



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20-10 et seq.
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Action title	Licensure credentials and examination requirements
Document preparation date	4/7/06

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board's intent is to address two regulatory issues that have been raised by the Credentials Committee in the process of considering applications for licensure. Currently, regulations require that an applicant who graduated from a non-approved medical school has had supervised clinical training as a part of his curriculum in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received, *if such training was received in the United States*. Therefore, there is inconsistency in the requirement between clinical training that occurred outside the United States and inside the United States. The provision needs to be more clearly stated with a consistent standard for all such graduates.

The other issue relates to the current requirement that all three steps of the United States Medical Licensing Examination (USMLE) be taken within seven years. Since there is an exception to the rule "for good cause shown," the Board has received several such requests. Without clear criteria for "good cause," the Board has some concern that the rule could be applied inconsistently. Therefore, it will consider adopting a more definitive regulation or eliminating the time limit for passage of the examinations.

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., 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, which provides the Board of Medicine the 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:

...

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. ...

Provisions in the Medical Practice Act relating to requirements for examination and post-graduate training include:

§ 54.1-2930. Requirements for admission to examination.

The Board may admit to examination for licensure to practice medicine, osteopathy, chiropractic and podiatry any candidate who has submitted satisfactory evidence verified by affidavits that he:

- 1. Is eighteen years of age or more;*
- 2. Is of good moral character;*
- 3. Has successfully completed all or such part as may be prescribed by the Board, of an educational course of study of that branch of the healing arts in which he desires a license to practice, which course of study and the educational institution providing that course of study are acceptable to the Board; and*
- 4. Has completed one year of satisfactory postgraduate training in a hospital approved by an accrediting agency recognized by the Board for internships or residency training. At the discretion of the Board, the postgraduate training may be waived if an applicant for licensure in podiatry has been in active practice for four continuous years while serving in the military and is a diplomate of the American Board of Podiatric Surgery. Applicants for licensure in chiropractic need not fulfill this requirement.*

In determining whether such course of study and institution are acceptable to it, the Board may consider the reputation of the institution and whether it is approved or accredited by regional or national educational or professional associations including, but not limited to, such organizations as the Accreditation Council of Graduate Medical Education or other official accrediting body recognized by the American Medical Association, by the Committee for the Accreditation of Canadian Medical Schools or their appropriate subsidiary agencies, by any appropriate agency of the United States government, or by any other organization approved by

the Board. Supervised clinical training which is received in the United States as part of the curriculum of a foreign medical school shall be obtained in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the relevant clinical training. The Board may also consider any other factors that reflect whether that institution and its course of instruction provide training sufficient to prepare practitioners to practice their branch of the healing arts with competency and safety in the Commonwealth.

§ 54.1-2931. Examinations; passing grade.

A. The examination of candidates for licensure to practice medicine and osteopathy shall be the Federation Licensing Examination, the joint Licensure Examination Sequence prepared by the National Board of Medical Examiners and the Federation of State Medical Boards, or such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

B. The examination of candidates for licensure to practice chiropractic shall include the National Board of Chiropractic Examiners Examinations and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

C. The examination of candidates for licensure to practice podiatry shall be the National Board of Podiatry Examiners Examinations and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

§ 54.1-2933. Licensure of persons who studied in foreign medical schools.

The Board may license by examination, an individual as a physician in this Commonwealth who has studied in a foreign medical school if the foreign medical school is acceptable to the Board and the individual has (i) qualified for and satisfactorily completed an appropriate supervised clinical training program as established by the American Medical Association; (ii) completed the postgraduate hospital training required by all applicants for licensure as defined in this chapter; and (iii) presented a document granted by the foreign medical school certifying that all of the formal requirements of the school for a degree, except postgraduate internship and social services, have been met.

§ 54.1-2933.1. Temporary licensure of certain foreign graduates to obtain training.

The Board may issue, to a physician licensed in a foreign country, a nonrenewable license valid for a period not to exceed two years to practice medicine while such physician is attending advanced training in an institute for postgraduate health science operated collaboratively by a health care system having hospitals and health care facilities with residency and training program(s) approved by an accrediting agency recognized by the Board and a public institution of higher education. This temporary license shall only authorize the holder to practice medicine in the hospitals and outpatient clinics of the collaborating health care system while he is receiving training in the institute for postgraduate health science. The Board may promulgate regulations for such license.

§ 54.1-2935. Supplemental training or study required of certain graduates.

In the event that a candidate has completed an educational course of study in an institution that is not approved by an accrediting agency recognized by the Board, the candidate shall not be

admitted to any examination given by the Board until he has completed two years of satisfactory postgraduate training in a hospital approved by an accrediting agency recognized by the Board for internship or residency training. The Board may consider other postgraduate training as a substitute for the required postgraduate training if it finds that such training is substantially equivalent to that required by this section.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

While USMLE still believes that it is best for the three examinations to be taken within seven years, passage of Step 3 may be a sufficient measure of an applicant's competency and ability to retain medical knowledge over a longer period of time. Therefore, the Board believes elimination of or modification to the seven-year rule would be appropriate without compromising its responsibility to ensure minimum competency to practice with skill and safety. The Board will consider options adopted by other states, which include: 1) a basic requirement for examinations to be taken within seven years with the exception of a MD/PhD candidate; a longer period of time (perhaps 10 years) for completion; or elimination of any time limit.

Likewise, the Board will consider a modification of its rule on clinical training for students in non-approved medical schools to achieve greater consistency and clarity. While supervised clinical training that provides rotations in various areas of medicine within the medical school curriculum is essential, the Board will likely eliminate the condition that it is required to occur in an institution with an approved residency program since that would not be enforceable for training that occurs outside the United States. The Board will investigate other requirements that could provide some assurance that the clinical training was adequate, and it will continue to also require two years of postgraduate training in an approved program as further assurance that the applicant has met the minimal competency standard for graduates of approved programs.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Seven-year limitation for completion of USMLE examination:

In 1998, following the recommendation of the Federation of State Medical Boards, the Board adopted a rule requiring all three steps of the USMLE examination to be taken within seven years. Several applicants presented situations which, in the opinion of the Board, justified a delay in completing the Step 3 examination within seven years. To address those concerns, the Board amended the regulation in 2001 to allow for exceptions to the seven-year rule "for good

cause shown.” Counsel advised the Board to not implement the requirement until August 1, 2005. As of that date, any application received by an applicant who took longer than seven years to complete all three steps, no matter when they initially passed Step 1 (even if it were prior to 1998), would be subject to the requirement.

The only alternative to amending section 140 to eliminate the requirement that the first three steps of the USMLE examination be taken within seven years is to continue holding an informal conference before the Credentials Committee at which the applicant presents his case for the “good cause” exception. The lack of specificity in the exception provides little guidance for the Board in granting or denying the exception for the seven-year rule or for the applicant who has to bear the expense of appearing before the committee to plead their cause. Board counsel has advised that a denial of an applicant’s request for a “good cause” exception would have to be based on evidence that the applicant is not competent to practice. USMLE still believes that it is best for the three examinations to be taken within seven years, and 42 states presently have a seven-year rule.

The Board will consider various alternatives found in other states, such as: 1) elimination on any time frame for passage (3 other states); 2) extending the time limit to 10 years (3 other states); or 3) allowance of another three years for persons who are MD/PhD candidates (10 other states). Eight other states allow an extension with board approval for illness or MD/PhD candidacy, and one state requires completion within five years.

Requirement for supervised clinical training in medical school

When off-shore medical schools began to be organized, the Board became concerned that the students were being sent to the U. S. to do their clinical rotations in non-approved hospitals without residency programs in the specialty area. The Credentials Committee now believes there is inconsistency and inequity in the rule because it only applies to training that was received in the U. S. If the clinical training was received in a foreign country, there is no oversight or regulatory requirement that the hospital, school or institution have an approved residency program. Therefore, the Board intends to look for other language that will eliminate the inconsistency and will be reasonable and enforceable. Regulations may continue to stipulate that the medical school provide for supervised clinical training in the curriculum without specifying that it occurs at a setting that has an approved residency. The Board will seek information from other states on similar provisions in regulation.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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

