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Final Regulation 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	2/8/19

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

In addition to editorial changes, the Board adopted changes for deletion of unnecessary or unenforceable rules, inclusion of a definition for active practice, more specificity about evidence of continued competency required for licensure by endorsement and reinstatement, clarification about the expiration date that may be included on an eyeglass prescription, and a waiver of graduation from an accredited school if an applicant was educated in a foreign country but has been actively practicing in another state.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

NBEO = National Board of Examiners in Optometry
TMOD = Treatment and Management of Ocular Disease
TPA = therapeutic pharmaceutical agents

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.

On February 8, 2019, the Board of Optometry adopted final amendments to 18VAC105-20-05 et seq., Regulations Governing the Practice of Optometry.

Mandate and Impetus

Please 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 since the previous stage; this action is the result of a periodic review of regulations.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity'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 Optometry 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:

...

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. ...

Purpose

Please 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.

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. Amended regulations will make it less onerous for an applicant who is currently licensed and practicing in another state and wants to become licensed in Virginia. If he/she has been actively practicing and has a current license, the applicant would not be required to do additional CE. If not actively practicing, the Board believes some CE is necessary to ensure minimal competency for public health and safety in providing patient care.

Substance

Please 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.

In addition to editorial changes, the Board adopted changes for deletion of unnecessary or unenforceable rules, inclusion of a definition for active practice, more specificity about evidence of continued competency required for licensure by endorsement and reinstatement, clarification about the expiration date that may be included on an eyeglass prescription, and a waiver of graduation from an accredited school if an applicant was educated in a foreign country but has been actively practicing in another state.

Issues

Please 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 to the public is the potential for additional practitioners to become licensed in Virginia if they are licensed in another state and actively practicing without a history of disciplinary action. It is also less onerous to reinstate a lapsed license, which could increase the supply of optometrists available to provide eye care. 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 “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.” There is no restraint

on competition as the regulation will provide an opportunity for some optometrists to be licensed in Virginia who are currently not able to meet the requirements.

Requirements More Restrictive than Federal

Please 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

Please 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

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

There was a public comment period from 10/29/18 to 12/28/18; a public hearing was held on 11/2/18. No public comment was received or posted on the Virginia Regulatory Townhall.

Detail of Changes Made Since the Previous Stage

*Please 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

There are no changes.

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
05	Sets out definitions for words and terms used in the chapter	<p>The term “active clinical practice” is defined as an average of 20 hours per week or 640 hours per year of providing patient care. <i>A definition is needed because the term is used in licensing and reinstatement requirements and is open to wide interpretation. The Board’s intent is to allow practice hours less than full-time but in a quantity sufficient to demonstrate continuing competency to practice.</i></p> <p>The word “adnexa” is currently defined in section 46; it is moved to the definitions section for consistency. A definition of TMOD is added because the acronym is used in regulation.</p>
10	Currently titled “Licensure by examination” but it is amended to include all requirements for licensure	<p>The requirements for licensure by examination and licensure by endorsement are virtually the same, so the Board has eliminated the distinction to avoid some of the confusion experienced by applicants who are not sure which type of application they need to complete. The changes in this section are:</p> <ol style="list-style-type: none"> 1) Addition of “other accrediting body deemed by the board to be substantially equivalent” to allow recognition of another educational accrediting body if there is one in the future. 2) Moved requirement to sign a statement that the applicant has read laws and regulations and will comply to subsection A; this requirement is currently found in subsection C and in section 15. 3) Subsection B allows the Board to waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another U. S. jurisdiction and has been engaged in active clinical practice for 36 out of the 60 months immediately preceding application for licensure in Virginia. <i>The intent of this amendment is to allow a pathway to licensure for foreign-trained optometrists who have been engaged in active practice in another state. Currently, regulations require graduation from an accredited program. The Board believes the requirement of passage of the national examination and active practice for at least 36 months is sufficient evidence of qualification to practice.</i> 4) The required examination section is amended to include the TMOD examination, which is now taken as part of the NBEO examination. TMOD is required for TPA certification, and subsection

		<p>A currently requires all applicants to meet the requirements for TPA certification.</p> <p>5) An applicant who has been licensed in another state and has not been engaged in active practice within the 12 months immediately preceding application is required to complete 20 hours (equivalent of one year) of CE. The Board has deleted the requirement that an applicant must complete 32 hours of CE if he has not passed all parts of the examination within the five years prior to application. <i>The Board is trying to make it less onerous for an applicant who is currently licensed and practicing in another state and wants to become licensed in Virginia. If he/she has been actively practicing and has a current license, the applicant would not be required to do additional CE. If not actively practicing, the Board believes some CE is necessary to ensure minimal competency for providing patient care.</i></p> <p>6) The requirement for a federal service optometrist to have verification of good standing from a commanding officer is current language from section 15, which is being repealed.</p>
15	Sets out the requirements for licensure by endorsement	The Board has repealed the section and incorporated all licensure requirements into section 10.
16	Sets out requirements for TPA certification	Currently, the regulation provides that an applicant who is certified in TPA by a state examination must provide evidence of comparability to the NBEO exam. The Board has found that comparability is difficult, if not impossible, to prove; so the proposed regulation will provide that an applicant must be TPA-certified by an examination satisfactory to the Board.
17	Establishes the fees charged to applicants and licensees	<p>The fee for an application for TPA certification is eliminated because every application now has to include TPA certification; a separate fee is not necessary.</p> <p>The fee reduction for the renewal in 2015 can now be eliminated.</p>
40	Sets out the standards of conduct for optometrists	The authority of the Board includes refusal to issue a license or renew a license for grounds established in law or regulation. That clarification and one edit are the only changes in this section.
45	Sets out the standards of practice for an optometrist	<p>Subsection B is amended to clarify the provision about whether an expiration date on a prescription is required. Currently, the regulation states that the patient record should include an expiration date "if medically appropriate." Rules of the FDA state that if there is an expiration date, it should not be less than one year unless there is a medical reason for the shorter date. <i>An optometrist is not required to place an expiration date on a prescription for contact lenses or eyeglasses.</i></p> <p>Subsection G is added to include provisions regarding a provider-patient relationship that were</p>

		added to the Code of Virginia in the 2017 General Assembly.
46	Sets out the treatment guidelines for TPA-certified optometrists	The definition of “adnexa” in subsection A has been moved to section 05 Definitions.
47	Sets out the therapeutic pharmaceutical agents within the scope of practice for an optometrist	Subsection B is amended to be inclusive of Schedule II controlled substance consisting of hydrocodone in combination with acetaminophen (other Schedule II drugs are not allowed to be prescribed).
60	Establishes the requirements for renewal and reinstatement of a lapsed license	Subsection D is amended to clarify the requirement that an applicant for reinstatement “demonstrate continuing competence.” Without a specific standard, it is very difficult for an applicant to comply or for staff to determine compliance. Therefore, the amended language requires a current, unrestricted license in another U. S. jurisdiction and active clinical practice within the 12 months immediately preceding application; or completion of CE as required in section 70 for a maximum of 40 hours (equivalent of two years of CE). Subsection E is deleted because it would be extremely burdensome for an applicant who has allowed his license to expire to take and pass all parts of the examination.
70	Sets out requirements for continuing education	Subsection D is amended to give licensees 30 days (rather than 14) after receiving notification of an audit (rather than after the renewal date). <i>Audits are not conducted within 14 days of the renewal date, so the current requirement is unreasonable.</i> Other boards have a regulation allowing a board to grant an exemption from all or part of the CE requirement for circumstances beyond the control of the licensee; the Board of Optometry is adding subsection G to include that provision. Subsection I is amended to place the burden on the licensee to ensure that the certificate of completion he/she receives from a CE provider includes the information necessary to receive credit from the Board for meeting regulatory requirements. The Board does not oversee the sponsors or providers, other than to list them as approved by regulation. An additional piece of information that the certificate should include is whether the course was in real-time and interactive, including in-person or electronic presentations, to meet the statutory requirement of 10 of the 20 hours.