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Final Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Doctors of Medicine, Osteopathic Medicine, Podiatry, or Chiropractic
Action title	Licensure by endorsement
Date this document prepared	4/13/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The Board has proposed regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another U. S. jurisdiction or Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

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 13, 2018, the Board of Medicine adopted final amendments to 18VAC85-20-10 et seq., Regulations Governing the Practice of Doctors of Medicine, Osteopathic Medicine, Podiatry, or Chiropractic.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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 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 Code section relating to authority to issue licenses by endorsement is:

§ 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.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the

United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 Board has reviewed elements of licensure by endorsement that would provide assurance of competency to practice but also considered potential disqualifiers including disciplinary actions by another state board, malpractice claims, and/or certain criminal convictions. While the Board may be able to license physicians who have had discipline, malpractice claims, or criminal convictions, it may determine that such an applicant requires a full review and would not qualify for an expedited license by endorsement. The intent is to facilitate licensure for physicians who have a demonstrated history of competent, safe practice in order to protect the health and safety of citizens of the Commonwealth who may become their patients.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The Board has proposed regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another U. S. jurisdiction or Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

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 primary advantage to the public is the potential to encourage highly qualified doctors to come to Virginia for practice since the application process would be somewhat expedited by

licensure by endorsement. There are no disadvantages; there would be ample evidence of competency to practice safely.

- 2) There are no advantages or disadvantages to the agency.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.*” There is no restraint on competition as a result of promulgating this regulation; all applicants would continue to have the same pathways to licensure, but those who are board-certified and actively practicing in another state would have a somewhat more expedited pathway.

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.

Family impact

Please assess the impact of this 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.

Changes made since the proposed stage

Please list all changes that made to the text since the proposed regulation was published in the Virginia Register of Regulations and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
141	Defines “good standing” as verification from all states in which the applicant has been licensed that he is not currently under investigation	Defines “good standing” as a license that is current and unrestricted, or if lapsed, eligible for renewal or reinstatement	Other states do not define “good standing” as not currently under investigation, and some states will not disclose that information even if specifically requested. Any action taken against a license as a result of such an investigation would be reported to the databank and subsequently revealed. The applicant is required to have on current license in a U. S. jurisdiction or Canada, but if licenses held in other states or Canada are lapsed, that is not problematic if the licensee is eligible for renewal and reinstatement.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There was a public comment period from 1/8/18 to 3/9/18 and a public hearing conducted on February 15, 2018. No oral or written comment was received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Proposed new section number, if applicable	Proposed change, intent, rationale, and likely impact of proposed requirements
141	<p>Requirements in Section 141 for licensure by endorsement include:</p> <ol style="list-style-type: none"> 1. At least one current, unrestricted license in a U. S. jurisdiction or Canada for the five years immediately preceding application to the board; 2. Active practice, defined as an average of 20 hours per week or 640 hours per year, for five years after post-graduate training and immediately preceding application; 3. Verification that all licenses held in another U. S. jurisdiction or Canada are in good standing, defined as not currently under investigation and <u>current and unrestricted or</u>, if lapsed, eligible for renewal or reinstatement; 4. Current certification by one of the following: <ol style="list-style-type: none"> a. American Board of Medical Specialties; b. Bureau of Osteopathic Specialists; c. American Board of Podiatric Surgery; d. Fellowship of Royal College of Physicians of Canada e. Fellowship of the Royal College of Surgeons of Canada; or f. College of Family Physicians of Canada; 5. A current report from the U. S. Department of Health and Human Services Data Bank (NPDB); and 6. No grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board. <p><i>Part IV includes the current criteria for licensure, including evidence of meeting education, experience and examination requirements. By applying for licensure by endorsement, a doctor would not be required to submit documentation of medical school education, internships, residencies, fellowships, and of passage of all examinations. For many doctors who have been actively practicing for a number of years, submission of such documentation can be quite time-consuming and burdensome.</i></p> <p><i>In lieu of education, post-graduate experience, and examination, a doctor can substitute active practice for at least five years and board certification. A doctor who is not board-certified or has not had sufficient active practice would still be able to apply as he/she does currently. Typically, applicants with less than five years of</i></p>

	<p><i>practice have access to current documentation and do not find it as burdensome to secure the evidence to satisfy requirements for licensure by examination.</i></p> <p><i>The requirement for active practice was established to allow doctors who have practiced part-time or who have taken breaks in their practice to qualify. Since other qualifications are being waived, it is important to have evidence of active practice to provide some assurance of continuing competency. If a doctor has been actively practicing and does not have board discipline or malpractice claims, there is a reasonable expectation of minimal competency. Even with discipline or malpractice, an applicant may still be licensed provided there are no grounds under §54.1-2915 to deny licensure.</i></p> <p><i>The listing of certifying bodies acceptable for licensure by endorsement is similar to the listing found in § 54.1-2910.1 for the physician profile. The Board has added the Canadian credentialing bodies as acceptable for endorsement.</i></p> <p><i>Some other states require disclosure of medical malpractice, but Virginia boards typically require a NPDB report, so there is independently-submitted evidence concerning a practitioner's malpractice history.</i></p> <p><i>While the regulations only require one active, current license in another jurisdiction, the Board will also require verification of all licenses to ensure that an applicant was not revoked or suspended or allowing his license to lapse to avoid disciplinary action.</i></p>
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