

Statement of Final Agency Action

18 VAC 85-80-10 et seq.

Regulations Governing the Practice of Occupational Therapy

On November 19, 1999, the Board of Medicine reviewed proposed regulations governing requirements for licensure of occupational therapists and adopted the proposed amendments as final regulations.

SUMMARY OF COMMENTS ON PROPOSED REGULATIONS

Virginia Board of Medicine

Regulations Governing the Practice of Occupational Therapy 18 VAC 85-80-10 et seq.

Licensure regulations for Occupational Therapists

Proposed regulations were published in the Virginia Register of Regulations on August 16, 1999. Public comment was requested for a 60-day period ending October 15, 1999; during that period no comments were received from individuals and organizations.

A Public Hearing before the Advisory Board on Occupational Therapy was held on September 9, 1999, at which time there were no comments on the proposed regulations under consideration by the Board.

Summary of Final Regulations

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

Amendments to regulations are adopted pursuant to changes in the Code of Virginia made in Chapter 593 of the 1998 Acts of the Assembly which required the Board to promulgate regulations for the licensure of occupational therapists. In accordance with the second enactment clause, the Board promulgated emergency regulations which became effective on January 29, 1999. These final amended regulations replace the emergency regulations and are intended to establish those qualifications for licensure and renewal which are necessary to protect the public health and safety in the delivery of occupational therapy.

The Board made no changes in the proposed regulations.

REGISTRAR'S SUBMISSION PACKAGE

BOARD OF MEDICINE 18 VAC 85-80-10 et seq.

Analysis of Final 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 responsibility to promulgate regulations.

§§ 54.1-2956.1 through 54.1-2956.5 establishes the requirement for the licensure of this profession and specifies the powers and duties of the Advisory Board on Occupational Therapy.

2. Statement of Purpose:

The purpose is to amend regulations pursuant to changes in the Code of Virginia made in Chapter 593 of the 1998 Acts of the Assembly which required the Board to promulgate regulations for the licensure of occupational therapists. In accordance with the second enactment clause, the Board promulgated emergency regulations that became effective on January 29, 1999. These final regulations replace the emergency regulations and are intended to establish those qualifications for licensure which are necessary to protect the public health and safety in the delivery of occupational therapy services.

3. Substance of Regulations:

18 VAC 85-80-10. A definition of “active practice” was added in the final regulations (not included in the emergency regulations) to specify that the active practice of occupational therapy may include activities that are not direct patient care. Other amendments are technical and not substantive.

18 VAC 85-80-20. Editorial changes are adopted.

18 VAC 85-80-25. A new section was added to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

18 VAC 85-80-35. Application requirements have been amended to state some of the current requirements, such as submission of an application form, fee and credentials, that are found in other sections and to specify the documentation or verification necessary to become licensed as an occupational therapist.

18 VAC 85-80-40. An amendment is adopted to remove the specific score required for passage of the Test of English as a Foreign Language examination (TOEFL) and state that the score must be acceptable to the Board. The amendment will allow the Board to adjust the acceptable score whenever the examination service adjusts its scoring scale for a recommended cut score.

18 VAC 85-80-50. Amendments are adopted to clarify that an applicant who must have passed the national examination from National Board for Certification in Occupational Therapy.

18 VAC 85-80-60. An amendment provides that an applicant for licensure who has practiced in another jurisdiction but has not been engaged in active practice of occupational therapy for two years or more shall serve a board-approved practice of at least 160 hours under the supervision of a licensed occupational therapist. This requirement will parallel the minimum requirement for renewal of licensure by an occupational therapist in Virginia.

18 VAC 85-80-70. The current regulations require that an occupational therapist be professionally active in order to renew each biennium. The amendment will specify what is intended by the requirement – that the licensee must have practiced at least 160 hours during the past biennium. Other amendments are editorial only.

18 VAC 85-80-80. An amendment will require that anyone who has allowed his license to lapse for two or more years should serve a board-approved practice of at least 160 hours under the supervision of a licensed occupational therapist in order to be reinstated.

4. Issues of the Regulations

ISSUE 1: Evidence of competency for licensure.

The Board is required by § 54.1-2956.1 to “take such actions as may be necessary to ensure the competence and integrity of any person who claims to be an occupational therapist or who holds himself out to the public as an occupational therapist, and to that end it may license practitioners as occupational therapists.” Before July 1, 1998, occupational therapists were

certified by the Board of Medicine; certification was title protection and therefore voluntary for practitioners.

As a certified profession regulated by the Board of Medicine, occupational therapists were required to indicate some professional activity as evidence of competency for biennial renewal of a license, but the level of that activity was undefined. Since they are now a licensed profession, it is expected that there be some further definition of active practice to determine qualification for initial licensure and for continued renewal of licensure. The Board determined that evidence of 160 hours of active practice in the profession within the past two years was the least burdensome regulation it could reasonably impose. Such a requirement is consistent with other professions that have a requirement for active practice, such as physical therapy and respiratory therapy.

To accommodate persons whose practice as an occupational therapist may now include educational, administrative, supervisory or consultative services rather than direct patient care, the Board added a definition of “active practice” to clarify that those professional activities were acceptable for the purpose of fulfilled the renewal or initial licensure requirements.

The current regulations require 160 hours of supervised practice for an applicant or a lapsed licensee who has been out of practice for six or more years. In adopting regulations for licensure, the Advisory Board strongly recommended changing the regulation to require supervised practice for anyone who has not actively practiced for two or more years. With the changes occurring in health care, an occupational therapist who has not practiced at least 160 hours over a two-year period has likely not remained current with professional knowledge and skills.

Advantages and disadvantages

There are no disadvantages to the public, which is better protected by having a requirement for hours of active practice in order to renew an active license or become licensed in Virginia from another state.

An occupational therapist who is maintaining an active license to practice should be required to work a minimal number of hours during the biennium in order to keep up with a rapidly changing, highly technical field. The requirement of 160 hours of practice (the equivalent of four weeks) with a two-year period is easily obtainable, even for persons who are working only on a part-time basis.

Impact of proposed regulations on the agency.

The proposed regulations would replace emergency regulations currently in effect. The addition of a requirement in section 25 for the licensee to inform the board of a name or address change and to specify that notices sent to the name and address of record shall be duly given will assure

that the agency has regulatory support for taken action against a licensee who claims to have not receiving a renewal or other notice. The addition of section 35 will assure that all the application requirements are clearly stated in regulation.

5. Estimated Fiscal Impact of the Regulations

I. Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation:

There are 1,769 occupational therapists licensed 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.

Projected costs to the affected entities:

There would be no additional costs for compliance with these regulations for occupational therapists who have kept a current license in the Commonwealth. While the Board has not kept a record of lapsed licensees, it is estimated that there have been less than 5 persons who have allowed their license to lapse for more than one year. Most have resumed practice within 6 months to one year. Therefore, it is unknown whether anyone would be affected by the reinstatement requirement of 160 hours of practice under the supervision of a licensed occupational therapist.

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 Occupational Therapy, 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: (Attached to proposed regulations)

III. Agency Response:

The Agency concurred with the analysis of the Department of Planning and Budget.