

**PRELIMINARY DETERMINATION**  
**NOTICE OF INTENDED REGULATORY ACTION**  
**DEPARTMENT OF HEALTH PROFESSIONS**  
**BOARD OF PSYCHOLOGY**

*18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology*

**ITEM 1: LEGAL AUTHORITY FOR THE REGULATION**

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

**§ 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) 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 or 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 licenses or certificates.*

The Board is authorized under § 54.1-3605 to issue temporary licenses to individuals engaged in a residency.

**§ 54.1-3605. Specific 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. In promulgating such regulations, the Board shall consider the standards recommended by*

*the Advisory Committee on Certified Practices pursuant to § 54.1-3610.*

*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.*

*Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.*

Subdivision 7 of § 54.1-3601 sets forth criteria for issuance of temporary licenses to individuals who are licensed in other jurisdictions who are practicing psychology in Virginia without compensation.

**§ 54.1-3601. Exemption from requirements of licensure**—*The requirements for licensure provided for in this chapter shall not be applicable to:*

- 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories licensed practitioner.*
- 2. The activities or services of a student pursuing a course of study in psychology in an institution accredited by an agency.*
- 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.*
- 4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization, except that any such person who renders psychological services, as defined in this chapter, shall be (i) supervised by a licensed psychologist or clinical psychologist; (ii) licensed by the Department of Education as a school psychologist; or (iii) employed by a school for students with disabilities which is certified by the Board of Education. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the licensure requirements.*
- 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.*
- 6. Any psychologist holding a license or certificate in another state, the District of Columbia, or United States territory or foreign jurisdiction consulting with licensed psychologists in this Commonwealth.*
- 7. Any psychologist holding a license or certificate in another state, the District of Columbia, or United States territory or foreign jurisdiction when in Virginia temporarily and such psychologist**

*has been issued a temporary license by the Board to participate in continuing education programs or rendering psychological services without compensation to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106.*

8. *The performance of the duties of any commissioned or contract clinical psychologist in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States while such individual is so commissioned or serving.*

9. *Any person from performing services in the lawful conduct of his particular profession or business under state law.*

## **ITEM 2: POTENTIAL ISSUES TO BE ADDRESSED**

Over the past three years, the Board has been petitioned on several occasions by the Directors of the Division of Medical Psychology and the Residency in Clinical Psychology at the University of Virginia's Department of Psychiatric Medicine to establish a provision in regulations for the temporary licensure for residents in clinical psychology. The problem identified in the letters (attached) was the threat to the continued existence of the residency program resulting from the refusal of third party payors to reimburse for services provided by clinical psychology residents. This is in contrast to the reimbursement situation for medical school's psychiatric residents who are licensed by the Board of Medicine and therefore enjoy full licensure privileges during their first residency year. The resulting limitation on post-doctoral training opportunities for psychologists has been recognized as a problem at the national level by the Association of State and Provincial Psychology Boards, and the Association of Medical School Psychologists (newsletter article attached). Although the Board considered the petition during a recently completed review of its regulations, language was not proposed to establish temporary licensure due to uncertainty that it would resolve the problem for the programs, the residents, or the public they serve.

Recently, additional concerns were raised in written and oral comment provided to the Board. One concern is a statutory provision (§32.1-325) which provides for reimbursement for mental health services by licensed mental health providers only. The other concern is the policy of Medicaid to award General Medical Education funds to psychiatric residencies, but not to psychology residencies. This limits the services available to the indigent who need mental health services. The Board would like to respond to these concerns by exercising its statutory authority to establish provisions for temporary licensure for clinical and school psychology residents.

Another issue that the Board would like to address is the rising cost of exam development for the Board's written examinations. Currently, the Board requires that all candidates pass the national examination required by all states that license psychologists, along with a written state practice and state jurisprudence examination. The Board developed the state examinations in 1993 following a statutory prohibition on oral examinations that year. Like any examinations, they are costly to develop, and the cost is distributed among a small pool of

Virginia candidates. Costs are certain to increase, as the vendor has lost money on the Virginia exams for each administration. In an effort to keep the cost of the examinations down, the Board would like to consider replacement of its jurisprudence examination requirement with an affidavit from each applicant stating that the applicant has read and agrees to comply with the laws and regulations governing the practice of psychology in Virginia.

The Board has developed the following preliminary language regarding the Resident's License in Clinical Psychology and the Resident's License in School Psychology:

*“Upon receipt of official documentation of passing scores on the EPPP examination and a notarized affidavit of having read and agreed to comply with the laws and regulations governing the practice of psychology in Virginia, the board may issue a Resident's License in Clinical Psychology or a Resident's License in School Psychology for a period of up to 18 months to candidates who have completed all other requirements for licensure except for the board-approved residency and state practice examination. The Resident's License shall expire upon the holder's termination or completion of the residency. Violating or aiding and abetting another to violate any statute applicable to the practice of psychology, or any provision of this chapter will result in revocation of the temporary license. The board may renew a Resident's license for a period of up to 18 months only for good cause and only once.”*

### **ITEM 3: REASONING FOR CONTEMPLATED REGULATION**

The Board considers Virginia's medical school residencies valuable training facilities for clinical psychology residents in Virginia. A difficult part of the licensure process is for applicants to be accepted into a residency position, which are limited and very competitive. The Board recognizes that the loss of the medical school residency programs will eliminate valuable training opportunities. This would increase the burden on applicants to compete for increasingly limited residency opportunities.

The Board reasoned that the jurisprudence examination is not the only means to ensure that each candidate has had exposure to the laws and regulations governing the profession in Virginia. Because failures on this exam are extremely rare (1-2 over the six years of its administration), its usefulness in identifying difficulties in comprehension of the laws and regulations is questionable. The Board determined that the affidavit could provide a valuable enforcement tool in disciplinary proceedings and may hold candidates more accountable than an examination. Other Boards in the Department of Health Professions have recently taken similar action with their jurisprudence examinations.

## **ITEM 4: ALTERNATIVES TO REGULATION**

As alternatives, the Board considered the provisions for temporary licensure in the regulations and laws of other states (attached). The Board considered developing a short-term limited permit for individuals licensed in other jurisdictions as established in many other states. The board rejected this alternative, since §54.1-3607 prohibits charging for services with a limited permit, which renders such a temporary license useless to practitioners.

Currently, licensure is granted to psychologist candidates following successful completion of both the post-graduate residency and the examination requirements. The Board considered several options for the examination requirement for the resident's license:

- Requiring passing scores on all examinations
- Requiring passing scores on the national and jurisprudence examinations.
- Requiring a passing score on only the national examination.
- Conferring the license prior to the examination, but rescinding it if a failing score was reported.

The Board rejected the first two alternatives, because the state examinations are administered only twice each year, which would delay issuance of the license by up to 9 months (application deadlines are 90 days prior to the exam administration). As discussed elsewhere in this document, the Board is proposing replacement of the jurisprudence examination with an affidavit. Because plans are underway to computerize the national examination, which will result in more frequent administrations, the Board proposes accepting a passing score on this examination as a prerequisite for issuing the temporary license. The Board rejected the alternative of rescinding the license if a failure is reported on the state practice examination, since failed candidates must wait one year before re-testing, during which time the term of the temporary license will have nearly expired.

Initially, the Board considered granting the temporary license for a period of one year, but determined that this would not allow enough time for individuals to complete the residency requirement for full licensure. As an alternative, the board would like to propose 18 months as the standard period for the resident's license.

The Board also considered developing more stringent supervision requirements for individuals holding the resident's license. The Board determined that the current supervision requirement adequately states the responsibility of the supervisor for the clinical activities of the resident, and no additional restrictions would have to be developed.

As alternatives to the current jurisprudence examination, the Board considered a take-home or open book exam that could be taken at any time during the licensure process, or requiring a signed affidavit attesting to the applicants having read and agreed to comply with the

standards of practice and laws governing psychology in Virginia. The Board rejected both examination alternatives, because costs for exam development and administration would still be incurred. The Board concluded that an affidavit may be more valuable in ensuring that potential licensees are aware of their responsibility to be cognizant of the laws and standards of practice governing their profession. The Board would like to propose the affidavit as an alternative to the current jurisprudence examination requirement.