



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Board of Physical Therapy, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 112-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Physical Therapy
<b>Action Title:</b>	Continuing education
<b>Date:</b>	7/26/01

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

Emergency regulations are required for compliance with an enactment clause in Chapter 858 of the 2001 Acts of the Assembly requiring the Board to promulgate regulations within 280 days of enactment to implement provisions of the act requiring the Board of Physical Therapy to establish requirements to ensure continuing competency of the practitioners it licenses.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

The legal authority to promulgate the emergency regulation is in second enactment clause of Chapter 858 of the 2001 Acts of the Assembly, which states: "That the Board of Physical Therapy shall promulgate regulations to implement the provisions of § 54.1-3474 relating to continuing competency within 280 days of the enactment of this act." See complete copy of SB 1367 (Chapter 858) - <http://leg1.state.va.us/cgi-bin/legp504.exe?011+ful+CHAP0858>.

The Office of the Attorney General has certified that the "emergency situation" which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law.

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

In promulgating emergency regulations for continued competency of physical therapy licensees, the Board considered the mandate of the General Assembly to adopt regulations that would address a) the need to promote ethical practice, b) an appropriate standard of care, c) patient safety, d) application of new medical technology, e) appropriate communication with patients, and f) knowledge of the changing health care system. The amended sections are as follows:

### **18 VAC 112-20-10. Definitions.**

New definitions are given to provide clarity for terms used in the continuing competency regulations. Terms defined include: "contact hour," "face-to-face," "type 1," and "type 2."

### **18 VAC 112-20-130. Biennial renewal of license.**

Added to the requirement of hours of practice to renew an active license is the requirement to comply with continuing competency requirements.

**18 VAC 112-20-131. Continued competency requirements for renewal of an active license.**

This new section of regulation sets requirement for renewal at 30 contact hours of continuing learning within the two years immediately preceding renewal. The 30-hour requirement is divided between Type 1 hours which must be offered by an accredited sponsor and which must be face-to-face or interactive hours and Type 2 hours which may be selected by the practitioner as valuable to continued learning in his practice.

Organizations approved by the Board as accredited sponsors or providers for Type 1 courses are listed in subsection B and include physical therapy associations, governmental agencies, accredited colleges and universities, accredited health care entities, the American Medical Association and the national athletic trainers' association. Specialty certification or re-certification may suffice as evidence of continued competency for the renewal period in which that occurs.

Regulations further provide for an exemption from continued competency requirements in the first renewal cycle following initial licensure, waiver of requirements for certain conditions, or an extension of time for good cause shown and upon request from the licensee. There are requirements for a random audit of licensees and for the retention of documentation for a period of at least four years.

**18 VAC 112-20-135. Inactive license.**

An amendment is adopted to add a requirement for evidence of completion of the number of continued competency hours that would have been required for the period the license was inactive, not to exceed four years.

**18 VAC 112-20-136. Reinstatement requirements.**

The reinstatement requirement for practice in another jurisdiction or completion of an inactive practice traineeship has been found in subsection A of 18 VAC 112-20-140. The amended regulations place that requirement in section 136 and add the requirement for completion of continued competency hours similar to that required for reactivation of an inactive license.

**18 VAC 112-20-140. Traineeship required.**

The subsection related to reinstatement of a lapsed license has been deleted in this section and included in new section 136.

**The Continued Competency Activity and Assessment Form** provided instructions to the licensees for compliance with regulations and completion of the form on which hours are documented.

To develop the emergency regulations, an ad hoc committee comprised of board members, representatives of VPTA, and licensees from various types of practices was appointed. Since the committee represented a good cross-section of licensees who consulted with other physical therapists and physical therapist assistants on the content of the regulations, the issues related to requirements were addressed. Therefore, it is not anticipated that the permanent regulations will differ substantially from the emergency regulations.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

To select the least burdensome method for ensuring continued competency of its licensees as mandated by legislative action of the 2001 General Assembly, the Board reviewed laws that were passed, the regulations adopted by other boards within the Department of Health Professions, and physical therapy regulations of other states. The requirements that were adopted are consistent with those in other states and other professions and in most cases less stringent.

Twenty-six other states have continuing education requirements for physical therapy; the average number of hours required is 36.4. Examples of requirements for other professions licensed by the Department include: 60 hours per biennium for physicians, chiropractors & podiatrists, 40 hours per biennium for nurse practitioners, 30 hours per biennium for pharmacists, veterinarians, audiologists and speech-language pathologists, 24 hours per biennium for radiologic technologists, and 20 hours per biennium for occupational therapists.

Issues that were addressed in the development of these regulations and the alternatives selected were:

### **1) Hour requirement for physical therapist and physical therapist assistant.**

The ad hoc committee and the Board considered the question of whether the physical therapist assistant (PTA) should have the same hour requirement as a physical therapist (PT). In reviewing requirements from other states, it was noted that approximately half of the states require an equal number of hours for both professions. Comments from assistants during the development of regulations indicated general support for an equal requirement as a way of indicating their professionalism and commitment to continued learning. Comments from PT's noted that assistants are increasingly being given a high level of individual responsibility for patient care. Therefore, both groups agreed that an equal number of continuing competency hours was appropriate and necessary.

In recognition of the differential in income between the two groups, the Board determined that the overall hours should be the same, but that the PTA's should not be required to have as many Type 1 hours offered by an accredited sponsor. Acquiring Type 1 hours will generally entail some cost to the licensee, whereas Type 2 hours may be gained through consultation, self-study or other means that may involve no cost to the licensee. Therefore, a physical therapist will have

to have a total of 30 hours each biennium with a minimum of 15 hours in Type 1, and the physical therapist assistant will be required to have 30 hours with a minimum of 10 hours in Type 1.

## **2) Selection of approved providers or sponsors of continuing education.**

Section D of § 54.1-3474 provides that the Board may approve persons who provide or accredit programs to ensure continuing competency. Rather than grant approval on a case-by-case basis, the Board followed the example of other boards with the Department by setting out in regulation the organizations that were considered “approved” providers or sponsors of continuing education. By establishing a broad range of approved providers, the Board has simplified compliance for its licensees who do not have to wait for a CE sponsor to apply and receive approval for its offerings. Licensees will know in advance that courses offered by one of the entities listed in subsection B of 18 VAC 112-20-131 will be acceptable for Type 1 or Type 2 credit.

Chapter 315 of the 2001 Acts of the Assembly provided that the Board “may approve” alternative courses upon timely application of any licensee. While regulations do not preclude such approval, they did not establish a process for such applications. It has been the experience of other boards that individual application from licensees for CE approval is both costly and time-consuming for all parties. The Board does not have the manpower or the resources to review and verify the validity of CE courses offered anywhere in the United States. Therefore, it is not its intention to begin the process of allowing individual applications for approval.

## **3) Content of continued competency requirement**

When the Board of Physical Therapy was considering continued competency requirements for its licensees, it concluded that the value of continuing education lies in those courses and activities which are practice-specific or clinically based and which address the specific needs of the learner-practitioner. The goal of the ad hoc committee’s work and the intent of the Board was to develop requirements that would: 1) encourage learner-directed continuing education through which the practitioner can identify a practice question or problem, seek the learning activity which provides needed information or teaches a new skill, and thereby, enhance his expertise or ability to practice; 2) offer a choice of content and form that is flexible enough to meet the needs of the PT’s and PTA’s in any type of practice in any location in Virginia; and 3) assure the public that they are maintaining their skills and competencies.

The 30 required hours are divided into two types: (1) In Type 1 continuing learning activities, the hours required biennially must be offered by an accredited sponsor or organization which is sanctioned by the profession and which provides documentation of hours to the practitioner; and (2) In Type 2 continuing learning activities, the hours required biennially may or may not be approved by an accredited sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning; PT’s and PTA’s document their own participation on the attached form.

In its consideration of these requirements, the Board modeled the format and content for

continuing education after that which has been recently adopted for other health care practitioners - specifically physicians, chiropractors, podiatrists, audiologists, occupational therapists and others. From the experience of many boards with disciplinary cases, it has been observed that practitioners who engage in substandard care or have other disciplinary problems are often not associated with other practitioners or involved in any professional group. Therefore, the Board is requiring that the Type 1 hours be earned in face-to-face settings or interactive opportunities.

#### **4) Requirements for reactivation of an inactive or lapsed license.**

Along with requirements for continuing competency for renewal of licenses, the Board is proposing new requirements for reactivation of an inactive license or reinstatement of a lapsed license as necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive or lapsed for at least two years to provide evidence of continuing competency hours equal to the amount of time the license has not been active, not to exceed four years. This requirement is also consistent with other health care practitioners who are required to demonstrate continued competency.

### **Family Impact Statement**

***Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.***

The Board has determined that there is no impact on the family or family stability as a result of these regulations. There may be a very modest decrease in disposable family income depending on the cost of continuing education that the licensee chooses to fulfill the regulatory requirement.