



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-80-10 et seq.
Regulation Title:	Regulations Governing the Practice of Occupational Therapy
Action Title:	Continuing competency and inactive licensure
Date:	4/6/01

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Amendments are adopted pursuant to a statutory mandate in Chapter 227 of the 1997 Acts of the Assembly for the Board of Medicine to promulgate regulations which assure that licensed practitioners continue to be competent to practice. The amendments are intended to establish requirements for renewal of licensure which include continuing competency evidenced by 160 hours of active practice each biennium and the completion of at least 20 hours of continuing learning activities. The amendments also establish an inactive license for licensees who are not engaged in practice and do not want to meet the requirements for renewal of an active license. Finally, amendments set forth the conditions which must be met to reactivate an inactive license or reinstate a lapsed license.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

No changes to proposed regulations have been made in the adoption of final amendments.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On April 6, 2001, the Board of Medicine adopted final amendments to 18 VAC 85-80-10 et seq., Regulations Governing the Practice of Occupational Therapy for the purpose of establishing requirements for continuing competency and for an inactive license and the requirements for reactivation or reinstatement.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

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 discipline regulated professionals.

§ 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 licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Occupational Therapy in:

§ 54.1-2956.1. Powers of Board concerning occupational therapy.

The Board shall be empowered 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.

§ 54.1-2956.2. Advisory Board of Occupational Therapy.

The Advisory Board of Occupational Therapy, referred to hereinafter as "Advisory Board," shall assist the Board in the manner set forth in this chapter.

§ 54.1-2956.3. Advisory Board of Occupational Therapy; composition; appointment.

The Advisory Board shall be comprised of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment occupational therapists 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. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term.

§ 54.1-2956.4. Advisory Board of Occupational Therapy; powers.

The Advisory Board shall, under the authority of the Board:

1. *Recommend to the Board for its enactment into regulation the criteria for licensure as an occupational therapist and the standards of professional conduct for holders of licenses.*
2. *Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation on licensure of the Advisory Board may appeal to the Board.*
3. *Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.*
4. *Assist in such other matters dealing with occupational therapy as the Board may in its discretion direct.*

§ 54.1-2956.5. Restriction of titles.

It shall be unlawful for any person not holding a current and valid license from the Board to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational Therapist," or any similar term, or to assume the designations "O.T." or "O.T.L." However, a person who has graduated from a duly accredited educational program in occupational therapy shall be exempt from the preceding prohibition until he has taken and received the results of any examination required by the Board or until one year from the date of graduation, whichever occurs sooner. This section shall not be construed to prohibit any person operating under the

supervision of an occupational therapist pursuant to such requirements as may be imposed by the Board from claiming to practice occupational therapy or from using the title "Certified Occupational Therapy Assistant" or any variation thereof, or from assuming the designations "O.T.A." or "C.O.T.A."

§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.

The Assistant Attorney General who provides counsel to the Board of Medicine has provided a letter of assurance that the amended regulations are consistent with statutory law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Chapter 227 of the 1997 Acts of the Assembly 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. To carry out that mandate, the Board requested that each of the advisory boards study the need for and type of continuing competency requirements for its profession, review what other states require, and develop a recommendation in the form of proposed amendments to regulation.

The goal of the Advisory Board on Occupational Therapy and the intent of the Board was to develop requirements that would: 1) encourage learner-directed continuing education through which a practitioner can identify a practice question or problem, seek the learning activity which provides needed information or teaches a new skill, and thereby, enhance his expertise or ability to practice; 2) offer a choice of content and form that is flexible enough to meet the needs of occupational therapists in a variety of practice settings in any location in Virginia; and 3) assure the public that occupational therapists have maintained their skills and competencies in order to protect the public health, safety and welfare.

In its adoption of these requirements, the Board is responding to the research which indicates that the most effective continuing learning occurs when it is self-directed and designed to be practitioner-specific. It is also most effective if there has been some assessment of practitioner's needs and some evaluation of outcome and possible effects on practice. In addition, the Board is cognizant of the need to have at least half of these continuing learning hours validated through some recognized organization or sponsor.

The purpose of the amendments is also to establish inactive licensure for occupational therapists 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 and requirements for reactivation or reinstatement of a inactive license which are consistent with protection of the public health and safety. Documentation of continuing competency activities will ensure that the person resuming active practice or licensure in Virginia has maintained current knowledge and skills to appropriately manage and treat patients. Information on practice and licensure in other jurisdictions will ensure that the Board is informed about the practice of the occupational therapist during the period in which he has not held an active license in the Commonwealth. The Board reserves the right to deny reactivation or reinstatement if it is determined that the licensee has committed an act in violation of § 54.1-2914 of the Code of Virginia.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Advisory Board recommended and the Board adopted a requirement which consists of a total of 20 hours per biennium as follows: (1) In Type 1 continuing learning activities, the 10 hours required biennially must be offered by a sponsor or organization which is sanctioned by the profession and which provides documentation of hours to the practitioner. The hours may include formal course work, in-service training, or specialty certification; and (2) In Type 2 continuing learning activities, the 10 hours required biennially may or may not be approved by a sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning; occupational therapists document their own participation on form provided by the Board.

Along with requirements for continuing competency for renewal of licenses, the Board is establishing an inactive license for those practitioners who want to take a leave of absence or are

now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of continuing competency hours equal to the amount of time the license has not been active, not to exceed four years. If a practitioner has not engaged in active practice for two but less than six years, the Board is requiring that he serve a board-approved practice of 160 hours under the supervision of a licensed occupational therapist. If a practitioner has not actively practiced for more than six years, the Board has concerns about his knowledge and skills and his ability to provide safe, effective care to patients. Therefore, the amended regulations would require that practitioner to serve a board-approved practice under supervision for 320 hours in four consecutive months.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to the licensees:

The continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. The members of the Advisory Board believe that the vast majority of occupational therapists already have more than 20 hours of continuing competency activities or courses in a biennium. Occupational therapists work for organizations which often require in-service training or continuing education for employment. Only 10 of the hours must be offered by a recognized sponsor, the other 10 may be acquired by the practitioner on his own time and schedule. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to the licensees:

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public:

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. The public is also better served by a requirement for a board-approved practice under supervision if an occupational therapist has not been professionally active for a period of time. Such a practice will provide assurance by

the observation and guidance of a licensed occupational therapists that the applicant for licensure or relicensure has regained his ability to practice.

Advantages or disadvantages to governmental agencies:

Government agencies that employ occupational therapists may incur additional costs if they elect to hire individuals to present workshops or seminars to their staff or to pay for continuing education. The Board will incur additional costs to monitor compliance of licensees, and to hold additional disciplinary hearings for individuals who do not comply with the requirement.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A public hearing was held before the Board of Medicine at the Department of Health Professions in Richmond on January 11, 2001. No comment was presented at that time nor was any written or electronically submitted comment received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 85-80-10. A definition of “active practice” was added to specify the number of hours necessary to constitute active practice and 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 85-80-70. 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. In addition, completion of continuing competency is required for biennial renewal. Other amendments are editorial only.

18 VAC 85-80-71. Continuing competency requirements for renewal of an active license.

This new section requires the following: a) Completion of an Continuing Competency Assessment and Activity Form showing as assessment of practice needs and at least 20 hours of continuing learning activities, 10 of which must be Type 1 offered by a sponsor recognized by the professions; b) exemption for newly licensed practitioners for their first renewal; c) retention

of records for 6 years and a random audit by the board; and d) provisions for an extension or exemption for all or part of the requirements.

18 VAC 85-80-72. Inactive license.

A new section is proposed to allow a practitioner to request an inactive license without requiring evidence of continuing competency. Such a license does not entitle the licensee to perform any act which would require a license to practice. The amendments would also add requirements for reinstatement of an inactive license to active status to include: evidence of continuing competency hours equal to the number of years of inactivity, not to exceed four years; and documentation of hours of active practice or completion of a board-approved practice under the supervision of a licensed occupational therapists if the license has been inactive for six or more years.

18 VAC 85-80-80. Reinstatement.

Amendments will require that anyone who has allowed his license to lapse to submit information on practice in any other jurisdiction during that period. Anyone whose license has been lapsed for more than six years and who has not been practicing in another jurisdiction would be required to complete a board-approved practice under supervision for 320 hours in four consecutive months. Amendments would also require that a person who seeks to reinstate a lapsed license provide evidence of completion of continuing competency hours equal to the number of years the license has been lapsed, not to exceed four years.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The amendments will have no impact on the authority and rights of parents in the education, nurturing or supervision of their children. They may encourage self-pride for licensees who obtain additional training which they may not have otherwise pursued. The amendments should have no impact on the marital commitment. Disposable income of practitioners who are required to obtain the training will decrease slightly depending on the type of continuing competency activities selected.