

Virginia Regulatory Town Hall
Agency Background Document
Notice of Intended Regulatory Action (NOIRA)

Agency Name: Board of Medicine; Department of Health Professions
VAC Number: 18 VAC 85-50-10 et seq.
Regulation Title: Regulations Governing the Practice of Physician Assistants
Action Title: Inactive licensure and continuing competency
Date: June 12, 1998

Basis:

A statement identifying and describing the source(s) of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions.

All regulations of the Board of Medicine were 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. Number 12 was added by the 1998 General Assembly.

§ 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.*

Statutory authority for continuing competency requirements.

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing competency requirements.

§ 54.1-2912.1. Continued competency 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.*

Statutory authority for inactive licensure requirements.

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.*

Purpose:

A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulation's provisions are intended to solve.

The Code of Virginia specifically set a mandate in § 54.1-2912.1 that the Board establish requirements for relicensure which will assure the continuing competency of the practitioners it licenses. For some practitioners who are now retired or are practicing out of state but who wish to retain their Virginia license, the necessity of acquiring CE results in an unnecessary burden and expense. The Board of Medicine sought legislation which was included in the Governor's legislative package for the 1998 General Assembly to authorize the establishment of an inactive license.

The Board is now authorized to develop and propose regulations for inactive licensure to include a fee for such a license and any remedial education or professional activity it deems necessary to assure that the practitioner is prepared to return to active practice with minimal safety and skill.

Substance:

A statement delineating the potential issues to be addressed in the proposed regulation, with any preliminary regulatory language that has been developed attached.

In seeking to publish a Notice of Intended Regulatory Action, the Board of Medicine with the concurrence of the Advisory Committee for Physician Assistants has identified the following issue of concern for regulatory action - the issuance of inactive licensure for those who do not wish to maintain requirements for renewal.

In the 1998 General Assembly, Senate Bill 516 was introduced at the request of the Department and as part of the Governor's legislative package. The legislation amends § 54.1-2400, which sets forth the powers and duties of health regulator boards by adding authority for the boards 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."*

The Board is seeking permission to amend its regulations to allow the issuance of such a license for those persons who are not actively engaged in practice or who may live out-of-state but wish to retain their Virginia license. As provided in the amended section of the Code, which becomes effective on July 1, 1998, the regulations would include the renewal fee and conditions for reactivated one's license to an active status.

Alternatives:

A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose (identified in I.c. above), the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.

In the statutory authority of § 54.1-2400, the Board is authorized 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."*

Therefore, the Board will consider qualifications for taking inactive licensure such as the active license must be current and unrestricted at the time of the request. In its consideration of appropriate renewal fees, the Board will consider a fee which would probably be lower than an active license fee but would continue to support the activities associated with licensure. The conditions for reactivation would likely include such requirements as continuing education hours equal to the requirement for the number of years of inactivity with a limit on the total to be acquired. In addition, the Board will consider the professional activity of practitioners who have been actively practicing in another jurisdiction while they have been inactive in Virginia.