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Fast-Track Regulation Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC105-20
Regulation title(s)	Regulations Governing the Practice of Optometry
Action title	Repeal of professional designation regulations
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.

The Board has repealed all of section 50, which establishes the requirements for issuance and usage of a professional designation, and amended the fees in section 20, relating to professional designations, and section 40, relating to unprofessional conduct for practicing in a location with an unregistered professional designation.

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 identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus for this regulatory action is the recommendation of a subcommittee appointed by the Board to study the use of professional designations. In its review of law and regulation, the subcommittee found no statutory requirement for registration of such designations and no necessity in terms of consumer protection for such registration. Since the amendments will eliminate a restriction and regulatory burden on optometrists, it is not expected to be controversial.

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 (6), 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: ...

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 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 of the regulatory change is elimination of requirements and fees that are not necessary for public protection. The Board found that current law and regulations protect consumer interest and protect the health, safety, and welfare of the public.

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 has repealed all of section 50, which establishes the requirements for issuance and usage of a professional designation, and amended the fees in section 20, relating to professional designations, and section 40, relating to unprofessional conduct for practicing in a location with an unregistered professional designation.

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 primary advantages or disadvantages to the public; the public is adequately protected by current laws and regulations for disclosures, posting, and record-keeping without registration of professional designations.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth. Eliminating an administrative function of registering professional designations is advantageous, but it is a very small component of the Board's work.
- 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 resulting from this regulation.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal regulations.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically.</p> <p>There will be an annual revenue loss for the Board of approximately \$14,050 from repeal of professional designations.</p> <p>The Board ended the 2016-2018 biennium with a surplus of \$505,645. To reduce the surplus and better manage renewals, the renewal date was</p>
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	moved from December 31 to March 31 and the renewal fee was reduced. It is projected that the Board will conclude the 2018-2020 biennium with a surplus of \$269,361. Thus, loss of revenue from repeal of professional designations will not impact the Board for the foreseeable future.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Optometrists who hold a professional designation issued by the Board
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 263 professional designations registered with the Board.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There will be no costs for affected individuals; there will be cost reduction. Optometrists who have been using a professional designation or name for their practice will be able to continue to do so. They will not be required to pay an annual renewal fee of \$50 per location for use of the name (designation).
Benefits the regulatory change is designed to produce.	Less regulation and reduced cost to optometrists with no appreciable reduction in consumer protection.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The repeal of professional designation rules is a less intrusive and less costly alternative for small businesses.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There is no regulatory flexibility; requirements and fees for professional designations are set in regulation. In order to repeal and reduce the regulatory burden, amendments must be promulgated.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18VAC105-20-20	Establishes fees charged to applicants and optometrists	The fees for an application for a professional designation (\$100); for renewal (\$50 per location); and for late renewal (\$20) are deleted in section 20.

<p>18VAC105-20-40</p>	<p>Establishes grounds for disciplinary action</p>	<p>Number 13, which currently says an optometrist shall “not practice with an expired or unregistered professional designation,” is deleted as one of the grounds for disciplinary action since the requirements for professional designations are repealed.</p>
<p>18VAC105-20-50</p>	<p>Establishes the requirements for issuance and usage of a professional designation</p>	<p>All of section 50 is repealed. The requirements in section 50 relating to consumer protection, advertising, disclosures, and record-keeping are already set out in Code or other sections of regulation. Only the necessity of registering the practice name (professional designation) and paying a fee to the Board are being eliminated.</p> <p>In § 54.1-3215, the Board is authorized to take disciplinary action for:</p> <p><i>9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;</i></p> <p><i>12. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license;</i></p> <p><i>16. Violating other standards of conduct as adopted by the Board;</i></p> <p><i>17. Violating, assisting, inducing or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.</i></p> <p>In 18VAC105-20-40, Standards of Conduct, the Board has the authority to deny, suspend, revoke, or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:</p> <p><i>1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."</i></p> <p><i>3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.</i></p> <p><i>4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of <u>18VAC105-20-45</u>.</i></p> <p><i>E. Practitioners shall maintain a patient record for a minimum of five years following the last patient encounter with the following exceptions:</i></p>

		<p><i>1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or</i></p> <p><i>2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.</i></p> <p><i>F. Practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.</i></p>
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