



Final Regulation Agency Background Document

Agency name	Board of Optometry, Department of Health Professions	
Virginia Administrative Code (VAC) citation	18 VAC 105-20-10 et seq. 18 VAC 105-30-10 et seq.	
Regulation title	Regulations Governing the Practice of Optometry	
Action title	Amendments to Chapter 20 to incorporate TPA certification Repeal of Chapter 30 – current TPA regulations	
Document preparation date	September 13, 2005	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The second enactment clause of Chapter 744 of the 2004 Acts of the Assembly, which states “*That the Board of Optometry shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment,*” required the Board to adopt emergency regulations to incorporate the requirements for initial licensure with therapeutic pharmaceutical agents (TPA) certification, fees for applications and renewals, and the continuing education requirement for TPA-certified optometrists into Chapter 20, Regulations Governing the Practice of Optometry. This action is necessary to replace the emergency regulations that have been in effect since December 8, 2004.

The Board is also repealing Chapter 30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.

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 September 13, 2005, the Board of Optometry adopted final amendments to 18 VAC 105-20-10 et seq., Regulations Governing the Practice of Optometry and repealed 18VAC105-30-10 et seq. Regulations for Certification for Therapeutic Pharmaceutical Agents, in order to implement Chapter 744 of the 2004 Acts of the Assembly requiring all newly licensed optometrists to have TPA certification.

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 (6) provides the Board of Optometry 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. ...*

Chapter 744 of the 2004 General Assembly mandates the promulgation of regulations for optometrists newly licensed in Virginia to be TPA certified:

<http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0744>

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.

The purpose of the regulatory action is to implement provisions of Chapter 744 of the 2004 General Assembly, which requires that all persons newly licensed to practice optometry after June 30, 2004 must meet the qualifications for a TPA-certified optometrist. Therefore, the general regulations for the practice of optometry are being amended to incorporate the qualifications for TPA certification that are currently found in a separate chapter of the VAC. Since TPA qualification is now a prerequisite for licensure, the Board has amended examination requirements to allow entry into Virginia for optometrists who may have been TPA-qualified by an examination other than the NBOE examination including TMOD. The goal of the regulation is to maintain the standard for TPA certification but reduce the cost and allow for some flexibility in applying the requirements for evidence of minimal competency.

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.

Amendments are proposed to incorporate the requirement for certification in therapeutic pharmaceutical agents into the qualifications for initial licensure in optometry, as mandated by Chapter 744 of the 2004 General Assembly. Modifications to the current rules for TPA will allow the Board the flexibility to 1) accept examinations other than the TMOD portion of the national examination, which is the current standard for licensure; and 2) order some type remediation for someone who has failed the TMOD three times rather than require a postgraduate educational program for such a candidate. Fees for general licensure and TPA certification are combined and the total amount reduced for optometrists who hold both credentials.

Since a separate set of regulations has been in effect for certification of TPA and that is now a requirement for initial licensure, Chapter 30 is repealed.

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.

Advantages or disadvantages to the public:

There are no advantages or disadvantages to the public. Requirements for TPA certification have not been changed by this action; they are being moved from a separate set of regulations into the general regulations for optometry in Chapter 20.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency or the Commonwealth. More specificity in the rules for optometry may alleviate questions and misunderstandings from applicants.

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.

Since publication of the proposed stage, the application fee for TPA certification that was set out in Chapter 30 has been incorporated to accommodate those optometrists who previously held a license without TPA certification but are now applying to have the additional credential. In addition, the Board realized that the requirement for 2 hours of continuing education relating to use of therapeutic pharmaceutical agents was already included in Section 70 A 2, so the amendment to A 1 was deleted.

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 on May 30, 2005 with a 60-day comment period ending July 29, 2005. A public hearing on the proposed regulation was held on June 8, 2005. There were no written or oral comments.

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, if applicable	Current requirement	Proposed change and rationale
105-30-10	105-20-05	Sets out the definitions for “board,” “TPA,” and “TPA certification”	There is no change in the definitions, other than relocation to a new section in Chapter 20.
105-30-30	105-20-10 105-20-15	Sets out the requirements for an applicant to be licensed as an optometrist	These sections are amended in accordance with an amendment to § 54.1-3221, which specifies that everyone initially licensed as an optometrist after June 30, 2004 must meet the qualifications for a TPA-certified optometrist.

<p>105-30-35 105-30-40</p>	<p>105-20-16</p>	<p>Sets out the education and examination requirements for TPA certification & specifies postgraduate training for someone who fails the TMOD examination 3 times</p>	<p>1) Requirements for completion of a graduate level training program approved by the board with a minimum of 20 hours of clinical supervision by an ophthalmologist are identical to current rules in Chapter 30 and consistent with provisions of § 54.1-3223. 2) Requires passage of the TMOD portion of the national examination or of another examination acceptable to the Board; or if TPA-certified in another state based on a state examination, requires the applicant to document that the exams were comparable. <i>(TMOD is the standard by which the vast majority of optometrists are qualified to be TPA-certified. Presently, TMOD is one portion of the NBOE exam taken by all graduates of optometric schools and accepted in all states. There may be an occasionally applicant who has been TPA-certified in another state based on passage of that state exam, so the Board wanted to be able to license that person if the exams were comparable. In addition, there is an examination in development that would replace the current examination and would have a different name, so the Board has provided that it may accept other examinations in order to be able to recognize any replacement for TMOD.)</i> 3) Current regulations require an applicant who fails the examination 3 times to repeat the portion of postgraduate educational program relating to TPA's. Optometric schools will no longer be offering separate & distinct TPA training, so it may be too burdensome to maintain the current rule. At the request of the Board, the optometry schools have fashioned remedial courses for applicants or optometrists who are the subject of a disciplinary action. Therefore, the Board has modified the current language to require an applicant who failed TMOD three times to complete additional postgraduate training as determined by the board (through a hearing before the Credentials Committee)</p>
<p>105-30-120</p>	<p>105-20-20</p>	<p>Sets the fees for applications, renewal, late renewal and other miscellaneous processes</p>	<p>Fees for TPA certification are incorporated into the fees for licensure and will result in a net reduction for practitioners. Application fee – Currently \$245 for optometric license and \$200 for TPA certification – <i>New fee is \$300 for both.</i></p>

			<p>A fee for endorsement of certification to use DPA's is being eliminated because current regulations require every optometrist, whether newly licensed by examination or endorsement, to be DPA-qualified. It is now part of the application process and not a separate endorsement.</p> <p><i>Application fee for TPA certification - \$200 – transferred from TPA regulations for currently licensed optometrists who want to add the TPA credential</i></p> <p>Annual licensure renewal without TPA certification – <i>unchanged at \$150</i></p> <p>Annual licensure renewal with TPA certification – Currently \$150 for license plus \$75 for TPA certification – <i>New fee is \$200 for both.</i></p> <p><i>Late renewal fees are approximately 1/3 of the annual renewal fee, consistent with the Principles for Fee Development.</i></p>
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Repeal of Chapter 30: The “**current section numbers and requirements**” reference those found in Chapter 30, which is being repealed in this action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
105-30-10		See above chart	Relocation to a new section in Chapter 20 (section 05).
105-30-20		Refers the Public Participation Guidelines in Chapter 10	Repealed; no similar amendment to Chapter 20 is necessary.
105-30-30		See above chart	Provisions in section 30 of Chapter 30 are included in amended sections 10 and 20 of Chapter 20.
105-30-35 105-30-40		See above chart	Provisions of sections 35 and 40 of Chapter 30 are now included in amended section 16 of Chapter 20.
105-30-60 105-30-70		Sets out the treatment guidelines and formulary of TPA's that may be used	Provisions of sections 60 and 70 are being amended and promulgated in Chapter 20 under an exemption from the APA but in accordance with specific requirements for recommendation from a TPA Formulary Committee, notification, public hearing, and

105-30-90		See above chart	publication of proposed and final regulations. These sections will become sections 46 and 47 within Chapter 20. A requirement for 2 hours of continuing education related to prescribing and administration is incorporated into section 70 of Chapter 20. Renewal will be simultaneous with renewal of a license to practice optometry.
105-30-100		Sets out provisions for expiration of TPA certification and requirements for reinstatement	Requirements for renewal and reinstatement are provided in section 60 of Chapter 20 and are now being amended.
105-30-120		See above chart	Fees for TPA certification are incorporated into section 20 of Chapter 20.

Family impact

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

There is no impact of the proposed regulatory action on the institution of the family and family stability.