



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-120
Regulation title	Regulations Governing the Licensure of Athletic Trainers
Action title	Changes to provisional licensure
Date this document prepared	4/30/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Subsection C of 18VAC85-120-80 on provisional licensure is amended to: 1) eliminate the reference to an internship approved by National Athletic Trainers' Association Board of Certification (NATABOC); and 2) change the term of a provisional license for athletic trainers from one year to six months from issuance and to add that the license expires upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

Statement of final agency 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 April 30, 2010, the Board of Medicine amended 18VAC85-120-10 et seq., Regulations Governing the Practice of Athletic Trainers.

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 General Assembly chapter number(s), 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 (6), which provides the Board of Medicine 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 legal authority to promulgate the regulation for provisional licensure is found in paragraph C of § 54.1-2957.4.

§ 54.1-2957.4. Licensure as athletic trainer required; requisite training and educational requirements; powers of the Board concerning athletic training.

- A. It shall be unlawful for any person to practice or to hold himself out as practicing as an athletic trainer unless he holds a license as an athletic trainer 90 days after the effective date of regulations promulgated by the Board implementing athletic trainer licensure. The Board shall issue licenses to practice athletic training to applicants for such certification who meet the requirements of this chapter and the Board's regulations.
- B. The Board shall establish criteria for the licensure of athletic trainers to ensure the appropriate training and educational credentials for the practice of athletic training. Such criteria may include experiential requirements and shall include one of the following: (i) a Virginia testing program to determine the quality of the training and educational credentials for and competence of athletic trainers, (ii) successful completion of a training program and passage of the certifying examination administered by the National Athletic Training Association Board of Certification resulting in certification as an athletic trainer by such national association, or (iii) completion of another Board-approved training program and examination.
- C. *At its discretion, the Board may grant provisional licensure to persons who have successfully completed an approved training program or who have met requisite experience criteria established by the Board. Such provisional licensure shall expire as provided for in the regulations of the Board.*

D. The Board shall promulgate such regulations as may be necessary for the licensure of athletic trainers and the issuance of licenses to athletic trainers to practice in the Commonwealth. The Board's regulations shall assure the competence and integrity of any person claiming to be an athletic trainer or who engages in the practice of athletic training.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed action is to limit the length of time a person can practice athletic training under a provisional license since that person has not demonstrated minimal competency by passage of the examination. The intent of a provisional license was to allow applicants to begin employment between the time they completed school and received the results of the certification examination, and six months is more than sufficient time to complete the examination and become licensed.

While provisional licensees are supposed to practice under close supervision, it is reported that some are practicing with very little oversight. In addition to the length of time for practice with a provisional license (currently 12 months), the current regulations allow persons who have failed the examination to continue practicing even though they have demonstrated that they are not minimally competent. Because the current regulation for provisional licensure may not adequately protect the athletes (typically young people) who are receiving important care and advice on injuries and training, the Board has determined that the regulation should be amended under a fast-track process.

The option of an internship approved by NATABOC instead of graduation from an educational program no longer exists and is eliminated to avoid confusion.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or 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 facilitate the changes as soon as feasible because of concerns in the athletic training profession about provisional licensees continuing to practice after failing the examination, which is an indication that they are not minimally competent.

The Advisory Board is unanimous in its recommendation for this change, and the limitation of six months on a provisional license is consistent with other professions such as occupational therapy.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Subsection C of 18VAC85-120-80 on provisional licensure is amended to: 1) eliminate the reference to an internship approved by National Athletic Trainers' Association Board of Certification (NATABOC); and 2) change the term of a provisional license for athletic trainers from one year to six months from issuance and to add that the license expires upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The advantage to the public is more assurance that persons practicing as athletic trainers and providing athletes (typically young people) with crucial care and advice on injuries and training are minimally competent. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods since the term and conditions for provisional licensure are specifically prescribed in regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<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 sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There will no additional on-going expenditures relating these amendments.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Persons who seek provisional licensure in athletic training.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an</p>	<p>Currently, there are 8 persons who have provisional licenses. Four of the 8 have held them longer than</p>

<p>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.</p>	<p>six months and they are scheduled to expire August, 2010. After the effective date of the regulations, provisional licenses would only be valid for six months.</p>
<p>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.</p>	<p>There are no projected costs; limiting the provisional license to six months may encourage some applicants to sit for the NATABOC examination sooner which would lead to full licensure sooner.</p>

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Advisory Board on Athletic Training has concerns about the practice of and level of supervision for athletic trainers with provisional licensure. Persons who have completed their educational programs should not wait a year to take the NATABOC examination, and persons who have taken the exam and failed it should not be practicing. To resolve the issue, the Advisory Board looked at provisional licensure in other professions. In occupational therapy, a graduate can practice for six months as an applicant or until he receives the results of the examination, whichever comes first. In physical therapy, a graduate can practice as a trainee if he has been registered with the Federation of State Boards of Physical Therapy to sit for the examination. The Federation requires that a graduate take the examination within 60 days of registration, so there is a built-in limitation of the time period for a traineeship. Once the exam results have been received, a physical therapy traineeship must be terminated within two days.

For consistency with similar professions and for public safety, the Board is proposing to amend regulations for athletic trainers working with a provisional license.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
120	n/a	Sets out requirements for provisional licensure	<p>Subsection C on provisional licensure is amended to: 1) eliminate the reference to an internship approved by National Athletic Trainers' Association Board of Certification (NATABOC); and 2) change the term of a provisional license for athletic trainers from one year to six months from issuance and to add that the license expires upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.</p> <p><i>NATABOC no longer approves internship as an alternative to graduation from an educational program, so that option as a prerequisite for examination and a provisional license has been eliminated by avoid confusion by applicants.</i></p> <p><i>The Board of Certification offers the national examination five times a year with a fifteen day window in which to take the computerized exam. Results are posted within 2 to 4 weeks from the last day of the exam window. Therefore, it is likely that the applicant for licensure in Virginia would have two or three opportunities (15-day exam windows) to sit for the certification exam during a provisional period. Once the exam results have been received, the applicant who passed would be licensed but the applicant who failed would no longer be able to practice under a provisional license.</i></p>

