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Final Regulation Agency Background Document

Agency name	Boards of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-50
VAC Chapter title(s)	Regulations Governing the Practice of Physician Assistants
Action title	Practice with a patient care team physician
Date this document prepared	12/4/20

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Amendments to 18VAC85-50 will replace the emergency regulations adopted to comply with changes to the Code (Chapters 92 and 137 of the 2019 Acts of the Assembly) that eliminated practice by a physician assistant under the *supervision* of a physician or podiatrist and replaced the relationship between the two to one of practice in collaboration and consultation with a *patient care team physician or podiatrist*.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

PA = physician assistant

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 4, 2020, the Board of Medicine adopted final amendments to 18VAC85-50-10 et seq., Regulations Governing the Practice of Physician Assistants.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes in the mandate. The Board of Medicine is complying with provisions of HB1952 and SB1209 of the 2019 General Assembly and is replacing emergency regulations adopted pursuant to the second enactment of the Acts.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards
The general powers and duties of health regulatory boards shall be:

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific statutory for this action is found in §§ [54.1-2900](#), [54.1-2951.1](#) through [54.1-2952.1](#), [54.1-2953](#), and [54.1-2957](#) of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is compliance with statutory changes delineating the practice of a physician assistant. The amendments are consistent with the requirement for a practice agreement between or among the parties and the responsibility of the patient care team physician or podiatrist for the health, safety, and welfare of patients who receive care.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Amendments are adopted to 18VAC85-50 to comply with changes to the Code (Chapters 92 and 137 of the 2019 Acts of the Assembly) that eliminated practice by a physician assistant under the *supervision* of a physician or podiatrist and replaced the relationship between the two to one of practice in collaboration and consultation with a *patient care team physician or podiatrist*.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) There are no advantages or disadvantages to the public apart from those in the statutory language in Chapter 29 of Title 54.1. The changes do not substantially alter the practice model for physician assistants and physicians as they are currently employed.
- 2) There are no particular advantages or disadvantages to the agency.
- 3) Other matters. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*" Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statute, which sets out the definitions and practice requirements for practice with a patient care team physician or podiatrist.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Proposed regulations were published on August 31, 2020 with comment requested until October 30, 2020. A public hearing was conducted on October 8, 2020 before the Advisory Board on Physician Assistants. There was no comment.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There were no changes made since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

In every section of this chapter, there are amendments to change the terminology from “supervising physician” to “patient care team physician (or podiatrist)” and to change “supervision” to “collaboration and consultation” as the practice relationship.

In addition, the following amendments were necessary:

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions used in the chapter	Words and terms defined in 54.1-2900 that are applicable to the chapter and this regulatory action are added. Amendments to terms defined in the chapter are necessary for consistency with their current usage. The term “supervision” is deleted because it is no longer applicable.
35	Sets out fees for licensure and renewal	The fee for submission of a new protocol is deleted as it is no longer required to submit a PA protocol.
110	Sets out responsibilities of the physician or podiatrist	Subdivision 4 is added for consistency with the Code (§ 54.1-2952) which specifically states: <i>A patient care team physician or patient care team podiatrist shall be available at all times to collaborate and consult with physician assistants.</i>
115	Sets out responsibilities of the physician assistant	Subsection A is amended to eliminate the language stating that the practice agreement “is approved and on file with the board.” <i>It is no longer a requirement for practice agreements between a PA and physician or podiatrist to be submitted to the Board for approval, so that language is outdated.</i> Likewise, subsection B is amended to eliminate the phrase “who has registered with the board” because it is not required for a physician to register in order to have a practice agreement with a PA. Subdivision 3 of subsection D is eliminated because the requirement is specifically eliminated in the Code in subsection D of § 54.1-2952.
130	Sets out qualifications for approval of prescriptive authority	The requirement for the practice agreement to be approved by the Board is deleted, as it is no longer required. The requirement to “submit evidence of successfully passing of the NCCPA exam” is deleted because passage of that exam is necessary in order to be initially licensed; the language in this section is outdated and not necessary.
140	Sets out the approved drugs and devices	The requirement for the practice agreement to be submitted for authorization is deleted, as it is no longer required.