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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC85-50-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Physician Assistants
<b>Action title</b>	Qualifications for performance of fluoroscopy
<b>Date this document prepared</b>	8/6/12

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.*

- 1) *Please explain why this is an emergency situation as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 81 of the 2012 Acts of the Assembly requires the Board of Medicine to promulgate regulations to implement provisions of the act with 280 days of its enactment. Therefore, the Board is authorized to adopt emergency regulations establishing the criteria for use of fluoroscopy by physician assistants.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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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. ...*

The specific mandate to promulgate regulations is found in § 54.1-2952 of the Code of Virginia:

**§ 54.1-2952. Supervision of assistants by licensed physician, or podiatrist; services that may be performed by assistants; responsibility of licensee; employment of assistants.**

*C. Notwithstanding the provisions of § 54.1-2956.8:1, a licensed physician assistant who (i) is working under the supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology, (ii) has been trained in the proper use of equipment for the purpose of performing radiologic technology procedures consistent with Board regulations, and (iii) has successfully completed the exam administered by the American Registry of Radiologic Technologists for physician assistants for the purpose of performing radiologic technology procedures may use fluoroscopy for guidance of diagnostic and therapeutic procedures.*

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

## 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.*

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The purpose of the emergency regulation is to establish the qualifications of a physician assistant who may use fluoroscopy for guidance of diagnostic and therapeutic procedures under the supervision of a physician specializing in the field of radiology. Fluoroscopy is a radiological procedure which is not within the usual scope of practice of a physician assistant. Therefore, additional education, training and testing is required to ensure minimal competency to perform the procedure. The goal of the amended regulation is to set qualifications that are consistent with those recommended by the national professional bodies for both radiologic technologists and physician assistants.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

Fluoroscopy is a radiologic procedure that emits high levels of ionizing radiation and is used for diagnostic and therapeutic purposes. Performed improperly, it can do harm to a patient or cause a misdiagnosis that can harm a patient. Since it is typically outside the scope of practice for physician assistants and not covered in their pre-licensure educational programs and examinations, additional qualifications must be established to ensure minimal competency to perform the procedure with safety and effectiveness.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
N/A	117	N/A	<p>18VAC85-50-117. Authorization to use fluoroscopy. A physician assistant working under the supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology is authorized to use fluoroscopy for guidance of diagnostic and therapeutic procedures provided such activity is specified in his protocol and he has met the following qualifications:</p> <ol style="list-style-type: none"> <li>1. Completion of at least 40 hours of structured didactic educational instruction and at least 40 hours of supervised clinical experience as set forth in the Fluoroscopy Educational Framework for the Physician Assistant created by the American Academy of Physician Assistants (AAPA) and the American Registry of Radiologic Technologists (ARRT); and</li> <li>3. Successful passage of the ARRT Fluoroscopy Examination.</li> </ol> <p><i>The intent of the regulation is to establish minimal qualifications for physician assistants to perform fluoroscopy, using a nationally-recognized training regime and examination approved for that purpose.</i></p> <p><i>The impact of the regulation will be limited to radiology practices in which physician assistants are employed and may be utilized to assist in performance of diagnostic and therapeutic use of fluoroscopy.</i></p>

## 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. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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There are no alternatives that will achieve the essential purpose of the action. The specific content of the regulation was recommended by both the American Registry of Radiologic Technologists (ARRT) and the American Academy of Physician Assistants (AAPA). The ARRT and AAPA collaborated on a consensus curriculum of didactic instruction (40 hours) and a clinical component (40 hours) in preparation for the ARRT Fluoroscopy Examination. Both organizations have written to the Board in support of the regulations specified in section 117, and the Advisory Board on Physician Assistants has unanimously endorsed the recommended regulation.

## Public participation

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The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, or [Elaine.yeatts@dhp.virginia.gov](mailto:Elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. Comments may also be submitted on the Regulatory Townhall at: [www.townhall.virginia.gov](http://www.townhall.virginia.gov) In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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There is no impact on the family.