



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Medicine, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 85-20-10 et seq.
<b>Regulation Title:</b>	<b>Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic</b>
<b>Action Title:</b>	Periodic review
<b>Date:</b>	6/6/03

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

Regulations are promulgated to provide educational and examination requirements for the licensure of doctors of medicine, osteopathy, podiatry and chiropractic. Provisions establish standards of professional conduct, requirements for limited or temporary licenses, and requirements for renewal or reinstatement of a license including evidence of continuing competency. Regulations implementing the physician profile system are set forth as are fees to support the regulatory and disciplinary activities of the board.

Amendments are proposed to change the term osteopathy to osteopathic medicine clarify the Board policies on: payment of late fees for failure to renew a license; advertising ethics; and utilization of acupuncture as a treatment modality. Amendments will also reduce the regulatory burden for applicants discharged from the military, for foreign medical graduates seeking a limited license, and for practitioners seeking to return to reinstate or reactivate a license.

## Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

No changes to proposed regulations have been made in the adoption of final amendments.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On June 5, 2003, the Board of Medicine adopted final amendments to 18 VAC 85-20-10 et seq., Regulations Governing the Practice of Medicine, Osteopathy, Podiatry & Chiropractic, in order to implement recommendations of a periodic review of regulations.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

*§ 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.*

The legal authority to promulgate regulations for the licensure and practice of doctors of medicine, osteopathy, podiatry and chiropractic is found in Chapter 29 of Title 54.1 of the Code of Virginia. (<http://leg1.state.va.us/000/lst/h3800731.HTM>)

The Assistant Attorney General who provides counsel to the Board of Medicine has provided a letter of assurance that the amended regulations are consistent with statutory law.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

While most of the amendments are clarifications of regulations to more clearly state Board policy, the changes related to advertising ethics are intended to better protect the public health, safety and welfare by establishing clearer guidance for advertisements of professional services. To ensure that the public is not being misled, the practitioner is required to advertise in a manner that is not deemed to be deceptive or misleading by doing such things as inflating charges for the purpose of advertising a discounted rate.

Amendments to requirements for applicants discharged from the military, foreign-trained applicants seeking limited licensure, or applicants for reinstatement or reactivation of a license are intended to eliminate or reduce any barriers to entry that are not essential for the protection of the public or assurance of competency to practice.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The Board is recommending amendments that will eliminate unnecessary provisions of the regulations, clarify others that have raised questions for licensees or the public and further specify restrictions on advertisements to ensure they are not deceptive to the consumer. Amendments to the fee section are intended to clarify that late fees are assessed for every biennial renewal period in which the license has been lapsed. Amendments to licensure requirements will: reduce the number of years from 10 to 5 within which an applicant discharged from the military must submit discharge papers; allow a determination of English proficiency to be delegated by the Credentials Committee to facilitate the process; and make the passage of an examination for reinstatement optional if a practitioner seeking reinstatement has not been

engaged in active practice. Active practice is now defined as at least 640 hours of clinical practice within the past four years. Finally, the regulation specifies that the use of acupuncture as a treatment modality must be appropriate to the doctor's scope of practice as defined in the law.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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, please include a sentence to that effect.*

The primary advantage to the public of the proposed regulatory action is making the rules on advertising more explicit to ensure that practitioners are acting ethically and lawfully. For example, advertisements that inflate the cost of treatment in order to advertise a discount or fail to disclose the total cost are misleading and can be harmful to patients. There is also an advantage to clarifying that acupuncture as a treatment modality must only be used within the scope of a licensee practice, as defined in the Code. There have been reports of practitioners, such as chiropractors, who have provided acupuncture treatment unrelated to the statutory scope of practice. Clarity in the regulation should protect patients or at least provide the Board with grounds for disciplinary action. There are no disadvantages to the public of any of the proposed amendments.

There are no specific advantages or disadvantages to the agency or to the Commonwealth. Clarity in regulations is always advantageous to the agency as it strives to interpret law and regulation to its licensee and the public.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

Proposed regulations were published in the Register of Regulations on December 2, 2002. The comment period concluded on January 31, 2003. Eight chiropractors commented that acupuncture is not a treatment modality within the practice of chiropractic but a complete treatment system with which they treat all human ailments and conditions. In their comments, they contend that the current regulation permits the treatment of a variety of conditions and ailments, including high blood pressure, diarrhea, impotence, infertility, alcohol abuse, etc. and that the amendments to section 131 would limit that practice.

A Public Hearing before the Board was held on December 13, 2002, at which time representatives of the Virginia Chiropractic Association presented comments on the proposed regulations identical to those in the written comment.

**Board response:**

At its meeting on June 5, 2003, the Board reviewed the comments and the concerns expressed by the commenters that the proposed amendment would be a limitation on their practice. The definition of the “practice of chiropractic” in § 54.1-2900 of the Code of Virginia was discussed in relation to the regulation on the use of acupuncture. It was agreed that the proposal does not limit the chiropractor ability to use acupuncture in “assisting nature for the purpose of normalizing the transmission of nerve energy” (§ 54.1-2900). Therefore, the Board determined that the proposed language should be adopted as final.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

### **18 VAC 85-20-10. Definitions.**

Amendments are proposed to delete the definition for “acupuncturist” as it is not relevant to these regulations. The change in terminology from “osteopathy” to “osteopathic medicine” would be made in this section and as it appears throughout the regulation.

### **18 VAC 85-20-22. Required fees.**

Minor amendments are proposed to clarify terminology and to reduce the fee for a temporary permit from \$30 to \$25, the limit allowed in the Code. Amendments are recommended to specify that reinstatement of a license expired for two years or more in medicine, osteopathy, podiatry and chiropractic requires payment of a late fee of \$90 per biennium (\$80 for chiropractic), not to exceed the total for four years.

### **18 VAC 85-20-30. Advertising ethics.**

Amendments are proposed for consistency with federal law and to clarify the policy of the Board on advertising of fees to ensure that all patients are treated equally and equitably.

### **18 VAC 85-20-120. Prerequisites to licensure.**

An applicant discharged from the military within the past 5 years would be required to submit a copy of discharge papers, rather than the current requirement of 10 years. The board only requires a chronology of practice for the past 5 years, so the change is consistent with current application requirements.

### **18 VAC 85-20-131. Requirements to practice acupuncture.**

The board is recommending deletion of the provision that a podiatrist may only use acupuncture for treatment of the human foot. It would be replaced with a provision that more clearly states that acupuncture, as a treatment modality, should only be used as appropriate to the doctor's scope of practice as defined in § 54.1-2900 of the Code of Virginia.

**18 VAC 85-20-150. Reexamination.**

It is recommended that this section be repealed, as each examining body has its own requirements for reexamination and additional training.

**18 VAC 85-20-210. Limited licenses to foreign medical graduates.**

Regulations currently permit the waiver of the requirement for evidence of equivalency from the Educational Commission for Foreign Medical Graduates, but there has been no criteria established for such a waiver. The amended regulation would allow a designee of the Credentials Committee (normally the Executive Director and the Chair) to issue the waiver based on other evidence of medical competency and English proficiency.

**18 VAC 85-20-230. Renewal of an active license.**

The current regulation states that a practitioner who intends to continue his practice must renew biennially, but many doctors intend to maintain an active license without continuing in active practice. An amendment will clarify that provision.

**18 VAC 85-20-235. Continued competency requirements for renewal of an active license.**

For consistency and clarity, the section may be amended to designate the Continued Competency Activity and Assessment Form as the "Form."

**18 VAC 85-20-240. Reinstatement of an inactive or lapsed license.**

The Board has determined that provisions for the reinstatement of a lapsed license and reactivation of an inactive license should be less restrictive. Currently, a practitioner seeking to reinstate or reactivate a license, who has not actively practiced for more than four years, would be required to re-examined in order to be licensed. Amendments continue to give the Board authority to require re-examination but make it discretionary. If there is other evidence of continued competency to practice, that could be considered and the examination waived. Also, there has been no specificity about a definition of "active practice" – it could mean anything from one hour of practice in four years to 2,000 hours per year. To clarify the term, the Board has adopted a standard for active practice of at least 640 hours of clinical practice within four years preceding application, consistent with the active practice definition for other professions regulated by Medicine.

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the 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 or on disposable family income.