

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

*DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE
18 VAC 85-20-10 et seq.*

**Regulations Governing the Practice of Medicine, Osteopathy,
Podiatry, Chiropractic, and Physician Acupuncture**

ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION

During the 1996 Session of the General Assembly, concerns were expressed about the competency of some health care providers licensed by the Board of Medicine who may not maintain current knowledge of practice modalities and ethical issues. Those concerns led to the introduction of two study resolutions - House Joint Resolution 68, patroned by Delegate Gladys Keating, and House Joint Resolution 157, patroned by Delegate Panny Rhodes. With the passage of HJR 68, the Virginia Board of Medicine was directed to study the need for requiring continuing medical education for physicians of medicine and osteopathy.

Based on the findings and recommendations of the study report (a copy of which is attached to this submission) House Bill 2444 was patroned by Delegate Keating and passed by the 1997 General Assembly without a dissenting vote. **With the Governor's signature, Chapter 227 amended the medical practice act by adding §54.1-2912.1, which mandates that the Board promulgate regulations for the establishment of continuing competency requirements.**

§ 54.1-2912.1 provides that "the Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement".

In order to proceed with amendments which have been determined necessary to comply with the legislative mandate, the Board requests permission to publish a Notice of Intended Regulatory Action as soon as possible.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

18 VAC 85-20-10 et seq. (VR 465-02-1): Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, and Physician Acupuncture was promulgated under the general authority of Title 54.1 of the Code of Virginia.

§ 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to ensure practitioner competency and to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to effectively 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 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 take appropriate disciplinary action for violations of applicable law and regulations.*
- 9. 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 (§ 9-6.14:1 et seq.). 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.

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing education requirements.

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system..

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

The Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

The purpose of any regulation of a profession is "for the exclusive purpose of protecting the public interest" (§ 54.1-100). According to the Code of Virginia, regulation is necessary to protect the health, safety or welfare of the public when the potential for harm is recognizable. In the practice of medicine, there exists a clearly recognized potential for harm and a need to protect the public.

Regulation is further authorized when the practice of the profession requires specialized skills and assurances of initial and **continuing professional and occupational ability**. The Board of Medicine does not believe that its current regulations provide such assurances, and that regulations requiring mandatory continuing competencies are in keeping with its statutory responsibility to protect the public.

The Board has reviewed mandatory continuing education among other professions in Virginia and in regulations by other states. Among those professions whose regulations currently require continuing education for renewal of licensure are pharmacists, dentists, optometrists, nursing home administrators, veterinarians, and attorneys. The Federation of State Medical Boards indicates that there are now 29 states which require hours of continuing medical education for license renewal. The intent of the Board in the promulgation of amended regulations will be to ensure that its licensees maintain professional

responsibility and current knowledge about their practice. Evidence of continuing competency will not be an additional burden on the vast majority of licensees who currently obtain CE hours or other activities for maintenance of professional credentialing, membership in professional associations, hospital privileges, or discounted rates on malpractice insurance. A requirement for mandatory CE or other evidence of competency for renewal will affect primarily those licensees (estimated to be 10% to 15%) who are not participating in any continuing education courses or learning activities, and it is those practitioners that concern the Board. The implementation of requirements for continuing competency should have a positive effect on the delivery of health care services and may reduce the disciplinary case load of the Board.

ITEM 4: ALTERNATIVES TO REGULATION

Content of the Regulation:

In its response to HJR 68, the Board consulted a wide range of persons and sources about the type, purpose, and efficacy of continuing medical education. Included in the study report was evidence and comment presented by legislators, medical educators, medical ethicists, the Joint Commission on Accreditation of Healthcare Organizations, the Medical Society of Virginia, the Virginia Society of Chiropractic, the Virginia Physical Therapy Association, the Virginia Academy of Family Physicians, and others involved in the delivery of quality medical care.

Through the literature review and information gathered at a public hearing and focus group meetings, the Board concluded that the current system of accrediting continuing education courses does not guarantee physician learning or a change in clinical outcomes. The study 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 Board recommended **against** a legislative mandate for specific hours, methods, or content of continuing education for licensees of the Board, but it did recommend a statutory provision for it to consider various alternatives, including continuing education, to ensure continued practitioner competence.

Support for continuing competency requirements came from the Federation of State Medical Boards and the Medical Society of Virginia which both offered alternatives to the current system of “Category 1” continuing medical education.

Dr. Gerald Bechamps, a former board president and immediate past president of the Federation, suggested, “*Continuing medical education is only one tool used by state licensing boards to promote the continuing competence of licensees. Other tools include post-licensure assessment for physicians identified to be at risk, targeted remedial education, and licensing re-registration in which the state board is allowed to review a licensee’s qualifications on a regular basis...The continued competence of licensees should be a coordinated effort of licensing boards, specialty boards, peer-review organizations, medical societies, medical staff organizations, and other health care organizations*”

who should share this information in a cooperative effort to protect the public's health, welfare and safety."

Dr. Ira Godwin, President of the Medical Society, observed that *"requiring traditional "Category 1" credits is not necessarily the best or only way by which physician learning can be fostered and measured. We believe that new technologies and innovative physician learning methods have been developed which can become an integral part of a physician's ongoing medical education"*.

In its report on Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century, the Pew Commission noted that *"Our nation's health care delivery and financing structures are undergoing fundamental transformations."* Among the ten policy options offered to address those fundamental transformations is a recommendation that **"States should require each board to develop, implement and evaluate continuing competency requirements to assure the continuing competence of regulated health care professionals."** The Pew Commission suggested the following alternatives for states to consider in the development of continuing competency requirements:

- A requirement for the regulated professionals to periodically demonstrate competence through appropriate testing mechanisms which could include random or targeted peer review or could be triggered by a variety of factors including a lack of specialty or private certification or length of time in solo practice.
- Cooperation with the relevant private organizations and with other states to develop standard continuing competency examinations to test minimum competence for continued practice.
- Support for the expanded use of modern technology to enhance traditional competencies and their assessment.

In addition to consideration of these and other recommendations, the Board is required by the statutory mandate in § 54.1-2912.1 to consider in its promulgation of regulations *"(i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system."*

Process of Developing the Proposed Regulations:

The Board intends to follow a process similar to that used in conducting its study on the need for continuing medical education. The Legislative Committee of the Board will serve as the study team for gathering information and pertinent data, for the consideration of various alternatives, and for the development of proposed regulations. It will report to the Executive Committee and to the full Board on its findings and progress.

During the course of developing and promulgating regulations, the Board intends to seek broad participation among the medical schools, the professional societies, and especially those experts in the field on continuing medical education. In addition to conducting one or more hearings, the Board will invite specific individuals to offer their advice and expertise on the least burdensome regulation but most effective regulations.

It is expected that the Board will adopt amendments to 18 VAC 85-20-10 et seq. which offer the most inclusive requirements for continuing competency which are consistent with its statutory mandate.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY, AND AUTONOMY

The Board is unable to determine any effect of its intended regulatory action on family formation, stability, and autonomy.