



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-20-10 et seq., 18 VAC 85-40-10 et seq., 18 VAC 85-50-10 et seq., 18 VAC 85-80-10 et seq., 18 VAC 85-101-10 et seq., 18 VAC 85-110-10 et seq., 18 VAC 85-120-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic Regulations Governing the Practice of Respiratory Care Practitioners Regulations Governing the Practice of Physician Assistants Regulations Governing the Practice of Occupational Assistants Regulations Governing the Practice of Radiologic Technology Regulations Governing the Practice of Licensed Acupuncturists Regulations Governing the Certification of Athletic Trainers
Action Title:	Standards of Ethics
Date:	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of regulatory action is to establish in regulation the standards of ethics by which practitioners of the healing arts must conduct their practice. In § 54.1-2914 (A) (7), the Code of Virginia defines one element of unprofessional conduct as “Conducts his practice in a manner contrary to the standard of ethics of his branch of the healing arts.” The Board has used the code of ethics of the American Medical Association and other organizations as guidance but has not specifically adopted a code of ethics in regulation. The intent is to set forth by regulation the code of ethics, either by incorporation by reference or by adoption of a code assimilated from all professions of the healing arts.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

In addition, sections 54.1-2914, 54.1-2915, and 54.1-2916 of the Code of Virginia (as cited below) establish grounds by which the Board may refuse to license or certify an applicant or take disciplinary action against a current license or certificate holder. In the promulgation of regulations on ethical standards, it will not be necessary to duplicate provisions of law set forth in these sections.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2914>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2915>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2916>

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The necessity for regulatory action arises from a recent decision by the Virginia Court of Appeals that reversed a disciplinary decision by the Board of Medicine. A licensed physician was charged with ethical violations related to his inappropriate behavior toward female medical

students while serving as a resident. He was placed on probation by the residency program and eventually dismissed. Subsequently, he was noticed to appear before an informal conference committee of the Board where he received a reprimand for ethical violations. Upon request from the physician for a formal hearing, the order of the committee was vacated. After the formal hearing, the physician was placed on indefinite probation with terms, including a requirement to complete hours of AMA approved continuing education in professional boundaries.

Following the formal hearing, the physician appealed the order of the Board to the Circuit Court, where the Board's ruling was upheld. The physician then appealed that ruling to the Virginia Court of Appeals. At the formal hearing, the Commonwealth's case referenced the AMA Code of Ethics, but the Court of Appeals ruled that the Board had never established that as the standard by regulation and had not disseminated that standard to its licensees, so therefore could not take action against a practitioner on that basis.

Following this decision by the Court, the Board must take steps to incorporate a standard of ethics into its regulations so the public health, welfare and safety are adequately protected against inappropriate and unethical actions by its licensees.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Given the recent court ruling by the Court of Appeals, the Board has determined that it must initiate regulatory action immediately. Since adoption of a code of ethics is a complex process, the Board's motion to initiate a regulatory action also included the creation of an ad hoc committee that would include citizen members of the board, representatives of professional groups as well as practitioners or licensees. There are three alternative methods for establishing ethical standards in regulation:

- 1) Incorporation by reference of codes of ethics established by professional bodies, such as the American Medical Association. The Board has received information on the ethics standards of all the professions it regulates and may choose to incorporate by reference for each profession in the applicable set of regulations. For example, the regulations for occupational therapy (18 VAC 85-80) would incorporate the American Occupational Therapy Association's Code of Ethics.
- 2) Incorporation by reference of parts of the codes of ethics established by professional bodies. The AMA Principles of Medical Ethics is a general statement of ethical principles that is augmented by specific opinions relating to ethical decisions or dilemmas. The Board may choose to adopt the Principles and certain ones but not all of the ethical opinions.
- 3) Creation of a new standard of ethics that would be applicable to all professions regulated under the Board that would be an assimilation of principles and codes from other sources. The Board would review standards for unprofessional conduct set forth by other medical boards and other professions within the Department of Health Professions.

By whatever means, the Board's intent is to set forth regulations that will provide an overarching framework for ethical practice by licensees and will be a clear standard by which licensees can be held accountable.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income.