



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 the Practice of Licensed Acupuncturists
Action Title:	Regulatory review
Date:	

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

Amendments are proposed in response to a periodic review of regulations to provide consistency in the educational requirements with the national certifying body and to address concerns about the unnecessary burden placed on applicants with a foreign education in acupuncture. Other amendments are recommended to clarify certain provisions of the regulations.

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.

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 legal authority to promulgate regulations for the licensure of acupuncturists is found in §§ 54.1-2956.9 through 54.1-2956.11 (<http://leg1.state.va.us/000/lst/h3301029.HTM>)

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed 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 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 regulatory action is to clarify and update the regulations pursuant to a periodic review and to amend an unnecessarily burdensome requirement for foreign-trained acupuncturists. The updated educational requirements will make compliance less burdensome for applicants, since the total number of hours required may be reduced. In addition, the proposed educational requirements (after July 1, 1999) must include clinical hours as well as didactic course work. Clinical hours in observation or internship prior to licensure are integral in the preparation for competent acupuncture practice, so the proposed requirements are essential to protect the health and safety of consumers of acupuncture treatment.

The major problem being addressed affected only a small number of applicants or potential licensees who have received their acupuncture education outside the United States and have moved into Virginia. These individuals are caught in a regulatory bind that is burdensome and which the Board has now determined is unnecessary. Currently, such an individual must repeat his acupuncture education in the U.S. (which is impossible for most whose English is very limited) or they must be licensed by another state and practice there for four years (which may also be impossible if their residence is in Virginia). The Board is confident that a transcript review by a credentialing evaluation service and passage of the national certification examination is sufficient evidence to ensure minimal competency to practice.

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.

Regulations will clarify certain sections of the regulation for consistency with current terminology and practice. Educational requirements are amended to make them less burdensome for applicants and for conformity with the national certifying body. The requirement for licensure and practice in another state prior to applying to Virginia for foreign-trained acupuncturists is eliminated.

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.

Advantage or disadvantages:

There are no disadvantages to the public. There may be an advantage to a narrow segment of the population that will benefit from the services of foreign-trained acupuncturists who are currently unable to obtain a license in Virginia. Likewise, there may be some acupuncturists who will be able to open a practice or create a small business who are presently barred from licensure. The public continues to have some assurance of the competency of acupuncture practitioners by requirements for certification by NCCAOM that include continuing education.

There are no advantages or disadvantages to the agency, since there are no additional tasks or responsibilities involved in compliance with these regulations.

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 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 one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. The development of proposed regulations has occurred in conjunction with scheduled meetings of the advisory committee, legislative committee and the full board. Every effort will be made to incorporate notices and hearings into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are 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.

Estimate of number of entities to be affected:

Currently, there are approximately 157 acupuncturists who are licensed by the Board of Medicine to practice acupuncture.

Projected costs to the affected entities:

There should be no additional costs to the affected entities for compliance.

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 85-110-10. Definitions.

The definitions of CCAOM and NCCAOM include the names of previous organizations that these terms replaced. That language is now outdated and unnecessary and may be deleted.

18 VAC 85-110-30. Non-restriction of doctors of medicine, osteopathy, chiropractic and podiatry.

Since these regulations govern the practice of licensed acupuncturists, this section is unnecessary. The qualification of doctors to practice acupuncture is addressed in regulations governing their licensure (18 VAC 85-20-10 et seq.)

18 VAC 85-110-50. Educational requirements.

Amendments to regulations are recommended to mirror the current educational requirements of the NCCAOM. Those include graduation from acupuncture program with at least 1,725 hours of entry-level acupuncture education. If an applicant was enrolled in a program on or after July 1, 1999, that program would have to be NCCAOM accredited. Educational hours must include 1,000 hours of didactic education and 500 clinical hours, including observation, internship or treatment. The remaining 225 hours may be either didactic or clinical. Hours must also be gained in a classroom or clinical setting rather than through a correspondence program.

Applicants who obtained their education prior to July 1, 1999 would continue to be eligible for licensure under the current requirements.

18 VAC 85-110-60. Requirements of graduates of non-approved educational programs in acupuncture.

The Board is recommending amendments to delete the requirement for four years of practice in another jurisdiction. Instead the applicant who attended acupuncture school in a foreign country must submit his transcripts to a foreign credential evaluation service to determine if his education and training was equivalent to that required for certification by the NCCAOM.

18 VAC 85-110-70. Part-time study.

The prohibition on part-time study of more than five years should be eliminated in this section and the prohibition against correspondence courses addressed in the educational requirements listed in section 50.

18 VAC 85-110-80. Examination requirements for licensure.

The regulation needs to be clarified to state that the Board requires current NCCAOM certification at the time the applicant applies for licensure. Certification is also a requirement to renew an active license, so it is necessary for the acupuncturist to hold current certification at the time of applying for licensure and to maintain his certification.

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

The current regulation states that the applicant must attest to having documentation of current certification by NCCAOM; that seems to confuse some applicants and lead them to believe they must submit that documentation to renew a license. The recommended change is to delete the words “documentation of” and require them to attest to having current certification.

18 VAC 85-110-155. Inactive licensure.

The Board recommends elimination of the requirement to provide information on practice and licensure in other jurisdictions for the period in which the license was inactive. That is not required for other professions regulated by the Board and is unnecessarily burdensome.

18 VAC 85-110-160. Reinstatement.

The regulation needs to be clarified to state that the Board requires NCCAOM certification to be active as well as current at the time the applicant applies for reinstatement.

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.

1. Educational requirements.

In current regulations there are different requirements for persons who received their acupuncture education before 1990 and those who were educated after 1990. In addition, the NCCAOM has educational requirements for those sitting for the certification examination. The disparity of requirements can be confusing for a candidate for licensure in Virginia. Currently, Virginia requires a minimum of three academic years equivalent to 90 semester hours. Beginning in July of 1999, the NCCAOM requirements are stated as 1725 contact hours in acupuncture education, with at least 1,000 hours in didactic education, 500 clinical hours and the remaining 225 in either.

Since Virginia requires a candidate to pass the NCCAOM comprehensive examination resulting in certification by NCCAOM, it seems logical for the educational requirement for licensure to be consistent with the current requirements of the certifying body. Adopting the NCCAOM

educational standard would not increase the regulatory burden. A semester hour is generally the equivalent of 20 contact hours.

2. Requirements for acupuncturists who had their training and education in a foreign country.

On several occasions, the Board has been petitioned by a candidate for licensure who does not meet the practice requirement for foreign-trained acupuncturists. For example, an acupuncturist who was otherwise well-qualified (foreign-trained and practicing in another country) moved to Virginia before she had the opportunity to practice in another state for four years. Current regulations have placed an unreasonable requirement on this person, because her only options are to repeat her acupuncture education in an accredited program in the U.S. or move out of state to satisfy the practice requirement. The Board has determined that the requirement is an unnecessary hindrance. Assurance by a credentials review service that the acupuncture education in a foreign country is equivalent to the requirements of the Board should be sufficient to assure public protection and should be required. In addition, every candidate for licensure will continue to be required to pass the national examination in acupuncture and become certified.

Public Comment

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

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until May 8, 2002. During the 30-day comment period, no comments were received from members of the public, but there have been numerous requests for an amendment to the requirements for foreign-trained acupuncturists who are caught in a “catch-22” position that prohibits them from becoming licensed in Virginia.

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.

The Advisory Committee on Acupuncture, comprised of licensed acupuncturists, physician acupuncturists and members of the Board met to work on draft regulations and made suggestions to clarify certain portions. The Assistant Attorney General who provides counsel to the Board has been involved during the adoption of proposed regulations to ensure clarity and compliance with law and regulation. Since the regulations were drafted and approved in conjunction with those regulated entities, the Board is satisfied that the regulation is clearly written and will be easily understandable by the individuals affected. .

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.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2004-05 fiscal year.

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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There may be a very modest increase in family income for the foreign-trained acupuncturist who live in Virginia and are unable to meet the current requirements for licensure and are therefore unable to practice their profession.