



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Medicine, 18 VAC 85
VAC Chapter Number:	18 VAC 85-31-10 et seq.
Regulation Title:	Regulations Governing the Practice of Physical Therapy
Action Title:	Regulatory review changes
Date:	February 11, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Amendments are adopted pursuant to a biennial review of regulations as required by the Public Participation Guidelines of the Board of Medicine and by Executive Order 23(98). As a result of its review, the Board adopted amendments to clarify the use of unlicensed persons in the practice of physical therapy, to require proof of English proficiency for graduates of schools located outside the United States or Canada, to require graduates of non-approved schools to provide documentation of certification by the Foreign Credentialing Commission on Physical Therapy, to establish the passing score for the examination and to clarify certain requirements for practice and supervision of physical therapy assistants. In addition, amendments establish an inactive licensure status and those requirements for renewal or reinstatement of licensure, which are necessary to protect the public health and safety in the delivery of physical therapy services.

In adopting final regulations, the Board made no amendments to proposed regulations.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

No changes to proposed regulations have been made in the adoption of final amendments.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On February 10, 2000, the Board of Medicine adopted final amended regulations, 18 VAC 85-31-10 et seq., Regulations Governing the Practice of Physical Therapy with no changes from the proposed amended regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Regulations of the Board of Medicine were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees.

§ 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 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 and 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 such licenses or certificates.

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Physical Therapy in:

§ 54.1-2942. Unlawful designation as physical therapist or physical therapist assistant.

It shall be unlawful for any person who is not licensed under this chapter, or whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed, to use in conjunction with his name the letters or words "R.P.T.," "Registered Physical Therapist," "L.P.T.," "Licensed Physical Therapist," "P.T.," "Physical Therapist," "Physio-therapist," "P.T.T.," "Physical Therapy Technician," "P.T.A.," "Physical Therapist Assistant," "L.P.T.A.," "Licensed Physical Therapist Assistant," or to otherwise by letters, words, representations or insignias assert or imply that he is a registered physical therapist. The title to designate a physical therapist assistant shall be L.P.T.A. The license to practice as a physical therapist assistant shall show such fact plainly on its face.

§ 54.1-2943. Unlawful to practice physical therapy or physical therapist assistance except by referral and direction; exceptions.

A. It shall be unlawful for a person to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery, or as provided in subsection B.

Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist and the patient's physician.

The Board may promulgate regulations providing for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by regulation of the Board under the direct supervision of a licensed physical therapist.

In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to its regulations.

B. This chapter shall not be construed to require referral and direction by a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery for the provision of physical therapy services to (i) a student athlete participating in a school-sponsored athletic activity while such student is at such activity in a public, private, denominational or parochial elementary, middle or high school, or public or private institution of higher education by a licensed physical therapist who is certified as an athletic trainer by the National Athletic Training Association or as a sports certified specialist by the American Board of Physical Therapy Specialties or (ii) employees solely for the purpose of evaluation and consultation related to workplace ergonomics by a licensed physical therapist.

§ 54.1-2946. Examinations given by Advisory Board; license issued or denied by Board; other duties of Advisory Board.

The Advisory Board shall, under the authority of the Board, provide the examinations to be taken by applicants for licensure as physical therapists and physical therapists assistants, and administer and grade such examinations. The results of such examinations shall be certified by the Advisory Board to the Board. The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any applicant who feels aggrieved at the result of his examination may appeal to the Board of Medicine.

The Advisory Board shall also assist the Board in matters pertaining to the regulation of physical therapists and the practice of physical therapy, and in the evaluation of evidence submitted in support of applications for physical therapist and physical therapist assistant licenses through reciprocity or endorsement, and in all other matters pertaining to physical therapy as the Board may request.

§ 54.1-2947. Requirements for admission to examination on physical therapy.

The examination of applicants to practice physical therapy shall be a written examination approved by the Board. Each candidate shall submit evidence, verified by affidavit and satisfactory to the Board, that he:

- 1. Is eighteen years of age or more;*
- 2. Is of good moral character; and*
- 3. Is a graduate of a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association or by the American Physical Therapy Association, or is a graduate of a school outside of the United States or Canada which offers and requires courses in physical therapy acceptable to the Board on the advice of the Committee.*

§ 54.1-2948. Physical therapist assistants.

The examination of applicants to practice as physical therapist assistants shall be a written examination approved by the Board. Each candidate shall submit evidence, verified by affidavit and satisfactory to the Board, that he:

- 1. Is eighteen years of age or more;*
- 2. Is of good moral character; and*
- 3. Is a graduate of a two-year college-level education program for physical therapist assistants approved by the Board.*

Examinations of applicants shall be taken in the same manner as examinations for applicants for licensure as physical therapists.

In addition to § 54.1-2400 (cited above), the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

§ 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.

The Assistant Attorney General who provides counsel to the Board has certified that the Board has the authority to promulgate the amended regulations and that they do not conflict with existing state or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Amendments are proposed pursuant to a biennial review of regulations as required by the Public Participation Guidelines of the Board of Medicine and by Executive Order 23(98). As a result of its review, the Board proposes amendments to clarify the use of unlicensed persons in the practice of physical therapy, to require proof of English proficiency for graduates of schools located outside the United States or Canada, to require graduates of non-approved schools to provide documentation of certification by the Foreign Credentialing Commission on Physical Therapy, to establish the passing score for the examination and to clarify certain requirements for practice and supervision of physical therapy assistants. In addition, the proposed amendments establish an inactive licensure status and those requirements for renewal or reinstatement of licensure which are necessary to protect the public health and safety in the delivery of physical therapy services.

Specific Reasons for amended regulations:

Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure for physical therapists and physical therapist assistants are not burdensome, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession.

Requirements for reactivation of an inactive or lapsed license.

The Board is proposing an inactive license for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of competency in hours of active practice equal to that required during amount of time the license has not been active. If a practitioner has not engaged in active practice, the Board requires that he serve a board-approved traineeship under the supervision of a licensed physical therapist.

Licensure requirements for applicants trained in foreign schools.

a. Test of English as a Foreign Language requirement for graduates of approved schools.

Graduates of schools approved by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association are recognized by the Board as having met its educational requirements for licensure. Those schools were traditionally located in the U. S. or Canada, so English proficiency was not an issue. The Commission has begun approving schools in foreign countries, so the Board has determined that a test of English (TOEFL) or some other proof of English proficiency is necessary. For example, if a graduate attended a school in Great Britain or a citizen of the U.S. attended a school in a foreign country, the TOEFL test would not be required.

b. Documentation of certification by the Foreign Credentialing Commission on Physical Therapy for graduates of non-approved schools.

As far as the Board has been able to determine, the only “non-approved schools” of physical therapy are located outside the United States and Canada. (The new school of physical therapy located at Shenandoah University will have accreditation completed before it graduates any students.) With foreign-trained therapists, there has been a problem throughout the U. S. with persons getting green cards or temporary occupational visas to work in this country as physical therapists who, once they get to the U. S., find that they do not meet the requirements for licensure in any state. Recent reforms in the immigration laws of the U.S. have created a requirement for internationally educated health care professionals entering the country to meet certain criteria before being granted a visa or applying for licensure. To ensure that those criteria have been met prior to entering the U.S., persons are being required to obtain pre-screening certification. Through the Federation of State Boards of Physical Therapy, the Foreign Credentialing Commission on Physical Therapy has been authorized to review credentials for the purpose of determining eligibility to be licensed as a physical therapist.

The Board is proposing that certification by the FCCPT be required for international candidates from non-approved educational programs. From its review of the criteria for certification by FCCPT, the Board determined that in every way its requirements met or exceeded Virginia’s requirements for licensure, with one exception – a traineeship in the U.S. The Board will continue to require a traineeship in Virginia to ensure through a period of supervised practice that the foreign-trained applicant has the knowledge, skills and English proficiency to communicate with and practice safely on patients in the Commonwealth. Requiring certification by FCCPT will eliminate the need for submission to the board of documents on educational programs, equivalency of degrees, translations from embassies, proof of English proficiency, and verification of licensure status in another country.

Clarification of practice responsibilities.

The Code of Virginia requires a referral from a doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery for treatment by a physical therapist. In 18 VAC 85-31-90, the title clearly referred to those particular practitioners, but the regulation spoke of the “referring practitioner”. As a result, there have been questions about whether a nurse practitioner or a

physician assistant working for physician could make the referral as the “referring practitioner.” An amendment will clarify the requirement and make it explicitly consistent with the Code.

Currently, regulations provide for the practice and supervision of a physical therapy aide; such a category of practitioner was not created in the statute and therefore should not be created by regulation. The proposal establishes a definition for “unlicensed personnel” and utilizes that terminology in the regulation.

Two other practice issues have been addressed to specify more clearly the requirements and policies of the Board. Supervision by a physical therapist of trainees is restricted to no more than three; the proposed amendment would clarify that it means three trainees *at any one time*. The clarification would assure that a physical therapist can provide direct supervision to any three trainees at any given time. The schedule for re-evaluation by a physical therapist of a patient being treated by a physical therapist assistant has been edited for greater clarity.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

18 VAC 85-31-10. Definitions are proposed for: a) an “approved program” to specify those educational programs which are accredited for licensure; b) “FCCPT” as the Foreign Credentialing Commission on Physical Therapy; and c) “non-licensed personnel as an individual not licensed or certified by a health regulatory board and is performing patient care functions at the direction of a physical therapist or a physical therapist assistant. An amendment is proposed in the definition of “inactive practice trainee” to clarify the meaning of “inactive” as not having practiced for at least 320 hours within the past four years and as consistent with terminology used elsewhere in the regulations.

18 VAC 85-31-25. A new section is proposed to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

18 VAC 85-31-40. The section on educational requirements is amended to specify that graduates of approved programs outside the United States or Canada must pass the Test of English as a Foreign Language or provide proof of English proficiency.

18 VAC 85-31-50. Regulations are amended for graduates of schools which are not approved by the board to require that such applicants in physical therapy provide documentation of certification by the FCCPT as evidence of equivalency in education and training. The requirements for a foreign-trained physical therapist assistant and for a traineeship have not been amended.

18 VAC 85-31-60. Amendments are editorial and not substantive. A new section 65 has been added to specify the current requirements for an examination and to set out the minimum passing score on the exam as a scale score of 600 or a score to be established by the Advisory Board.

18 VAC 85-31-80. An amendment is proposed to clarify that applicants for licensure by endorsement who has not been practicing in another jurisdiction for at least 320 hours within the four years immediately preceding application meet the requirements for a traineeship in 18 VAC 85-31-140. Other amendments in section 80 are editorial.

18 VAC 85-31-90. Amendments are proposed to clarify that the physical therapist gets a referral for treatment from a doctor of medicine, osteopathy, podiatry or dental surgery.

18 VAC 85-31-100. An amendment is proposed to change the term “physical therapy aide”, which is not a category of practitioner created by statute to the term “unlicensed personnel”, which is defined in regulation. An amendment is also proposed to clarify that the physical therapist shall supervise no more than 3 trainees at any one time.

18 VAC 85-31-120. Amendments are intended to clarify the schedule by which a physical therapist must re-evaluate a patient who is receiving treatment by a physical therapy assistant.

18 VAC 85-31-130. Amendments proposed on renewal of licensure are intended to be editorial.

18 VAC 85-31-135. A new section is proposed to allow a practitioner to request an inactive license without requiring evidence of continuing practice in physical therapy. Such a license does not entitle the licensee to perform any act which would require a license to practice. The proposed amendments would also establish a fee for inactive licensure and add requirements for reinstatement of an inactive license to active status to include: evidence of active practice hours in another jurisdiction equal to the number of years of inactivity and payment of the difference between the cost of an active and inactive license. An inactive licensee who cannot meet the requirement of active hours of practice must meet the requirements for a traineeship as specified in section 140.

18 VAC 85-31-140. An amendment is proposed to clarify the requirement for evidence of active practice in order to reinstate a license and to specify that a traineeship must be under the supervision of a physical therapist and to clarify who is required to do a traineeship as set forth in subsection A. The requirement for re-examination after a period of seven years of inactivity is deleted.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

ISSUE #1. Type and amount of continuing competency requirements.

In response to the statutory mandate for the Board of Medicine to develop regulations for the assurance of the continued competency of all its licensees, the Advisory Board reviewed its current requirement for hours of active practice as a pre-requisite for renewal of licensure. In these proposed regulations, there are no amendments for continuing education or other type of evidence of continued competency. However, the Advisory Board is continuing to monitor the research on continued competency, the requirements of other states, and the availability of credentialing organizations offering continued competency courses or activities.

ISSUE #2. Requirements for reactivation of an inactive or lapsed license.

In current regulations, there is a requirement for at least 320 hours of practice within the preceding four years in order to renew a license. The Board is proposing an inactive license at a reduced renewal fee for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of continuing competency hours equal to the amount of time the license has not been active. If a practitioner has not engaged in active practice during the time the license was inactive in Virginia, the Board currently requires that he serve a board-approved traineeship of 480 hours under the supervision of a licensed physical therapist.

Advantages or disadvantages to the licensees

The inactive licensure status will be beneficial to practitioners who are not currently living or practicing in the Commonwealth. They will be able to maintain a license at a reduced cost. If they choose to reactivate and return to practice, they will not have to apply for reinstatement or pay back renewal fees and penalty fees. They will only have to indicate that they have the required hours of active practice in another jurisdiction or have served the requisite traineeship and pay the difference between the inactive and active renewal fee. There are no disadvantages to licensees who will have the option of requesting inactive licensure.

Advantages or disadvantages to the public

Inactive licensure has no significant advantages or disadvantages to the public; these are persons who are not authorized the practice physical therapy in Virginia. Inactive licensure may have a minor positive impact on access to physical therapy services in that it would be less costly and burdensome for an inactive licensee who has taken a break from professional practice or has been living out-of-state to return to active practice and employment in Virginia. The public is well served by a requirement for a board-approved traineeship under supervision if a physical therapist or physical therapist assistant has not been professionally active for a period of time. Such a practice will provide assurance by the observation and guidance of a licensed therapist that the applicant for licensure or relicensure has regained his ability to practice.

ISSUE #3. Licensure requirements for applicants trained in foreign schools.**a. Test of English as a Foreign Language requirement for graduates of approved schools.**

Graduates of schools approved by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association are recognized by the Board as having met its educational requirements for licensure. Those schools were traditionally located in the U. S. or Canada, so English proficiency was not an issue. The Commission has begun approving schools in foreign countries, so the Board has determined that a test of English (TOEFL) or some other proof of English proficiency is necessary. For example, if a graduate attended a school in Great Britain or a citizen of the U.S. attended a school in a foreign country, the TOEFL test would not be required.

b. Documentation of certification by the Foreign Credentialing Commission on Physical Therapy for graduates of non-approved schools.

As far as the Board has been able to determine, the only “non-approved schools” of physical therapy are located outside the United States and Canada. (The new school of physical therapy located at Shenandoah University will have accreditation completed before it graduates any students.) With foreign-trained therapists, there has been a problem throughout the U. S. with persons getting green cards or temporary occupational visas to work in this country as physical therapists who, once they get to the U. S., find that they do not meet the requirements for licensure in any state. Recent reforms in the immigration laws of the U.S. have created a requirement for internationally educated health care professionals entering the country to meet certain criteria before being granted a visa or applying for licensure. To ensure that those criteria have been met prior to entering the U.S., persons are being required to obtain pre-screening certification. Through the Federation of State Boards of Physical Therapy, the Foreign Credentialing Commission on Physical Therapy has been authorized to review credentials for the purpose of determining eligibility to be licensed as a physical therapist.

The Board is proposing that certification by the FCCPT be required for international candidates from non-approved educational programs. From its review of the criteria for certification by FCCPT, the Board determined that in every way its requirements met or exceeded Virginia’s requirements for licensure, with one exception – the lack of a traineeship in the U.S. The Board will continue to require a traineeship in Virginia to ensure through supervised practice that the foreign-trained applicant has the knowledge, skills and English proficiency to communicate with and practice safely on patients in the Commonwealth. Requiring certification by FCCPT will eliminate the need for submission to the board of documents on educational programs, equivalency of degrees, translations from embassies, proof of English proficiency, and verification of licensure status in another country.

Advantages or disadvantages to the licensees.

The TOEFL examination is the nationally recognized standard for determining English proficiency for internationals seeking to practice a profession in the U.S. To require a different standard would be burdensome, since the TOEFL exam is readily available at schools located in other countries.

Students who can clearly demonstrate English proficiency will not be required to take the TOEFL exam.

Since pre-screening is required for entry into the U.S., applicants who have to get FCCPT certification will not have an unnecessary burden or barrier to licensure. The pre-screening process will eliminate the unfortunate situation of a foreign-trained physical therapist sacrificing to come to the U.S. only to find that he is not eligible to sit for the examination or to become licensed in any state. Pre-screening may also reduce the extremely high failure rate for foreign-trained graduates on the national licensure examination (out of the 30 foreign-trained applicants currently pending with the Board of Medicine, 27 have already failed the licensure examination at least once).

Advantages or disadvantages to the public.

The public is better protected by having potential licensees pre-screened for their ability to practice safely in Virginia and to communicate in English with their patients. The FCCPT will authenticate the licensure status of any person who has been licensed or certified in another country, evaluate the equivalency of his degree, and ensure English proficiency.

ISSUE #4. Clarification of practice responsibilities.

The Code of Virginia requires a referral from a doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery for treatment by a physical therapist. In 18 VAC 85-31-90, the title clearly referred to those particular practitioners, but the regulation spoke of the “referring practitioner”. As a result, there have been questions about whether a nurse practitioner or a physician assistant working for physician could make the referral as the “referring practitioner.” An amendment will clarify the requirement and make it explicitly consistent with the Code.

Currently, regulations provide for the practice and supervision of a physical therapy aide; such a category of practitioner was not created in the statute and therefore should not be created by regulation. The proposal establishes a definition for “unlicensed personnel” and utilizes that terminology in the regulation.

Two other practice issues have been addressed to specify more clearly the requirements and policies of the Board. Supervision by a physical therapist of trainees is restricted to no more than three; the proposed amendment would clarify that it means three trainees *at any one time*. The schedule for re-evaluation by a physical therapists of a patient being treated by a physical therapist assistant has been edited for greater clarity.

Advantages or disadvantages to the licensees and the public:

Greater clarity in the language of the regulation will serve to ensure more consistent compliance with regulations. Licensees will not inadvertently or unintentionally violate some provision of the requirements nor will they be pressured to accept a patient from a practitioner who is not authorized by law to make such a referral. The public is better protected by regulations which are specific in their requirements for practice and for supervision of unlicensed persons working in a physical therapy practice.

Advantages and disadvantages to the agency:

There are no specific advantages or disadvantages to the agency. There should be some additional clarity in the proposed regulations, which could contribute to better understanding and compliance by the licensees. More specificity in regulation sometimes results in less staff time spent in clarifying the intent of the rules.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A Public Hearing before the Board of Medicine was held on November 19, 1999 at which no comment was received.

Proposed regulations were published in the Virginia Register of Regulations on September 27, 1999. Public comment was requested for a 60-day period ending November 26, 1999, and none was received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 85-31-10. Definitions are proposed for: a) an “approved program” to specify those educational programs which are accredited for licensure; b) “FCCPT” as the Foreign Credentialing Commission on Physical Therapy; and c) “non-licensed personnel as an individual not licensed or certified by a health regulatory board and is performing patient care functions at the direction of a physical therapist or a physical therapist assistant. An amendment is proposed in the definition of “inactive practice trainee” to clarify the meaning of “inactive” as not having practiced for at least 320 hours within the past four years and as consistent with terminology used elsewhere in the regulations.

18 VAC 85-31-25. A new section is proposed to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

18 VAC 85-31-40. The section on educational requirements is amended to specify that graduates of approved programs outside the United States or Canada must pass the Test of English as a Foreign Language or provide proof of English proficiency.

18 VAC 85-31-50. Regulations are amended for graduates of schools which are not approved by the board to require that such applicants in physical therapy provide documentation of certification by the FCCPT as evidence of equivalency in education and training. The requirements for a foreign-trained physical therapist assistant and for a traineeship have not been amended.

18 VAC 85-31-60. Amendments are editorial and not substantive. A new section 65 has been added to specify the current requirements for an examination and to set out the minimum passing score on the exam as a scale score of 600 or a score to be established by the Advisory Board.

18 VAC 85-31-80. An amendment is proposed to clarify that applicants for licensure by endorsement who has not been practicing in another jurisdiction for at least 320 hours within the four years immediately preceding application meet the requirements for a traineeship in 18 VAC 85-31-140. Other amendments in section 80 are editorial.

18 VAC 85-31-90. Amendments are proposed to clarify that the physical therapist gets a referral for treatment from a doctor of medicine, osteopathy, podiatry or dental surgery.

18 VAC 85-31-100. An amendment is proposed to change the term “physical therapy aide”, which is not a category of practitioner created by statute to the term “unlicensed personnel”, which is defined in regulation. An amendment is also proposed to clarify that the physical therapist shall supervise no more than 3 trainees at any one time.

18 VAC 85-31-120. Amendments are intended to clarify the schedule by which a physical therapist must re-evaluate a patient who is receiving treatment by a physical therapy assistant.

18 VAC 85-31-130. Amendments proposed on renewal of licensure are intended to be editorial.

18 VAC 85-31-135. A new section is proposed to allow a practitioner to request an inactive license without requiring evidence of continuing practice in physical therapy. Such a license does not entitle the licensee to perform any act which would require a license to practice. The proposed amendments would also establish a fee for inactive licensure and add requirements for reinstatement of an inactive license to active status to include: evidence of active practice hours in another jurisdiction equal to the number of years of inactivity and payment of the difference between the cost of an active and inactive license. An inactive licensee who cannot meet the requirement of active hours of practice must meet the requirements for a traineeship as specified in section 140.

18 VAC 85-31-140. An amendment is proposed to clarify the requirement for evidence of active practice in order to reinstate a license and to specify that a traineeship must be under the supervision of a physical therapist and to clarify who is required to do a traineeship as set forth in subsection A. The requirement for re-examination after a period of seven years of inactivity is deleted.

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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 Board has reviewed the adopted regulations and concluded that the amendments have no effect on strengthening the authority and rights of parents, on economic self-sufficiency, on the marital commitment or on disposable family income.