



Fast Track Proposed Regulation Agency Background Document

Agency name	Boards of Nursing and Medicine; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-30-10
Regulation title	Regulations Governing the Licensure of Nurse Practitioners
Action title	Delegation to an agency subordinate
Date this document prepared	7/17/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Fast-track regulations were adopted by the Boards of Nursing and Medicine to establish regulations to allow the use of an agency subordinate to hear disciplinary cases involving a nurse practitioner.

Section 240 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that may be delegated, and the individuals who may be designated as agency subordinates.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Medicine adopted the amendments on June 21, 2007; and the Board of Nursing adopted the amendments on July 17, 2007 to 18VAC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and to delegate informal fact-finding to an agency subordinate:

§ 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 and Chapter 25 of this title...*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, to act in accordance with § [2.2-4019](#) 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 30 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 30-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 § [2.2-4020](#), and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § [2.2-4001](#), the authority to conduct informal fact-finding proceedings in accordance with § [2.2-4019](#), upon receipt of information that a practitioner may be subject to a disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health,

safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The adoption of these proposed rules gives another tool to these health regulatory boards seeking to bring closure to nurse practitioner cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member, former board member or staff person trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact finding proceeding establish the rights of parties to a disciplinary care including the right to “appear in person or by counsel or other qualified representative before the agency *or its subordinates*, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case.” A “subordinate” is defined in the APA as “(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.” The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The boards will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While more egregious standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case and recommend a finding. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to the chairman of the Committee of the Joint Boards. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Boards have determined that a fast-track process is appropriate because there is no controversy with this action. The Board of Nursing has been routinely utilizing agency subordinates to hear disciplinary cases, so the process is well established. One of the subordinates employed by the Board is a nurse practitioner and nurse educator who would be well-qualified for such cases, so it is generally agreed that regulatory authority to expedite the use of a subordinate would be beneficial to board members and the public alike.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Amendments to regulations for nurse practitioners establish the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by the chairman of the Committee of the Joint Boards, and the individuals who may be designated as agency subordinates.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary 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 indicate.*

- 1) The advantage to the public may be a speedier resolution of most disciplinary cases, but egregious cases involving patient harm could continue to be heard by a special conference committee.
- 2) There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the Board, there will be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member or another trained individual to sit as an agency subordinate will be easier than scheduling for two or more members from two different boards, so it will be possible for cases to be heard more quickly. If the informal is conducted by 3 of the 6 members representing the Boards of Nursing and Medicine, then those members have a conflict in any subsequent hearing, so convening a formal hearing is extremely difficult. The use of a subordinate will facilitate hearings conducted for cases involved nurse practitioners.
- 3) There is no other pertinent matter of interest related to this action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will be no on-going expenditures related to this action. Costs for the use of an agency subordinate are typically less than costs for convening a committee of board members.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected by this regulation would be nurse practitioners.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Since the number of disciplinary cases involving nurse practitioner is relatively small (less than 15 a year), it is likely that between 10 and 15 nurse practitioners would be affected.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the</p>	<p>Depending on whether a case is heard by a committee of the board or by an agency subordinate, there would be no additional costs</p>

<p>projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>to the affected entity.</p>
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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.

In order for the Boards of Nursing and Medicine to utilize an agency subordinate to hear disciplinary cases involving nurse practitioners, it is necessary to amend Chapter 30. The two boards currently have regulations for delegation, but the regulations are not identical and they apply only to those licensees regulated solely by that board. Since nurse practitioners are jointly licensed, it is necessary to adopt amendments that will establish the delegation process and criteria for subordinates in regulations for nurse practitioners. The boards will also rely on guidance documents that set out the implementation of delegation and will utilize the Administrative Process Act which sets the legal framework for the conduct of an informal fact-finding proceeding and the opportunity for the formal taking of evidence upon relevant fact issues in any case.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

<p>Current section number</p>	<p>Proposed new section number, if applicable</p>	<p>Proposed change and rationale</p>
<p>n/a</p>	<p>240</p>	<p>Subsection A references the statutory authority for delegation of informal fact-finding to an agency subordinate and establishes that such delegation may occur upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action.</p>

		<p>Subsection B states that cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate. An exception may be made for a case in which there was patient injury if it is approved by the chairman of the Committee of the Joint Boards. By providing an exception to the rule stating that violations of standards of practice may not be delegated, the Board has provided the maximum flexibility while reserving the decision to delegate to advice and authorization to a member of the Board in conjunction with the Executive Director.</p> <p>Subsection C sets out the criteria for the individual who may serve as an agency subordinate to include board members (both current and former) and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.</p> <p>It also provides that the executive director will maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated, and that the board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.</p>
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