Form: TH- 02

Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Board of Medicine / Department of Health Professions
VAC Chapter Number:	18 VAC 85-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Chiropractic and Podiatry
Action Title:	Education and training for doctors who practice acupuncture
Date:	2 / 13 / 00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to regulation are required in order to conform to an enactment clause in Chapter 814 of the 2000 Acts of the Assembly requiring the Board to promulgate regulations for the education and training of doctors who utilize acupuncture. Emergency regulations were authorized by the bill and are replaced by the Board in the promulgation of this proposed amendment, which requires 50 of the 200 hours of acupuncture training to be in clinical practice.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. *To establish schedules for renewals of registration, certification and licensure.*

5. *To levy and collect fees for application processing, examination, registration, certification or licensure 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 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The legal authority to promulgate regulations is in second enactment clause of Chapter 814 of the 2000 Acts of the Assembly, which states: "That the Board of Medicine, in consultation with the Advisory Board on Acupuncture, shall promulgate regulations, including education and training requirements for doctors of medicine, osteopathy, chiropractic and podiatry who utilize acupuncture, and including the requirement for a standard form recommending a diagnostic examination for provision to the patient by the acupuncturist, to implement the provisions of this act within 280 days of enactment."

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Chapter 814 eliminated the separate license for physicians who practice acupuncture but mandated that the Board establish qualifications necessary to practice with minimal competency. The requirement of 200 hours with 50 of those hours being clinical instruction under supervision by a person legally authorized to practice acupuncture is the least burdensome requirement considered which would continue to protect the public health and safety in seeking acupuncture treatment. Since it would be expected that a practitioner holding a license from the Board of Medicine would have the physiological and medical background necessary to provide acupuncture treatment, the clinical instruction in acupuncture is essential to ensure safe, effective practice.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Section 131 is being amended to comply with a statutory mandate for the Board to provide regulations for the education and training required of a doctor of medicine, osteopathy, podiatry or chiropractic in order to be authorized to use acupuncture as a modality of treatment. Current regulations require 200 hours of instruction in order to be authorized to practice acupuncture. The proposed amendment requires that 50 of those hours be in clinical practice under the supervision of someone legally authorized to practice acupuncture.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The issue involved in the development of this regulation centered on the amount and type of training that was necessary. Doctors of medicine, osteopathy, podiatry and chiropractic receive years of didactic education in subjects such as anatomy, but their training typically does not prepare them to perform acupuncture. For that reason, training in acupuncture treatment and technique has been post-graduate and post-licensure for most practitioners. Courses have been developed by individuals and health education systems to prepare physicians and equip them with the skills and necessary hours of training.

In an effort to standardize that training or to determine comparability and quality, the Board sought curriculum information from all providers of acupuncture education for physicians of which it was aware. Only a few responded with course outlines or other information. It appears

that there is no national standard, no national credentialing, and no accreditation of programs for physician acupuncturists. Therefore, the Board elected to retain the hours-requirement but did not add a requirement for any accreditation or board approval of programs.

In the opinion of the Advisory Committee on Acupuncture, it is essential for physicians to receive supervised clinical training in the technique of acupuncture administration. While physicians have experience through their medical training with injections, appropriate and efficacious administration of acupuncture needles requires different knowledge and skills.

The Committee debated the necessary hours of training and compromised on 50 hours of supervised clinical experience in addition to the 200 hours of instruction. When the issue was considered by the full Board of Medicine, the 50 hours was included in the 200 hours as sufficient for public protection and minimal competency.

There are no disadvantages to the public, since the total number of hours of acupuncture instruction will remain the same. There may be some advantage to consumers of acupuncture services if the doctor is required to acquire at least 50 hours of clinical experience before practicing acupuncture on a patient.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: 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.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: 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 copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed doctors of medicine, osteopathy, podiatry or chiropractic who want to be authorized to practice acupunctu.

Estimate of number of entities to be affected:

Currently, there are approximately 200 doctors who are authorized to practice acupuncture.

Projected costs to the affected entities:

The cost for compliance will vary depending on the practitioner and the method chosen for acquiring the required hours. The Board does not approve certain educational programs or courses, so the individual may meet the requirements by attending weekend seminars, by correspondence study and training with an acupuncturist or by enrolling in a formal educational program.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 85-20-131. Requirements to practice acupuncture.

The current requirement for a licensed doctor to practice acupuncture is completion of 200 hours of instruction in specified aspects of acupuncture. The amended language requires that after the effective date of the regulation, it will be necessary for persons to have 50 of those 200 instructional hours in clinical experience supervised by a person legally authorized to practice acupuncture in any jurisdiction in the United States.

Alternatives

Please describe the specific 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 were no alternatives to adoption of a regulation as it was mandated by Chapter 814 of the 2000 Acts of the Assembly. The two issues considered in the development of regulations were: the quality and content of instruction and the amount of instruction necessary to adequately prepare a licensed physician to practice acupuncture. (See discussion above.)

In the opinion of the Board, acupuncture treatment is not unlike other new knowledge and skills acquired during the course of their practice. While there is no accreditation of acupuncture programs for physicians, their basic medical knowledge enables them to determine the adequacy of their training. Programs designed to provide such training are typically 200 hours in length, which is considered sufficient for minimal preparation to practice.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until December 6, 2000. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Advisory Committee on Acupuncture, comprised of licensed acupuncturists, physician acupuncturists and members of the Board met to work on draft regulations, which are identical to emergency regulations currently in effect. The emergency regulations were reviewed and approved by the Department of Planning & Budget, the Secretary of Health and Human Resources and the Office of the Governor. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2003-04 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability.