



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Board of Physical Therapy
<b>VAC Chapter Number:</b>	18 VAC 112-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Physical Therapy
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Regulations are promulgated to provide educational and examination requirements for the licensure of physical therapists and physical therapist assistants. Provisions also establish requirements for renewal or reinstatement of a license, standards for practice, and fees to support the regulatory and disciplinary activities of the board.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or*

*discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 34.1 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively 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:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Chapter 34.1 of Title 54.1 sets forth statutory provisions for the licensure and practice of physical therapists, excerpts of which are listed below:

*§ 54.1-3473. Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Board" means the Board of Physical Therapy.*

*"Physical therapist" means any person licensed by the Board to engage in the practice of physical therapy.*

*"Physical therapist assistant" means any person licensed by the Board to assist a physical therapist in the practice of physical therapy.*

*"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders. The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.*

*§ 54.1-3474. Unlawful to practice without license; continuing competency requirements.*

- A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.
- B. The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.
- C. In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.
- D. The Board may approve persons who provide or accredit programs to ensure continuing competency.

§ 54.1-3477. Requirements for licensure as a physical therapist.

An applicant for licensure as a physical therapist shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

1. Is eighteen years of age or more;
2. Is a graduate of a school of physical therapy approved by the American Physical Therapy Association or is a graduate of a school outside of the United States or Canada which is acceptable to the Board; and
3. Has satisfactorily passed an examination approved by the Board.

§ 54.1-3478. Requirements for licensure as a physical therapist assistant.

An applicant for licensure as a physical therapist assistant shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

1. Is eighteen years of age or more;
2. Is a graduate of a two-year college-level education program for physical therapist assistants acceptable to the Board; and
3. Has satisfactorily passed an examination approved by the Board.

§ 54.1-3479. Licensure by examination or endorsement; traineeships.

- A. The Board shall provide for the examinations to be taken by applicants for licensure as physical therapists and physical therapist assistants. The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any applicant who feels aggrieved at the result of his examination may appeal to the Board.
- B. The Board, in its discretion, may issue licenses to applicants upon endorsement by boards of other appropriate authorities of other states or territories or the District of Columbia with which reciprocal relations have not been established if the credentials of such applicants are satisfactory and the examinations and passing grades required by such other boards are determined to be equivalent to those required by the Virginia Board.
- C. The Board, in its discretion, may provide for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by the Board under the direct supervision of a licensed physical therapist.
- D. In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to regulations promulgated by the Board.

## Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or

*particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

An announcement of the board's review of its regulations governing the licensure of acupuncturists was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from November 18, 2002 to December 18, 2002. During the 30-day comment period, no comments were received from members of the public.

The Board of Physical Therapy held an open discussion and review of the regulations and recommended to begin the process of amending its regulations.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The stated goals for this regulation are as follows:

1) To review methods for assuring continuing competency of licensed practitioners in physical therapy.

Chapter 858 of the 2001 Acts of the Assembly mandated promulgation of regulations to establish requirements to ensure continuing competency within 280 days of enactment. In response, the Board adopted emergency regulations that remained in effect from November 1, 2001 through October 31, 2002. Those regulations, which require 30 hours of continuing learning activities each biennium, were replaced by final regulations effective October 23, 2002.

During its review of regulations, the Board considered whether the active practice requirement for renewal of licensure is necessary. With a continuing learning requirement, the 320 hours of active practice in a biennium may not be needed as evidence of competency to continue in practice. If the requirement is continued, the Board has determined that some amendment to a definition of "active practice" may be necessary to clarify the types of physical therapy-related activities that would qualify.

2) To update the practice requirements for physical therapists and physical therapist assistants.

While the practice requirements are largely set out in the Code of Virginia, which was amended by the 2003 General Assembly, the Board has identified several areas in which amendments would be clarifying or necessary for consistency with current standard of care. From patient evaluation to supervision of PTA's by PT, the Board is concerned that it may need to clarify that the role of the physical therapist should be to have ongoing involvement in the care of a patient, continuous communication with an assistant about the treatment of a patient, and ultimate responsibility for such care and treatment.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

Regulations for the licensure of physical therapists and physical therapist assistants are mandated by law, so the Board did not consider the alternative of repealing 18 VAC 112-20-10 et seq. The amendments that are recommended are relatively minor, but will serve to clarify and simplify the requirements. The recommended amendments are intended to make compliance with regulations less burdensome and subjective. Amendments are also intended to ensure that persons licensed by examination or endorsement are qualified to practice with competency and safety and that physical therapists and physical therapist assistants understand their role relative to communication with and care for the patient.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The board is recommending amendments to its regulations for the licensure of physical therapists and physical therapist assistants in order to clarify and update educational, examination and practice requirements. With the creation of an independent Board of Physical Therapy, the regulations that had been in effect under the Board of Medicine were adopted in 2000 by the new board with only minor revisions. With more than two years of experience and with the mandated rules for continuing education, the Board has determined that some of its requirements may need to be more consistent with national standards in the practice of physical therapy, may need to be clarified to facilitate compliance by licensees, or may need to be modified to reduce the burden of compliance.

## Substance

*Please detail any changes that would be implemented.*

### **Recommendations by section:**

#### **18 VAC 112-20-10. Definitions.**

Definitions for the following terms may be amended for consistency with current law in Virginia or with national standards. Others will be amended for clarification or ease of compliance. The Board will consider amendments to: *“Approved program,” “CLEP,” “Direct supervision,” “Evaluation,” “Non-licensed personnel,” “Physical therapist,” “Physical therapist assistant,” “Trainee,” and “Traineeship.”*

#### **18 VAC 112-20-20. Public participation.**

This section was adopted from Board of Medicine regulations and is likely to be repealed as unnecessary. The public participation guidelines (18 VAC 112-10-10 et seq.) are a separate set of regulations adopted by the Board of Physical Therapy.

**18 VAC 112-20-25. Current name and address.**

No change has been identified during the periodic review.

**PART II.**  
**Licensure: General Requirements.**

**18 VAC 112-20-30. General requirements.**

No change has been identified during the periodic review.

**18 VAC 112-20-40. Education requirements: graduates of approved programs**

If an educational program was not conducted in English, whether approved or non-approved, it may be necessary to require a Test of Spoken English, since the quality of care is affected by the ability of a PT to adequately communicate with a patient.

**18 VAC 112-20-50. Education requirements: graduates of schools not approved by an accrediting agency recognized by the board.**

The Board currently requires certification by the Foreign Credentialing Commission on Physical Therapy to verify educational equivalency and eligibility to sit for an examination in physical therapy. It will examine whether there are other credentialing bodies or other methods by which a decision on qualifications could be based.

In subsection C, the requirement for a full-time 1,000-hour traineeship as a "foreign educated trainee" under the direct supervision of a licensed physical therapist may need clarification. The Board will consider a definition of "full-time" and set a maximum amount of time within which the traineeship must be completed. In addition, the Board will consider changes to the form and method of reporting, such as use of the American Physical Therapist Association clinical performance instrument.

**PART III.**  
**Licensure by Examination.**

**18 VAC 112-20-60. Application requirements.**

It does not appear that any changes are needed in this section.

**18 VAC 112-20-65. Requirements for the examination.**

The Board will consider an amendment that would remove the scale score from regulation and include a requirement for passage of a national examination by a score determined by the board. Such language is consistent with other boards and allows for flexibility if the scoring methodology for the examination changes.

The Board will also consider amending the restriction on licensure of an applicant who has failed the examination six times. It will compare the Virginia rule with policies of other boards and will consider requirements for remediation rather than a prohibition on licensure.

**18 VAC 112-20-70. Traineeship for unlicensed graduate scheduled to sit for the board's licensure examination.**

The regulations for a traineeship may be amended to set a limit on the time an unlicensed graduate can practice in a traineeship. The training requirement may also be amended to recognize practice on other states.

**PART IV  
Licensure by Endorsement.****18 VAC 112-20-80. Endorsement requirements.**

In addition to current requirements for licensure by endorsement, the Board will consider specifying that an applicant must provide verification that his license is current and in good standing in another state and that he has been actively engaged in practice for two of the past five years or some comparable period of time. Currently regulations require a traineeship if an applicant for licensure by endorsement has not practiced for at least 320 hours within the four years immediately preceding his application; other alternatives, such as letters of recommendation or continuing education, will be considered.

**PART V.  
Practice of Physical Therapists.****18 VAC 112-20-90. Individual responsibilities to patients.**

This section may be amended to clarify the responsibility of the physical therapist to communicate the treatment plan to the patient and to add nurse practitioners and physician assistants to the practitioners who may legally refer for physical therapy.

**18 VAC 112-20-100. Supervisory responsibilities.**

The Board will consider amendments to the supervisory responsibilities to update some requirements and clarify others.

**PART VI.  
Practice of Physical Therapist Assistants.****18 VAC 112-20-110. General requirements.**

The Board will consider an amendment in this section to specify the interventions that a physical therapist assistant may utilize in addition to stating those functions that are excluded to his practice.

**18 VAC 112-20-120. Individual responsibilities to patients and to physical therapists.**

The current regulation requires that the initial patient visit must be made by the physical therapist for evaluation of the patient and establishment of a plan of care. The Board will review regulatory language in other states to clarify and further identify the nature of an evaluation. It should be clearly stated that the physical therapist must have on-going involvement with the care of a patient and responsibility for continuous communication with the PTA on the patient's care and progress.

Requirements in subsection D for "re-evaluation" may also need to be clarified, and it may be preferable to state the time period for re-evaluation as every seven days, rather than once a week.

**PART VII.**



**Renewal of Licensure: Relicensure.****18 VAC 112-20-130. Biennial renewal of license.**

One of the current requirements for renewal is active practice consisting of a minimum of 320 hours of practice in the preceding four years. With the addition of continuing competency requirements set forth in 18 VAC 112-20-131, the Board will consider deletion of the active practice requirement.

**18 VAC 112-20-131. Continued competency requirements for renewal of an active license.**

Rules for continued competency have not yet been tested through one renewal cycle; licensees will have to attest to completion of the required hours in order to renew an active license biennially after December 31, 2003. Therefore, the Board has not identified changes during the periodic review. If it receives comments during the NOIRA comment period related to continued competency requirements, an inactive license or reinstatement, it will consider addressing those comments in the promulgation of amended regulations.

**18 VAC 112-20-140. Traineeship required.**

The Board will consider setting a time limit on a traineeship, so completion of the 480 hours must be accomplished within one year.

**PART VIII.****Fees.**

Renewal fees were reduced by action of the Board for the renewal cycle ending December 31, 2003 and which the previous fee schedule will be in effect. There are no changes to fee requirements identified in the periodic review of regulations.

**Family Impact Statement**

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.