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MEMORANDUM

TO: William L. Harp, MD
Executive Director
Virginia Board of Medicine

FROM: Erin L. Barrett
Assistant Attorney General

DATE: September 13, 2018

SUBJECT: *Regulations Governing the Practice of Polysomnographic Technology*
18VAC85-140-10 *et seq.*

I have reviewed the amendment to the *Regulations Governing the Practice of Polysomnographic Technology*, 18VAC85-140-10 *et seq.* The proposed amendment allows individuals enrolled in polysomnographic technology educational programs or acting as trainees to practice without a license provided those individuals are under the direct supervision of a licensed polysomnographic technologist, doctor of medicine, or doctor of osteopathy. The regulation additionally requires the unlicensed individual to obtain a license within 18 months from the start of the educational program or traineeship or six months from the conclusion of the educational program or traineeship. This change is consistent with changes in the Code of Virginia following the passage of 2018 Va. Acts Ch. 98. The proposed amendment is exempt from the operation of the Virginia Administrative Process Act and review by the Executive Branch in accordance with Virginia Code § 2.2-4000(A)(4)(a), which provides an exemption for regulations “[n]ecessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.” Va. Code § 2.2-4006(A)(4)(a). The Board of Medicine has the statutory authority to amend this Regulation under Virginia Code § 54.1-2400. The proposed amendment is constitutional and does not conflict with existing federal or state laws or regulations.