



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-110-10 et seq.
Regulation Title:	Regulations Governing Licensed Acupuncturists
Action Title:	Inactive licensure
Date:	1/5/00

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amendments establish inactive licensure for acupuncturists pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications and requirements for reactivation of an inactive license or reinstatement of a lapsed license which include continuing competency as evidenced by recertification by the National Certification Commission for Acupuncture and Oriental Medicine.

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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 85-110-10 et seq.: Regulations Governing Licensed Acupuncturists was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license 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 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.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualification standards for renewal and to grant inactive licensure, the Code provides a mandate for licensure and involvement of the Advisory Committee on Acupuncture in:

§ 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists. --It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board.

In addition, it shall be unlawful for any person who is not licensed under this chapter, whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in

conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.

The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy or podiatry shall obtain written documentation that the patient had received a diagnostic examination from and had been referred by a licensed physician with regard to the ailment or condition to be treated. The regulations may include requirements for approved education programs, experience, examinations, periodic review of the diagnosis and treatment progress, and referral and rereferral of patients.

§ 54.1-2956.10. Requisite training and educational achievements of acupuncturists.--*The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.*

§ 54.1-2956.11. Advisory Committee on Acupuncture; composition; appointment.

The Advisory Committee on Acupuncture, hereinafter referred to as the "Advisory Committee," shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, licensure, and regulation of acupuncturists.

The Advisory Committee shall be appointed by the Board of Medicine and shall be composed of seven members. Six of the members shall serve terms of four years each. Three of these six shall be doctors of medicine, osteopathy, or podiatry who are licensed to practice acupuncture in Virginia, and three of these six shall be licensed acupuncturists. The seventh member shall be a member of the Board of Medicine and shall serve at the pleasure of the president. Of the initial members so appointed, the three licensed acupuncturists shall be individuals, other than licensed practitioners of medicine, osteopathy, or podiatry, who are licensed to practice acupuncture in another state but are residing in Virginia. Thereafter, the three members who are licensed acupuncturists shall be residents of Virginia who are licensed as acupuncturists by the Board of Medicine and who are not also licensed by the Board to practice medicine, osteopathy, or podiatry. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term. No person shall be eligible to serve on the Advisory Committee for more than two successive terms.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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 proposed amendments is to establish inactive licensure for acupuncturists pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications and requirements for reactivation of an inactive license which are consistent with protection of the public health and safety.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications fees and conditions for reactivation of inactive licensure.

The Board of Medicine currently requires a licensed acupuncturist to maintain current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in order to renew a license. NCCAOM requires 60 PDA's (professional development activities) within a four-year recertification period and practice of 250 patients during a 12-month period within the last 4 years. For someone who is not planning to actively practice for a period of time, it may be unnecessarily burdensome to have to take the continuing education hours required by NCCAOM to maintain certification. By taking an inactive status, the licensee is not required to maintain certification but is also not permitted to practice. If the licensee wants to reactivate a license, it would be necessary to provide documentation that he has first taken the continuing education hours necessary to reactivate his certification with NCCAOM. There needs to be some assurance that a practitioner with an inactive license has maintained or relearned some of the minimal knowledge and skills necessary to practice with safety. Certification by the NCCAOM is the standard by which the Board judges such competency.

In proposing regulations for an inactive license, the Board determined that it was also necessary to amend the requirements for reinstatement of a license expired for two years or more. Within the two years after expiration, a licensee may renew by payment of the renewal fee and an administrative fee, providing the licensee is qualified for renewal. After two years, the expired license may only be reinstated by submission of a reinstatement application which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia and payment of a reinstatement fee. Information on practice and licensure in other jurisdictions is necessary in order for the Board to have assurance that the applicant has been practicing safely and has been licensed without disciplinary action. The Board maintains the authority to refuse to reinstate or renew a license of someone who has violated provisions of law or regulation.

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 providing detail of the regulatory action's changes.

Proposed amendments create an inactive license for acupuncturists who are not actively practicing in the Commonwealth and set the requirements for reactivation of licensure.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

ISSUE 1: Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

The Board of Medicine currently requires a licensed acupuncturist to maintain current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in order to renew a license. NCCAOM requires 60 PDA's (professional development activities) within a four-year recertification period and practice of 250 patients during a 12-month period within the last 4 years. For someone who is not planning to actively practice for a period of time, it may be unnecessarily burdensome to have to take the continuing education hours required by NCCAOM to maintain certification. By taking an inactive status, the licensee is not required to maintain certification but is also not permitted to practice. If the licensee wants to reactivate a license, it would be necessary to provide documentation that he has first taken the continuing education hours necessary to reactivate his certification with NCCAOM.

Advantages and disadvantages

There are no disadvantages for the public which remains protected by requirements that assure that a licensed acupuncturist is current in his skills and knowledge. By requiring an inactive licensee to be recertified by the NCCAOM, the Board is providing assurance of minimal competency as it does in initially granting a license to practice. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license.

ISSUE 2: Requirements for renewal and reinstatement of an expired license.

The Board proposes to delete the provision that would permit a licensee to renew without if they were not initially NCCAOM certified if the licensee provided evidence of continuing competency substantially equivalent to requirements for NCCAOM recertification. That provision is now unnecessary because NCCAOM is required for initial licensure; it was put in the regulations because one individual was initially licensed without NCCAOM certification. That individual now has NCCAOM certification, so the regulation is no longer needed.

In proposing regulations for reactivation of an inactive license, the Board determined that it was also necessary to amend requirements for reinstatement of a license expired for two years or more to state that the expired license may only be reinstated by submission of a reinstatement application

which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia.

Advantages and disadvantages

The proposed regulation protects the public by requiring that the applicant provide complete information on practice and licensure in other jurisdictions during that period. That provides the Board with an opportunity to check on the safety and professionalism of the licensee who may have been in practice elsewhere during the time the license was lapsed in Virginia. The Board also maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The potential loss of income to the Board from persons who choose inactive licensure is minimal, since it is estimated that only 2 or 3 licensees will become inactive. In the "Principles for Fee Development" adopted by the Board for a revised fee structure, it was contemplated that the inactive licensure renewal would be approximately half of the active licensure renewal per biennium. That could result in slightly reduced revenue to the Board. However, without the option of requesting an inactive license, those persons may choose to drop their license in Virginia, which would result in a greater loss of revenue each biennium.

Projected cost on localities:

There is no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed acupuncturists who are not now or who may choose to not actively practice in Virginia.

Estimate of number of entities to be affected:

Out of the 52 licensed acupuncturists in Virginia, it is estimated that only 2 or 3 will choose inactive licensure.

There would be no additional costs for compliance with these regulations for the licensed acupuncturists in Virginia.

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 cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 85-110-150. Biennial renewal of licensure.

A proposed amendment would delete the provision that a person could renew license if he was not originally NCCAOM certified, if he provided evidence of continuing competency substantially equivalent to the requirements for NCCAOM recertification. Other amendments to this section are editorial and not substantive.

18 VAC 85-110-155. Inactive licensure

The proposed new section would establish a category of inactive licensure and specify that such a license holder is not required to maintain certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), but is likewise not entitled to practice acupuncture.

To reactivate an inactive license, the acupuncturist is required to provide documentation of having renewed or maintained NCCAOM certification and to pay the difference between the current inactive and active renewal fee.

The Board reserves the right to deny a request for reactivation to any person determined to have committed a violation of these regulations or of § 54.1-2914 of the Code of Virginia.

18 VAC 85-110-160. Reinstatement.

Amendments to the section on reinstatement add a requirement for information on practice and licensure in other jurisdictions during the period in which the license was lapsed in Virginia. That information is currently required on the application but has not been so stated in regulation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Department originally submitted proposed regulations on inactive licensure for review by the Department of Planning and Budget on April 6, 1999. Subsequently, the Board determined that the fee structure for all applicants and licensees had to be revised, and this regulatory package was withdrawn pending approval of amended regulations for increased fees. The "Principles for Fee Development" adopted by the Department assumes that the biennial renewal fee for inactive licensure will be half that of active licensure. While the fees have not been amended in this proposal, the fee for inactive licensure will be incorporated into the proposal for amended fees during the final adoption of regulations.

In considering requirements for reactivation of an inactive license, the Board determined that the public remains protected by requirements that assure that licensed acupuncturists are current in their skills and knowledge. By requiring an inactive licensee to be recertified by the NCCAOM, the Board is providing assurance of minimal competency as it does in initially granting a license to practice. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license.

The Board also determined that the proposed regulation should protect the public by requiring that the applicant provide complete information on practice and licensure in other jurisdictions during that period. The Board maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Notice of Intended Regulatory Action was published on September 28, 1998 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was October 28, 1998 and there was no comment received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Prior to the adoption of proposed regulations by the Board, the Advisory Committee on Acupuncture and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language that was adopted had the approval of the licensed acupuncturists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board, including the citizen members.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Committee and the Legislative Committee of the Board will review this set of regulations in 2002 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential 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.

The agency has reviewed the proposed regulation in relation to its impact on the institution of the family and family stability. There would be no effect of the proposal on the authority and rights of parents, economic self-sufficiency or the marital commitment. Since the proposed regulation will permit a person who is not actively practicing in Virginia to get an inactive license at a reduced fee, there could be a very minimal effect on disposable family income.