



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-110-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Acupuncturists
Action Title:	Diagnostic Form
Date:	10/17/01

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 to regulation are required in order to conform to an enactment clause in Chapter 814 of the 2000 Acts of the Assembly requiring the Board to promulgate regulations for the requirement of a standard form recommending a diagnostic examination for provision by the licensed acupuncturist to the patient. Emergency regulations were authorized by the bill and are replaced by the Board in the promulgation of this final amendment.

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.

The change to proposed regulations made in the adoption of final amendments was to specify the original of the consent form should be retained in the patient's chart and a copy given to the patient. There were also changes to the form adopted for implementation by licensed acupuncturists.

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 October 11, 2001, the Board of Medicine adopted final amendments to 18 VAC 85-110-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists for the purpose of providing a requirement for acupuncturists to inform patients of their need to have a diagnostic examination.

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.*

The legal authority to promulgate regulations is in second enactment clause of Chapter 814 of the 2000 Acts of the Assembly, which states: "That the Board of Medicine, in consultation with the Advisory Board on Acupuncture, shall promulgate regulations, including education and training requirements for doctors of medicine, osteopathy, chiropractic and podiatry who utilize acupuncture, and including the requirement for a standard form recommending a diagnostic examination for provision to the patient by the acupuncturist, to implement the provisions of this act within 280 days of enactment."

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.

The law requires the licensed acupuncturist to either get written documentation that the patient has received a diagnostic examination by a licensed practitioner of medicine, osteopathy, chiropractic or podiatry or to provide a written recommendation for such an examination to the patient. The enactment clause requires the board to promulgate regulations for this requirement, including a standard form to be signed by the patient.

While the Code of Virginia no longer requires that a person get a medical examination and referral prior to receiving acupuncture, concerns remain that a medical problem will go undiagnosed and untreated during the course of acupuncture treatment. Therefore, the requirement for a written recommendation for an examination by a physician will provide a measure of protection for a patient's safety and health.

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.

Regulations for licensed acupuncturists are amended to specify a form that must be provided by a licensed acupuncturist to a patient who has not received a diagnostic examination from a physician within the past six months and to require the original of the signed form to be retained in the patient's chart and a copy given to him.

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.

There have been no issues related to the written recommendation form; the Code of Virginia requires that such a form be given to acupuncture patients. Many licensed acupuncturists already utilize such a form for their own protection and their concerns about their patients. Discussion by the Acupuncture Advisory Committee related to the composition of the form; the most important information and signature lines have been placed at the top of the form with the information intended for the acupuncturist at the bottom. Since licensed acupuncturists are not required to be fluent in English and the patient may not understand English, the instructions provide that the licensee has an obligation to either provide the form in the language of the patient or ensure that it has been translated for their understanding.

There are no disadvantages to the public; the public is better protected by the requirement for a disclosure form that will ensure the patient is aware of the need for a diagnostic examination by a doctor.

There are no disadvantages to the agency, since there are no additional tasks or responsibilities involved in compliance with these regulations.

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 August 3, 2001. No comment was presented at that time nor was any written or electronically submitted comment received. The Advisory Committee and the Board did consider comment from the Department of Planning and Budget on the format of the form used to inform patients of their need for a diagnostic examination.

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 85-110-100. General requirements.

The amended regulation requires that the written recommendation for a diagnostic examination be provided on a form specified by the Board and signed by the patient. The original of the form must be maintained in the patient's chart and a copy given to the patient.

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 Board has reviewed the adopted regulations and concluded that the amendments have no effect on strengthening the authority and rights of parents, on economic self-sufficiency, on the marital commitment or on disposable family income.