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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC105-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Optometry
Action title	Periodic review
Date this document prepared	3/17/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

In addition to editorial changes, the Board will consider deletion of unnecessary or unenforceable rules, addition of a limitation on the number of times an applicant can take and fail the licensing examination before additional education is necessary, and addition of specificity about evidence of continued competency required for licensure by endorsement and reinstatement. For reinstatement of a lapsed license, the Board will also consider requiring evidence of any disciplinary or malpractice action and, if the applicant is licensed in another state, evidence of a current, unrestricted license.

By updating the current regulations, eliminating any that are unnecessarily burdensome, and adding requirements for evidence of continued competency, the Board's intent is greater clarity and understanding by applicants and licensees of the applicable rules.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Optometry are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

§ 54.1-2400. General powers and duties of health regulatory boards.--*The general powers and duties of health regulatory boards shall be:*

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§2.2-4000 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.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose is assurance that optometrists who are initially licensed by examination or by endorsement and those who are reinstating a lapsed license are competent to practice to protect the health and safety of patients receiving optometric services.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

In addition to editorial changes for the purpose of greater clarity and understanding by applicants and licensees, the Board will consider the following changes:

Section 05 – Definitions

- Add definitions for several terms that are currently defined within the body of the regulations

Section 10 – Licensure by examination

- Add a limitation on the number of times an applicant can take the licensure examination before additional coursework is required (already requirement for therapeutic pharmaceutical agents (TPA) certification examination)
- Move regulations for licensure of applicants who already hold a license in another jurisdiction to "Licensure by endorsement" and require hours of continuing education for applicants who have not been actively practicing.

Section 15 – Licensure by endorsement

- Deletion of subsection B (requirement of proof of competency in the use of diagnostic pharmaceutical agents) because subsection A requires TPA certification.
- Deletion of subsection D because it is an added requirement for federal service optometrist not required for optometrists in private practice.

Section 16 – Requirements for TPA certification

- Deletion of requirement for 20 hours of clinical supervision by an ophthalmologist within a graduate-level optometric training program because it is difficult to verify.
- Deletion of requirement that a state TPA examination be comparability to national examination because comparability is really not possible to determine.

Section 20 – Fees

- Deletion of a separate application fee for TPA certification as TPA is now part of all licenses issued, and there is no separate application.

- Deletion of one-time fee reduction in subsection C.

Section 40 – Standards of conduct

- Add other disciplinary actions that the Board is authorized to take, including impose a monetary penalty and place restrictions on a licensee.

Section 45 – Standards of practice

- Change record retention from five to six years for consistency with recordkeeping requirements of the Board of Medicine for medical records.
- Revise subsection A to document that, if a prescription includes an expiration date, the necessity for such expiration.

Section 60 – Renewal of licensure; reinstatement; renewal fees

- Possible change in renewal date to avoid year-end timing; licensees would have additional months on renewal for the time after making such a change.
- Additional requirements for reinstatement of a lapsed license to specify the requirement for demonstration of continuing competence and verification of licensure in another state (if applicable) and no history of disciplinary action. May delete requirement for passage of the examination if measures of continued competency are put in place.

Section 70 – Requirements for continuing education

- Differentiate between an extension of CE requirements and an exemption; current regulation only provides for a "waiver" which would allow Board to exempt a licensee from CE for certain circumstances.
- Delete post-test requirement because Board relies on the date on the certificate.
- May add to or delete from listing of approved providers.
- Place requirement for having a certificate of completion on the licensees, since the Board does not regulate the CE sponsors or providers.
- Add mode of delivery to information required on certificate since there is now a statutory requirement for hours of "live" CE.

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.

Since the requirements for licensure and practice are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or **elaine.yeatts@dhp.virginia.gov** or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (https://www.virginia.gov/connect/commonwealth-calendar). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board in consultation with representatives of the optometric community.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

1) A notice of periodic review was posted on the Virginia Regulatory Townhall, published in the Register of Regulations, and sent to interested parties for participation in regulatory actions for the Board. The comment period was open from September 5, 2017 to October 5, 2017; there were no comments received.
2) The regulation is necessary for protection of public health and safety in the provision of optometric services and the prescribing of drugs and eyewear.
3) To ensure that the regulation is clearly written and easily understandable, there are amendments recommended as a result of the Board's periodic review.
4) There is a continued need for the regulation as § 54.1-3204 specifies that it is unlawful: *To practice optometry in this Commonwealth without holding a license issued by the Board.* Likewise, the Board has a statutory mandate to promulgate regulations for prescribing and administering therapeutic pharmaceutical agents, continuing education, and issuance of a renewal of licensure.
5) There were no comments on the review, and no complaints have been received concerning the regulation from the public.
6) The regulations do not conflict with applicable state and federal regulations; the regulations are consistent with federal rules for glasses and contact lenses.
7) The regulation has been amended 10 times in the past 10 years in order to maintain consistency with the Code and with changes in practice.