REGISTRAR'S SUBMISSION PACKAGE

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

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Title 54.1, Chapter 24 and Chapter 29 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and renewal, to promulgate regulations and to issue inactive licensees.

§§ 54.1-2954 through 54.1-2956.01 establishes the definition of a respiratory care practitioner and requirements for the licensure of this profession and specifies the powers and duties of the Advisory Board on Respiratory Care.

2. Statement of Purpose:

The purpose of the proposed amendments is to establish inactive licensure for respiratory care practitioners pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications, fees and requirements for reactivation of an inactive license which are consistent with protection of the public health and safety.

3. Substance of Regulations:

18 VAC 85-40-61. Inactive license

The proposed new section would establish a category of inactive licensure and specify that such a license holder may renew by indicating his request for inactive licensure on a renewal form and payment of the required fee.

To reactivate an inactive license, a respiratory care practitioner is required to provide information on practice in another jurisdiction or some other evidence of continued competency to resume practice and to pay the difference between the current inactive and active renewal fee.

The Board reserves the right to deny a request for reactivation to any person determined to have committed a violation of these regulations or of § 54.1-2914 of the Code of Virginia.

18 VAC 85-40-80. Fees

Amendments to this section will establish a lesser fee for renewal of an inactive license ($35 per biennium versus $50 for an active license).

4. Issues of the Regulations

ISSUE 1: Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure as a respiratory care practitioner are minimal, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession. The Board has also adopted a lesser fee for renewal of an inactive license.

Advantages and disadvantages

There are no disadvantages for the public which remains protected by requirements that assure that an active respiratory care practitioner is current in his skills and knowledge. By requiring an inactive licensee to provide some evidence of continued competency to practice, the Board has the opportunity to determine whether the practitioner has maintained active practice in another state, remained professionally current with continuing education or engaged in some other learning activities to update his knowledge and skills. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license. Renewal of an inactive license is also less expensive than renewal of an active license ($35 for inactive/ $50 for active).

5. Estimated Fiscal Impact of the Regulations

I. Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation:

There are 2,706 respiratory care practitioners licensed in Virginia; 373 of those list an out-of-state address. Some of those who live out-of-state may choose an inactive license if they are not actively practicing in Virginia.

Projected cost to the agency:

The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The potential loss of income to the Board from persons who choose inactive licensure is minimal. It is estimated that only 20 or 30 licensees will become inactive at a cost of $300 to $450 per biennium in reduced revenue to the Board. What is unknown is how many of those licensees might choose to allow their license to lapse if an inactive licensure status is not available. If the estimated 20 to 30 practitioners who are not practicing in the state let their license lapse, there could be a loss in revenue to the Board of $1000 to $1500. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

Projected costs to the affected entities:

There would be no additional costs for compliance with these regulations for licensed acupuncturists. For those persons who are not actively practicing in Virginia but who want to maintain an inactive license, there would be a savings of $15 biennially.

Citizen input in development of regulation:

In the development of regulations, notices were sent to persons on the public participation guidelines mailing list of every meeting of the Advisory Board on Respiratory Care, the Legislative Committee of the Board, and of the Board itself. A Notice of Intended Regulatory Action was also sent to persons on the list; no comment was received on the NOIRA. Public comment was also received at each meeting.

Localities affected:

There are no localities affected by these regulations in the Commonwealth.

II. Fiscal Impact Prepared by the Department of Planning and Budget:

(To be attached**)**

III. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners was promulgated under the general authority of Title 54.1 of the Code of Virginia.

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 issue an inactive license.

§ 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.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for renewal and to grant inactive licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Respiratory Care in:

§ 54.1-2954. Respiratory care practitioner; definition.

"Respiratory care practitioner" means a person who has passed the examination for the entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with the regulations pertaining to licensure prescribed by the Board, and who has been issued a license by the Board.

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.
The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

§ 54.1-2955. Restriction of titles.

It shall be unlawful for any person not holding a current and valid license from the State Board of Medicine to practice as a respiratory care practitioner or to assume the title, "Respiratory Care Practitioner" or to use, in conjunction with his name, the letters "RCP."

§ 54.1-2956. Advisory Board on Respiratory Care; appointment; terms; duties; etc.

A. The Advisory Board on Respiratory Care shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed respiratory care practitioners.
The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment respiratory care practitioners who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large.
Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.
B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a respiratory care practitioner and the standards of professional conduct for holders of licenses.
The Advisory Board shall also assist in such other matters dealing with respiratory care as the Board may in its discretion direct.

§ 54.1-2956.01. Exceptions to respiratory care practitioner's licensure.

The licensure requirements for respiratory care practitioners provided herein shall not prohibit the practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory care education program approved by the Board. Any student enrolled in accredited respiratory care education programs shall be identified as "Student RCP" and shall only deliver respiratory care under the direct supervision of an appropriate clinical instructor recognized by the education program.

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on September 28, 1998 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was October 28, 1998 and there was no comment received.

f. Changes to existing regulations.

18 VAC 85-40-61. Inactive license

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To reactivate an inactive license, a respiratory care practitioner is required to provide information on practice in another jurisdiction or some other evidence of continued competency to resume practice and to pay the difference between the current inactive and active renewal fee.

18 VAC 85-40-80. Fees

Amendments to this section will establish a lesser fee for renewal of an inactive license ($35 per biennium versus $50 for an active license).

g. Statement of reasoning for the regulations.

Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure as a respiratory care practitioner are minimal, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession.

Amendments to fees.

In establishing an inactive licensure status, the Board also had to consider the appropriate fee for renewal of such a license. Consistent with other boards in the Department and with other professions regulated by the Board of Medicine, a lesser fee is proposed for inactive renewal. Active respiratory care practitioners pay $50 each biennium; inactive practitioners would pay $35 biennially.

h. Statement on alternatives considered.

Inactive licensure

By requiring an inactive licensee to provide some evidence of continued competency to resume practice, the Board has the opportunity to determine whether the practitioner has maintained active practice in another state, remained professionally current with continuing education or engaged in some other learning activities to update his knowledge and skills. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and

eliminate the need to reapply for reinstatement of an expired license. Renewal of an inactive license is also less expensive than renewal of an active license.

Amendments to fees.

In establishing an inactive licensure status, the Board also had to consider the appropriate fee for renewal of such a license. Consistent with other boards in the Department and with other professions regulated by the Board of Medicine, a lesser fee is proposed for inactive renewal. Administrative costs for inactive licensees are lower than those for an active licensee who may have complaints filed against him which may necessitate disciplinary action. There will continue to be costs for mailings, newsletters and renewals for inactive licensees.

i. Statement of clarity.

Prior to the adoption of proposed regulations by the Board, the Advisory Board on Respiratory Care and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language which was adopted had the approval of the licensed acupuncturists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board, including the citizen members.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Board on Respiratory Care and the Legislative Committee of the Board will review this set of regulations in 2001 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Medicine 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.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The potential loss of income to the Board from persons who choose inactive licensure is minimal. It is estimated that only 20 or 30 licensees will become inactive at a cost of $300 to $450 per biennium in reduced revenue to the Board. What is unknown is how many of those licensees might choose to allow their license to lapse if an inactive licensure status is not available. If the estimated 20 to 30 practitioners who are not practicing in the state let their license lapse, there could be a loss in revenue to the Board of $1000 to $1500 per biennium. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

The Board will incur some costs for review of an application to reactivate an inactive license; it will be necessary to verify that competency requirements have been met and that an applicant who has been licensed in another jurisdiction has not had disciplinary action taken or pending. Since the number who will reactivate each year is expected to be small, that effort can be performed by the current staff and costs absorbed within the budget of the Board.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed respiratory care practitioners.

Estimate of number of entities to be affected:

There are 2,706 respiratory care practitioners licensed in Virginia; 373 of those list an out-of-state address. Some of those who live out-of-state may choose an inactive license if they are not actively practicing in Virginia. An estimate of the number who would request inactive licensure is 20 to 30 persons each biennium at a savings of $15 per person.