

**PRELIMINARY DETERMINATION  
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF MEDICINE  
18 VAC 85-31-10 et seq.**

**Regulations Governing the Practice of Physical Therapy**

**ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION**

*The Board of Medicine with the concurrence of the Advisory Board for Physical Therapy is seeking to publish a Notice of Intended Regulatory Action in order to begin a biennial review of its regulations in concurrence with Public Participation Guidelines of the Board (18 VAC 85-10-10 et seq.).*

*18 VAC 85-10-100. Biennial review of regulations.*

*A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.*

*B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.*

*C. Notice of the proceeding shall be transmitted to the Registrar for inclusion in The Virginia Register and shall be sent to the mailing list identified in 18 VAC 85-10-30.*

**ITEM 2: LEGAL AUTHORITY FOR REGULATION**

**18 VAC 85-31-10 et seq.: Regulations Governing the Practice of Physical Therapy** was promulgated under the general authority of Title 54.1 of the Code of Virginia.

§ 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to ensure practitioner competency and to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to effectively 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:*

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 and Chapter 25 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 take appropriate disciplinary action for violations of applicable law and regulations.*
9. *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 (§ 9-6.14:1 et seq.). 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.*

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

While 18 VAC 85-10-100 requires a biennial review, the Board is not required to publish a Notice of Intended Regulatory Action in order to have an “informational proceeding” which provides an opportunity for public comment.

However, in this case, the Board is seeking permission to publish a NOIRA because it has identified two issues of concern for possible regulatory action. Those issues are as follows:

- A) There are a number of applicants who are graduating from “approved” professional schools without proficiency in the English language. Current regulations require applicants who graduate from “unapproved” schools to take TOEFL (Test of English as a Foreign Language). Schools which were not located in the U.S. or Canada were not approved by the national accrediting agency, so all “foreign” graduates were required to take TOEFL. Now the accrediting agency has begun to approve “foreign” educational programs, so the Board has no choice but to license those individuals even those they cannot not appropriately communicate with patients in English.
- B) There is an increasing dilemma for physical therapists about which activities and tasks can be delegated to unlicensed assistive personnel. The Board licenses physical therapists and physical therapy assistants; it does not regulate physical therapy aides or other unlicensed assistive personnel. Questions are frequently posed to Board staff and to members of the Advisory Board on Physical Therapy about delegation to unlicensed persons in a PT practice.

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

In seeking alternatives to regulation, the Board will consider any comment it receives as a result of its informational proceeding and written public comment. Working in conjunction with the Advisory Board on Physical Therapy, the Legislative Committee will recommend any revisions to regulation which will clarify, simplify or make the requirements less burdensome. In addition, the Board will consider any changes which are recommended as necessary to provide greater assurance of public health and safety in the delivery of physical therapy services.

In addressing the issue of foreign graduates being licensed without proficiency in English, the Board will consider a requirement for the TOEFL test for anyone whose physical therapy education was not in English.

In addressing the issue of delegation to unlicensed assistive personnel, the Board will consider a specific listing in regulation of those duties which may be delegated **or** the inclusion of a more general requirement for delegation in regulation and a guidance document of the Board’s position on specific tasks or duties.

#### **ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY, AND AUTONOMY**

The Board is unable to determine any effect of its intended regulatory action on family formation, stability, and autonomy.