



**Virginia  
Regulatory  
Town Hall**

**Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	Board of Optometry
<b>VAC Chapter Number:</b>	18 VAC 105-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Optometry
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

**Summary**

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Regulations governing optometry provide requirements for the licensure of optometrists by examination or endorsement. Provisions also establish requirements for renewal or reinstatement of a license, including hours of continuing education and set fees to support the regulatory and disciplinary activities of the board. Grounds for unprofessional conduct of a licensee and for standards of practice are established. Finally, regulations establish provisions for optometrists who want to practice with a professional designation.

## Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 32 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively 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.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of*

*Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and 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 such licenses or certificates.*

Chapter 32 of Title 54.1 sets forth statutory provisions for the licensure and practice of optometrists, as listed below:

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*Article 1.  
General Provisions.*

**§ 54.1-3200. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Board" means the Board of Optometry.*

*"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.*

*"Practice of optometry" means the examination of the human eye to ascertain the presence of defects or abnormal conditions which may be corrected or relieved by the use of lenses, prisms or ocular exercises, visual training or orthoptics; the employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye; the use of testing appliances for the purpose of the measurement of the powers of vision; the examination, diagnosis, and optometric treatment in accordance with this chapter, of conditions and visual or*

*muscular anomalies of the human eye; the use of diagnostic pharmaceutical agents set forth in § 54.1-3221; and the prescribing or adapting of lenses, prisms or ocular exercises, visual training or orthoptics for the correction, relief, remediation or prevention of such conditions. An optometrist may treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents only as permitted under this chapter.*

*"TPA-certified optometrist" means an optometrist who is licensed under this chapter and who has successfully completed the requirements for TPA certification established by the Board pursuant to Article 5 (§ 54.1-3222 et seq.) of this chapter. Such certification shall enable an optometrist to treat certain diseases, including abnormal conditions, of the human eye and its adnexa, as determined by the Board, with certain therapeutic pharmaceutical agents specified by the Board. Such certification shall not, however, permit treatment through surgery, including, but not limited to, laser surgery or other invasive modalities, except for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.*

*The foregoing shall not restrict the authority of any optometrist licensed or certified under this chapter for the removal of superficial foreign bodies from the human eye and its adnexa or from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by optometrists, if such activities or functions are authorized by and performed for such optometrists and responsibility for such activities or functions is assumed by such optometrists.*

**§ 54.1-3201. What constitutes practice of optometry.**

*Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.*

**§ 54.1-3202. Exemptions.**

*This chapter shall not apply to physicians licensed to practice medicine by the Board of Medicine or to prohibit the sale of nonprescription eyeglasses and sunglasses. Contact lenses shall not be sold as merchandise from a retail business other than one operated by a physician, an optometrist or an optician.*

**§ 54.1-3203. License to be displayed.**

*Every person practicing optometry shall display his license in a conspicuous place in the principal office in which he practices.*

**§ 54.1-3204. Prohibited acts.**

*It shall be unlawful for any person:*

- 1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.*
- 2. To impersonate a licensed optometrist of like or different name.*
- 3. To buy or sell or fraudulently obtain a diploma or license.*
- 4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.*
- 5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.*

6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.

7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.

**§ 54.1-3205. Practicing in a commercial or mercantile establishment.**

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

D. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

**§ 54.1-3205.1. Supervision by unlicensed persons prohibited.**

No optometrist shall be directly or indirectly supervised within the scope of the practice of optometry by any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not a Virginia-licensed optometrist or physician. No officer, employee, or agent of a commercial or mercantile establishment, who is not a Virginia-licensed optometrist or physician, shall directly or indirectly control, dictate, or influence the professional judgment, including but not limited to the level or type of care or services rendered, of the practice of optometry by a licensed optometrist.

**§ 54.1-3206. Report of conviction or injunction to Board; revocation or suspension of license.**

It shall be the duty of the clerk of every circuit court in which any person is convicted of any violation of this chapter or enjoined from unlawfully practicing optometry to report the same to the Board. The Board may thereupon suspend or revoke any certificate or license held by the person so convicted or enjoined. Every such report shall be directed to the secretary of the Board.

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Article 2.  
Board of Optometry.

**§ 54.1-3207. Board of Optometry.**

The Board of Optometry shall be composed of six members as follows: five licensed optometrists and one citizen member. The terms of office of the members shall be four years. The professional members of the Board shall have been engaged in the practice of optometry for at least five years prior to the date of their appointment. After July 1, 1996, all professional members newly appointed to the Board shall be certified in the administration of therapeutic pharmaceutical agents pursuant to Article 5 (§ 54.1-3222 et seq.) of this chapter.

**§ 54.1-3208. Nominations.**

Nominations may be made for each professional vacancy from a list of at least three names submitted to the Governor by the Virginia Optometric Association, Incorporated. The Governor may notify the Association promptly of any professional vacancy other than by expiration and like nominations may be

*made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees of the Association.*

**§ 54.1-3209. Oaths and testimony.**

*Any member of the Board may, upon being designated by a majority of the Board, administer oaths or take testimony concerning any matter within the jurisdiction of the Board.*

**§ 54.1-3210. Seal; executive director.**

*The Board shall adopt a seal of which the executive director shall have the custody. The executive director shall keep a record of all proceedings of the Board, which shall be open to the public for inspection.*

**§ 54.1-3211. Examination.**

*The Board shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license to practice optometry.*

*The examination shall be given at least semiannually if there are any candidates who have applied to the Board for examination at least thirty days before the date for the examination.*

*The examination shall include anatomy; physiology; pathology; general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents; and the use of the appropriate instruments.*

*The Board may determine a score which it considers satisfactory on any written examination of the National Board of Examiners in Optometry. The Board may waive its examination for a person who achieves a satisfactory score on the examination of the National Board of Examiners in Optometry. Those persons licensed on or before June 30, 1997, to practice optometry in this state but not certified to administer diagnostic pharmaceutical agents may continue to practice optometry but may not administer diagnostic pharmaceutical agents without satisfying the requirements of this section. Those persons licensed after June 30, 1997, shall be considered as certified to administer diagnostic pharmaceutical agents.*

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Article 3.

Licensure of Optometrists.

**§ 54.1-3212. Qualifications of applicants.**

*An application for a license to practice optometry shall be made in writing and shall be accompanied by satisfactory proof that the applicant has been graduated and received a doctor of optometry degree from a school of optometry approved by the Board.*

**§ 54.1-3213. Issuance of license; fee; renewal.**

*Every candidate successfully passing the examination shall be licensed by the Board as possessing the qualifications required by law to practice optometry.*

*The fee for examination and licensure shall be prescribed by the Board and shall be paid to the executive director of the Board by the applicant upon filing his application.*

*Every license to practice optometry granted under the provisions of this chapter shall be renewed at such time, in such manner and upon payment of such fees as the Board may prescribe.*

**§ 54.1-3214. When license issued without examination.**

*Any person who has successfully passed an examination in optometry in any state of the United States and is the holder of a license to that effect, issued by the board of such state, and has conducted an*

*ethical professional practice of optometry for at least one year, may, upon application to the Board of Optometry, be issued a license without examination.*

*The Board may recognize such examinations if they are approximately equivalent to its examination, the applicant's educational qualifications are equivalent to those required in this Commonwealth, the applicant has not failed an examination in optometry in Virginia, and the state from which the applicant comes grants reciprocity to persons licensed in the Commonwealth.*

**§ 54.1-3215. Reprimand, revocation and suspension.**

*The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:*

- 1. Fraud or deceit in his practice;*
- 2. Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;*
- 3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;*
- 4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;*
- 5. Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;*
- 6. Practicing optometry while suffering from any infectious or contagious disease;*
- 7. Neglecting or refusing to display his license and the renewal receipt for the current year;*
- 8. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;*
- 9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;*
- 10. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;*
- 11. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this Commonwealth;*
- 12. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license;*
- 13. Lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this Commonwealth;*
- 14. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;*
- 15. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;*
- 16. Violating other standards of conduct as adopted by the Board;*
- 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.*

**§ 54.1-3216. Evidence; mental or physical examinations.**

*The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to practice optometry with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by the Board. Failure of the licensee to submit to the*

*examination shall constitute grounds for disciplinary action. Any licensee affected by this section shall be afforded reasonable opportunity to demonstrate that he is competent to practice optometry with reasonable skill and safety to patients.*

**§ 54.1-3217.**

*Repealed by Acts 1997, c. 556.*

**§ 54.1-3218. Obtaining new license after revocation.**

*A person whose license has been revoked may, after one year from the date of such revocation, apply for a new license in the manner provided for original application. The Board may in its discretion exempt the applicant from examination and grant him a license.*

**§ 54.1-3219. Continuing education.**

*As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to take annual courses relating to optometry as approved by the Board. The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of research. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. However, the required number of credit hours shall not exceed sixteen in any one calendar year. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.*

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Article 4.

*Certification for Administration of Diagnostic Pharmaceutical Agents.*

**§ 54.1-3220. Certification for administration of diagnostic pharmaceutical agents.**

*In order to become certified to administer diagnostic pharmaceutical agents for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures, an optometrist shall:*

- 1. Complete successfully a Board-approved course in general and ocular pharmacology as it relates to the practice of optometry which shall consist of at least fifty-five classroom hours including a minimum of fifteen classroom hours in general pharmacology, twenty classroom hours in ocular pharmacology and twenty classroom hours of clinical laboratory presented by a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post Secondary Accreditation or by the United States Department of Education.*
- 2. Pass a Board-approved, performance-based examination on general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents as defined in this article.*

**§ 54.1-3221. "Diagnostic pharmaceutical agents" defined; utilization; acquisition.**

*A. Certified optometrists may administer diagnostic pharmaceutical agents only by topical application to the human eye. "Diagnostic pharmaceutical agents" shall be defined as the following drugs in strengths not to exceed those stated:*

- 1. Mydriatics and cycloplegics known as tropicamide in a 1.0 percent solution, phenylephrine hydrochloride in a 2.5 percent solution and cyclopentolate hydrochloride in a 1.0 percent solution to be used only on persons three years of age or older;*



2. Anesthetic agents known as proparacaine hydrochloride in a 0.5 percent solution, tetracaine in a 0.5 percent solution and benoxinate hydrochloride in a 0.4 percent solution;
  3. The miotic known as pilocarpine in a 1.0 percent solution; and
  4. Dapiprazole hydrochloride in a 0.5 percent solution.
- B. Any optometrist who utilizes diagnostic pharmaceutical agents without being certified as required by this article shall be subject to the disciplinary sanctions provided in this chapter.
- C. Licensed drug suppliers or pharmacists are authorized to supply optometrists with diagnostic pharmaceutical agents upon presentation of evidence of Board certification for administration of such drugs.

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Article 5.

*Certification for Administration of Therapeutic Pharmaceutical Agents.*

**§ 54.1-3222. TPA certification; certification for treatment of certain diseases or abnormal conditions with certain therapeutic pharmaceutical agents.**

A. The Board shall certify an optometrist to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents, if the optometrist files a written application, accompanied by the fee required by the Board and satisfactory proof that the applicant:

1. Is licensed by the Board as an optometrist and certified to administer diagnostic pharmaceutical agents pursuant to Article 4 (§ 54.1-3220 et seq.) of this chapter;
2. Has satisfactorily completed such didactic and clinical training programs for the treatment of diseases and abnormal conditions of the eye and its adnexa as are determined, after consultation with a school or college of optometry and a school of medicine, to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients; and
3. Passes such examinations as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients.

B. TPA certification shall enable an optometrist to treat certain diseases and abnormal conditions of the human eye and its adnexa as determined by the Board with certain therapeutic pharmaceutical agents specified by the Board, within the following conditions:

1. Treatment with oral therapeutic pharmaceutical agents shall be limited to the analgesics included on Schedules III and VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are appropriate to alleviate ocular pain.
2. Prescriptions for oral analgesics to relieve ocular pain shall be limited to dosages for no more than seventy-two hours.
3. Therapeutic pharmaceutical agents shall include topically applied Schedule VI drugs as defined in § 54.1-3455 of the Drug Control Act.
4. Treatment of glaucoma shall require prior consultation with the patient's physician or other appropriate physician, and shall exclude treatment of congenital and infantile glaucoma. Treatment of angle closure glaucoma shall be limited to initiation of immediate emergency care.
5. Treatment through surgery or other invasive modalities shall not be permitted, except for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine, such as that included in a bee sting kit.
6. Entities permitted or licensed by the Board of Pharmacy to distribute or dispense drugs, including, but not limited to, wholesale distributors and pharmacists, shall be authorized to supply TPA-certified optometrists with those therapeutic pharmaceutical agents specified by the Board on the TPA-Formulary.

**§ 54.1-3223. Regulations relating to instruction and training, examination, and therapeutic pharmaceutical agents; Board to determine TPA-Formulary; appointment of TPA-Formulary Committee.**

A. *The Board shall promulgate such regulations governing the treatment of certain diseases and abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents by TPA-certified optometrists as are reasonable and necessary to ensure an appropriate standard of medical care for patients, including, but not limited to, determinations of the diseases and abnormal conditions of the human eye and its adnexa which may be treated by TPA-certified optometrists, treatment guidelines, and the drugs specified on the TPA-Formulary. In establishing standards of instruction and training, the Board shall consult with a school or college of optometry and a school or college of medicine and shall set a minimum number of hours of clinical training to be supervised by an ophthalmologist. The didactic and clinical training programs may include, but need not be limited to, programs offered or designed either by schools of medicine or schools or colleges of optometry or both or some combination thereof. The Board may prepare, administer, and grade appropriate examinations for the certification of optometrists to administer therapeutic pharmaceutical agents or may contract with a school of medicine, school or college of optometry, or other institution or entity to develop, administer, and grade the examinations.*

*In order to maintain a current and appropriate list of therapeutic pharmaceuticals on the TPA-Formulary, current and appropriate treatment guidelines, and current and appropriate determinations of diseases and abnormal conditions of the eye and its adnexa which may be treated by TPA-certified optometrists, the Board may, from time to time, amend such regulations. Such regulations shall be exempt from the requirements of the Administrative Process Act (§ 9-6.14:1 et seq.), except to any extent that they may be specifically made subject to §§ 9-6.14:14.1, 9-6.14:21, and 9-6.14:22; the Board's regulations shall, however, comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.). The Board shall, however, conduct a public hearing prior to making amendments to the TPA-Formulary, the treatment guidelines or the determinations of diseases and abnormal conditions of the eye and its adnexa which may be treated by TPA-certified optometrists. Thirty days prior to conducting such hearing, the Board shall give written notice by mail of the date, time, and place of the hearing to all currently TPA-certified optometrists and any other persons requesting to be notified of the hearings and publish notice of its intention to amend the list in the Virginia Register of Regulations. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any TPA-Formulary amendments. Proposed and final amendments of the list shall also be published, pursuant to § 9-6.14:22, in the Virginia Register of Regulations. Final amendments to the TPA-Formulary shall become effective upon filing with the Registrar of Regulations. The TPA-Formulary shall be the inclusive list of the therapeutic pharmaceutical agents that a TPA-certified optometrist may prescribe.*

B. *To assist in the specification of the TPA-Formulary, there shall be a seven-member TPA-Formulary Committee, as follows: three Virginia TPA-certified optometrists to be appointed by the Board of Optometry, one pharmacist appointed by the Board of Pharmacy from among its licensees, two ophthalmologists appointed by the Board of Medicine from among its licensees, and the chairman who shall be appointed by the Board of Optometry from among its members. The ophthalmologists appointed by the Board of Medicine shall have demonstrated, through professional experience, knowledge of the optometric profession. In the event the Board of Pharmacy or the Board of Medicine fails to make appointments to the TPA-Formulary Committee within thirty days following July 1, 1996, or within thirty days following any subsequent vacancy, the Board of Optometry shall appoint such members. The TPA-Formulary Committee shall recommend to the Board those therapeutic pharmaceutical agents to be included on the TPA-Formulary for the treatment of certain diseases and abnormal conditions of the eye and its adnexa by TPA-certified optometrists.*

**§ 54.1-3224. Denial, etc., of TPA certification; disciplinary actions; summary suspension under certain circumstances.**

A. *The Board of Optometry may deny, refuse to renew, revoke, or suspend any TPA-certificate issued to a TPA-certified optometrist, or applied for by a licensed optometrist in accordance with the provisions of*

*this article, or may discipline or reprimand any certificate holder for violations of this chapter or the Board's regulations.*

*B. The Board may take action summarily to suspend a TPA-certified optometrist's certification under this section by means of a telephone conference call if, in the opinion of a majority of the Board, (i) a good faith effort to convene a regular meeting of the Board has failed and (ii) there is an imminent danger to the public health or safety which warrants this action.*

## Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

An announcement of the board's review of its regulations governing the practice of optometry was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from November 1, 2000 until January 1, 2001. During that period, no comment was received from members of the public.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

- 1) Achieve high ratings on the Customer Service Satisfaction Survey for application process and renewal of licensure.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of licensure was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 92.4% agreed or strongly agreed that the instructions were easy to understand. Asked if the application was processed promptly, 91.4% agreed or strongly agreed. Asked if the forms were easy to complete, 93.5% agreed or strongly agreed. Therefore, no changes in regulations are being considered in the application process. There are, however, certain recommendations regarding the comparability of the national examination and licensure by endorsement.

- 2) Achieve a reduction in the number of disciplinary cases related to practice in a mercantile establishment.

It is estimated that at least 160 optometry practices are located in conjunction with or adjacent to establishments that dispense optical goods. While no data on trends is available

within the Department, it appears to the Board and its staff that the number of such practices located near or “adjacent” to commercial establishments represents an expanding portion of vision care service.

Location of a practice adjacent to a commercial establishment has become a common occurrence in the Commonwealth. It is apparent that when locating their practices, some optometrists have entered into leases and contracts that run afoul of the application of statutes (§§ 54.1-3205 and 54.1-3205.1). In the past five years, nine percent of cases investigated for the Board of Optometry involved an allegation of a violation of the law cited above. However, these constitute 26 percent of the cases adjudicated on average each year where a finding of violation was determined. This represents a major demand on resources of the Board. In addition, responding to charges brought by the Board is both costly and time-consuming for the respondent practitioner.

Twenty orders involving violation of § 54.1-3205 for the last ten years have been reviewed. Of the twenty orders, only one case also involved poor or substandard care. Licensees have been found in violation of the above cited provisions where they have not had access to their patient records, allowed access to confidential patient records, been inaccessible to patients and shared fees with optical establishments. However, there is no clear expression of these findings that a practitioner may rely upon when locating or establishing his practice.

At the present time, there is “institutional knowledge” among many of the commercial establishments about how to do business under Virginia law, but optometrists need guidance to avoid pitfalls in the future. Regulations that specify and clarify the provisions for such practice would benefit licensees and the public by allowing these practices to be established in a lawful manner.

In 1997, the Board submitted a Notice of Intended Regulatory Action requesting comment on a proposal to amend regulations to provide “guidance on conditions and provisions that would permit an optometrist to practice adjacent to a commercial or mercantile establishment.” Comments were requested until February 18, 1998. Following the comment period, the Board worked on proposed rules but was unable to resolve the regulatory issues surrounding practice adjacent to mercantile establishments. Attorneys for one of the large establishments raised questions about the authority of the Board to enforce § 54.1-3205. Therefore, no regulatory proposal was adopted at that time to address this issue.

In August 2000, following a recommendation by the Office of the Attorney General, the Board of Optometry submitted a pre-NOIRA requesting permission to amend its regulations to facilitate compliance with certain statutes governing practice. Specifically, the Board sought to clarify circumstances where an optometrist may locate his practice, maintain compliance with law governing ownership and avoid unlawful influences on his practice. By clarifying its criteria for deciding such cases, the Board intended to increase compliance and therefore avoid costly case adjudication and litigation for itself and respondents. An advisory committee comprised of board members and representatives of the commercial establishments have worked on language and are confident they will have consensus in drafting reasonable regulations. Guidance in complying with the law should increase access to qualified vision care services for the

consuming public. The Board has not yet received permission to publish the NOIRA on establishing rules for practice adjacent to mercantile establishments.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

Alternatives for addressing the following issues:

### **Mercantile Practice:**

The Board has taken a variety of steps to address issues of practice by optometrists in mercantile or commercial establishment that may be unlawful (see discussion above). The more equitable and least burdensome alternative would be the adoption of clear enforceable rules, which every optometrist must study prior to becoming licensed in Virginia. The Board would like to adopt criteria for establishing an optometric practice adjacent to a mercantile or commercial establishment. Such rules would provide guidance and allow practitioners to organize in a way to maintain compliance with law and avoid costly and time-consuming disciplinary proceedings. Clearer regulations would prevent optometrists from unknowingly becoming involved with unlawful arrangements and leases. The Board has begun that process through submission of a pre-NOIRA on mercantile practice.

### **Requirements for licensure:**

The Board needs to change the date for acceptance of scores on the national examination approved by the National Board of Examiners in Optometry (NBEO) from 1993 to 1985; such a change would allow more persons to be licensed by examination. When the 1993 date was set in regulation, the NBEO established that as the year after which all examinations could be considered comparable to the current exam. After further scrutiny, the NBEO determined that the variables in the exam from 1985 to 1993 were not sufficiently different to be able to defend the later date. While exam questions have changed, the content domains have been essentially the same. For consistency and fairness, the Board intends to adopt the 1985 date for licensure by examination.

If an applicant was licensed under a state examination or the national exam prior to 1985, he or she must be licensed in Virginia by endorsement. To ensure competency to practice, the Board requires active practice in another jurisdiction for 36 out of the past 60 months. The Board would like to add a requirement for an active license in good standing for at least 3 years prior to applying for licensure in Virginia. While the Board can inquire about licensure on the application, it cannot require active licensure for any period of time without specifying so in regulation.

### **Fee adjustments:**

During the promulgation of amendments to fees for other boards within the Department of Health Professions, principles were established to provide more consistency across boards for similar fees (such as late renewal) and a rationale for setting of fees relative to the basic renewal fee for each profession. For example, the fees for a duplicate license or a late renewal may be reduced, but fees for licensure verification and late renewal of a professional designation should be established. The Board will examine all of its fees in relation to the Principles for Fee Development. It will also consider the possible impact of adopting an inactive license, thus potentially reducing the renewal fees derived from licensees who have out-of-state addresses.

In addition, the Board will consider under an APA exemption a time-limited reduction in renewal fees for all licensees. Projections for revenue and expenditures for this fiscal year indicate that the Board will likely have a surplus in excess of 10%. Following an analysis of the Board's fiscal status at the end of FY'00-'01, the Board will consider the appropriate amount of the reduction to bring the budget in balance without risking deficit spending in the next biennia.

#### **Clarification of rules on practice:**

While information disseminated through newsletters is helpful, it is apparent that certain rules need to be clarified and made more specific. The Board intends to address those rules related to notification of patients when a practice is being closed or sold, provision of a prescription for a contact lens patient, and the use of only one professional designation.

#### **Continuing education:**

The Code of Virginia (§ 54.1-3219) authorizes the Board to require up to 16 hours of continuing education each year. In its review of regulations from other states, that number seems to be consistent with the requirement in the majority of states. In fact, 32 states require more hours of continuing education for optometrists than does Virginia ranging from 15 to 25 hours per year; 14 states require no continuing education or fewer hours. In addition, the scope of practice and prescriptive authority of optometrists have expanded in recent years. Therefore, the Board has concerns that the current requirement of 14 hours may not be sufficient to address new drugs, changes in technology and other practice issues which would ensure continuing competency in patient care.

Further, it intends to consider acceptance of a limited number of practice management courses, provided they are related to improvements in the delivery of care to patients. The Board often receives questions about the validity of courses related to computer knowledge, interpersonal communication and similar topics. While such courses may be related to better service for patients through office efficiencies and skills improvement, they are not currently defined as related to the clinical care of patients. With the current requirement of 14 hours, the Board has felt constrained to limit acceptance of hours to only those narrowly defined as "patient care." If additional hours are required, it may be able to expand the definition of "courses related to patient care."

The Board intends to reduce the burden of continuing education on applicants seeking reinstatement of a lapsed license. To require evidence of continuing education for all the years in which the license has been lapsed is burdensome, because many optometrists do not maintain records of continuing education beyond two or three years. If the Board requires evidence of up to two years of continuing education, that would amount to 28 hours (or 32 if the hours are increased to 16), which is a significant amount and is consistent with requirements by other boards. Further the Board will consider the possibility of establishing an inactive licensure status for those who are not practicing in Virginia or who have been practicing in another state.

Other issues related to continuing education that need to be addressed include: record-keeping or documentation of hours, an exemption for the first renewal following initial licensure, credit for hours of teaching a continuing education course, and clarification of specialty organizations as approved providers.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The Board of Optometry is recommending that 18 VAC 105-20-10 et seq. be amended to revise certain requirements of licensure by endorsement, to reduce the burden of reinstatement, to add some miscellaneous fees consistent with other boards, and to clarify certain provisions related to the provision of prescriptions for contact lenses, the use of professional designations and continuing education. The Board recommended increasing by two the number of continuing education hours but expanding the scope of course work for which optometrists may receive credit. It will also consider establishment of an inactive license and any other issues raised during public comment on the Notice of Intended Regulatory Action.

## Substance

*Please detail any changes that would be implemented.*

### **18 VAC 105-20-10. Licensure by examination.**

- The date at which the national examination was determined to be comparable to the current examination needs to be amended from 1993 to 1985.

### **18 VAC 105-20-15. Licensure by endorsement.**

- Clarification that licensure by endorsement is not available to an applicant who has previously licensed in Virginia is recommended. Such an applicant would need to request reinstatement under section 60.

### **18 VAC 105-20-20. Fees.**

- During the promulgation of amendments to fees for other boards within the Department of Health Professions, principles were established to provide more consistency across boards for similar fees (such as late renewal) and a rationale for setting of fees relative to the basic renewal fee for each profession. For example, the fees for a duplicate license or a late renewal may be reduced, but fees for licensure verification and late renewal of a professional designation should be established.

#### **18 VAC 105-20-40. Unprofessional conduct.**

- In response to complaints from consumers, the Board proposes to add a section specifying that it is unprofessional conduct not to make a good faith effort to notify patients in a timely manner in the event a practice is being sold or terminated.

#### **18 VAC 105-20-45. Standards of practice.**

- In response to consumer concerns, the Board will consider some modification to the requirement for a written prescription for contact lenses to ensure that the patient is not forced to purchase the lenses from the prescribing optometrist.

#### **18 VAC 105-20-50. Professional designations .**

- An amendment would clarify that an optometrist may practice with only one of the three types of professional designations listed.

#### **18 VAC 105-20-60. Renewal of licensure; reinstatement; renewal fees.**

- Consistent with the Principles for Fee Development established by the Department in 1999, the Board will consider amendments to permit late renewal of license for one year following expiration and reinstatement at any time following. It also proposes to reduce the burden on optometrists seeking reinstatement by specifying that they must satisfy continuing education requirements for the period the license was lapsed, not to exceed two years. A requirement of satisfying all the years of CE is very prohibitive for some optometrists seeking to return to Virginia to practice; many do not maintain records for all past years.
- To alleviate some of the confusion about continuing education requirements and assist licensees in compliance, the Board will consider revising its renewal schedule to a calendar year, rather than October 31<sup>st</sup> as is currently stipulated.
- An inactive licensure status will be considered to accommodate persons who are not actively practicing or who have moved out of state. Since approximately half of the Board's licensees list out-of-state addresses, the fiscal impact and other ramifications of such an action will have to be carefully evaluated. The Board will want to consider public comment on the issue and determine criteria for reactivation of a license.

#### **18 VAC 105-20-70. Continuing education.**



- In the promulgation of regulations, the board will consider increasing the hours from the current requirement of 14 per year to the statutory limit of 16 annually. With the increase, the proposal may be to accept up to two hours in practice management courses that may include but not be limited to courses such as computer and communication skills which would enhance or improve the services an optometrist could delivery to patients.
- The Board recommends limiting the number of hours to two of cardiopulmonary resuscitation (CPR) that may be credited toward optometric continuing education. On the record of course completion, there are no hours indicated, and there is often a discrepancy in the time it takes to complete the course depending on the number of people enrolled.
- To address a question that is often raised, the Board proposes to specify that up to one hour of preparation time for a continuing education lecturer and the actual lecture time would be counted for CE credit on a one-time basis.
- Other changes that need to be addressed include: adding a requirement for maintenance of supporting documentation for continuing education, an exemption for new graduates in their initial renewal cycle, and clarification of what is meant by “specialty organizations” as approved providers of continuing education.
- Subsection E needs to be amended to clarify that all courses offered by approved providers (either those specified in regulation or approved by the board) must pertain directly to the care of the patient.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.