



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Board of Medicine
<b>VAC Chapter Number:</b>	18 VAC 85-40-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Respiratory Care Practitioners
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Regulations are promulgated to provide educational, examination and practice requirements for the licensure of respiratory care practitioners. Provisions establish requirements for renewal or reinstatement of a license, standards for practice, and fees to support the regulatory and disciplinary activities of the board.

## Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 29 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively 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:*

- 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 general provisions in § 54.1-2400, the Board of Medicine is guided by provisions in the Medical Practice Act related to the licensure and regulation of respiratory care practitioners as follows:

**§ 54.1-2954. Respiratory care practitioner; definition.**

*"Respiratory care practitioner" means a person who has passed the examination for the entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with the regulations pertaining to licensure prescribed by the Board, and who has been issued a license by the Board.*

**§ 54.1-2954.1. Powers of Board concerning respiratory care.**

*The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.*

*The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.*

**§ 54.1-2955. Restriction of titles.**

*It shall be unlawful for any person not holding a current and valid license from the State Board of Medicine to practice as a respiratory care practitioner or to assume the title, "Respiratory Care Practitioner" or to use, in conjunction with his name, the letters "RCP."*

**§ 54.1-2956. Advisory Board on Respiratory Care; appointment; terms; duties; etc.**

*A. The Advisory Board on Respiratory Care shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed respiratory care practitioners.*

*The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment respiratory care practitioners 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.*

*Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.*

*B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a respiratory care practitioner and the standards of professional conduct for holders of licenses.*

*The Advisory Board shall also assist in such other matters dealing with respiratory care as the Board may in its discretion direct.*

**§ 54.1-2956.01. Exceptions to respiratory care practitioner's licensure.**

*The licensure requirements for respiratory care practitioners provided herein shall not prohibit the practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory care education program approved by the Board. Any student enrolled in accredited respiratory care education programs shall be identified as "Student RCP" and shall only deliver respiratory care under the direct supervision of an appropriate clinical instructor recognized by the education program.*

The Board of Medicine has a specific statutory mandate to promulgate regulations to ensure practitioner competence with requirements such as continuing education.

**§ 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.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

An announcement of the board's review of its regulations governing the licensure of respiratory care practitioners was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received until August 2, 2000. During the 30-day comment period, no comments were received from members of the public.

The Advisory Board on Respiratory Care held a public meeting on September 14, 2000 to conduct a review of regulations and discuss related issues. Based on the concerns expressed by licensees about continued practitioner competence and other issues, the Advisory Board voted to request that the Board recommend certain amendments to regulations.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The goals for this regulation are as follows:

1) Achieve a high level of satisfaction for application and renewal processes for all licensed practitioners.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of certification was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 90.4% agreed or strongly agreed that the instructions were easy to understand; 86% agreed or strongly agreed that the application was processed promptly; and 86.8% agreed or strongly agreed that the forms were easy to complete. Therefore, no changes in regulations are being considered in the application process.

2) Increase the number of licensed respiratory care practitioners and achieve a reduction in unlicensed practice.

Legislation passed in the 1998 General Assembly changed the regulation of respiratory therapists from certification to licensure and authorized the Board to adopt emergency regulations for that

purpose. When the final regulations became effective in January of 2000, there were approximately 2700 persons licensed by the Board. The Board has made an effort to inform practitioners and hospitals of the requirement for licensure for persons practicing respiratory care, as defined in § 54.1-2900 of the Code of Virginia. As of October 1, 2000, there are 2942 persons holding a current, active license as a respiratory care practitioner providing services to patients of the Commonwealth.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

The only major issues facing the Board in the regulation of respiratory care practitioners and the alternatives to dealing with those issues are discussed below:

### Continuing competency hours

The Advisory Board considered the options for continuing competency and has recommended that a small number of continuing learning activities, combined with the current requirement for 160 hours of active practice, would provide the assurance that a respiratory care practitioner was maintaining his current knowledge and skills and being exposed to new ideas, techniques and technologies. While no specific proposal has been developed, it would likely be similar to the system proposed by the Board for occupational therapy with a total of 20 hours of continuing learning within a biennium, 10 of which may be totally self-directed study or activity and 10 of which must be face-to-face learning activities. Such a requirement would be less burdensome than the current requirement for doctors of medicine, osteopathy, podiatry or chiropractic (60 hours each biennium) and similar to the proposed regulations for occupational therapists, who are also regulated by the Board of Medicine.

For those practitioners who have not engaged in practice for several years, the Board will consider whether it should be necessary to require retesting as a measure of minimal competency. It may decide to adopt a less restrictive requirement of practice under supervision for a certain number of hours before relicensure. Therefore, for those persons who have been out of practice for two or more years, the regulations may require supervised practice before a license could be issued, reactivated or reinstated.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The board is recommending amendments to its regulations for the licensure of respiratory care practitioners in order to address concerns about the continued competency of practitioners who are renewing their licenses. Proposed regulations establishing requirements for continuing

competency have not been specifically developed but would expect to follow those currently proposed for occupational therapists or radiologic technologists. Other amendments are recommended for greater clarity for the regulated entities or for adaptability to computerized testing.

## Substance

*Please detail any changes that would be implemented.*

### **18 VAC 85-40-40. Application requirements.**

The Board recommends some amendment to the requirement for "documentation" of passage of the national examination. Evidence of passage may be delivered on-line in the future.

### **18 VAC 85-40-45. Educational requirements.**

It is recommended that an amendment be added to give the Board authority to accept equivalent education to that required for credentialing by the National Board on Respiratory Care (NBRC) if another equivalent, national credential became available.

### **18 VAC 85-40-50. Examination requirements.**

An amendment would delete the requirement for "written evidence, verified by affidavit" to permit the Board to receive national examination scores on-line.

### **18 VAC 85-40-60. Renewal of license.**

The Board recommends an amendment to clarify that the license must attest on the renewal form that he has engaged in active practice as defined in section 10.

### **Amendments to Part III. Renewal and Reinstatement.**

Specific regulations for evidence of continued competency as a prerequisite for renewal of licensure have not been developed. The Advisory Board is recommending 20 hours of continued learning courses or activities each biennium with half of the hours being face-to-face. In addition, the Board will consider requirements for reinstatement of a lapsed or inactive license which will include hours of continued competency courses or activities, a period of supervised practice or other evidence of competency to resume practice.

### **18 VAC 85-40-80. Fees.**

Amendments are recommended to place the fees under Part I, General Provisions for consistently with other regulations under the Board of Medicine and to state the current policy of the board, which is that all fees are nonrefundable unless otherwise specified.

## Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential 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.*

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on the assumption of responsibility. Depending on the cost, scope and content of any continuing competency requirement for renewal of licensure that may be proposed, there may be some minimal reduction in disposable family income.