



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20-10 et seq.
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Action title	Amendments to continuing competency requirements
Document preparation date	6/27/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed regulatory action is to consider a waiver to requirements for continuing medical education for doctors of medicine whose practice is limited to service as a medical examiner. The action is in response to a petition for rule-making from a physician in Lee County, who is retired from active practice but is serving his community as a medical examiner and would like to be freed from the expense and time commitment of 60 hours of continuing education each biennium.

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 number(s), 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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine 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, the Medical Practice Act requires the Board to establish requirements to ensure continued practitioner competence:

§ 54.1-2912.1. Continued competency and office-based anesthesia requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

D. Pursuant to § 54.1-2400 and its authority to establish the qualifications for registration, certification or licensure that are necessary to ensure competence and integrity to engage in the regulated practice, the Board of Medicine shall promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed change would amend section 235 to grant authority for the Board to waive all or part of the continuing education requirements for doctors of medicine or osteopathic medicine who limit their practice to serving as a medical examiner in a locality. The Board believes that such a waiver may have the effect of a modest increase in the availability of physicians willing to serve as medical examiners in local communities. If this action had that effect, delays in

determining the cause of death could be avoided, which could be important to law enforcement and to the health and safety of persons in those communities.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Currently, regulations provide authority to the board to grant an exemption for all or part of the continuing education requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters or for a licensee who is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board. The waiver for medical examiners would likely be added to the current exemption authority, which is granted on a case-by-case basis upon request from the practitioner.

There are issues to be considered, such as how the Board would be able to ensure that a person who has an exemption from all continuing education but has a *full* license to practice medicine would limit that practice to work as a medical examiner. Additionally, there is some question as to whether the exemption could have an effect on the medical examiner's ability to serve as an expert witness in a court of law. However, the Board is concerned about the availability of persons who are willing to serve as medical examiners, especially in more isolated regions of the state. In the promulgation of regulations, the Board will be exploring these issues and will be working with the Chief Medical Examiner on any proposal it adopts.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.