



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Physical Therapy, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC112-20-10 et seq.
Regulation title	Regulations Governing the Practice of Physical Therapy
Action title	Periodic review
Document preparation date	4/3/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board's intent is to update and clarify its regulations pursuant to recommendations from the Regulatory/Legislative Committee, which conducted a periodic review of regulations in accordance with Executive Order 36 (2006). The Board will consider revisions to clarify and simplify definitions and requirements for trainees and for foreign-trained applicants, specify the additional clinical training or course work required to retake the examination after three failures, add evidence of competency for licensure by endorsement, clarify the responsibilities of physical therapist in the evaluation and discharge of a patient and in the supervision of physical therapist assistants or other personnel, and modify the requirements for renewal or reinstatement of licensure. The Board will consider the addition of provisions on standards of professional practice and grounds for unprofessional conduct.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 Physical Therapy 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 statutory requirement for a periodic review of regulation is found in: § 2.2- 4017:

§ 2.2-4017. Periodic review of regulations.

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In its review of all provisions of Chapter 20, the Board has recommended a notice to the public that it intends to consider revisions to the following sections:

Section 10 – Definitions

The Board will review the definition of “evaluation” in conjunction with its consideration of changes in Part III on practice requirements for physical therapists and physical therapist assistants. The definitions of trainee and traineeships will be amended to eliminate the confusion with differing terminology and usage in regulation.

Section 40 - Education requirements: graduates of approved programs

Amendments are recommended to add acceptance of TOEFL iBT, the Internet Based tests of listening, reading, speaking and writing and to specify what evidence of English proficiency is acceptable in lieu of the required tests.

Section 50 - Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

Amendments are recommended to add acceptance of TOEFL iBT, the Internet Based tests of listening, reading, speaking and writing and to specify what evidence of English proficiency is acceptable in lieu of the required tests. Amendments will also be considered to eliminate the specific requirements for a “foreign-trained trainee” and refer to general requirements for a traineeship in section 140.

Section 60 - Requirements for licensure by examination.

The Board intends to clarify the “additional clinical training or course work in the deficiency areas of the examination” required for applicants who have failed the licensure examination three times. The language currently found in a guidance document will be incorporated into regulation.

Section 65 – Requirements for licensure by endorsement.

The Board is concerned that it may not have sufficient documentation to ensure the competency of applicants coming from other states, especially since the requirements for endorsement were changed to allow evidence of clinical practice for five years to replace the educational qualifications of applicants for licensure by examination. The Board will require submission of reports on malpractice payments and actions taken by other boards or healthcare organizations and evidence of continuing education equivalent to that required in Virginia to ensure that the applicant has practiced safely and has maintained current knowledge and skills.

Section 70 – Traineeship for unlicensed graduate scheduled to sit for the national examination.

The requirements for an unlicensed graduate trainee will be amended in accordance with general traineeship requirements and to specify a limitation on the amount of time someone who has not passed the national examination can serve in a traineeship.

Part III. Practice Requirements.

Provisions of sections 90, 100, and 120 may be amended to clarify practice questions and issues that have come to the attention of the Board. The Board will consider amendments to clarify the roles of the physical therapist and the physical therapist assistant in evaluations and discharges and in the supervision of other physical therapy tasks.

Section 130. Biennial renewal of license.

In 2006, the Board has changed from biennial renewal in the licensee’s birth month to renewal by December 31st. For a variety of reasons, there is a desire to revisit the renewal date and consider reversal of the previous action or consideration of another renewal date.

Section 131. Continued competency requirements for renewal of an active license.

The Board will consider modification to its requirement that half of the required hours be face-to-face; it will review regulations of other boards and continuing education offerings to determine whether the need for face-to-face CE remains. An amendment is needed to clarify that the exemption granted in the first renewal after licensure is for licensure by examination when a new licensee has just completed physical therapy school and passed his examination. Other CE requirements will also be considered for continued need and clarity.

Section 136. Reinstatement requirements.

This section needs to be amended to distinguish between a licensee whose license has lapsed for less than two years, who may reinstate by meeting the renewal requirements and payment of a late fee, and the licensee whose license is lapsed for more than two years who must reinstate by completion of a traineeship or evidence of practice in another jurisdiction. The Board will also

consider the addition of a fee for reinstatement of a suspended license and reinstatement requirements after disciplinary action.

Section 140. Traineeship requirements.

Section 140 will be amended to make it applicable to all references to traineeship; other sections of the regulation will be amended accordingly.

Section 150. Fees.

If the Board decides to revise the renewal deadline to a schedule other than December 31st, amendments in section 150 will also be necessary.

Unprofessional conduct.

The Board will also consider the addition of regulations specifying standards of practice and grounds for unprofessional conduct. In the development of regulations, the Board will review the standards for such topics as confidentiality, informed consent, practitioner-patient communication, sexual contact with patients and maintenance of patient records addressed in regulations of the Board of Medicine for the professions it regulates. The Board will also use the Code of Ethics and Guide for Professional Conduct of the American Physical Therapy Association and Model Regulations for the Federation of State Boards of Physical Therapy.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

During its review of the board's regulations, staff of the board and the members of the Regulatory/Legislative Committee reviewed each provision of Chapter 20 in accordance with Executive Order 36 (2006). The purpose was to determine whether there was alternative language that could be adopted that would state the regulations more clearly or whether there were other provisions that would make compliance easier. In the development of proposed regulations, the Board will clarify or further specify provisions of current regulations and will consider the adoption of a section on standards of professional practice.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.