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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-50
Regulation title(s)	Regulations Governing the Practice of Physician Assistants
Action title	Definition of supervision and pharmacology for weight loss
Date this document prepared	10/26/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The purpose of the proposed regulatory action is to simplify and clarify the definitions and usage of various terms for supervision for more consistency with the Code and with actual practice of physician assistants and supervising physicians. Further the action will add a provision in the regulation on pharmacotherapy for weight loss to clarify that a physician assistant can conduct the physical examination, review tests, and prescribe drugs, if so authorized in a practice agreement with a supervising physician.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code

of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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. ...*

Regulations on supervision of physician assistants are promulgated in accordance with:

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

A. A physician or a podiatrist licensed under this chapter may supervise physician assistants and delegate certain acts which constitute the practice of medicine to the extent and in the manner authorized by the Board. The physician shall provide continuous supervision as required by this section; however, the requirement for physician supervision of physician assistants shall not be construed as requiring the physical presence of the supervising physician during all times and places of service delivery by physician assistants. Each team of supervising physician and physician assistant shall identify the relevant physician assistant's scope of practice, including the delegation of medical tasks as appropriate to the physician assistant's level of competence, the physician assistant's relationship with and access to the supervising physician, and an evaluation process for the physician assistant's performance.

Physician assistants appointed as medical examiners pursuant to § [32.1-282](#) shall be under the continuous supervision of a licensed doctor of medicine or osteopathic medicine who has been appointed to serve as a medical examiner pursuant to § [32.1-282](#).

No licensee shall be allowed to supervise more than six physician assistants at any one time.

Any professional corporation or partnership of any licensee, any hospital and any commercial enterprise having medical facilities for its employees which are supervised by one or more physicians or podiatrists may employ one or more physician assistants in accordance with the provisions of this section.

Activities shall be delegated in a manner consistent with sound medical practice and the protection of the health and safety of the patient. Such activities shall be set forth in a practice supervision agreement between the physician assistant and the supervising physician or podiatrist and may include health care services which are educational, diagnostic, therapeutic,

preventive, or include treatment, but shall not include the establishment of a final diagnosis or treatment plan for the patient unless set forth in the practice supervision agreement. Prescribing or dispensing of drugs may be permitted as provided in § [54.1-2952.1](#). In addition, a licensee is authorized to delegate and supervise initial and ongoing evaluation and treatment of any patient in a hospital, including its emergency department, when performed under the direction, supervision and control of the supervising licensee. When practicing in a hospital, the physician assistant shall report any acute or significant finding or change in a patient's clinical status to the supervising physician as soon as circumstances require and shall record such finding in appropriate institutional records. The physician assistant shall transfer to a supervising physician the direction of care of a patient in an emergency department who has a life-threatening injury or illness. Prior to the patient's discharge, the services rendered to each patient by a physician assistant in a hospital's emergency department shall be reviewed in accordance with the practice agreement and the policies and procedures of the health care institution. A physician assistant who is employed to practice in an emergency department shall be under the supervision of a physician present within the facility.

Further, unless otherwise prohibited by federal law or by hospital bylaws, rules, or policies, nothing in this section shall prohibit any physician assistant who is not employed by the emergency physician or his professional entity from practicing in a hospital emergency department, within the scope of his practice, while under continuous physician supervision as required by this section, whether or not the supervising physician is physically present in the facility. The supervising physician who authorizes such practice by his physician assistant shall (i) retain exclusive supervisory control of and responsibility for the physician assistant and (ii) be available at all times for consultation with both the physician assistant and the emergency department physician. Prior to the patient's discharge from the emergency department, the physician assistant shall communicate the proposed disposition plan for any patient under his care to both his supervising physician and the emergency department physician. No person shall have control of or supervisory responsibility for any physician assistant who is not employed by the person or the person's business entity.

B. No physician assistant shall perform any delegated acts except at the direction of the licensee and under his supervision and control. No physician assistant practicing in a hospital shall render care to a patient unless the physician responsible for that patient has signed the practice agreement, pursuant to regulations of the Board, to act as supervising physician for that physician assistant. Every licensee, professional corporation or partnership of licensees, hospital or commercial enterprise that employs a physician assistant shall be fully responsible for the acts of the physician assistant in the care and treatment of human beings.

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.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the regulatory action is clarity and consistency in rules relating to supervision of physician assistants and removal of any unnecessary rules that may impede the ability of assistants to practice to the full extent of their training and competency as permitted by law. There are no substantive changes that affect the supervisory role of a physician, and proposed regulations will continue to protect public health and safety.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Relating to the use of supervision in regulation, the Board intends to:

- 1) Amend the definition of “supervision” by combining the meanings of general and continuous supervision, so the new definition would be: Supervision means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients (current definition of “continuous supervision”) and is easily available and can be physically present or accessible for consultation with the physician assistant within one hour (current definition of “general supervision”);
- 2) Eliminate definitions of “direct supervision” and “personal supervision” The definitions of “alternative supervising physician” and “supervising physician” will be moved to the appropriate places in the listing of words and terms being defined;
- 3) Delete in Section 101 the examples of various levels of supervision that may be spelled out in the practice agreement between the parties; and
- 4) Amend Section 110 to change the word “supervising” to “observing” in order to clarify the responsibility of the physician in attesting to the competency of a physician assistant to perform invasive procedures.

Relating to regulations in Section 181 on pharmacotherapy for weight loss, the Board intends to add a subsection C, which is similar to language in subsection C of Section 90 in regulations for physicians. *The new subsection C would read: If specifically authorized in his practice agreement with a supervising physician, a physician assistant may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section.*

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The proposal is a less burdensome and intrusive alternative that meets the essential purpose of the action, so no alternatives were considered.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The Board will utilize the Advisory Board on Physician Assistants to develop proposed amendments to regulation.