



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>	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry & Chiropractic
<b>Action Title:</b>	Changes to physician profile system
<b>Date:</b>	4/17/03

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*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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.*

The Board of Medicine has amended its regulations to comply with a statutory mandate found in § 54.1-2910.1 as amended by Chapter 38 of the 2002 Session of the General Assembly. The statute requires certain changes to the practitioner profile system for doctors of medicine, osteopathy and podiatry to include the addition of telephone numbers, email and fax for dissemination of emergency information and information on felony convictions.

The amended regulations would replace emergency regulations required by the second enactment clause of the bill, which are in effect from June 19, 2002 to June 18, 2003.

## 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.*

The Board made the following editorial changes to the proposed regulations in the adoption of final amendments.

18 VAC 85-20-280

In subsection A, the term osteopathy was changed to osteopathic medicine for consistency with terminology now used for the profession. (A similar change was made in section 290.) In subdivision 12, it was clarified that a licensee must report on the profile if he has surrenders his license while under investigation in another state; it is intended that the profile reflect disciplinary action or pending action, rather than a voluntary surrender for retirement or other cause.

In subsection B, the Board clarifies that unadjudicated notices and orders that are not yet final are not posted on the profile but are available by request to the Board. The amended language was recommended by Board counsel as more accurate to the process and requirement of law.

18 VAC 85-20-290

In subsection B, the requirement in the Code (54.1-2910.2) that the Board shall not release numerical values of any malpractice reports was also stated in regulation for clarity to the licensees and the public.

Other changes were made for grammatical or editorial purposes.

## 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 April 16, 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 changes in the physician profile system.

## 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 specific statutory mandate for the Board to implement the physician profile is found in:**

§ 54.1-2910.1. *Certain data required.*

*A. The Board of Medicine shall require all doctors of medicine, osteopathy and podiatry to report and shall make available the following information:*

1. *The names of the schools of medicine, osteopathy, or podiatry and the years of graduation;*
2. *Any graduate medical, osteopathic, or podiatric education at any institution approved by the Accreditation Council for Graduation Medical Education, the American Osteopathic Association or the Council on Podiatric Medical Education;*
3. *Any specialty board certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association, or the Council on Podiatric Medical Education of the American Podiatric Medical Association;*
4. *The number of years in active, clinical practice as specified by regulations of the Board;*
5. *Any hospital affiliations;*
6. *Any appointments, within the most recent ten-year period, of the doctor to the faculty of a school of medicine, osteopathy or podiatry and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;*

7. *The location and telephone number of any primary and secondary practice settings and the approximate percentage of the doctor's time spent practicing in each setting. For the sole purpose of expedited dissemination of information about a public health emergency, the doctor shall also provide to the Board any e-mail address or facsimile number; however, such e-mail address or facsimile number shall not be published on the profile database and shall not be released or made available for any other purpose;*

8. *The access to any translating service provided to the primary and secondary practice ~~setting~~ settings of the doctor;*

9. *The status of the doctor's participation in the Virginia Medicaid Program;*

10. *Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ [54.1-2906](#), [54.1-2908](#), and [54.1-2909](#) that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action;*

11. *Conviction of any felony; and*

12. *Other information related to the competency of doctors of medicine, osteopathy, and podiatry, as specified in the regulations of the Board.*

*B. In addition, the Board shall provide for voluntary reporting of insurance plans accepted and managed care plans in which the doctor participates.*

*C. The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a specific doctor. The Board's regulations shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement; however, the specific numeric values of reported paid claims shall not be released in any individually identifiable manner under any circumstances.*

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.*

Chapter 38 of the 2002 Acts of the Assembly resolves several problems with the existing law on physician profiling in § 54.1-2910.1, as approved in the 2001 Special Session. The Department identified several ways in which the physician profile system could be more efficient and effective and worked with the patron and other interested parties in amending provisions of the law that were problematic and offered no real benefit to the consumers of health care services by doctors. Required elements of the profile are intended to provide information sufficient for the

public to locate doctors in their area who practice in a particular specialty and to further assure the public health, safety and welfare in their informed selection of doctors in the Commonwealth.

## 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.*

Requirements for the physician profile have been amended in conformity to changes in § 54.1-2910.1. Certain information is now required - such as telephone numbers of practice locations, availability of translating services at secondary practice settings, and reports of any felony convictions. In addition, contact information, such as an email address, which are necessary for communicating with practitioners in times of emergency situations is required to be reported, but not available on the profile viewed by the public. Information on insurance plans accepted is voluntary, and the amended regulations specify that notices and orders will be posted by the Board after the notice has been adjudicated. The statistical methodology for calculating the rating of malpractice claims has been modified to more accurately reflect the relative nature of the claim. Where there have been fewer than 10 claims in a specialty, no rating is applied. Other technical changes are proposed to make the regulation clearer and more enforceable.

## 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.*

There are several advantages to the public of the amended regulation:

- Current law requires the licensees to report any "insurance plans accepted" - a requirement with which it is nearly impossible to comply since the list can be well over 1,000 and licensees sometimes don't even know when they have been added or deleted from a panel. By making that field in the profile optional, the practitioner can choose several options: 1) he can report no insurance plans; 2) he can list the 10 or more that are most frequently used in his office; 3) he can state that most major plans are accepted with instruction for the patient to call the office; or 4) he can respond in some other fashion. If he chooses to report insurance plans, he is responsible for keeping it accurate. The amended law and regulation make the reporting of this information optional and less confusing to the consumer.
- Under current regulations, primary and secondary practice addresses are required but telephone numbers are not. Including telephone numbers will be a convenience for patients.

- Current regulation requires the reporting of translating services only at the primary practice setting. Including secondary practice settings would better serve consumers.
- The amended regulation requires a practitioner to report a felony conviction, which is information that consumers may need to make an informed choice about a doctor.

There are no disadvantages to the public as all amendments are intended to provide better access to useful information on doctors of medicine, osteopathy and podiatry.

There are no advantages or disadvantages to the agency; the amended regulations clarify several aspects of the profile and address some issues that had been difficult to resolve. The provision of email addresses and facsimile numbers will provide a valuable resource and an immediate contact for the Board or the Department of Health in cases of emergency.

### 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 January 27, 2003. The comment period concluded on March 28, 2003. A public hearing was held before the Board of Medicine at the Department of Health Professions in Richmond on February 6, 2003. No comment was presented at that time nor was any written or electronically submitted comment received.

### 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.*

As provided in the law, the regulations are amended the following sections:

#### **18 VAC 85-20-280. Required information.**

##### **Subsection A**

- This section has a technical amendment to incorporate language currently in subsection C requiring submission of information within 30 days of a change in what is on the profile.
- An amendment specifies the reporting the telephone numbers for primary and secondary practice settings in addition to addresses.

- An amendment eliminates the requirement for reporting of all insurance plans accepted or managed care plans in which the doctor participates. That information is now optional, as provided in a new section (285) on voluntary information.
- An amendment adds the requirement of reporting translating services at secondary practice settings as well as primary practice settings.
- Complying with #11 in the listing of information the law requires on the profile, the regulations are amended to specify that a doctor must report any felony conviction, including the date of the conviction, the nature of the conviction, the jurisdiction in which the conviction occurred and the sentence that was imposed.
- The law requires the Board to specify in regulation other information related to the competency of doctors. In accordance, an amendment is adopted to require information on final disciplinary orders from a regulatory board of another jurisdiction or a disciplinary action taken by a federal health institution or agency.

#### **Subsection B**

- The current subsection B has been moved to a new section (285) on voluntary information.
- The new subsection B requires the posting of adjudicated orders and notices or decision documents that are subject to public disclosure in § 54.1-2400.2 D of the Code. In addition, the profile is required to reflect that unadjudicated notices and orders that are subject to be vacated are available to the public upon request.

#### **Subsection C**

- Language in the current subsection C has been incorporated into subsection A of this section.
- An amendment will require doctors to provide email addresses or facsimile numbers for the sole purpose of expediting the dissemination of information about a public health emergency. Such information is not published on the profile or released to the public.

### **18 VAC 85-20-285. Voluntary information.**

This section is added to distinguish from required information that information which the doctor may voluntarily provide on the profile to include names of insurance plans accepted or managed care plans in which he participates or any other information that suggests additional competency or recognition.

### **18 VAC 85-20-290. Reporting of malpractice paid claims.**

Current language in section 290 was deleted and replaced with requirements for reporting that are more useful in presenting information on malpractice to the public. For example, current regulations require the physician to report the specialty in which he practices; amended regulations require the physician to report the specialty in which he was practicing at the time the claim was paid. Calculation of the level of significance for each paid claim is based in part on the number of doctors in that specialty who have had paid claims, so the amended requirement is more pertinent. In addition, the Board found the standard deviation methodology set forth in current regulations produced skewed results, so a different statistical method has been used to rate the paid claims. If there have been fewer than 10 paid claims in any specialty, no rating



system is applied. For all other paid claims, the top 16% of claims are displayed as above average; the next 68% are displayed as average; and the bottom 16% of claims are displayed as below average.

**18 VAC 85-20-300. Non-compliance or falsification of profile.**

Technical changes are made in this section to ensure consistency in the application of requirements and disciplinary action for non-compliance.

There are no potential issues to be addressed in the development of regulations to replace the emergency provisions adopted by the Board. Issues related to the posting of disciplinary information were worked out with representatives of the Medical Society of Virginia prior to the introduction of SB 59. Several of the suggested statutory and regulatory changes resulted from an internal assessment of the profiling system as well as meetings with MSV and other external groups such as the Virginia Association of Health Plans, Trigon, the Bureau of Insurance and the Virginia Hospital and Healthcare Association.

### 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.