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Final Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC125-20
VAC Chapter title(s)	Regulations Governing the Practice of Psychology
Action title	Periodic review
Date this document prepared	2/18/20

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. 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 seven 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

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

APA = American Psychological Association

Statement of Final Agency Action

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 February 11, 2020, the Board of Psychology adopted final amendments for 18VAC125-20-10 et seq., Regulations Governing the Practice of Psychology.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

This action is the result of a comprehensive periodic review of Chapter 20 that was begun in 2016. There are no changes to the previously-reported information.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's 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

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

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 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

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

There was a 60-day comment period from November 25, 2019 to January 24, 2020. Comments were received from three entities. A public hearing was conducted on December 3, 2019; no persons commented at the hearing.

Commenter	Comment	Agency response
VACP (Virginia Academy of Clinical Psychologists)	1) Client is used interchangeably with patient; Practice Act only uses patient. 2) Suggested change in amendment to section 122 on CE providers. 3) Questioned the authority of the Board to include the practice of torture as a possible violation of a standard of practice in section 150. 4) Questioned whether a psychologist should be responsible for informing a client about alternative treatments. 5) Recommended that the information specified in a patient record (Section 150 D) be deleted.	1) The Board is aware that the two words are used interchangeably and has done so intentionally. No amendments are recommended. 2) The comment missed the intent of the change, which is related to what a provider must include on a certificate of completion. The language relating to requirement for ethics hours is found in section 121. 3) The Board has consulted with the Office of the Attorney General for its authority to promulgate the rule. 4) The Board concurred that the proposed language placed an undue burden in the process of providing informed consent. Section 150 B 16 was amended to delete language and to add a sentence about informed consent for alternatives that are not the accepted standard of care. 5) The Board concurred that the proposed language was problematic for psychologists working in an institutional setting but was necessary for records in a private practice.

	6) Questioned the additional grounds for disciplinary action to include an action taken against a license in another jurisdiction or by another board.	Amendments to subsection D was adopted accordingly. 6) The Board concurred that the language in Section 160 should be amended to specify “disciplinary” actions taken against a license would provide grounds for possible action by the Board.
Richard Senese, PhD Capella University	Requested the Board to reconsider its requirement for APA accreditation of education programs, noting that the blended program at Capella appeals to persons seeking flexibility in obtaining a doctoral in psychology. He noted the delayed effective date, which would allow current students to complete the program. He also proposed an alternative to accreditation, consisting on a program review by the Board (for which Capella could pay a fees).	The Board discussed the requests for reconsideration of its proposed requirement for educational programs to be APA accredited and determined that setting an accreditation standard is the best way to assess quality and competency. The Board has neither the resources nor the expertise to judge equivalency of programs, so it must rely on accreditation bodies to make that determination. The proposed regulation allows acceptance of other accrediting bodies if evidence is presented demonstrating substantial equivalency with APA or CPA. Proposed regulations also have a delayed effective date to allow current students to complete their program.
Shana Garrett, PhD Walden University	Comments from Walden were similar to those of Capella (both are primarily on-line programs that are not APA accredited). Walden noted that APA does not give distance learning programs a level playing field. Walden noted the person-to-person aspect of its program offerings. Requests the Board to retain a licensure equivalency pathway.	In reviewing the impact of requiring accreditation, the Board looked at the educational background of applicants within the past five years. It appears approximately 1-2% of the total number of applicants who were licensed graduated from one of the on-line programs. Of that number, some applied for licensure by endorsement – which would continue to be an avenue to licensure under the proposed regulations.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
Chapter 20 Section 150	In subsection B, #16, the new requirement was to provide a patient with information about the risks and	In final adoption, the Board deleted the inclusion of alternatives to recommended treatments in the informed consent. A	The change was made in response to comment from the VACP (see above). The Board concurred that the language as previously proposed was unnecessarily

	benefits and alternatives to recommended treatments.	sentence is added to clarify that informed consent about alternatives only needs to be included when there are not recognized techniques and procedures.	burdensome and potentially confusing to patients/clients.
Chapter 20 Section 150	In subsection D, the requirement specified the information that must be included in a patient record.	The revised regulation makes a distinction between a patient record maintained in an institutional setting versus a patient record maintained by a psychologist for non-institutional patients. In an institutional setting, the record must follow the policies of the public institution or facility (such as a state mental, behavioral health, or correctional facility).	The Board acknowledged that the specificity of a patient record was very important for the benefit of a psychologist and for his/her client, but it was not practical for practices in institutional settings.
Chapter 20 Section 160	The proposed regulation established grounds for disciplinary action based on an action taken against a health or mental health license in Virginia or another jurisdiction	The amended regulation inserts the word “disciplinary” before “action” to clarify that an action of a non-disciplinary nature would not constitute grounds for discipline by the Board. The Board also added the surrender of one’s license in lieu of discipline could also provide grounds for an action by the Virginia Board.	The amendment was made in response to a comment from VACP (see above). The additional language is necessary to prevent someone whose practice is potentially harmful to the public from giving up a license in another state to avoid a disciplinary action that could trigger an action in Virginia.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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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.
New section – 35	Sets our requirements for notification to the Board about changes of name or address	Language moved from section 120 on renewal of licensure.
41	Establishes the requirements for licensure by examination	<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>
42	Establishes prerequisites for licensure by endorsement	<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>
54	Establishes the education requirements for clinical psychologists	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

		<p>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. • 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	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.
122	Sets out the listing of approved continuing education providers	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.
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.