



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Standards of conduct
Document preparation date	11/20/07

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In its proposed regulatory action, the Board intends to clarify and amend certain provisions of the section on unprofessional conduct to address certain issues and licensee conduct that has been problematic. The Board will consider adding language relating to retention and destruction of patient records, disclosure of disciplinary actions in other states or malpractice judgments or settlements, prescribing and treating self or family members, practicing with an expired license or registration, sexual misconduct and other areas of practitioner conduct.

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 number(s), 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 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. ...*

The Code of Virginia has established grounds for disciplinary actions by the Board of Optometry against its licensees. Regulations on standards of conduct would expand and clarify the statutory provisions.

§ 54.1-3215. Reprimand, revocation and suspension.

The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:

1. *Fraud or deceit in his practice;*
2. *Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;*
3. *Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;*
4. *Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;*
5. *Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;*
6. *Practicing optometry while suffering from any infectious or contagious disease;*
7. *Neglecting or refusing to display his license and the renewal receipt for the current year;*
8. *Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;*
9. *Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;*
10. *Employing, procuring, or inducing a person not licensed to practice optometry to so practice;*
11. *Aiding or abetting in the practice of optometry any person not duly licensed to practice in this Commonwealth;*
12. *Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license;*
13. *Lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this Commonwealth;*
14. *Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;*

15. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;

16. Violating other standards of conduct as adopted by the Board;

17. Violating, assisting, inducing or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

At its meeting on September 26, 2007, the Legislative/Regulatory Committee of the Board reviewed unprofessional conduct regulations of other boards within the Virginia Department of Health Professions and also looked at the optometry regulations of other states. The Committee recommended making at least the following changes in the standards of conduct:

- 1) Adding language relating to treating self and family mirrored after the Board's guidance document on the subject;
- 2) Adding language on record retention and a requirement to post or inform patients of patient record retention and destruction policies;
- 3) Adding a prohibition against failure to disclose disciplinary action in another state and malpractice cases;
- 4) Renaming of the section on Unprofessional Conduct to Standards of Conduct;
- 5) Including violation of Drug Control Act in the standards of conduct;
- 6) Requiring provisions for 24-hour patient care coverage;
- 7) Referencing §54.1-2405 (transfer of patient records, closure or sale of practice).
- 8) Including language regarding the practice on an expired or unregistered professional designation.
- 9) Including provisions for sexual misconduct as grounds for disciplinary action

After publication of the Notice of Intended Regulatory Action, the Board will consider any comment received and will utilize regulations from other boards and a compilation of unprofessional conduct provisions from other states to determine those provisions that should be set out in regulation to ensure that the Board has the necessary authority to protect the public health and safety from unprofessional conduct or substandard care.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Board has been aware that there was practitioner misconduct or substandard patient care not currently addressed in law or regulation. In some cases, current provisions are general enough to incorporate that conduct and establish grounds for disciplinary actions. However, there is a need to further specify certain provisions in order to give licensees a more precise regulatory standard by which to practice and to authorize the Board to act more decisively.

To assist board members in consideration of issues relating to unprofessional conduct, board staff compiled an extensive document consisting of regulations of other health profession boards (Medicine, Audiology & Speech-Language Pathology, Counseling, Physical Therapy, Psychology & Nursing) and of optometric regulations from most other states. From that document, the Board has identified a number of provisions that are necessary for public protection in Virginia. In the development of regulatory language, the Board will identify conduct that should be addressed in regulation and will utilize applicable regulations from other sources.

Family impact

Assess 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.

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