



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Physical Therapy, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 112-20
<b>Regulation title</b>	Regulations Governing the Practice of Physical Therapy
<b>Action title</b>	Changes to traineeships and continuing education
<b>Document preparation date</b>	11/18/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The proposed regulations will increase the flexibility and accountability of traineeships by: 1) offering the option of passage of the Practice Review Tool in lieu of some training hours for applicants returning to practice through reinstatement, reactivation or endorsement; 2) reducing the traineeship hours for physical therapist assistants; 3) allowing part-time traineeships for graduates of non-approved physical therapy schools; and 4) limiting the numbers of supervisors for each trainee and requiring co-signing of trainee documentation in patient records and identification of a trainee for the patient. The proposed regulations will also reduce the burden of obtaining continuing education for licensees by eliminating the requirement for Type 1 hours to be face-to-face.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

**PRT** is the Practice Review Tool created by the Federation of State Boards of Physical Therapy to allow PTs to compare their knowledge, skills and abilities to current entry-level practice. It is also an opportunity to review PT fundamentals. The PRT uses scenarios and multiple-choice questions that emphasize clinical application of content knowledge. Results include a Completion Certificate and Candidate Feedback Report, which are given to the licensee who took the PRT.

**PT** is defined as a physical therapist or physical therapy.

**PTA** is defined as a physical therapist assistant.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

**Chapter 24 of Title 54.1** establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Physical Therapy to promulgate regulations and administer a licensure and renewal program.

*§ 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.*

Chapter 34.1 requires a license to practice and the promulgation of regulation establishing requirements to ensure continuing competency.

*§ 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.*

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the regulatory action is to provide more flexibility and accountability in traineeships for graduates of approved or unapproved (foreign) programs in physical therapy and for applicants who have not had recent clinical experience and are seeking licensure by endorsement or reinstatement. Additionally, the goal of the amendments is to provide more opportunities for obtaining the necessary continuing education hours for physical therapists and physical therapist assistants to maintain current licensure.

During the periodic review of regulations conducted in 2008, there were several comments and issues relating to traineeships and continuing competency that the Board elected to refer to the Legislative/Regulatory Committee. In consultation with the Virginia Physical Therapy Association representatives and a faculty member at VCU Health Systems, the Committee and the Board concluded that it should retain traineeships but make certain adjustments that would offer more flexibility and licensee oversight. Certain requirements are added for more accountability and greater assurance of public safety including provisions that should result in the trainee being adequately supervised, that the diagnosis and treatment being provided by a trainee is appropriate, and that there is continuity of supervision. For the sake of public health and safety, a trainee should be so identified to the patient; and the progress notes from the trainee should be countersigned to document physical therapist oversight and responsibility for patient care.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

The Board has recommended the following substantive provisions:

- 1) Clarify section 70 regarding traineeships to specify that the unlicensed graduate applying for a traineeship has been scheduled to take the national examination.
- 2) Amend section 140 to limit the number of supervisors for each trainee to no more than two PT's to ensure some continuity in training.
- 3) Amend section 140 to specify that a trainee be designated as a "PT Trainee" or "PTA Trainee" for the sake of public safety.
- 4) Amend section 140 to state that all patient progress notes must be countersigned by the trainee's supervisor. This includes computerized/electronic patient care notes to have documentation that the trainee is being supervised.
- 5) Amend section 50 D, which currently requires a 1,000 hour full-time traineeship to allow a part-time traineeship, but include a limitation of two years on the amount of time allotted for completion. The time limit could be waived or extended for hardship circumstances in which the trainee needs additional time for completion.
- 6) Allow the PTA traineeship to be a fewer number of hours than the PT traineeship, since PTA education programs are shorter than PT education programs, and the scope of services provided by the PTA is less than that provided by a PT. Traineeship hours for an unlicensed graduate or an inactive PTA would be reduced from 480 hours to 320 hours.
- 7) Eliminate "face-to-face" requirement for Type I courses to allow home study, online or audio courses offered by the approving organizations to be counted, but increase the number of hours that must be Type I from 15 to 20 per biennium for PT's and from 10 to 15 for PTA's. Type II hours would be reduced from 15 to 10 for PT's and from 20 to 15 for PTA's, so the total number of hours would remain the same.
- 8) Grant credit for all or part of the continuing competency hours for licensee who takes the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy. The amount of credit would be designated depending on whether the PT used the PRT as a self-assessment or as a measure of competency by meeting the standard set by the Federation.
- 9) Amend sections on endorsement, reinstatement or reactivation to use the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy as a competency assessment for PT's who have not been in active clinical practice. The PRT would be used to allow the PT

to assess his or her areas of weakness, so a precepted experience could be more directed. Additionally, PT's who meet the standard on the review tool would be granted credit for some of the traineeship hours.

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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- 1) The primary advantage to the public would be greater protection for patients in the practice of trainees by closer supervision of their practice and identification of their status as a trainee. Use of the PRT will offer applicants and licensees information about their weaknesses in current knowledge about practice to allow them to direct continuing education or supervised practice in those areas. Elimination of the face-to-face requirement for Type 1 hours will reduce the financial burden of PT's and PTA's while continuing to ensure the safety of the public, by allowing licensees to fulfill their CE requirements with less time from practice and patient care. There are no disadvantages to the public.
  - 2) There are no advantages or disadvantages to the agency or the Commonwealth.
  - 3) There is no other pertinent matter of interest related to this action.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no requirements more restrictive than federal.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities particularly affected.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to comment may do so via the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) or submit written comments to the Department of Health Professions to Elaine Yeatts, Senior Policy Analyst, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or by fax to (804) 527-4434 or by email to [Elaine.yeatts@dhp.virginia.gov](mailto:Elaine.yeatts@dhp.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional on-going costs relating to these regulations.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The entities that are likely to be affected by these regulations would be applicants for licensure and</p>

	licensed physical therapists and physical therapist assistants.
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 5552 physical therapists and 2144 physical therapist assistants with active licenses who could be affected by changes to continuing education requirements. Of that number, some would be considered small businesses but many PT’s work as employee of hospitals, corporate practices, or other entities. The agency has no figures on those practices that are independently owned. Since PTA’s work under the supervision of PT’s, none of that number could be considered small businesses.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There are no projected costs of the new regulations. The cost for taking the PRT is \$250, but it is voluntary for applicants desirous of shortening the traineeship period in order to accept a position in a PT practice. It is also voluntary for a licensee who wants to have his knowledge and skills professionally assessed, and in doing so, he is able to reduce the number of continuing education hours required for renewal.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Elimination of the face-to-face requirement for Type 1 hours will reduce the financial burden of PT’s and PTA’s while continuing to ensure the safety of the public, since many quality courses are available in a home study or on-line format. Will result in reduction in time and cost to licensees and employers.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

To address issues relating to traineeships, the board considered the elimination of traineeships for unlicensed graduates who are waiting to take the licensure examination. Since the examination is now offered throughout the year, the original purpose of the traineeship, to bridge the gap of time between graduation and the examination date, is no longer valid. Additionally, if graduates were not allowed to begin work in a trainee capacity, they would have more time to concentrate on studying for and passing the national examination. In support of continuing traineeships, members and commenters noted that the traineeships allow graduates an opportunity to gain some experience in practice, while still under supervision; and a traineeship allows an employer an opportunity to observe the clinical skills of a new graduate.

For the graduate of an unapproved (“foreign”) educational program, there was a recommendation to reduce the number of traineeship hours and allow for part-time employment. The Board did not recommend a reduction in hours, because the foreign graduate needs time to demonstrate clinical skills but also to acclimate himself to a different health care environment with U.S. patients. Allowing part-time traineeships will benefit the foreign-educated trainee by giving them more options and opportunities to work.

In addressing issues relating to continued competence, the Board has eliminated the face-to-face requirement in obtaining Type 1 CE to allow more home study and potentially reduce the time commitment and cost of continuing education. Additionally, the Board will grant credit for taking the PRT as a self-assessment instrument for licensees in fulfilling continuing competency hours. The PRT could also be used for persons seeking reinstatement or reactivation, which would give an applicant the opportunity to demonstrate current clinical competence and reduce the period of traineeship to allow them to be licensed and begin employment more quickly.

There are no alternatives to regulatory action but the Board is considering amendments that will represent more options and opportunities to demonstrate clinical competence.

### Regulatory flexibility analysis

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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There are no alternative regulatory methods, other than the amendments described in the Substance section.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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The Notice of Intended Regulatory Action was published on June 8, 2009 with comment received until July 8, 2009. Three persons offered the following comments:

- Support for requiring a graduate to be scheduled to sit for the examination before being approved for a traineeship; that will encourage new graduates to complete the exam in a timely manner which increases the odds of passage and will limit exposure of employers.



- Support for limiting traineeship supervisors to two and countersigning of documentation.
- Support for allowing a part-time traineeship with a two-year limitation and for reducing the hours of traineeship for the PTA from 480 to 320.
- Support for eliminating face-to-face requirement for Type 1 hours; many quality courses are available in a home study or on-line format. Will reduce the financial burden of PT's and PTA's while continuing to ensure the safety of the public. Agreed with increasing the portion of CE that must be Type 1 if face-to-face is eliminated.
- Support for use of the PRT as partial credit for competency to practice.

The board concurred with all comments and adopted amendments accordingly.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

There is no impact of the proposed regulatory action on the institution of the family and family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

Current section number	Current requirement	Proposed change and rationale
10	Sets out definitions for words and terms used in regulation	<ul style="list-style-type: none"> <li>• Adds a definition for <i>PRT</i> as the Practice Review Tool for competency assessment offered by the Federation of State Boards of Physical Therapy.</li> <li>• Deletes the term “face-to-face” in the definition of Type 1 continuing learning activities because the requirement for face-to-face activities is being deleted.</li> </ul>
50	Sets out the educational requirements for graduates of schools that are not approved by an accrediting agency	Subsection D requires a graduate of a non-approved PT or PTA program to complete a <i>full-time</i> 1,000-hour traineeship. The amended regulation specifies that the 1,000 hours must be completed with a two-year period, which would allow someone to work part-time in a traineeship. <i>For a variety of</i>

		<p><i>reasons, both economic and personal, it is not always possible for someone to be engaged full-time in a traineeship. Eliminating the “full-time” requirement, but adding a limitation on the length of time (2 years) someone can have to complete the traineeship, offers applicants more flexibility and yet assures that there will be some continuity in the training. The board has also added authorization to extend the two-year limitation for circumstances beyond the control of the applicant.</i></p>
65	<p>Sets out requirements for licensure by endorsement from other states</p>	<p>Amendments to subsection C offer another option for applicants who were licensed in another state but have not actively practiced for at least 320 hours within the last four years preceding application in Virginia. Currently, the applicant for licensure as a PT is required to complete a 480-hour traineeship under supervision. The additional option is passage of the PRT (Practice Review Tool) within the two years preceding application for licensure and completion of a 320-hour traineeship.</p> <p><i>Passage of the PRT is an indication that the applicant is competent to return to active practice with a license in Virginia. It is an indicator of one’s current knowledge about the practice of physical therapy, but the board has retained the requirement a reduced number of traineeship hours to ensure that the skills of the therapist are also current and competent.</i></p> <p>Subsection D was added to address applicants by endorsement as PTA’s. Since the PRT is not offered for physical therapist assistants, passage of that examination is not an option. However, the board believes that a reduction in the traineeship hours is appropriate for PTA’s because their educational programs are shorter and their practice is under the supervision of a physical therapist. Therefore, the current requirement for a 480-hour traineeship has been reduced to a 320-hour traineeship for PTA’s.</p>
70	<p>Establishes a traineeship for unlicensed graduate scheduled to sit for the national examination.</p>	<p>An amendment to subsection A clarifies that a traineeship may only be approved for a graduate who is registered with the Federation to sit for the examination. The Federation requires that a graduate take the examination within 60 days of registration, so there is a built-in limitation of the time period for a traineeship. If an applicant fails the examination, he must apply for a new traineeship (after he has re-registered for the examination). The Federation only allows three attempts at passage within a one-year period.</p>
131	<p>Establishes the continued competency requirements for renewal of an active license.</p>	<ul style="list-style-type: none"> <li>• The board proposes to eliminate the requirement for all Type 1 activities or courses to be “face-to-face.” Without that restriction, there are considerably more options available to obtain courses or activities that are</li> </ul>

		<p>approved by one of the organizations listed in subsection B, including on-line or self-study courses. Given that the PT and PTA would have many more Type 1 options, the board has adopted a different ratio of Type 1 and Type 2 hours. A PT would have to have a minimum of 20 of the required 30 hours in Type 1, and a PTA would have to have a minimum of 15 of the 30 hours in Type 1. The remaining hours could be either Type 1 or Type 2.</p> <ul style="list-style-type: none"> <li>An additional option for documentation of continued competency would be completion of the PRT. If a PT can document that he took the PRT within the last two years, he could receive 10 hours of Type 1 credit. If he can document that he passed the PRT, he could receive 20 hours of Type 1 credit for the biennium in which the examination was passed. <i>There is a benefit to taking the PRT even if the PT does not achieve a passing score. The Federation provides written feedback on areas of strength and weakness in one’s knowledge and practice, so attempting the PRT is beneficial to one’s continued competence and knowledge. Passage of the PRT is a strong indicator of competency and would result in all Type 1 hours for the biennium.</i></li> </ul>
135	Sets out requirements for re-activation of an inactive license.	The requirement for active practice of 320 hours within the past four years is the same as that for licensure by endorsement. Likewise, the amendments for traineeship hours and credit for passage of the PRT are identical to those explained in section 65.
136	Sets out requirements for reinstatement of licensure	The requirement for active practice of 320 hours within the past four years is the same as that for licensure by endorsement and reactivation of an inactive license. Likewise, the amendments for traineeship hours and credit for passage of the PRT are identical to those explained in section 65.
140	Sets out requirements for traineeships.	<p>Subsection A – a modification was made for grammatical purposes.</p> <p>Subsection B is added to set out new requirements for supervision and identification of trainees. <i>The board is concerned about the lack of responsibility and oversight by some physical therapists for the trainees assigned to work under their supervision. If there are multiple supervisors, no one is fully aware of or takes responsibility for the trainee’s practice and progress. To limit supervision to one supervisor per trainee could limit the trainee’s opportunities to work and experience some variety in clients, so the board proposes a limitation of two physical therapists assigned to supervise each trainee.</i></p>

		<p><i>To ensure that there is oversight and supervision for the activities of a trainee, the board has added a requirement for the supervisor to countersign patient documentation for services provided by a trainee. Such a requirement will re-enforce the responsibility of the supervisor for client care by a trainee under his/her supervision and ensure that he or she has exercised some oversight. The board did not set a time requirement for countersigning as the timing may depend on a variety of factors, such as the setting in which physical therapy is being practiced – out-patient, school, in-patient, home health, etc.</i></p> <p><i>To ensure that the patient or client knows that he is receiving services by a trainee and not a licensee, the board has added a requirement for identification designating the traineeship status.</i></p>
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