Boards of Nursing & Medicine, Department of Health Professions

18 VAC 90-30-10 et seq. and 18 VAC 90-40-10 et seq.

Regulations Governing Nurse Practitioners

Evidence of continuing competency

Purpose

The Boards of Nursing and Medicine are seeking to publish a Notice of Intended Regulatory action in response to a need to provide assurance to the public that nurse practitioners including those who have the authority to prescribe controlled substances have continued to be competent to provide patient care. The Board of Medicine, in response to a statutory mandate in § 54.1-2912-1 that the Board "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" has promulgated regulations for evidence of continued competence for all other professions that it regulates. In addition, House Bill 818 passed by the 2000 General Assembly included a provision requiring that the Boards of Nursing and Medicine to promulgate regulations pursuant to prescriptive authority that "ensure continued nurse practitioner competency" which may include the use of new pharmaceuticals, patient safety, and appropriate communication with patients. With nurse practitioners assuming increasing responsibilities for patient care and an expanding authority to prescribe certain schedules of drugs, the Boards of Medicine and Nursing concur that some evidence on continued competency is essential to protect public health and safety.

Basis

18 VAC 90-40-10 et seq. Regulations Governing Prescriptive Authority for Nurse Practitioner were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

§ 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 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 specific statutory mandate for the Board of Medicine to adopt regulations for practitioner continued competency is found in:

§ 54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing education requirements.

§ 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.

The Boards are also authorized by § 54.1-103 to specify additional training for licensees seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

House Bill 818, passed by the 2000 General Assembly, amends § 54.1-2957.01 to provide the following:

The Board of Medicine and the Board of Nursing shall be assisted in this process by an advisory committee composed of two representatives of the Board of Nursing and one nurse practitioner appointed by the Board of Nursing, and four physicians, three of whom shall be members of the Board of Medicine appointed by the Board of Medicine. The fourth physician member shall be jointly appointed by the Boards of Medicine and Nursing. Regulations promulgated pursuant to this section shall include, at a minimum, (i) ~~the formulary of the specific Schedule VI drugs and devices that nurse practitioners are eligible to prescribe pursuant to this section to the extent, and in the manner, authorized in a written protocol between the nurse practitioner and the supervising physician~~ *such requirements as may be necessary to ensure continued nurse practitioner competency which may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients*, and (ii) requirements for periodic site visits by physicians who supervise and direct nurse practitioners who provide services at a location other than where the physician regularly practices.

Substance

The purpose of any regulation of a professional is " for the exclusive purpose of protecting the public interest" (§ 54.1-100). According to the *Code of Virginia*, regulation is necessary to protect the health, safety or welfare of the public when the potential for harm is recognizable. In the practice of a nurse practitioner, there exists a clearly recognized potential for harm and a need to protect the public.

Regulation is further authorized when the practice of the profession requires specialized skills and assurances of initial and **continuing professional and occupational ability**. The Boards of Nursing and Medicine do not believe that current regulations provide such

assurances, and that regulations requiring mandatory continuing competency are in keeping with its statutory responsibility to protect the public.

In its discussion of the need to require evidence of continued competency, the Committee of the Joint Boards identified three reasons why it is essential: 1) There is a statutory mandate as described above; 2) It is unprofessional conduct for a practitioner to continue treating patients without updating his knowledge and skills. Some experts estimate that the half-life of medical knowledge is seven years; others estimate that it is outdated in three to five years; and 3) In disciplinary cases before the Joint Boards, there is evidence that nurse practitioners who are guilty of practicing outside the scope of their training and certification have not maintained current or continued competency.

The Boards have reviewed mandatory continuing competency as required for other professions in Virginia and in regulations by other states. Among those professions whose regulations currently require continuing education for renewal of licensure in Virginia are doctors of medicine, osteopathy, podiatry, and chiropractic, pharmacists, dentists, optometrists, nursing home administrators, veterinarians, audiologists, speech-language pathologists and social workers. Among other states, there are only **seven** that have no requirement for continued competency for advanced practice nurses. As the growth of technology and scientific knowledge escalates, it is essential for health care practitioners who make crucial decisions about the care of patients to stay abreast in their professions. Licensing boards have a statutory responsibility to not only assure minimal competency as a person enters a profession with initial licensure but to continue to provide assurance of continued competency for practitioners who renew licensure over a period of years.

The need for continued competency and the role of regulatory bodies have been identified by several health policy groups. The Pew Commission in its report on "Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century" recommended that states should require each regulatory board to develop, implement, and evaluate continuing competence requirements to assure the continuing competency of regulated health care professionals." The Citizen Advocacy Center (CAC) raised the question of whether the public is adequately protected if a health care professional has minimum levels of competence at the time of initial licensure but has not demonstrated continuing competence throughout the span of their practice. Its conclusion was that the public can not be assured that a level of minimum competence has been maintained.

In its discussion of the need to require evidence of continued competency for nurse practitioners with prescriptive authority, the Committee of the Joint Boards determined that some evidence of current knowledge of new pharmaceuticals and appropriate prescribing practices may be necessary. Legislation passed by the General Assembly will expand the prescribing authority for nurse practitioners to include Schedule V and VI drugs in 2000, schedule IV, V and VI drugs in 2002 and Schedules III through VI in

2003. It is likely that knowledge acquired by a nurse practitioner in order to initially meet the requirements for prescriptive authority has become out-dated and may not have included drugs in schedules other than Schedule VI.

The Boards have reviewed mandatory continuing competency regulations for nurse practitioners by other states. Among other states, there are ten that have some specific requirement for continued education for advanced practice nurses who have prescriptive authority or a specific hour requirement for continuing education in pharmacology. As new drugs come on the market and new information about drug interactions and efficacy becomes known, it is essential for health care practitioners who make crucial decisions about the care of patients to stay current. Licensing boards have a statutory responsibility to not only assure minimal competency for a practitioner who is initially authorized to write prescriptions but to continue to provide assurance of continued competency for practitioners who renew that authorization over a period of years.

Several issues will have to be addressed in the development of regulations. First the Boards will need to determine whether the competency requirements should be related to the specialty area in which the nurse practitioner was initially certified and in which he currently practices. The alternative would be to have competency requirements that are more general in nature and only specify a number of continuing education or practice hours for renewal. Second, the Boards will need to determine what regulations are essential to address the issue of continued competency without imposing an unnecessarily burdensome requirement on nurse practitioners. Third, the Boards will need to devise a reasonable requirement for those nurse practitioners who were initially "grandfathered" and who do not qualify by education for certification by a specialty board. (Prior to January 21, 1988, nurse practitioners were not required to have certification by a specialty board in order to become licensed). If initial certification was not obtained, re-certification for renewal of one's license would be an unreasonable requirement. Fourth, the Boards will consider whether any provision should be made for waivers or extensions for good cause shown, what is required for record-keeping and enforcement, and whether to also adopt provisions for inactive licensure.

In the development of regulations, the Boards will address certain issues related to continued competency. First, the Boards will need to determine whether continued competency requirements for all nurse practitioners will be sufficient assurance that those with prescriptive authority are maintaining current information on new drugs and drug interventions. If there needs to be an additional measure of continued competency for prescriptive authority, as is contemplated in HB 818 and the amendments to § 54.1-2957.01, the Boards will need to determine the amount and nature of the competency requirements.

Alternatives

As the Boards begin the process of developing competency requirements for nurse practitioners, they will consider those currently in effect in other states and among other boards within the Department of Health Professions. Among those states that have requirements for evidence of continued competency for renewal of license 32 states require re-certification by a national certifying body. Many of those states also have requirements for hours of continuing education, pharmacology course work or hours of practice in their specialty or both. Two other states have enabling legislation and are in the process of enacting continuing competency requirements. Eight states have some requirement for continuing education as a prerequisite for renewal of licensure. Seven states (including Virginia) have no requirements, and one state provided no information. Several states have specific requirements for continuing education courses in infection control or pharmacology.

Among the alternatives that the Boards will consider include: 1) hours of continuing education; 2) hours of active practice in one's specialty; 3) peer review of one's practice; and 4) re-certification by a specialty organization.

The Boards will consider comment received following the Notice of Intended Regulatory Action (which will be sent to approximately 1100 persons or organizations on the PPG mailing list for the Board of Nursing and 250 persons or organizations on the list for the Board of Medicine) and will seek advice from the Committee of the Joint Boards and its Advisory Committee, representing various categories of nurse practitioners and physicians who supervise nurse practitioners. The Boards will also strongly consider a requirement for re-certification by the specialty board that initially certified the licensed nurse practitioner, similar to the rule adopted by the majority of other states. An ad hoc committee on continuing competency, with representatives of the Committee of the Joint Boards of Medicine and Nursing, has been reviewing the need for evidence of continuing competency and has expressed support for regulations that would include proof of current certification for nurse practitioners at the time of licensure renewal.

Although there is no data on the number of nurse practitioners who do maintain certification for professional reasons, it is estimated by the members of the Committee of the Joint Boards that the vast majority do. First, many institutions and physicians who employ nurse practitioners require them to have current certification in order to be initially hired and to continue to practice. Hospitals require nurse practitioners to maintain current certification in order to maintain employment. Second, once a nurse practitioner has obtained specialty certification, it is far easier to maintain certification than to allow it to lapse and have to become recertified. For example, if a person is practicing as a CRNA (Certified Registered Nurse Anesthetist), it would be necessary for him to continue to be certified in order to use that title in the course of his employment.

While each certifying board has its own practice-specific requirement of re-certification, they would typically include retesting or meeting clinical practice and continuing education requirements or both. Some boards require a self-assessment learning exercise to help the nurse practitioner identify areas where additional learning needs to occur, The period of time for certification to remain valid varies with specialty boards, generally ranging from re-certification every five years to every eight years. The National Council of Boards of Nursing has been working with certifying bodies to encourage some commonality among their requirements and to ensure that testing is psychometrically sound. The Boards will review the re-certification requirements for each specialty board currently recognized for the licensure of nurse practitioners to determine the adequacy and reasonableness of those requirements.

Family Impact Statement

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There may be a slight decrease in disposable family income for those nurse practitioners who have to fulfill certain continuing education requirements in order to maintain authorization to prescribe controlled substances.