



townhall.virginia.gov

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	Inactive license
Date this document prepared	11/8/19

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 response to a petition for rulemaking, the Board has promulgated regulations to issue inactive licenses. The amendments will allow licensees who are no longer practicing, either because they have located to another state or have retired, to place their Virginia licenses in an inactive status, which will allow them to reactivate should they decide to resume practice.

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.

N/A

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 November 8, 2019, the Board of Optometry amended 18VAC105-20-10 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.

This regulatory action was initiated from a petition for rulemaking. It is consistent with Governor Northam’s Executive Order 14 (2018), which states that: “All regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare.”

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 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 and the authority to issue inactive licenses.

§ 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:

- 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.*

12. To issue inactive licenses or 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 licenses or certificates.

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.

The purpose is to promulgate regulations for the issuance of inactive licenses for optometrists. Such regulations will include a provision that an inactive license does not authorize an optometrist to practice in Virginia and provisions for evidence of continued competency in order to reactivate an inactive license. All provisions are necessary to protect patients receiving optometric services from being seen by doctors who have not maintained continuing education and competency.

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.

The Board amended the following sections relating to inactive licenses:

Section 20 – Fees set in accordance with Fee Principles for all boards (Guidance document: 76-90.05)

- A fee for an inactive license (set at ½ the cost of an active license)
- A fee for late renewal of an inactive license (set at approximately 1/3 the cost of the renewal)
- A fee for reactivation to active status (set at the difference between the renewal fee for an active license and the fee for an inactive license)

Section 61 – New section on inactive licensure

Section 61 is enacted to include provisions for requesting an inactive license and for reactivation of a license. Reactivation will require evidence of continuing education for the time of inactivity with a maximum of 40 hours or the equivalent of two years of continuing education. There is also be a provision stating that an inactive license does not authorize the practice of optometry in Virginia.

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) There are no advantages or disadvantages to the public; the amendments will benefit optometrists who are not actively practicing by allowing them to keep their optometry license at half the cost of an active license.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth. The loss of revenue can be absorbed in the budget of the Board of Optometry without necessitating any increase in fees.
- 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 a result of promulgating this regulation, which is less costly and less restrictive for licensees.

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 is no applicable federal requirement.

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 6/24/19 to 8/23/19; a public hearing was conducted on 6/28/19. No comment was received on the proposed regulations.

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 is a grammatical correction in subsection B of section 61 to change the wording from “who requests reactivation of an active license” to read “who requests reactivation to an active license.

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 chapter-section number	Current requirement	Change, intent, rationale, and likely impact of updated requirements
20	Sets out the fees for application and renewal	Subsection A is amended to specify an annual renewal fee of \$100, which is half the fee for an active license. The fee for late renewal is approximately 1/3 of the fee for licensure renewal. <i>The proportionality of these fees is consistent with all other health regulatory boards that have inactive licensure.</i>
	61 - NEW SECTION On inactive licensure; reactivation	Subsection A specifies that an optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The regulation also specifies that the holder of an inactive license is not be required to maintain continuing education requirements but is not entitled to perform any act requiring a license to practice optometry in Virginia. <i>The intent of an inactive license is to allow a person who does not intend to practice to keep his/her professional license without incurring the cost of a full renewal and of continuing education.</i> Subsection B specifies that a licensee whose license has been inactive and who requests reactivation to an active license shall: 1) file an application,

		<p>2) pay the difference between the inactive and active renewal fees for the current year, and</p> <p>3) provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.</p> <p><i>If a licensee intends to be inactive for a short period of time and then return to full licensure and practice, he or she should maintain continuing education so he or she can qualify for reactivation. The licensee would still benefit by a reduced fee during the period of inactivity and would only pay the difference when reactivating. If a licensee retires or moves away and has no intention of returning to active practice in Virginia, he would not need to maintain CE. However, if circumstances change and he does want to resume practice, he would need to demonstrate current competency by completing the hours of CE he would have been required to have – for a maximum of 40 hours or the equivalent of two years of CE.</i></p>
70	Sets out the requirements for continuing education	Subsection A is amended to clarify that the CE requirement apply to renewal of an active license.