



## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Psychology, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 125-30
<b>Regulation title</b>	Regulations Governing the Certification of Sex Offender Treatment Providers
<b>Action title</b>	Experience requirement for certification; continuing education
<b>Date this document prepared</b>	2/18/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Board's proposal is response to a petition for rulemaking which requested fewer supervised hours in experience required for persons who already hold a license as a clinical psychologist and are attempting to qualify for certification as a sex offender treatment provider. The Board recommended that the regulations be amended to allow credit for supervised hours for licensed persons who are able to document that those hours were working with the sex offender population within the past ten years. The Board also recommends that certified sex offender treatment providers be required to have at least six hours of continuing education focused on the treatment of that population for annual renewal.

### 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 January 13, 2009, the Board of Psychology adopted final amendments for 18VAC125-20-10 et seq., Regulations Governing the Practice of Psychology.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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 Psychology 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 specific statutory mandate for the Board to establish requirements for mandatory certification of sex offender treatment providers is found in § 54.1-3605:

*§ 54.1-3605. Powers and duties of the Board.*

*In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:*

*1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*

*2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*

*3. To designate specialties within the profession.*

*4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*

*5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.*

*6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include*

*provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.*

*7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.*

Since courts and other institutions rely on the expertise of sex offender treatment providers to assess the mental condition of persons who are deemed as sex offenders, it is necessary to have a sufficient number of certified practitioners available, but also to ensure that those persons are competent, knowledgeable and current in that field. The purpose of the amended regulation is to recognize the post-degree clinical supervision an applicant has already attained for a mental health license if the hours were in the treatment and assessment of sex offender clients. Additionally, a practitioner who holds certification will be required to obtain six hours within the annual renewal period in topics related to the provision of sex offender treatment. The field of sex offender treatment is constantly evolving with are new developments, research and theories; it is essential for the health and safety of the public that persons charged with treating these clients are current in those developments to provide competent care for their clients and have sufficient knowledge to advise courts and others of the potential danger a person may pose to the public.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

An Ad Hoc Committee appointed by the Board reviewed the petition for rulemaking to amend the regulations to ease the supervision requirement for licensed individuals attempting to become certified as sex offender treatment providers (SOTP) to allow some of the licensure experience to be used to satisfy supervised practice requirements for the certification.

Based on the Committee recommendations, the Board adopted the following:

- Allow licensed professionals to count toward requirements for certification as a SOTP the hours of supervised experience in working with the sex offender population within the past 10 years by a licensed professional who will attest that he provided supervision only for those sex offender treatment services which he is qualified to render.

- Require that certified SOTPs complete six hours of continuing competency related to sex offender treatment each renewal year. The six hours required to satisfy the CE requirement for SOTP certification may be hours that are also counted toward completion of a CE requirement for another license, provided the hours are clearly directed at the diagnosis and treatment of the sex offender population.

Given that the sex offender population is potentially more dangerous to the health and safety of the public than the usual client or patient under the care of a mental health provider, the Board has determined that additional education and training is essential for public protection. However, a licensed mental health provider whose training and practice has included work with that population could be credited with some of the hours of supervised experience required for the additional certification. In addition, the demands of treating sex offenders and the expansion of knowledge in the field were considered in review of this regulation, and the Board concluded that some requirement for continuing education was necessary.

**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.*

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- 1) There are no disadvantages to the public. The changes will not significantly affect the quality or amount of supervision one receives in gaining experience in a mental health field but will allow a person to credit experience for one license towards SOTP certification. Likewise, continuing education obtained for licensure as a psychologist, counselor, social worker, etc. will count toward the SOTP certification renewal if directed towards treatment of the sex offender population. The public should benefit from both changes to encourage more certified practitioners who are current in their knowledge and skills.
  - 2) There are no advantages or disadvantages to the agency or the Commonwealth.
  - 3) There is no other pertinent matter of interest related to this action.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

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There were no changes to the text of the proposed regulation since the publication of the proposed stage.

**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.*

Proposed regulations were published in the Virginia Register of Regulations on August 4, 2008. Public comment was requested for a 60-day period ending October 3, 2008. A Public Hearing before the Board of Psychology was held on September 3, 2008. There were no comments received at the public hearing and none submitted in writing or electronically on the Townhall.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
50	n/a	Sets out the experience and supervision requirements for an applicant seeking certification as a sex offender treatment provider	<p>Allows an applicant who has obtained the required post-degree clinical experience for a mental health license within the past ten years to receive hours of credit for supervision experience for the sex offender treatment certification, if the applicant can document that the hours were in the treatment and assessment with sex offender clients; and the supervisor for the face-to-face hours can attest that he is licensed and qualified to render services to sex offender clients.</p> <p><i>If post-degree clinical experience hours have been supervised by a supervisor qualified to provide sex offender treatment and if the hours with sex offender clients were within the past 10 years (hours used to obtain another mental health license), the Board believes it is unnecessarily burdensome to require an additional 2,000 hours of experience with 100 hours of face-to-face supervision. This reduction in supervisory requirements will allow a few people to obtain sex offender certification, which will in turn make more practitioners available to the judicial and mental health systems.</i></p>
80	n/a	Sets out the requirement for annual renewal of certification	Adds a requirement for six hours of continuing education related to the provision of sex offender treatment. CE that is approved by another licensing board or by the Association for the Treatment of Sexual Abusers is acceptable to meet the

		<p>requirement. Hours used to satisfy renewal requirements for another license may satisfy the six-hour requirement for sex offender certification.</p> <p><i>The Board believes that anyone who holds this certification and is treating this population should direct some of his CE hours to the field of sex offender treatment.</i></p>
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**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There were no regulatory methods that will accomplish the objectives of applicable law.

**Family impact**

*Please assess the impact of the proposed 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 of the proposed regulatory action on the institution of the family and family stability.