



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Optometry, Department of Health Professions
VAC Chapter Number:	18 VAC 105-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Optometry
Action Title:	Periodic review
Date:	10/1/02

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board of Optometry is recommending that 18 VAC 105-20-10 et seq. be amended to revise certain requirements of licensure by endorsement, to reduce the burden of reinstatement, to add some miscellaneous fees consistent with other boards, and to clarify certain provisions related to the provision of patient records if a practice is to be terminated and the use of professional designations. The Board is recommending several changes in requirements for continuing education including an increase in the number of continuing education hours to the statutory limit of 16 but allowing two of those hours to be in record-keeping and two in CPR.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The Board has made the following changes in 18 VAC 105-20-70:

In subsection D, the phrase “within 14 days of the renewal date” has been added to the requirement to submit documentation of continuing education upon an audit request on the renewal form. The addition is reflective of the Board’s policy; the 14-day time frame is currently stated in the audit request but is not stated in regulation. The audit request is noted on the renewal notice, which is sent approximately 45 days prior to the renewal date, so the licensee is given that period of time plus an additional 14 days to get the necessary documentation to the Board.

In subsection G, the Board has added “or approved” to the requirement that an approved continuing education course or program be sponsored by one of the listed entities. In public comment, it was noted that several of the approved organizations do not actually “sponsor” continuing education but approve entities, individuals or organizations that do. For example, the Council on Optometric Education and the Accreditation Council for Continuing Medical Education approve the sponsors rather than sponsor the courses.

In subsection G, number 11 was modified to allow the Board to accept category II courses approved by the Accreditation Council for Continuing Medical Education of the AMA as well as Category 1. It was felt that ophthalmologists who offer courses to optometrists might find it easier to get Category 2 credit through the Medical Society of Virginia or some other AMA approved sponsor.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 27, 2002, the Board of Optometry adopted final amendments to 18 VAC 105-20-10 et seq., Regulations Governing the Practice of Optometry.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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 statutory authority for licensure and regulation of optometrists, including the mandate for continuing education, is found in Chapter 32 of Title 54.1 of the Code of Virginia:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC540100000320000000000000>

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the final amended regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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.

The purpose of the amended regulation is to revise certain requirements for licensure by examination and to reduce the burden of reinstatement in order to facilitate licensure for some applicants. Fees are reduced or added for consistency with the Principles for Fee Development, and certain provisions are clarified related to the use of professional designations. A requirement for notifying patients if a practice is to be terminated will address problems with records that consumers have faced in those situations.

Additional hours of continuing education in drug prescribing and administration are necessary to ensure that licensees maintain current knowledge as new drugs and new therapies are introduced. With the amended regulations, an optometrist may now include hours of CPR in the 16 required for renewal of licensure. Amendments for patient notification and additional continuing education are intended to improve consumer protection and increase the quality of optometric care in the delivery of health services to patients.

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 of the regulatory action's detail.

Substantive changes to the existing sections of the regulations include: 1) a change in the date after which the Board will accept passage of the National Board Examination for initial licensure - anyone who passed the examination prior to the amended date is required to apply for licensure by endorsement; 2) a requirement in the unprofessional conduct section for an optometrist to notify patients if his practice is to be terminated to give patients an opportunity to have his records sent to a like-provider or be destroyed; 3) an additional two hours of continuing education which may include record-keeping or CPR and a requirement that two of the 16 hours be in prescribing and administration of drugs if the optometrist is certified to use therapeutic pharmaceutical agents.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 primary advantages to the public of implementing the amended regulations are as follows: a) A change in date for acceptance of the national board examination offering a less burdensome avenue to initial licensure and a reduction in the hours of required continuing education for reinstatement of licensure may result in a very modest increase in the number of licensed optometrists available to provide services in the Commonwealth; b) To specify that it is unprofessional conduct for an optometrist to fail to notify patients if a practice is to be terminated to give the patient the opportunity to have his records transferred or destroyed will benefit consumers and offer protection against records being lost or not available; and c) An additional requirement for two hours of continuing education in prescription drugs for optometrists who use therapeutic pharmaceutical agents will offer some assurance that the practitioner is current in his knowledge of appropriate drug therapies.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified optometrists who have remained current in their knowledge and skills.

There is a definite advantage to the agency resulting from the elimination of board approval of individual continuing education courses. The amount of staff time consumed by that task will be available for licensing and disciplinary activities, and board members will no longer be burdened by hours of review and issues that often surrounded approval of courses. There will also be some modest reduction in expenditures of the board related to per diem for board member time. There is also the possibility that accepting continuing education hours in record-keeping may encourage optometrists to take courses in that area and thereby reduce the investigative and disciplinary load by one or two cases a year. The Board finds failure to keep adequate, complete records on patients is sometimes the genesis for substandard care or unprofessional conduct.

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.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on June 17, 2002. Public comment was requested for a 60-day period ending August 16, 2002; one written comment was received. A Public Hearing before the Board of Optometry was held on July 12, 2002 at which one comment was received on proposed regulations.

The Virginia Optometric Association provided a comment that was received on June 5, 2002. Although it was received prior to the official 60-day comment period, it has been summarized as follows:

- Requirements for reinstatement of a lapsed license should be equal to those for initial licensure and should include certification in diagnostic pharmaceutical agents (DPA).

Board response: Such a requirement would be more restrictive and burdensome. It was not addressed in the NOIRA and therefore should be addressed in the adoption of final regulations.

- Board should require all licensees to provide the address of principle practice location, as well as practice phone and fax numbers.

Board response: The issue was not addressed in the NOIRA and would be a more restrictive requirement. It is not a comment on proposed regulation, because there was no amendment proposed to section 30, containing the requirement for licensees to notify the Board of a current address.

- Requirement for release of eyeglass and contact lens prescription should be amended to provide that the optometrist can notify the patient at the time of examination of the date

of expiration of the prescription and note the date of the patient chart. After the expiration date, the optometrist would no longer be required to provide a prescription.

Board response: Such a requirement would amend Section 45 D. The Board did not address the issue in the NOIRA and did not propose any amendments to section 45. Therefore, the comment is not a comment on proposed regulations.

At the public hearing, the only comment received was from the Virginia Optometric Association as follows:

- Licensure by endorsement should require the applicant to meet requirements for certification of diagnostic pharmaceutical agents (DPA).

Board response: Same as the written comment.

- Licensure by endorsement should be restricted to applicants from states which likewise allow licensure by endorsement.

Board response: First, such a requirement would be more restrictive and would address an issue that was not identified in the NOIRA. Second, the principle of endorsement is to license practitioners who are in good standing and have met requirements substantially equal to those required for licensure in Virginia. It is not intended to be an enticement for other states to adopt similar provisions. The endorsement provisions should not penalize the individual optometrist seeking to relocate in the Commonwealth if he happens to come from a state that does not license by endorsement.

- The VOA supports a proposed requirement for 16 hours of continuing education annually.

Board response: The Board agrees that it is in the public's best interest for doctors of optometry to be current in clinical advancements and new technology.

- The VOA opposes a proposed requirement for 2 CE hours devoted to therapeutic pharmaceutical agents.

Board response: The VOA states that no other health care professional authorized to prescribe medications are required to have specific hours of CE, but that is not the case. Nurse practitioners, who have prescriptive authority, are required to obtain eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium. As TPA is a separate certification, the Board believes that two hours directly related to the prescribing and administration of therapeutic pharmaceutical agents is not unreasonable and does not add to the total requirement of acquiring the 16 hours for renewal.

- The VOA supports changing the licensure renewal date to coincide with the calendar year because the process will be simpler and may reduce the number of late renewals.

Board response: The Board agrees with the comment.

- The VOA supports the proposal to approve certain sponsors for CE courses by regulation and elimination of individual Board approval. It was suggested that the Council on Optometric Practitioner Education be removed from the list of approved sponsors, since COPE does not offer courses or programs.

Board response: The Board concurs that the current language referring to “sponsors” of continuing education is confusing, since certain organizations listed do not “sponsor” the courses but approve the entities that offer CE. Therefore, the Board has amended its proposed regulation to include the word “approved” in the language of *18 VAC 105-20-70. Requirements for continuing education.*

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 105-20-10. Licensure by examination.

- The date at which the national examination was determined to be comparable to the current examination needs to be amended from August 1993 to May 1985.

18 VAC 105-20-15. Licensure by endorsement.

- Clarification that licensure by endorsement is not available to an applicant who has previously licensed in Virginia is recommended. Such an applicant would need to request reinstatement under section 60.

18 VAC 105-20-20. Fees.

- During the promulgation of amendments to fees for other boards within the Department of Health Professions, principles were established to provide more consistency across boards for similar fees (such as late renewal) and a rationale for setting of fees relative to the basic renewal fee for each profession. Consequently, the late fee is being reduced from \$100 to \$50, and a late fee for renewal of a professional designation is established. The reinstatement application fee is now inclusive of the renewal fee, the late fee and the reinstatement fee.
- There is also a new fee for licensure verification, which is consistent with the identical fee charged by other boards.

- The fee for approval of continuing education courses has been eliminated because the board intends to discontinue its practice of approving individual courses and require potential course providers to seek approval from one of the board-recognized sponsors of continuing education.

18 VAC 105-20-40. Unprofessional conduct.

- In response to complaints from consumers, the Board proposes to add a section specifying that it is unprofessional conduct not to make a good faith effort to notify patients in a timely manner in the event a practice is being sold or terminated.

18 VAC 105-20-50. Professional designations.

- An amendment would clarify that an optometrist may practice with only one of the three types of professional designations listed.

18 VAC 105-20-60. Renewal of licensure; reinstatement; renewal fees.

- Consistent with the Principles for Fee Development established by the Department in 1999, the Board has adopted proposed amendments to permit late renewal of license for one year following expiration and reinstatement at any time following. It also proposes to reduce the burden on optometrists seeking reinstatement by specifying that they must satisfy continuing education requirements for the period the license was lapsed, not to exceed two years. A requirement of satisfying all the years of CE is very prohibitive for some optometrists seeking to return to Virginia to practice; many do not maintain records for all past years.
- To alleviate some of the confusion about continuing education requirements and assist licensees in compliance, the Board has revised its renewal schedule to a calendar year, rather than October 31st as is currently stipulated.

18 VAC 105-20-70. Continuing education.

- The board has increased the current requirement from 14 hours to 16 hours of continuing education per year, but two of those hours may now be courses related to record-keeping or cardiopulmonary resuscitation (CPR), both which would enhance or improve the services an optometrist could deliver to patients.
- The board also proposes to require optometrists who are certified in the use of therapeutic pharmaceutical agents to have two of the required 16 hours in courses directly related to prescribing and administration of drugs.
- Amendments are adopted to clarify the board policy regarding acceptance of hours – namely that the course must be approved by a recognized sponsor prior to the course being taken. There is also clarification about the requirement to pass a post-test if one is given and about the acceptable date for a correspondence course.

- Other changes that have been addressed include: adding a requirement for maintenance of supporting documentation for continuing education, a requirement to submit such documentation within 14 days of renewal if so requested by an audit, an exemption for new graduates in their initial renewal cycle, and clarification of what information must be on the CE documentation.
- Subsection G has been amended as follows: Since there are no specialty organizations or journals of optometric information networks recognized by the board in optometry, those groups of providers were eliminated. Regulations were amended to clarify that journals or electronically-offered courses from one of the recognized providers are acceptable. Finally, the final regulation adds the American Medical Association, Categories 1 and 2 continuing medical education and providers of training in CPR as approved providers. In the final regulation, continuing education may be sponsored or approved by one of the organizations listed.
- The Board approval of continuing education courses has been eliminated. To ensure that there are consistent standards by which the courses are approved, potential providers will be required to seek approval or sponsorship by one of the organizations, schools or entities listed in the regulation.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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 analysis of the final regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.