



**Virginia
Regulatory
Town Hall**

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic
Action Title:	Felony conviction on profile
Date:	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Board of Medicine intends to amend its regulations to comply with a statutory mandate found in § 54.1-2910.1 as amended by Chapter 199 of the 2001 Session of the General Assembly. While the statute requires all physicians of medicine or osteopathy and all podiatrists to report and make available information about the conviction of any felony, the Board must specify in regulation the nature and format of the information to be reported.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic were 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 promulgate regulations.

§ 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 specific statutory mandate for the Board to include felony convictions on the physician profile is found in:

§ 54.1-2910.1. Certain data required.

The Board of Medicine shall require all physicians of medicine or osteopathy and all podiatrists to report and shall make available the following information:

- 1. The names of medical schools or schools of podiatry and dates of graduation;*
- 2. Any graduate medical or graduate podiatric education at any institution approved by the Accreditation Council for Graduation Medical Education, the American Osteopathic Association or the Council on Podiatric Medical Education;*
- 3. Any specialty board certification or eligibility for certification as approved by the American Board of Medical Specialties or the Council on Podiatric Medical Education of the American Podiatric Medical Association;*
- 4. The number of years in active, clinical practice as specified by regulations of the Board;*
- 5. Any insurance plans accepted, managed care plans in which the physician or podiatrist participates, and hospital affiliations;*
- 6. Any appointments, within the most recent ten-year period, of the physician to a medical school faculty or of the podiatrist to a school of podiatry faculty and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;*
- 7. The location of any primary and secondary practice settings and the approximate percentage of the physician's or podiatrist's time spent practicing in each setting;*

8. *The access to any translating service provided to the primary practice setting of the physician or podiatrist;*

9. *The status of the physician's or podiatrist's participation in the Virginia Medicaid Program;*

10. *Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ [54.1-2906](#), [54.1-2908](#), and [54.1-2909](#) that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action;*

11. ***Conviction of any felony; and***

12. *Other information related to the competency of physicians or podiatrists as specified in the regulations of the Board.*

The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a physician or a podiatrist. The regulations promulgated by the Board shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement.

(1998, c. 744; 1999, c. 573; 2000, c. 199; 2001, c. 199.)

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

While the Board has not determined the exact nature of the regulatory action to be taken, it will amend Part VII. Practitioner Profile System and will either amend section 280 which sets out the required information on the profile or add a new section to the regulation for reporting of felony convictions. The purpose of the regulatory action is to specify what information related to a felony conviction a practitioner must provide to the public on the profile. If the regulation was amended to strictly conform to the statutory mandate, the only information required would be a response of “yes” or “no” to a section on felony convictions. A response of “yes” would certainly be incomplete information and would raise concerns and questions for persons who are seeking information about a doctor. In order to appropriately protect the public health and safety, the Board has determined that the profile should include additional information about the felony conviction to include such things as a date, description and jurisdiction in which the felony occurred.

The primary issue is related to the nature and format of the information; various alternatives for addressing the issue are discussed in the section below. The Board will consider the comments it

receives from interested parties as a result of publication of the Notice of Intended Regulatory Action to determine the appropriate regulatory action.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Board of Medicine is required by § 54.1-2910.1, as amended by the 2001 Acts of the Assembly, to include information about felony convictions on the physician profile system. That section of the Code also requires the Board to provide information about any disciplinary action that has been taken against a licensee. Since 1993, the Code of Virginia (§ 54.1-2409) has required that the license, certificate or registration of a health care professional be mandatorily suspended upon receipt of documentation from a court or another regulatory agency about conviction of a felony. Clerks of court are required by that section and by § 54.1-2909 of the Medical Practice Act to report the felony conviction of a person known to be a licensed doctor. Therefore, felony convictions that occurred after 1993 (if reported to the Board) resulted in a mandatory suspension and would already be shown on the physician profile with the Board order attached.

Since 1958, the Code of Virginia has required felony convictions on physicians to be reported by courts, and since 1986, physicians have been required to self-report any felony conviction. Therefore, it is likely that any felony conviction for an actively practicing physician would be known by the board and likely that it would have resulted in some disciplinary action being taken.

A regulatory provision would likely require the practitioner to report a description or nature of the felony conviction or crime committed, the date of the conviction and the jurisdiction in which the conviction occurred. Questions remained about whether information should also include the Code section that was violated and the sentence that was imposed. There are also questions about whether the Board should require a copy of the court order to be attached to the profile with a link to this regulation and about whether the practitioner must report if a conviction has been overturned by another court.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income.