



Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 85 -20
Regulation title	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic
Action title	Increase in fees
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

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

House Bill 1441 of the 2003 General Assembly strengthened requirements for health care institutions to report misconduct by doctors and changed the threshold for a finding of unprofessional conduct from a gross negligence standard to a simple negligence standard. The end result will be a substantial increase in the number of disciplinary proceedings conducted by the Board of Medicine. It was recognized that the additional cost associated with compliance and implementation of HB1441 would result in increased costs for the board and an immediate need for additional revenue.

In response, the General Assembly included an enactment clause to authorize the promulgation of emergency regulations to increase fees, which the Board has completed. An increase of \$77 per licensee for a biennial renewal, with other associated fees increased by a like amount, has

been in effect since July 15, 2003. This regulatory action will replace the emergency regulations currently in effect.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (5) provides the Board the authority to levy fees and (6) provides authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...

The legal authority to promulgate the regulation for a fee increase is in fifth enactment clause of Chapter 762 of the 2003 Acts of the Assembly. See complete copy of HB 1441 (Chapter 762) - <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0762>

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.

In the 2003 General Assembly, House Bill 1441 strengthened requirements for health care institutions to report misconduct by doctors when there is a “reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.” Both the time limit for reporting and the content of the report have been specified in the Code, and the civil penalty for failure to

report has been increased from a maximum of \$10,000 to \$25,000. Accordingly, the agency estimated that complaints or reports of misconduct by doctors could increase from 1500 to 1800 per year.

In addition, HB1441 changed the threshold for a finding of unprofessional conduct from a gross negligence standard to a simple negligence standard. The current standard is: *Gross ignorance or carelessness in his practice, or gross malpractice*; since July 1, 2003, the standard has been: *Intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients.*

The end result of the reduction in the threshold for disciplinary action coupled with the additional reporting requirements will be a substantial increase in the number of disciplinary proceedings conducted by the Board of Medicine. Additional reporting will likely result in approximately 160 new cases to fully investigate (from 1200 to 1360), but the number of informal conferences is expected to more than double from 80 to 175 per year. Likewise, it is projected that the number of formal hearings may double from 25 to 50 per year. In addition, it is expected that a number of cases that may have previously been closed as “no violation” under the old disciplinary standard may be settled with a confidential consent agreement. The number of confidential consent agreements, which must be prepared by legal staff and reviewed by counsel, is estimated to be approximately 375 per year. During debate on the bill, it was clearly noted that the additional cost associated with compliance and implementation of HB1441 would result in increased costs for the affected boards and would generate an immediate need for additional revenue.

The provision of sufficient funding to support the costs of investigating and adjudicating reports of negligence or unprofessional conduct is essential to the mission of the Board, which is to protect the health and safety of the public. Delays in the disciplinary process due to insufficient resources could potentially allow unsafe doctors to remain in active practice and would be harmful to consumers of medical 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.)

To accommodate the projected increase in reporting, investigations and disciplinary proceedings for the Board of Medicine, the agency has calculated costs for additional staff, hearings, equipment and related expenses. It is estimated that by June 30, 2006 at the conclusion of the 2004-06 biennium, costs related to HB1441 could result in a \$3.7 million deficit for the Board. In order to adjust fees as necessary to accomplish the regulatory and enforcement responsibilities set forth in the act, the Board has adopted an emergency regulation to increase the biennial renewal fee by \$77 and has set other fees accordingly. The adoption of the proposed fee increase will result in an additional \$3,701,292 in revenue by FY 06 – an amount sufficient to offset the projected deficit.

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.

1) In order for the Department to continue processing applications, investigating complaints and conducting disciplinary proceedings against doctors, it is necessary for the Board to have sufficient funding. There are no direct advantages to the public in taking action to increase renewal fees, but failure to act could place the public in jeopardy as there could be delays in licensing practitioners and in the investigation and adjudication of complaints of negligence or other unprofessional conduct. To the extent the Board has acted in anticipation of its need for additional revenue to offset additional expenditures and loss of income, the public is well-served. There are no disadvantages to the public; a \$77 increase in a professional licensure fee payable every two years is not likely to deter persons interested in the entering the profession nor is it likely to cause any currently-practicing doctor to leave the profession.

2) The primary advantage to the Commonwealth is the availability of sufficient funding for the Department and the Board to carry out its statutory responsibilities. Since the agency is self-funded through its licensure fees, an increase in fees is the only mechanism for producing adequate income to meet its budget. There are no disadvantages to the agency or the Commonwealth.

3) There are no other matters of interest related to this regulatory action that are pertinent to the regulated community, government officials, and the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</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 \$5,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled; there will be on-going expenditures associated with the fee increase.</p>
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Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The entities that are likely to be affected by these regulations would be doctors of medicine, osteopathy, chiropractic and podiatry
Agency's best estimate of the number of such entities that will be affected	Currently, there are 29,223 doctors of medicine and surgery, 1018 doctors of osteopathy, 499 doctors of podiatry, and 1634 doctors of chiropractic licensed in Virginia.
Projected cost of the regulation for affected individuals, businesses, or other entities	The projected cost to affected individuals will be primarily related to an increase in the cost of maintaining a professional license. Relative to the costs of qualifying and obtaining a license, the additional \$77 per biennial should not have a significant negative impact on licensees or their employers. There may be some licensees who are not currently practicing who would decide to give up their license to avoid paying the increased amount.

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.

Since the passage of HB1441, the agency has worked internally and in conjunction with the Office of the Attorney General to calculate the potential impact of the legislation and determine costs that are reasonable but sufficient to address the anticipated case load. At this time, the agency has calculated the costs attributable to HB1441 to be:

FY04	1,678,874
FY05	2,286,311
FY06	2,388,767

Should the workload and expenditures be less than expected, the Board will reexamine the amount of fee increase at the adoption of a final regulation or, thereafter, will take advantage of the exemption in the APA and immediately reduce fees accordingly.

In the fiscal impact statement (FIS) prepared for HB1441, the Department of Planning and Budget (DPB) estimated that an additional 27.5 FTE's would be needed for the boards, investigations, compliance, and administrative proceedings. The agency has further refined the estimates and determined that 27 FTE's will likely be necessary. For planning purposes, costs for those positions have been staged into projected hiring quarters over the next fiscal year. Those positions will only be filled as necessary in response to the actual caseload that develops. In addition, however, the Office of the Attorney General estimates that 4,000 additional hours will be needed to handle related legal matters.

DPB had estimated in the FIS that the biennial renewal fees for doctors licensed by the Board of Medicine would increase by approximately \$73 for a 28 percent increase. In fact, the agency

has estimated that a slightly higher percentage of the overall cost would likely fall to Medicine and has proposed an increase for the biennial renewal of \$77 for a 29.6 percent increase.

Without an increase in fees, it is estimated that the Board of Medicine would have a deficit of (\$3,690,380) by the end of FY 2006. The calculation for the increase in renewal fees that is necessary to produce another \$3,701,292 in revenue is based on an expectation that the increased fee would be in effect at the beginning of calendar year 2004 for three years of additional renewal income. Doctors renew their licenses in even years with the renewal due in their birth month.

Public comment

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

The Notice of Intended Regulatory Action was published on July 28, 2003 with the comment period concluded on August 27, 2003. There were no public comments and none from the Medical Society of Virginia, the Virginia Osteopathic Medical Association, the Podiatric Medical Association or the Virginia Chiropractic Association.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The Board has determined that there is no impact on the family or family stability as a result of these regulations. While there would be a modest effect on disposable family income, the increase in fees, which total approximately \$39 per year for renewal of a license to practice medicine, osteopathy, podiatry or chiropractic, should not be overly burdensome.

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.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
22	The application fee for licensure in medicine, osteopathy, and podiatry shall be \$225 302, and the fee for licensure in chiropractic	See below for

<p>shall be \$200 <u>277</u>.</p> <p>The fee for board approval to sit for Part 3 of the United States Medical Licensing Examination without subsequent licensure in Virginia shall be \$85.</p> <p>The fee for biennial renewal shall be \$260 <u>337</u> for licensure in medicine, osteopathy and podiatry and \$235 <u>312</u> for licensure in chiropractic, due in <u>each even-numbered year in</u> the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$90 <u>115</u> for licensure in medicine, osteopathy and podiatry and \$80 <u>105</u> for licensure in chiropractic.</p> <p>The fee for requesting reinstatement of licensure <u>or certification</u> pursuant to §54.1-2924 <u>54.1-2408.2</u> of the Code of Virginia <u>or after a petition to reinstate the certificate or license of any person has been denied</u> shall be \$2,000.</p> <p>The fee for reinstatement of a license issued by the Board of Medicine pursuant to §54.1-2904 of the Code of Virginia which has expired for a period of two years or more shall be \$305 <u>382</u> for licensure in medicine, osteopathy and podiatry and \$290 <u>367</u> for licensure in chiropractic and shall be submitted with an application for licensure reinstatement.</p> <p>The fee for biennial renewal of an inactive license shall be \$130 <u>168</u>, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$45 <u>55</u> for each renewal cycle.</p>	<p>rationale</p>
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The proposed action will amend 18VAC85-20-22 to increase the biennial renewal fee for doctors of medicine, osteopathic medicine and podiatry by \$77 from \$260 to \$337 and for doctors of chiropractic from \$235 to \$312. Other fees which are associated with the licensing (renewal) fee are also increased accordingly. The application fee for initial licensure in Virginia is increased from \$225 to \$302 doctors of medicine, osteopathic medicine and podiatry and for doctors of chiropractic from \$200 to \$277, because the first renewal cycle is included in the initial application fee. The fee for late renewal anytime within the two years following the expiration date is increased by \$25 from \$90 to \$115 (late fees are calculated at approximately 1/3 of the renewal fee). The fees for reinstatement of a lapsed license after two years are increased from \$305 to \$382 doctors of medicine, osteopathic medicine and podiatry and for doctors of chiropractic from \$290 to \$367. Renewal fees for inactive licensees are increased by \$38 from \$130 to \$168 with the late fee increasing from \$45 to \$55 (renewal of inactive licenses is calculated at approximately 1/2 of the active fee).

A fee currently in regulation is eliminated because it is no longer applicable. The fee for board approval to sit for Part 3 of the USMLE examination without subsequent licensure in Virginia is deleted, since those applicants now can apply directly to USMLE to be approved to sit for the exam. An amendment in subsection H clarifies that renewal occurs in each even-numbered year, which is the current policy of the board.

Finally, the legislation eliminated § 54.1-2921 in the Medical Practice Act and inserted a new section, § 54.1-2408.2, in which a three-year time limit is set before a health regulatory board can consider a petition for reinstatement following revocation. The deleted Code section in Chapter 29 of Title 54.1 is referenced in current regulation for a reinstatement fee charged to an applicant who is seeking reinstatement following revocation or after a petition to reinstate has been denied. The Board must change the Code cite in its regulation and specifically add the requirement for the \$2,000 fee for an applicant after a petition to reinstate has been denied, since that is not referenced in the new § 54.1-2408.2.

Failure to provide sufficient funding through the adoption of regulations to cover the costs of implementing this legislation would place the agency in non-compliance with the law. If the Board failed to increase fees sufficient to provide adequate staffing and support for investigative and disciplinary activities, the public health and safety would suffer by long delays in responding to complaints, processing cases and possibly removing incompetent or dangerous practitioners. The proposed regulatory action is essential to ensure that the Board and the Department have sufficient resources to respond to reports of misconduct in a timely and thorough fashion.