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Proposed Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC125-20
Regulation title(s)	Regulations Governing the Practice of Psychology
Action title	Periodic review
Date this document prepared	5/23/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Board has updated its regulations for consistency and clarity, reduced the regulatory hurdle for licensure by endorsement, increased the opportunities for continuing education credits, specified a time frame within which an applicant must have passed the national examination, and simplified the requirement for individual supervision in a residency. The Board also proposes to require all psychology doctoral programs to be accredited by the American Psychological Association, the Canadian Psychological Association or another accrediting body acceptable to the Board within three years of the effective date of the regulation. Finally, the Board has revamped its regulations on standards of conduct to emphasize rules for professionalism, confidentiality, client records, and prohibitions on dual relationships.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA = American Psychological Association

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Regulations of the Board of Psychology are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

§ 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 (§2.2-4000 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 statutory powers and duties of the Board are found in:

§ 54.1-3605. Powers and duties of the Board.

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.
2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.
3. To designate specialties within the profession.
4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.

5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.
6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.
7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.

The requirement for licensure of psychologists is found in:

§ 54.1-3606. License required.

A. In order to engage in the practice of applied psychology, school psychology, or clinical psychology, it shall be necessary to hold a license.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

Additional standards of conduct and causes for disciplinary action will provide further guidance to psychologists on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The Board has updated its regulations for consistency and clarity, reduced the regulatory hurdle for licensure by endorsement, increased the opportunities for continuing education credits, specified a time frame within which an applicant must have passed the national examination, and simplified the requirement for individual supervision in a residency. The Board also proposes to require all psychology doctoral programs to be accredited by the American Psychological Association, the Canadian Psychological Association or another accrediting body acceptable to the Board within three years of the effective date of the regulation. Finally, the Board has revamped its regulations on standards of conduct to emphasize rules for professionalism, confidentiality, client records, and prohibitions on dual relationships.

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.

- 1) The primary advantage of the amendments is greater protection for clients who receive treatment with psychologists through enhanced and clarified standards of practice and grounds for disciplinary action. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “*promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.*” Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statutory obligation of the Board to protect the safety and health of clients/patients in the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the

agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There are no costs to the state for implementation or enforcement; all funding for the Board is derived from fees charged to applicants and licensees.										
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities.										
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	All persons regulated under this chapter could potentially be affected by changes to the standards of conduct. A few applicants for licensure by endorsement will be positively affected by the proposed amendments.										
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	<table border="0" style="width: 100%;"> <tr> <td>Applied psychologists</td> <td style="text-align: right;">32</td> </tr> <tr> <td>Clinical psychologists</td> <td style="text-align: right;">3, 477</td> </tr> <tr> <td>School psychologists</td> <td style="text-align: right;">104</td> </tr> <tr> <td>School psychologists-limited</td> <td style="text-align: right;">664</td> </tr> <tr> <td>Residents</td> <td style="text-align: right;">878</td> </tr> </table> <p>The Board is aware of two on-line programs that are not APA-accredited and have a small number of students currently enrolled. Because of the delayed effective date on the proposed</p>	Applied psychologists	32	Clinical psychologists	3, 477	School psychologists	104	School psychologists-limited	664	Residents	878
Applied psychologists	32										
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	requirement for accreditation, those students would not be affected. Those programs are Capella and Walden Universities.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no additional costs for the new or amended regulations.
Beneficial impact the regulation is designed to produce.	The beneficial impact would be greater clarity and accountability to clients. A reduced requirements for years of licensure may encourage a few psychologists to apply for licensure by endorsement.

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since the requirements for licensure and practice are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Kristian Maul & Andrea Miller Capella University	Requested two alternatives to the proposal for requiring APA accreditation of doctoral education programs: 1) Allow for program evaluations in which the Board would determine in the educational program was equivalent to an accredited program; the Board should be able to charge a fee for such a review. 2) Allow a grandfather period to protect existing Virginia students	The Board has considered the comment and does not intend, at this time, to amend regulations to allow for an equivalency review; the Board did propose a delayed date of the accreditation requirement of seven years after the regulation becomes effective to allow ample time for any student enrolled in an on-line program to complete the coursework.

Family impact

Please assess the impact of this 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 on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Sets out definitions for words and terms used in the chapter	The Board has added definitions for the terms “CAEP,” “CPA,” “face-to-face,” “intern,” “practicum student” and “resident” for clarity in the use of those terms in the context of the regulation. Likewise, amendments are proposed for “demonstrable areas of competence,” and “supervisor” to update and clarify those terms. “NCATE” is deleted because it was replaced by CAEP; and “candidate for licensure” is not specifically used.

<p>New section – 35</p>	<p>Sets our requirements for notification to the Board about changes of name or address</p>	<p>Language moved from section 120 on renewal of licensure.</p>
<p>41</p>	<p>Establishes the requirements for licensure by examination</p>	<p>The Board proposes requiring a report of the National Practitioner Data Bank for all applicants and specifying that an applicant shall not have surrendered his license while under investigation or have unresolved action against him. The Board will also modify the requirement to require passage of “all parts” of the national examination (at the time the examination was taken) since it appears that it will be moving towards a two-step examination.</p> <p><i>Boards are requiring a NPDB report to ensure that they have accurate information about disciplinary action by another state or malpractice payments – both of which might serve to provide grounds for denial of licensure. Likewise, an applicant who has surrendered his license in lieu of discipline or who has unresolved disciplinary action would not be considered for licensure until such a situation has been resolved. That is currently required for licensure by endorsement.</i></p>
<p>42</p>	<p>Establishes prerequisites for licensure by endorsement</p>	<p>One of the options for licensure by endorsement will be amended to clarify that the National Register of Health Service Psychologists credential is required, not just a “listing.” Currently, one option is 10 years of active practice, but the Board is amending that practice qualification to five years of active licensure with active practice for 24 out of the last 60 months. The Board will also modify the requirement to require “all parts” of the national examination (at the time the examination was taken) since it appears that it will be moving towards a two-step examination.</p> <p><i>A reduction in years of licensure from 10 to 5 years will make a number of applicants eligible for licensure without having to submit all the documentation of education, experience and examination by standards substantially equivalent to those in Virginia.</i></p>
<p>54</p>	<p>Establishes the education requirements for clinical psychologists</p>	<p>The Board proposes to require all educational programs to be nationally accredited by APA, the Canadian Psychological Association or other accrediting body acceptable to the Board within seven years after the effective date of the regulation; currently APA accreditation is required but there are provisions under which an applicant can submit information indicating APA-equivalency. Graduates of programs outside the U.S. or Canada would still be able to submit documentation from a credentialing evaluation services verifying equivalency.</p> <p>Amendments to subsection C are intended to clarify and update current terminology.</p>

		<p>A new subsection D is a restatement of subsection D (now deleted) in section 65 on the residency because the emphasis and experience should be part of the educational program.</p> <p>A new subsection E is a restatement of subsection A (now deleted) in section 65, because it is more logical to place the internship requirements in section 54 since internships are within the educational programs.</p> <p>Subsection F on the practicum supervised experiences is amended to clarify that it is within the doctoral program (not “pre-doctoral”) and that the experiences occur prior to the internship. A person may be able to fulfill all of the residency requirements in the practicum experiences, but if there are any deficiencies, they can be remedied by meeting the requirements for a residency in section 65.</p>
55	Establishes educational requirements for applied psychologists	The word “which” is changed to “that.”
56	Establishes educational requirements for school psychologists	The only change is an updating of the accrediting body from NCATE to CAEP. Subsection C is the same requirement as language on internships currently found in subsection A of section 65
65	Establishes the requirements for a residency	<p>The title of this section is amended from “supervised experience” to “residency” because much of the supervised experience – practicum and internships – occurs in the context of an educational program and is now specified in those sections of the regulations.</p> <p>Subsection A is amended to delete internship requirements (now found in the educational programs sections) and to include the allowance for fulfilling residency hours in supervised practicum experiences for clinical psychologists. Currently, those provisions are in subsection C, and the Board proposes to have that provision stated up front in the section. There is also an amendment to clarify that internship hours are not counted towards the 1,500 residency hours. <i>That is not a new policy but a clarification for the reader.</i></p> <p>Subsection B is amended to make an allowance for extension of the residency beyond three years for extenuating circumstances that precluded completion within the required time frame.</p> <ul style="list-style-type: none"> • There is also a clarification that the “application package” includes an official transcript to determine whether the candidate for residency has completed the required educational program. • The Board will count supervision hours obtained outside of Virginia, provided there is evidence of board approval in the other jurisdiction.

		<ul style="list-style-type: none"> • The timeframe for the minimum of two hours of individual supervision is changed from “per week” to “per 40 hours” to allow for gaps when a resident or supervisor is on vacation or ill. • The limitation on use of titles is moved to subsection C. • The requirement for the psychologist providing supervision is expanded to allow for a person receiving supervision in another jurisdiction. • An amendment adds a requirement for the supervisor to maintain records of supervision and to co-sign case notes. Since the supervisor or supervisors must submit a written evaluation, the requirement for record-keeping and co-signing notes is beneficial to all parties as evidence of appropriate supervision. <p>Subsection is amended to delete language found elsewhere and replace the title protection language currently found in subsection B. The reference to use of the title “applied psychologists” is eliminated because candidates for that license are not required to complete a residency.</p>
80	Sets out general examination requirements	<p>Rules are amended to be inclusive of a two-part examination with candidates taking the first part during their educational program and the second part after completion of supervised experience. Eligibility to sit for the national examination is amended to allow an applicant who completed residency requirements in a practicum as part of the educational program to be eligible. Currently, regulations require a candidate to sit for the examination within two years of initial board approval. The Board proposes an amendment to require passage of the final part of the examination within two years immediately preceding application for licensure, unless there are extenuating circumstances.</p>
120	Sets out requirements for annual renewal of licensure	<p>An amendment will clarify that a person with an inactive license is not eligible to practice. Rules about a change of address are moved to a new section 35 under General Provisions.</p>
121	Establishes the continuing education course requirements for renewal of an active license	<p>Language for continuing education is amended to allow specified work on a professional journal to be counted for up to four hours and completion of or teaching a three-credit academic course could be counted for up to 10 hours.</p>
122	Sets out the listing of approved continuing education providers	<p>The specific reference to forensic psychology organizations as approved providers of CE is deleted as no other specialty organization is mentioned and they would qualify under other provisions. The requirement for a CE certificate is amended to specify that the certificate must indicate the number of hours designated as ethics.</p>

130	Sets out requirements for a late renewal or reinstatement/reactivation of licensure	This section is amended to clarify that renewal of an expired license requires completion of the CE as well as payment of fees.
150	Sets out the standards of practice for a psychologist	<p>A section will be added to ensure that psychological services, whether face-to-face or by another delivery method, are subject these standards. Standards are added for consistency with the APA Code of Ethics and with other mental health and health regulatory boards as they relate to competency to practice, accurate representation, professional responsibilities, informed consent and disclosure, documentation and client records, confidentiality, and multiple relationships that might impair professional judgment or increase the risk of exploitation or harm. Some current provisions are amended for greater clarity</p> <p>Additionally, the provisions relating to dual relationships and sexual misconduct and the provisions related to client records and confidentiality are arranged in new subsections of section 150</p>
160	Sets out the grounds for disciplinary action or denial of licensure	The current grounds for denial of licensure or disciplinary action are clarified, and several added, including performance of an act likely to deceive, defraud or harm the public and knowingly allowing a person under supervision to jeopardize client safety. The Board would also have grounds based on action taken by another health or mental health regulatory board and for failure to cooperate with a DHP investigator or for failure to report child abuse or elder abuse.