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Final Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC90-19
VAC Chapter title(s)	Regulations Governing the Practice of Nursing
Action title	Clinical nurse specialist registration
Date this document prepared	7/21/20

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board is proposing amendments in response to a petition from the Virginia Association of Clinical Nurse Specialists, which requested changes to regulations relating to registration of a clinical nurse specialist (CNS). Amendments will clarify that the Board will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation is amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations are aligned with those in section 190 relating to the reinstatement of a nursing license.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CNS = clinical nurse specialist

Statement of Final Agency Action

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.

On July 21, 2020, the Board of Nursing amended 18VAC90-19-10 et seq., Regulations Governing the Practice of Nursing.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There were no changes to the previously reported impetus for this regulatory change.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency 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 Nursing 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:

- 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.

...
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. ...

The specific authority for the Board of Nursing to register clinical nurse specialist is found in:

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:...

9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists; ...

§ 54.1-3018.1. Registration of clinical nurse specialists.

The Board may register an applicant as a clinical nurse specialist if the applicant:

- 1. Holds a valid license to practice professional nursing pursuant to this article; and
- 2. Has successfully completed a graduate-level clinical nurse specialist program within a regionally accredited college or university that meets all educational qualifications and standards established by national certification guidelines and holds a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Regulations were recently amended to align regulatory provisions on national certification with the language of the Code in § 54.1-3018.1 (effective 3/22/19). Further amendments will clarify that the Board will accept a specialty examination that has now been retired but the certification has been maintained or will accept the core examination for national certification as a clinical nurse specialist. Amendments are also necessary to assure that a registered nurse who has allowed his CNS registration to lapse for more than one renewal cycle is safe and competent to resume advanced practice by providing evidence of current certification.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board amended section 210 to clarify that it will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation is amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations are aligned with those in section 190 relating to the reinstatement of a nursing license.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) The primary advantage of the amendment is clearer language to avoid confusion and to facilitate registration as a CNS. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.*" There is no restraint on competition as a result of promulgating this regulation. The language is clarifying and consistent with the Code.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected - none

Localities Particularly Affected - none

Other Entities Particularly Affected - none

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

There was a 60-day comment period from January 20 to March 20 of 2020. A public hearing was conducted on January 28, 2020; no comment was presented.

Commenter	Comment	Agency response
16 commenter	Supportive of the proposed regulation	The Board appreciates the support of the clinical nurse specialists.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There were no changes made since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
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30	Sets fees for licensure or registration	<p>Clarifies that fee for reinstatement of suspended or revoked license would also apply to CNS registration. <i>There have been no cases of a suspended or revoked registration that staff can recall, but the fee and process for reinstatement should be set in regulation.</i></p>
210	Sets the qualifications for initial registration	<p>Subsection A(2) is amended to authorize the Board to accept core certification or a certification that has been retired, as evidence of current national clinical nurse specialist certification, for the purpose of initial registration. <i>The amendment clarifies that a person who obtained the core certification or was certified with a specialty certification that has now been retired may be registered, provided certification has been maintained and is current. Recently, the Board was allowed to interpret its current regulation to accept an applicant who had the core certification, but was advised that the regulation needed to be revised to specify such acceptance.</i></p> <p>Subsection B(2) is amended to authorize the Board to accept core certification or a certification that has been retired, as evidence of current national clinical nurse specialist certification, for the purpose of renewal of registration.</p> <p>Subsection B(3) clarifies the conditions for reinstatement if one’s registration as a CNS has lapsed within one renewal cycle – just as the conditions for reinstatement if one’s license as an RN has lapsed within one renewal cycle.</p> <p>Subsection C sets out the requirements for reinstatement if a registration has been lapsed for more than one renewal cycle or if the CNS registration has been suspended or revoked. <i>There have been no cases of a suspended or revoked registration that staff can recall, but the fee and process for reinstatement should be set in regulation. The provision stating that a CNS whose registration has been revoked may not apply for reinstatement sooner than three years from entry of the order is set out in Code in § 54.1-2408.2.</i></p>