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Final Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC125-20
VAC Chapter title(s)	Regulations Governing the Practice of Psychology
Action title	Unprofessional conduct – conversion therapy
Date this document prepared	2/9/21

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board proposes to specify in regulations that the standard of practice requiring persons licensed or registered by the Board to "*Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare*" precludes the provision of conversion therapy and to define what conversion therapy is and is not. The goal is to align regulations of the Board with the stated policy and ethics for the profession of psychology.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On February 9, 2021, the Board of Psychology adopted final amendments to 18VAC125-20-10 et seq., Regulations Governing the Practice of Psychology.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

During the 2018 General Assembly session, Delegate Hope introduced HB 363 which would prohibit a person licensed by a health regulatory board from engaging in sexual orientation change efforts with a person under 18 years of age. During discussion before a subcommittee of the House, the question arose as to why licensing boards had not addressed this issue in regulation. Subsequently, the President of the Board of Psychology made the recommendation to the Director of the Department of Health Professions to convene a workgroup to discuss the issue.

The workgroup met on October 5, 2018 and included representatives from the boards and professional associations of Counseling, Medicine, Nursing, Psychology, and Social Work. A substantial amount of testimony was heard from proponents and opponents of a prohibition on conversion therapy. While there was not a complete consensus that additional regulation was necessary, most members concurred that there was a need for more protection for children. It was agreed that each board would have to make the decision whether to promulgate regulation.

During the 2020 General Assembly, legislation was passed to amend the Code of Virginia to establish a definition for conversion therapy and a prohibition on a person licensed by a health regulatory board from engaging in conversion therapy.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Psychology the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...

The specific Code section establishing a prohibition on conversion therapy is found in:

§ 54.1-2409.5. Conversion therapy prohibited.

A. As used in this section, "conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

B. No person licensed pursuant to this subtitle or who performs counseling as part of his training for any profession licensed pursuant to this subtitle shall engage in conversion therapy with a person under 18 years of age. Any conversion therapy efforts with a person under 18 years of age engaged in by a provider licensed in accordance with the provisions of this subtitle or who performs counseling as part of his training for any profession licensed pursuant to this subtitle shall constitute unprofessional conduct and shall be grounds for disciplinary action by the appropriate health regulatory board within the Department of Health Professions.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to specify in regulations the interpretation of the Board that conversion therapy has the potential for significant harm if practiced with persons under the age of 18. The regulations will define the term consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The Board has amended section 10 to define conversion therapy and section 150 to specify that the standard of practice would prohibit from a psychologist from engaging in conversion therapy with a person under the age of 18. Regulations define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia as amended by the 2020 General Assembly.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) The primary advantage to the public is protection for children who might otherwise be subjected to reparative or conversion therapy; the Board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or psychological services that offers acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “*promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.*” Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statutory obligation of the Board to protect the safety and health of clients/patients in the Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Proposed regulations relating to a prohibition on conversion therapy were published on August 31, 2020 with comment accepted through October 30, 2020. A public hearing was conducted on October 27, 2020; no comment was received at the hearing.

The following comments were received through the Virginia Regulatory Townhall:

Commenter	Comment
Virginia Academy of Clinical Psychologists (VACP)	Substantial research has confirmed that conversion therapy should be prohibited as it is potentially harmful to patients. It should be considered a violation of standards of practice by the Board of Psychology.
The Family Foundation Todd Gathje	The proposed regulation would prevent practitioners from having conversation with minor patients to help overcome unwanted sexual desires. Va. law makes it clear that parents have a fundamental right to make decisions for the children. Law passed by the GA in 2020 expressly allows a licensed professional to promote same-sex attractions or a transgender lifestyle. There are serious mental and physical health concerns if patients are encouraged to expand their sexuality. The proposed action will violate the constitutionally-protected free speech rights of health professionals. The regulatory action will be ripe for a legal challenge.

Board response to comment in support of the proposed regulation:

The Board concurs with the position of the VACP on the practice of conversion therapy.

Board response to comment in opposition to the proposed regulation:

The Board amended its proposed definition for consistency with the language in the Code of Virginia. The Board does not believe the regulation violates the free exercise of religion or free speech, or parental rights and relies on the Office of the Attorney General for legal advice.

Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
20-10	The term “conversion therapy” was included in the proposed regulation.	The definition is amended to reference the new definition now in the Code of Virginia in § 54.1-2409.5	The change is to ensure consistency with statutory language.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions for words and phrases used in the Chapter	There is a new definition for “conversion therapy” as any practice or treatment as defined in § 54.1-2409.5 (A) of the Code of Virginia. <i>In the adoption of final regulation, the Board chose to adopt the statutory definition so there is no distinction between Code and regulation.</i>
150	Sets out the standards of practice for practitioners licensed by the Board	In 18VAC125-20-150 of the <i>Regulations Governing the Practice of Psychology</i> (“Regulations”), the Virginia Board of Psychology (“Board”) has stated that “[t]he protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity and worth of all people, and are mindful of individual differences.” One of the standards of practice established in the Regulations is that persons licensed or registered by the Board shall:

		<p><i>"Avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable." 18VAC125-20-150(B)(5).</i></p> <p>In subsection B, #16 is added to state that persons licensed by the Board shall "not engage in conversion therapy with any person under 18 years of age."</p> <p>Many national behavioral health and medical associations have issued position and policy statements regarding conversion therapy/sexual orientation change efforts, especially with minors. Such statements have typically noted that conversion therapy has not been shown to be effective or safe.</p> <p>Consistent with established positions by the American Psychological Association, National Association of School Psychologists, and Virginia Academy of Clinical Psychologists (see below), the Board considers "conversion therapy" or "sexual orientation change efforts" (as defined above) to be services that have the potential to harm patients or clients, especially minors. Thus, under the Regulations governing applied, clinical, and school psychologists and others licensed or registered by the Board, practicing conversion therapy/sexual orientation change efforts with minors could result in a finding of misconduct and disciplinary action against the licensee or registrant.</p> <p>An email communication to the Board, dated May 7, 2018, stated the position of the Virginia Academy of Clinical Psychologists (VACP).</p> <p>The following was unanimously approved by the VACP Board of Directors and represents the official position statement of VACP:</p> <p>- <i>Significant research by both the American Psychological Association and the American Psychiatric Association substantiates that "conversion therapy" should be prohibited in that it has the potential to be harmful to patients. "Conversion therapy," or, "efforts to change a person's sexual orientation" shall mean any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person, or facilitates a person's coping, social support, and identity exploration and development. This includes</i></p>
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