Form: TH- 02

Virginia
Regulatory
Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Board of Optometry / Department of Health Professions
VAC Chapter Number:	18 VAC 105-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Optometry
Action Title:	Regulatory review
Date:	02 / 20 / 02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form,Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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 patient records if a practice is to be terminated and the use of professional designations. The Board is recommending several changes in requirements for continuing education including an increase in the number of continuing education hours to the statutory limit of 16 but allowing two of those hours to be in record-keeping and two in CPR.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.*

The statutory authority for licensure and regulation of optometrists, including the mandate for continuing education, is found in Chapter 32 of Title 54.1 of the Code of Virginia: http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC54010000032000000000000

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to revise certain requirements for licensure by examination and to reduce the burden of reinstatement in order to facilitate licensure for some applicants. Fees are reduced or added for consistency with the Principles for Fee Development,

and certain provisions are clarified related to the use of professional designations. A requirement for notifying patients if a practice is to be terminated will address problems with records that consumers have faced in those situations.

Additional hours of continuing education in drug prescribing and administration are necessary to ensure that licensees maintain current knowledge as new drugs and new therapies are introduced. With the amended regulations, an optometrist may now include hours of CPR in the 16 required for renewal of licensure. Amendments for patient notification and additional continuing education are intended to improve consumer protection and increase the quality of optometric care in the delivery of health services to patients.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Substantive changes to the existing sections of the regulations include: 1) a change in the date after which the Board will accept passage of the National Board Examination for initial licensure - anyone who passed the examination prior to the amended date is required to apply for licensure by endorsement; 2) a requirement in the unprofessional conduct section for an optometrist to notify patients if his practice is to be terminated to give patients an opportunity to have his records sent to a like-provider or be destroyed; 3) an additional two hours of continuing education which may include record-keeping or CPR and a requirement that two of the 16 hours be in prescribing and administration of drugs if the optometrist is certified to use therapeutic pharmaceutical agents.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The primary advantages to the public of implementing the amended regulations are as follows: a) A change in date for acceptance of the national board examination offering a less burdensome avenue to initial licensure and a reduction in the hours of required continuing education for reinstatement of licensure may result in a very modest increase in the number of licensed optometrists available to provide services in the Commonwealth; b) To specify that it is unprofessional conduct for an optometrist to fail to notify patients if a practice is to be terminated to give the patient the opportunity to have his records transferred or destroyed will benefit consumers and offer protection against records being lost or not available; and c) An additional requirement for two hours of continuing education in prescription drugs for optometrists who use

therapeutic pharmaceutical agents will offer some assurance that the practitioner is current in his knowledge of appropriate drug therapies.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified optometrists who have remained current in their knowledge and skills.

There is a definite advantage to the agency resulting from the elimination of board approval of individual continuing education courses. The amount of staff time consumed by that task will be available for licensing and disciplinary activities, and board members will no longer be burdened by hours of review and issues that often surrounded approval of courses. There will also be some modest reduction in expenditures of the board related to per diem for board member time. There is also the possibility that accepting continuing education hours in record-keeping may encourage optometrists to take courses in that area and thereby reduce the investigative and disciplinary load by one or two cases a year. The Board finds failure to keep adequate, complete records on patients is sometimes the genesis for substandard care or unprofessional conduct.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: 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 for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than $1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed optometrists.

Estimate of number of entities to be affected:

Currently, there are approximately 1300 licensed doctors of optometry and 940 who are authorized to use therapeutic pharmaceutical agents.

Projected costs to the affected entities:

The cost for compliance will relate to the additional two hours of continuing education proposed by the Board. Costs for those hours will vary depending on the practitioner and the method chosen for obtaining continuing education. Since the additional hours may be related to record-keeping or cardiopulmonary resuscitation (CPR), many optometrists will be able to fulfill the CE requirement with hours taken routinely. Record-keeping courses are offered annually by the Virginia Optometric Association and other providers. A review of courses being offered for the months of February and March by the Council on Optometric Practitioner Education (COPE) and by other Board approved providers (universities, national association affiliates) indicate that there is a wide variety available with some offering at no cost to members of an organization or affiliated group.

Internet courses (including a variety for therapeutic pharmaceutical agents) generally run about $20 to $25 per hour. For courses offered at meetings, the cost is approximately $8 to $15 per hour. Registration for the entire meeting is generally required to receive credit for any of the offerings. Examples include one meeting at which the sponsor offered 40 hours of CE for a $335 registration fee and another offered 20 continuing education hours for a registration fee of $250. Acquiring a total of 16 hours of continuing education should not be too burdensome, as hours are available from many sources.

For more details on COPE and other Board approved CE, the following on the Association of Regulatory Boards in Optometry's website provides a wealth of information: www.arbo.org/opt/opthome.htm.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

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 August 1993 to May 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. Consequently, the late fee is being reduced from $100 to $50, and a late fee for renewal of a professional designation is established. The reinstatement application fee is now inclusive of the renewal fee, the late fee and the reinstatement fee.

- There is also a new fee for licensure verification, which is consistent with the identical fee charged by other boards.

- The fee for approval of continuing education courses has been eliminated because the board intends to discontinue its practice of approving individual courses and require potential course providers to seek approval from one of the board-recognized sponsors of continuing education.

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 105-20-50. 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 has adopted proposed 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 has revised its renewal schedule to a calendar year, rather than October 31st as is currently stipulated.

18 VAC 105-20-70. Continuing education.

- The board has increased the current requirement from 14 hours to 16 hours of continuing education per year, but two of those hours may now be courses related to record-keeping or cardiopulmonary resuscitation (CPR), both which would enhance or improve the services an optometrist could deliver to patients.

- The board also proposes to require optometrists who are certified in the use of therapeutic pharmaceutical agents to have two of the required 16 hours in courses directly related to prescribing and administration of drugs.

- Amendments are proposed to clarify the board policy regarding acceptance of hours – namely that the course must be approved by a recognized sponsor prior to the course being taken. There is also clarification about the requirement to pass a post-test if one is given and about the acceptable date for a correspondence course.

- Other changes that have been 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 information must be on the CE documentation.

- Subsection H has been amended as follows: Since there are no specialty organizations or journals of optometric information networks recognized by the board in optometry, those groups of providers were eliminated. Regulations were amended to clarify that journals or electronically-offered courses from one of the recognized providers are acceptable. Finally, the regulation adds the American Medical Association, Category 1 continuing medical education and providers of training in CPR as approved providers.

- The Board approval of continuing education courses has been eliminated. To ensure that there are consistent standards by which the courses are approved, potential providers will be required to seek approval by one of the organizations, schools or entities listed in the regulation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

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.

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 has examined its fees in relation to the Principles for Fee Development and has reduced the late renewal fee for licensure and added a late fee for renewal of professional designation and for licensure verification. A licensee may now renew with a late fee for up to one year following licensure expiration, so the reinstatement fee has been increased to cover the cost of renewal, the late fee and a review of a reinstatement application.

The Board considered a substantial increase in the fee for review of a continuing education course (from $25 to $100) because the current fee is insufficient to cover the cost of staff and board members who must organize and review all the documentation necessary to determine approval or disapproval. Instead, the proposed regulation would eliminate board-approved courses and require all courses to be approved by a listing of CE providers.

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 has added a specific rule related to notification of patients when a practice is being closed or sold and clarified that an optometrist may only use one professional designation.

The Board considered an additional requirement on providing a complete prescription for contact lenses to a patient but determined in its review that the current regulation is sufficient to address any consumer concerns.

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, the Board has found that 32 states require more hours of continuing education for optometrists than does Virginia, ranging from 15 to 25 hours per year, and 14 states require no continuing education or fewer hours. Given the expanded scope of practice and prescriptive authority of optometrists, the Board has determined that the increase the total hours to the statutory limit of 16 but to also allow hours in record-keeping and cardiopulmonary resuscitation.

In its review of regulations for optometrists to use therapeutic pharmaceutical agents (18 VAC 105-30-10 et seq.), the Board determined that some continuing education was necessary to ensure that practitioners remain current with new drugs and drug therapies. Since every optometrist with TPA authorization must obtain continuing education to renew his basic license, it was determined that an amendment to the CE requirement in this set of regulations was appropriate and necessary.

The Board considered the various issues related to its approval of courses and determined that there was too much staff and board time being consumed in an effort to gather all necessary documentation sufficient for a board decision. Often the fee is not paid and the application package completed in time to approve the course before it is offered. Board members are paid a per diem for the time spent in course review, so the $25 review fee was woefully inadequate. Therefore, the Board determined that the listing of approved sponsors was extensive enough to ensure that all potential CE providers could get approval for valid courses that meet the criteria of the Council on Optometric Practitioner Education or other such entity. The Board also added Category 1 CME and providers of courses in CPR to the listing of approved sponsors.

The Board has reduced 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 32 if the hours are increased to 16 per year, which is a significant amount and is consistent with requirements by other boards.

Other issues related to continuing education that were addressed include: record-keeping or documentation of hours, an exemption for the first renewal following initial licensure, clarification that courses must be approved in advance, passage of a post-test, and acceptance of correspondence or electronic courses offered by approved providers.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until December 5, 2001. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Members of the Board met in open session to work on draft regulations, and the public has been invited to comment during the course of those meetings. No comments have been received regarding the need for clarity in the proposed amendments. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations governing the practice of optometry will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an 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.