Virginia Regulatory Town Hall

Final Regulation
Agency Background Document

Agency Name:	Board of Optometry, Department of Health Professions
VAC Chapter Number:	18 VAC 105-30-10 et seq.
Regulation Title:	Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents
Action Title:	Periodic review
Date:	10/1/02

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board of Optometry is recommending that 18 VAC 105-30-10 et seq. be amended to reduce the burden of reinstating an expired certification, to reduce the late renewal fee and add some miscellaneous fees consistent with other boards, and to specify that two of the continuing education hours required for renewal of licensure must be directly related to prescribing and administration of prescription drugs.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The Board has made the no changes in text since the publication of the proposed regulation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 27, 2002, the Board of Optometry adopted final amendments to 18 VAC 105-30-10 et seq., Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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 authority to use therapeutic pharmaceutical agents, 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

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the final amended regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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 reduce the burden of reinstatement for a few optometrists who allow their TPA certification to expire. Fees are reduced or added for consistency with the Principles for Fee Development. By requiring at least two hours of continuing education directed toward drug therapies, the Board is seeking to protect the public health and safety by ensuring that optometrists who use therapeutic pharmaceutical agents have remained abreast of drug interactions and efficacy and are familiar with newer drugs as they are introduced.

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 of the regulatory action's detail.

Substantive changes to the existing sections of the regulations include: 1) an additional two hours of continuing education in prescribing and administration of drugs; 2) the reduction or addition of certain fees consistent with the Principles of Fee Development; and 3) a provision for reinstatement of an expired certificate as opposed to requiring the optometrist to take the TPA examination and apply as a new applicant.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 requirements for reinstatement of an expired TPA certificate may result in a few additional licensed optometrists being available to provide those services in the

Commonwealth; and b) 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 are no advantages or disadvantages to the agency or the Commonwealth in the adoption of these regulations. While the addition of miscellaneous fees and the increase in the returned check charge may result in a very modest increase in income, the reduction in the late fee will likely offset that amount.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on June 17, 2002. Public comment was requested for a 60-day period ending August 16, 2002; one written comment was received. A Public Hearing before the Board of Optometry was held on July 12, 2002 at which one comment was received on proposed regulations.

At the public hearing, the only comment received was from the Virginia Optometric Association as follows: The VOA opposes a proposed requirement for 2 CE hours devoted to therapeutic pharmaceutical agents.

Board response: The VOA states that no other health care professional authorized to prescribe medications are required to have specific hours of CE, but that is not the case. Nurse practitioners, who have prescriptive authority, are required to obtain eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium. As TPA is a separate certification, the Board believes that two hours directly related to the prescribing and administration of therapeutic pharmaceutical agents is not unreasonable and does not add to the total requirement of acquiring the 16 hours for renewal.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 105-30-90. Renewal of certification.

- The Board has adopted an amendment to specify that two of the 16 continuing education hours required for renewal of an optometrist's license be directed to topics related to therapeutic pharmaceutical agents for those optometrists holding TPA certification.

18 VAC 105-30-100. Expiration of certification.

- Reinstatement of a lapsed certification currently requires the applicant to submit a new application. Amendments are recommended to change the rule to require a reinstatement application and to specify that the applicant must provide certain evidence of continued competency to practice.

18 VAC 105-30-120. 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. Certain fees, such as the penalty for late renewal may be reduced; others, such as the returned check fee may be increased. In addition, the administrative cost for issuing a duplicate license or a duplicate wall certificate may be reflected in fees charged to licensees.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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 analysis of the final 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.