

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE**

18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners

18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists

18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologist Practitioners

18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists

ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION

In seeking to publish a Notice of Intended Regulatory Action, the Board of Medicine with the concurrence of the Advisory Boards for Acupuncture, Occupational Therapy, Respiratory Therapy, and Radiologic Technology have identified an issue of concern for regulatory action - mandatory continuing education or other requirements as evidence of continuing competency for renewal of licensure.

Mandatory requirements for evidence of continuing competency.

During the 1996 Session of the General Assembly, concerns were expressed about the competency of some health care providers licensed by the Board of Medicine who may not maintain knowledge of current practice modalities and new technologies. Those concerns led to the introduction of two study resolutions - House Joint Resolution 68, patroned by Delegate Gladys Keating, and House Joint Resolution 157, patroned by Delegate Panny Rhodes. With the passage of HJR 68, the Virginia Board of Medicine was directed to study the need for requiring continuing medical education.

Based on the findings and recommendations of the study report, House Bill 2444 was patroned by Delegate Keating and passed in the 1997 General Assembly without a dissenting vote. **With the Governor's signature, Chapter 227 amended the medical practice act by adding §54.1-2912.1,**

which mandates that the Board promulgate regulations for the establishment of continuing competency requirements.

§ 54.1-2912.1 provides that “the Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement”.

In order to proceed with amendments which have been determined necessary to comply with the statutory mandate, the Board requests permission to publish a Notice of Intended Regulatory Action as soon as possible.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

18 VAC 85-40-10 et seq., 18 VAC 85-80-10 et seq., 18 VAC 85-101-10 et seq., and 18 VAC 85-110-10 et seq. were promulgated under the general authority of Title 54.1 of the Code of Virginia.

§ 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to ensure practitioner competency and to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to effectively 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:

- 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.*

A. Statutory authority for continuing competency requirements.

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing competency requirements.

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. *In promulgating such regulations, 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..*

C. *The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.*

In addition to § 54.1-2400 (cited above), the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

The purpose of any regulation of a profession is "for the exclusive purpose of protecting the public interest" (§ 54.1-100). According to the Code of Virginia, regulation is necessary to protect the health, safety or welfare of the public when the potential for harm is recognizable. If the practice involves a clearly recognized potential for harm and a need to protect the public, the appropriate level of regulation is licensure.

Regulation is further authorized when the practice of the profession requires specialized skills and assurances of initial and continuing professional and occupational ability. In order to provide some assurance of continuing professional ability, the **current regulations** may not be sufficient. While the Advisory Boards have affirmed that current regulations provide some assurance that professional skills and abilities have been maintained, they do recommend the issuance of a Notice of Intended Regulatory Action to receive comment from the public to determine whether the current regulation is sufficient or if other regulations requiring mandatory continuing competencies are necessary to comply with its statutory responsibility to protect the public.

ITEM 4: ALTERNATIVES CONSIDERED

Following passage of the law on continuing competency for licensees of the Board of Medicine, the Legislative Committee of the Board directed the formation of a special advisory committee comprised of board members, representatives of each of the medical schools in Virginia, and a representative of the Medical Society to review the research on continuing medical education, to develop a variety of alternatives, and to recommend proposed rules to the Board. That committee has worked to develop requirements which meet the intent of the law, are the least burdensome to the practitioner, are administratively feasible and equitable, and are most likely to result in improvement and enhancement of medical care in the Commonwealth. Now that the Board has begun the development of continuing

competency requirements for doctors of medicine, osteopathy, podiatry, and chiropractic, it is prepared to consider comments on similar requirements for other professions licensed by the Board.

In its consideration of continuing competency requirements, the Board will review its current requirements for renewal or relicensure. Likewise, it will consider requirements in other states, so that interstate mobility will not be unnecessarily hindered. Nationally, professional organizations are reviewing evidence on continuing competency as they particularly consider the needs of the profession. The intent of the Board in the promulgation of amended regulations will be to ensure that its licensees maintain professional responsibility and current knowledge about their practice without imposing unnecessarily burdensome or costly requirements. The implementation of requirements for continuing competency should have a positive effect on the delivery of health care services and may reduce the disciplinary case load of the Board.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY, AND AUTONOMY

The Board is unable to determine any effect of its intended regulatory action on family formation, stability, and autonomy.