



Fast Track Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 115-20; 18VAC115-50; 18VAC115-60
Regulation title	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Practice of Licensed Substance Abuse Practitioners
Action title	Clarification of endorsement and reporting requirements
Document preparation date	December 9, 2008

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board is clarifying regulations for the three licensed professions relating to: 1) clinical practice experience required for licensure by endorsement by specifying that the experience must be post-licensure; and 2) reporting requirements for licensees who know or suspect violations by another licensee.

Statement of agency final action

Please 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 November 14, 2008, the Board of Counseling took action to amend 18 VAC 115-20, Regulations Governing the Practice of Professional Counseling; 18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy, and 18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Practitioners, through the fast-track regulatory process.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of 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 Counseling 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:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to clarify and correct an oversight in the recent revisions of regulations. In an action that became final on September 3, 2008, the Board added provisions for licensure by endorsement to allow persons did not have educational and residency experience consistent with what is required for licensure in Virginia to be licensed based in part on their clinical experience in another state. It was assumed that the “clinical practice for five of the last six years” immediately preceding a licensure application in Virginia was “post-licensure” experience, so there would be a history of ethical, competent practice in another state on which to base a licensure decision in Virginia. Since the regulation does not specify “post-licensure” experience, a person has applied for licensure based on years of pre-licensure experience in internship or residency. The Board must clarify its intent in order to ensure that an applicant who does not otherwise meet its licensure requirements is competent and safe to practice – based on years of independent clinical practice as a licensee of another state board.

The Board of Counseling has two certified and three licensed professions. For many years, all of those professions, as well as those regulated by the Boards of Psychology and Social Work, have had a regulatory requirement for a practitioner to report incompetent or unprofessional conduct by another practitioner within the same profession and regulated by the same board. Several years ago, the Board of Counseling revised its regulations for the three licensed professions to require reporting of any mental health provider licensed by any health regulatory board. Board counsel subsequently decided that the mandate for reporting on any mental health provider exceeded the mandate in § 54.1-2400.6, which requires a practitioner to *inform his patient* of his right to report misconduct. Therefore, in an action that became final on July 25, 2007, regulations were changed from requiring reporting of any other mental health provider to informing the client of his right to report. At that time, the Board failed to recapture the older language about reporting of another practitioner within the same profession. The reinstatement of the reporting requirement in the fast-track action will make all five Counseling regulations consistent with each other and with regulations for Psychology and Social Work. Without the amendment, the misconduct of another counselor, marriage and family therapy or licensed substance abuse may go unreported and harm to patients or their families would continue.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used to promulgate the amendments because there is unanimous agreement with the changes proposed. The action is not controversial and will resolve questions and issues that have come to the Board in recent months.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The proposed action would insert “post-licensure” to the clinical experience required for licensure by endorsement and would reinsert a requirement to report misconduct by another licensee within the same profession in the standards of conduct.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) There are no disadvantages to the public. For applicants who do not meet Virginia’s requirements for education and experience, the years of post-licensure clinical practice in another state provide a measure of competency that is important to persons who will receive mental health services by those licensees. A requirement for the licensee to report known or suspected violations of law or regulation within his profession also protects the public from persons who are incompetent or unethical in their practice.
- 2) There are no disadvantages to the agency or the Commonwealth. Clarification of the regulations will resolve some issues or questions that have been raised in recent months.
- 3) There are no other matters of interest.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) 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; b) 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</p>
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	<p>sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The only entities that are likely to be affected by these regulations would be persons who might apply for licensure by endorsement who do not have five years of post-licensure clinical experience.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There is no estimate of the number that might be affected, but it would be very small.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There would be no cost for compliance for changes.

Alternatives

Please describe any viable 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.

There are no viable alternatives to the proposal considered; without clarification of the regulatory provision on licensure by endorsement, the Board has no choice but to grant a license to an individual who may not have adequately demonstrated an ability to engage in independent, competent practice.

While a licensee may voluntarily report a known or suspected violation under current laws and regulations, the mandate to report offers greater protection for the licensee and his clients. Without a regulatory change, the reporting requirement for professional counselors, marriage and family therapists and licensed substance abuse practitioners is inconsistent with certified substance abuse counselors or rehabilitation providers with may work under the supervision of one of the licensed professionals. It is also inconsistent with other licensed professions of social work and psychology.

Family impact

Please assess the 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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

Chapter 20 – Licensed Professional Counselors

Current section number	Current requirement	Proposed change and rationale
45	Sets out requirements for licensure by endorsement	Specifies that the five years of clinical practice preceding an application for licensure must be “post-licensure” practice. <i>This option is available to persons who <u>do not</u> meet the education and supervised experience requirements for licensure in Virginia. Therefore, it is important to have some assurance that the applicant has engaged in independent <u>licensed</u> clinical practice, so there a history with another state board to indicate whether that practice was ethical and competent.</i>
130	Sets out the standards of practice for a licensee	Adds a previous standard that was omitted in subsequent regulations to require reporting of known or suspected violations by another licensee within the same profession. <i>The re-insertion of the reporting requirement will keep this chapter consistent with other chapters under the Board of Counseling and with regulations of the Boards of Social Work and Psychology.</i>

Chapter 50 – Marriage and Family Therapists

Current section number	Current requirement	Proposed change and rationale
40	Sets out requirements for licensure by endorsement	Specifies that the five years of clinical practice preceding an application for licensure must be “post-licensure” practice. <i>This option is available to persons who <u>do not</u> meet the education and supervised experience requirements for licensure in Virginia. Therefore, it is important to have some assurance that the applicant has engaged in independent <u>licensed</u> clinical practice, so there a history with another state board to indicate whether that practice was ethical and competent.</i>
110	Sets out the standards of practice for a licensee	Adds a previous standard that was omitted in subsequent regulations to require reporting of known or suspected violations by another licensee within the same profession.

		<i>The re-insertion of the reporting requirement will keep this chapter consistent with other chapters under the Board of Counseling and with regulations of the Boards of Social Work and Psychology.</i>
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Chapter 60 – Licensed Substance Abuse Treatment Practitioners

Current section number	Current requirement	Proposed change and rationale
50	Sets out requirements for licensure by endorsement	Specifies that the five years of clinical practice preceding an application for licensure must be “post-licensure” practice. <i>This option is available to persons who <u>do not</u> meet the education and supervised experience requirements for licensure in Virginia. Therefore, it is important to have some assurance that the applicant has engaged in independent <u>licensed</u> clinical practice, so there a history with another state board to indicate whether that practice was ethical and competent.</i>
130	Sets out the standards of practice for a licensee	Adds a previous standard that was omitted in subsequent regulations to require reporting of known or suspected violations by another licensee within the same profession. <i>The re-insertion of the reporting requirement will keep this chapter consistent with other chapters under the Board of Counseling and with regulations of the Boards of Social Work and Psychology.</i>