



Final Regulation Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC30-20-10 et seq.
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Licensure by endorsement; reinstatement
Date this document prepared	2/18/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Requirements for reinstatement are amended to allow an applicant whose license has been lapsed for five or more years based on documentation of meeting current requirements for education, examination and certification or documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years. If an applicant for reinstatement in audiology cannot meet the current licensure requirements or cannot document current licensure and active practice for three years, a third option is provided in the amended regulation. The applicant, who has the educational qualifications and has passed the examination, may be granted a provisional license and practice under supervision for six months and must be recommended for licensure by his supervisor.

New regulations for licensure by endorsement mirror the provisions for reinstatement of a lapsed Virginia license as evidence of current competency to practice.

Statement of final agency action

Please 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 5, 2009, the Board of Audiology and Speech-Language Pathology adopted final amendments to 18VAC30-20-10 et seq., Regulations of the Board of Audiology and Speech-Language Pathology.

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 numbers, 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.

Chapter 24 of Title 54.1 establishes the general powers and duties of the Board of Audiology & Speech-Language Pathology, including the authority to establish qualifications for licensure and 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, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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...*

§ 54.1-103 of the Code of Virginia authorizes a health regulatory board to promulgate regulations specifying additional training for individuals seeking licensure and to recognize licensure in other states in credentialing applicants.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

§ 54.1-2604 establishes the Board’s authority to issue a provisional license in audiology.

§ 54.1-2604. Provisional license in audiology.

The Board may issue a provisional license to an applicant for licensure in audiology who has met the educational and examination requirements for licensure, to allow for the applicant to obtain clinical experience as specified in the Board's regulations. However, a person practicing with a provisional license shall practice only under the supervision of a licensed audiologist in accordance with regulations established by the Board.

Purpose

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

The Board’s purpose is to modify requirements for initial licensure to allow an applicant who has been licensed and has practiced in another jurisdiction but who does not possess current certification from the American Speech-Language-Hearing Association (ASHA) or the American Board of Audiology (ABA) to present other qualifications that indicate current competency to practice. The Board has also amended requirements for reinstatement of a lapsed license to allow someone who has not practiced in recent years to work with a provisional license under direct supervision for a specified period of time. The goal of the amended regulations is to remove any barriers to licensure that are not necessary to ensure an ability to practice with safety and competency. Evidence of continuing education, current licensure and practice in another jurisdiction, and/or provisional practice under supervision will assure that applicants are adequately competent to protect the health and safety of the clients they serve. Access to audiology and speech-language pathology services should not be hampered by enacting unreasonable rules that make it overly burdensome for a qualified person to be licensed. Conversely, the Board has an obligation to ensure that requirements in Virginia are not distinctly less restrictive than other states to the point that persons who would be unqualified in other states are able to obtain a Virginia license.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Currently, regulations of the Board require an applicant for licensure as an audiologist to hold a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association (ASHA) or certification issued by the American Board of Audiology (ABA). For an applicant who has been licensed in another state, the requirement for current certification may be problematic. The purpose of certification is to provide evidence of completion of a degree, educational courses, a practicum, and clinical experience required for licensure. If an applicant met that requirement at the time of initial licensure and has evidence of continuing education and clinical practice, it may not be necessary to show evidence of holding current certification from ASHA or ABA.

Therefore, the Board adopted endorsement provisions that allow an applicant three pathways in which to be licensed: 1) meet the qualifications for licensure as prescribed by 18VAC30-20-170 of this chapter; 2) provide documentation of continuing education, a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years; or 3) if the applicant does not meet those qualifications, he may be qualified by practicing under supervision for six months with a provisional license in audiology, if he can provide evidence of having met the educational qualifications and passed the qualifying examination at the time of initial licensure. Additionally, an applicant who has been licensed in another jurisdiction must submit documentation of 15 continuing competency hours for each year in which he has been licensed in the other jurisdiction, not to exceed 60 hours.

To reinstate a lapsed license within five years, an applicant is required to provide evidence of continuing education equal to the number of hours required for the years the license was lapsed, not to exceed 60 hours. To reinstate a license lapsed for more than five years, an applicant is required to meet the requirements for initial licensure. The Board has adopted provisions for reinstatement of a lapsed license identical to those for endorsement of a license from another jurisdiction. The intent of requirements for licensure, whether by endorsement or reinstatement, is to ensure that an applicant is competent to practice in Virginia in a safe, professional manner with current skills and abilities.

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.*
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- 1) The primary advantage to the public would be the possibility of increasing the number of licensees available in audiology and speech-language pathology. By adding pathways to licensure for persons who have “retired” from practice to raise a family or who are moving to Virginia from another state, the Board has made it less burdensome to obtain a license but has concurrently retained the essential requirements for evidence of competency to practice. There are no disadvantages.
- 2) There are no advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
160 C & 185 C	In subsection C, the word “qualifications” is used.	Amended to use the word “requirements”	More appropriate word for requirements stated in subsection B.
160 C & 185 C	Requires that provisional licensure shall be practiced under provisions of subsections C, D and E of section 171.	Adds requirement for practice of provisional licensure under the supervision of a licensed audiologist (currently required in subsection C of section 171). Eliminates reference to subsection C of section 171.	Subsection C of section 171 provides that the holder of a provisional license in audiology shall only practice under the supervision of a licensed audiologist <i>in order to obtain clinical experience as required for certification by the American Speech-Language-Hearing Association</i> . The purpose of provisional licensure for an applicant for licensure by endorsement is to gain experience if he has not actively practiced for 3 of the past 5 years; it is not to obtain clinical experience as required for ASHA certification, so the reference to subsection C was eliminated and the requirement for supervision by a licensed audiologist added to sections 160 and 185.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published in the Virginia Register of Regulations on October 13, 2008. Public comment was requested for a 60-day period ending December 12, 2008. There was no comment provided at a Public Hearing held before the Board on November 12, 2008.

The written or electronic comment received is as follows:

Janice Brannon, Director of State Special Initiatives for the American Speech-Language Hearing Association (ASHA) expressed concern that the proposed endorsement regulations would allow an applicant who does not possess current ASHA certification to be licensed. ASHA believes that it is important for licensees to maintain current certification as an indication of professional development and competency. Ms. Brannon also noted an error in the Statement of Economic Impact prepared by the Department of Planning and Budget, which was corrected by that agency.

Agency response:

While some members of the Board agree that it is important to maintain current ASHA certification, it is not a requirement for renewal of licensure in Virginia. Therefore, the Board did not choose to require current certification for those who are reinstating a license or being licensed by endorsement. The measures of current competency are completion of continuing education and, for those who have been practicing in another jurisdiction, active practice for at least three of the past five years or practice with a provisional license under supervision.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
160	n/a	Sets out continuing education and other requirements for reinstatement of a license that has been lapsed for more than one year.	Subsection A is amended to clarify the number of continuing competency hours that must be documented. <u>There is no change in the requirement.</u> <i>The current requirement of 15 hours for each year in which the license has been lapsed, not to exceed four years or 60 hours, is identical to the continuing competency requirement for renewal of an active license. To reinstate a lapsed license, an applicant should document no fewer hours of CE than a current licensee. If the applicant with a lapsed Virginia license has been actively practicing in another state, the CE obtained for that renewal will be acceptable to meet this requirement.</i>

			<p>Subsection B is amended to:</p> <p>1) Allow a licensee <u>five</u> years (rather than the current four years) in which to reinstate with only evidence of continuing competency (CE) as required in subsection A.</p> <p><i>Five years is consistent with neighboring states (MD, TN, WV) that require applicants who have been lapsed five years or more to meet requirements consistent with initial licensure.</i></p> <p>2) Provide an additional pathway for reinstating a lapsed license of documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years.</p> <p><i>The two barriers to complying with the current regulation of meeting the requirements of section 170 are: a) current and unrestricted Certificate of Clinical Competence in the area in which the applicant seeks licensure issued by the ASHA or ABA; and/or b) passage of the qualifying examination within three years preceding the date of applying for licensure. A person who has been practicing in another state and has allowed his license to lapse in Virginia may be very well-qualified and competent, but may not have maintained <u>current</u> ASHA certification and may not have passed the examination within the past 3 years. Therefore, that person could not qualify for reinstatement without reinstating ASHA certification and retaking the examination. The addition of subsection B will allow someone who has been actively practicing for 3 of the past 5 years (allowing time off for family) to be licensed.</i></p> <p>Subsection C is added to provide that an applicant for reinstatement in audiology who does not meet the qualifications of subsection B may be issued a provisional license if he can provide evidence of having met the educational qualifications prescribed in section 170 and passage of the qualifying examination at the time of initial licensure.</p>
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			<p>The applicant must practice for six months under supervision with a provisional license and be recommended for licensure by his supervisor to qualify for licensure.</p> <p><i>Subsection C is intended to provide a pathway for persons who do not have three years of active practice within the past five years or who do not meet the current requirements of ASHA or ABA certification and passage of the exam within the past three years. An applicant in audiology could obtain a provisional license and practice under supervision to provide evidence of current competency to practice.</i></p> <p><i>§ 54.1-2604, which sets out the Board's authority to issue a provisional license is only applicable to audiology, so subsection C is limited to applicants in audiology.</i></p>
n/a	185	No current provisions for licensure by endorsement	<p>Subsection A provides that an applicant who has been licensed in another jurisdiction in the United States may apply for licensure in Virginia by submission of a completed application, payment of the application fee, and submission of documentation of 15 continuing competency hours for each year in which he has been licensed in the other jurisdiction, not to exceed 60 hours.</p> <p><i>The hours of continuing competency (CE) are identical to those required for someone who is applying for reinstatement of a lapsed license. If an applicant is currently licensed and practicing in another state, CE hours acquired for renewal in that state could be used to fulfill this requirement.</i></p> <p>Additionally, subsection B provides that the applicant shall either:</p> <ol style="list-style-type: none"> 1. Meet the qualifications for licensure as prescribed by 18VAC30-20-170 of this chapter; or 2. Provide documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years. <p><i>Requirements for evidence of competency to practice are identical to those for an applicant who previously held a Virginia</i></p>

			<p><i>license and is seeking reinstatement.</i></p> <p>C. An applicant for licensure by endorsement in audiology who does not meet the qualifications of subsection B may be issued a provisional license if he can provide evidence of having met the educational qualifications prescribed in subsection 170 and passage of the qualifying examination at the time of initial licensure. The applicant must practice under supervision for six months with a provisional license and be recommended for licensure by his supervisor.</p> <p><i>The pathway for licensure by endorsement for someone who does not qualify under subsection B is identical to the option for reinstatement of a lapsed Virginia license.</i></p> <p>D. An applicant shall provide evidence that no disciplinary action has been taken or is pending against his license in another jurisdiction. The board reserves the right to deny a request for licensure to any applicant who has been determined to have committed an act in violation of 18VAC30-20-280.</p> <p><i>Subsection D of this section is similar to subsection D of section 160 to ensure that the Board can know whether there is current or pending disciplinary action in another state and to state the Board's authority to deny licensure on grounds.</i></p>
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Regulatory flexibility analysis

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.

The Board considered the regulatory language from other states as alternatives to the current regulations in Virginia. For example, North Carolina does not license by endorsement, but the

regulations for initial licensure set out requirements for specific educational courses and hours, a clinical experience in a practicum, a clinical fellowship under supervision, and passage of a national examination or certification from ASHA. Therefore, an applicant may be able to provide evidence of qualification without current certification.

West Virginia also does not license by endorsement, but will waive the requirement for passage of the national examination if an applicant has a master's degree, a clinical fellowship under supervision, a postgraduate professional experience and has a current license in another state or holds a certificate by ASHA. Tennessee licenses by reciprocity if an applicant has a master's degree and standards that equal or exceed those required for licensure in that state, including certification from ASHA or hours in a practicum, and a clinical fellowship.

Maryland does recognize a current, unrestricted license from another state, but also requires passage of the examination by a score of 600 within the past five years, or active practice for three of the past five years. If an applicant does not meet the active practice requirement, he is allowed to practice under supervision with a limited license. The amendments adopted by the Board for licensure by endorsement are very similar to the regulations in Maryland.

Neighboring states of Maryland, Tennessee and West Virginia do not allow a person whose license has been lapsed for more than five years to reinstate.

Family impact

Please assess the 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 on the family.