Commonwealth of Virginia

REGULATIONS

GOVERNING THE PRACTICE OF LICENSED CERTIFIED MIDWIVES

VIRGINIA BOARD OF NURSING
VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18 VAC 90-70-10 et seq.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.04 of the *Code of Virginia*

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PART I. GENERAL PROVISIONS.

18VAC90-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances containing an opioid may be prescribed for no more than three months.

"Approved program" means a midwifery education program that is accredited by the Accreditation Commission for Midwifery Education or its successor.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances containing an opioid may be prescribed for a period greater than three months.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Licensed certified midwife" means an advanced practice midwife who is jointly licensed by the Boards of Nursing and Medicine pursuant to § 54.1-2957.04 of the Code of Virginia.

"MME" means morphine milligram equivalent.

"Practice agreement" means a written or electronic statement, jointly developed by the consulting licensed physician and the licensed certified midwife, that describes the availability of the physician for routine and urgent consultation on patient care.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

18VAC90-70-20. Delegation of authority.

A. The boards hereby delegate to the Executive Director of the Virginia Board of Nursing the authority to issue the initial licensure and the biennial renewal of such licensure to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in 18VAC90-70-90 E and F. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the licensure of licensed certified midwives shall be maintained in the office of the Virginia Board of Nursing.

18VAC90-70-30. Committee of the Joint Boards of Nursing and Medicine.

A. The Committee of the Joint Boards of Nursing and Medicine, appointed pursuant to 18VAC90-30-30 and consisting of three members appointed from the Board of Medicine and three members appointed from the Board of Nursing, shall administer this chapter.

B. In accordance with 18VAC90-30-30, the committee may, in its discretion, appoint an advisory committee. The advisory committee shall include practitioners specified in 18VAC90-30-30.

18VAC90-70-40. Fees.

A. Fees required in connection with the licensure of certified midwives are:

1. Application	$125
2. Biennial licensure renewal	$80
3. Late renewal	$25
4. Reinstatement of licensure	$150
5. Verification of licensure to another jurisdiction	$35
6. Duplicate license	$15
7. Duplicate wall certificate	$25
8. Handling fee for returned check or dishonored credit card or debit card	$50
9. Reinstatement of suspended or revoked license	$200

PART II. LICENSURE.

18VAC90-70-50. Licensure generally.

A. No person shall perform services as a certified midwife in the Commonwealth of Virginia except as prescribed in this chapter and when licensed by the Boards of Nursing and Medicine.

B. The boards shall license applicants who meet the qualifications for licensure as set forth in 18VAC90-70-60 or 18VAC90-70-70.

18VAC90-70-60. Qualifications for initial licensure.

An applicant for initial licensure as a licensed certified midwife shall:

1. Submit evidence of a graduate degree in midwifery from an approved program;

2. Submit evidence of current certification as a certified midwife by the American Midwifery Certification Board;

3. File the required application; and

4. Pay the application fee prescribed in 18VAC90-70-40.

18VAC90-70-70. Qualifications for licensure by endorsement.

An applicant for licensure by endorsement as a licensed certified midwife shall:

1. Provide verification of a license as a certified midwife in another United States jurisdiction with a license in good standing or, if lapsed, eligible for reinstatement;

2. Submit evidence of current certification as a certified midwife by the American Midwifery Certification Board;

3. File the required application; and

4. Pay the application fee prescribed in 18VAC90-70-40.

18VAC90-70-80. Renewal of licensure.

A. Licensure of a licensed certified midwife shall be renewed biennially.

B. The renewal notice of the license shall be sent to the last known address of record of each licensed certified midwife. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed certified midwife shall attest to current certification as a certified midwife by the American Midwifery Certification Board and submit the license renewal fee prescribed in 18VAC90-70-40.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a certified midwife during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-70-90. Continuing competency requirements.

A. In order to renew a license biennially, a licensed certified midwife shall hold a current certification as a certified midwife by the American Midwifery Certification Board.

B. A licensed certified midwife shall obtain a total of eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium.

C. The licensed certified midwife shall retain evidence of compliance with this section and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of at least 1.0% of their licensed certified midwives to determine compliance. The licensed certified midwives selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee submitted prior to the renewal date.

F. The boards may delegate to the committee the authority to grant an exemption for all or part of the continuing education requirements in subsection B of this section for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-70-100. Reinstatement of license.

A. A licensed certified midwife whose license has lapsed may be reinstated within one renewal period by the payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee; and

2. Provide evidence of current professional competency consisting of:

a. Current certification by the American Midwifery Certification Board;

b. Continuing education hours completed during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or

c. If applicable, a current, unrestricted licensed as a certified midwife in another jurisdiction.

C. An applicant for reinstatement of a license following suspension or revocation shall:

1. Petition for reinstatement and pay the reinstatement fee; and

2. Present evidence that he is competent to resume practice as a licensed certified midwife in Virginia, to include:

a. Current certification by the American Midwifery Certification Board; and

b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act (§ 2.2-4000 *et seq.* of the Code of Virginia).

PART III. Practice of Licensed Certified Midwives.

18VAC90-70-110. Practice of licensed certified midwives.

A. All licensed certified midwives shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-70-10.

B. The written or electronic practice agreement shall include provisions for the availability of the physician for routine and urgent consultation on patient care.

C. The practice agreement shall be maintained by the licensed certified midwife and provided to the boards upon request. For licensed certified midwives providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the licensed certified midwife's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the licensed certified midwife shall be responsible for providing a copy to the boards upon request.

D. The practice of licensed certified midwives shall be consistent with the standards of care for the profession.

E. The licensed certified midwife shall include on each prescription issued or dispensed the licensed certified midwife's signature and Drug Enforcement Administration (DEA) number, when applicable.

F. The licensed certified midwife shall disclose to patients at the initial encounter that the licensed certified midwife is a licensed certified midwife. Such disclosure may be included on a prescription or may be given in writing to the patient.

G. A licensed certified midwife who provides health care services to a patient outside of a hospital or birthing center shall disclose to that patient, when appropriate, information on health risks associated with births outside of a hospital or birthing center, including to risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation.

H. The licensed certified midwife shall disclose, upon request of a patient or a patient's legal representative, the name of the consulting physician, and information regarding how to contact the consulting physician.

PART IV. Prescribing.

18VAC90-70-120. Prescribing for self or family.

A. Treating or prescribing shall be based on a bona fide practitioner-patient relationship, and prescribing shall meet the criteria set forth in § 54.1-3303 of the Code of Virginia.

B. A licensed certified midwife shall not prescribe a controlled substance to himself or a family member, other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia, unless the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or it is for a single episode of an acute illness through one prescribed course of medication.

C. When treating or prescribing for self or family, the licensed certified midwife shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

18VAC90-70-130. Waiver for electronic prescribing.

A. A prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in § 54.1-3408.02 C.

B. Upon written request, the boards may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

PART V. Management of Acute Pain.

18VAC90-40-140. Evaluation of the patient for acute pain.

A. The requirements of this part shall not apply to:

1. The treatment of acute pain related to (i) cancer, (ii) sickle cell, (iii) a patient in hospice care, or (iv) a patient in palliative care;

2. The treatment of acute pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or

3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, the practitioner shall give a short-acting opioid in the lowest effective dose for the fewest possible days.

C. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, the prescriber shall perform a history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance misuse as a part of the initial evaluation.

18VAC90-70-150. Treatment of acute pain with opioids.

A. Initiation of opioid treatment for patients with acute pain shall be with short-acting opioids.

1. A prescriber providing treatment for a patient with acute pain shall not prescribe a controlled substance containing an opioid in a quantity that exceeds a seven-day supply as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the medical record. This shall also apply to prescriptions of a controlled substance containing an opioid upon discharge from an emergency department.

2. An opioid prescribed as part of treatment for a surgical procedure shall be for no more than 14 consecutive days in accordance with manufacturer's direction and within the immediate perioperative period, unless extenuating circumstances are clearly documented in the medical record.

B. Initiation of opioid treatment for all patients shall include the following:

1. The practitioner shall carefully consider and document in the medical record the reasons to exceed 50 MME per day.

2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.

3. Naloxone shall be prescribed for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present.

C. Due to a higher risk of fatal overdose when opioids are used with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

D. Buprenorphine is not indicated for acute pain in the outpatient setting, except when a prescriber who has obtained a U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) waiver is treating pain in a patient whose primary diagnosis is the disease of addiction.

18VAC90-70-160. Medical records for acute pain.

The medical record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed or administered to include the date, type, dosage, and quantity prescribed or administered.

PART VI. Management of Chronic Pain.

18VAC90-70-170. Evaluation of the chronic pain patient.

A. The requirements of this part shall not apply to:

1. The treatment of chronic pain related to (i) cancer, (ii) sickle cell, (iii) a patient in hospice care, or (iv) a patient in palliative care;

2. The treatment of chronic pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or

3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Prior to initiating management of chronic pain with a controlled substance containing an opioid, a medical history and physical examination, to include a mental status examination, shall be performed and documented in the medical record, including:

1. The nature and intensity of the pain;

2. Current and past treatments for pain;

3. Underlying or coexisting diseases or conditions;

4. The effect of the pain on physical and psychological function, quality of life, and activities of daily living;

5. Psychiatric, addiction, and substance misuse histories of the patient and any family history of addiction or substance misuse;

6. A urine drug screen or serum medication level;

7. A query of the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia;

8. An assessment of the patient's history and risk of substance misuse; and

9. A request for prior applicable records.

C. Prior to initiating opioid analgesia for chronic pain, the practitioner shall discuss with the patient the known risks and benefits of opioid therapy and the responsibilities of the patient during treatment to include securely storing the drug and properly disposing of any unwanted or unused drugs. The practitioner shall also discuss with the patient an exit strategy for the discontinuation of opioids in the event they are not effective.

18VAC90-70-180. Treatment of chronic pain with opioids.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids.

B. In initiating opioid treatment for all patients, the practitioner shall:

1. Carefully consider and document in the medical record the reasons to exceed 50 MME per day;

2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist;

3. Prescribe naloxone for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present; and

4. Document the rationale to continue opioid therapy every three months.

C. Buprenorphine mono-product in tablet form shall not be prescribed for chronic pain.

D. Due to a higher risk of fatal overdose when opioids, including buprenorphine, are given with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-70-190. Treatment plan for chronic pain.

A. The medical record shall include a treatment plan that states measures to be used to determine progress in treatment, including pain relief and improved physical and psychosocial function, quality of life, and daily activities.

B. The treatment plan shall include further diagnostic evaluations and other treatment modalities or rehabilitation that may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

C. The prescriber shall record in the medical records the presence or absence of any indicators for medication misuse or diversion and take appropriate action.

18VAC90-70-200. Informed consent and agreement to treatment of chronic pain.

A. The practitioner shall document in the medical record informed consent, to include risks, benefits, and alternative approaches, prior to the initiation of opioids for chronic pain.

B. There shall be a written treatment agreement, signed by the patient, in the medical record that addresses the parameters of treatment, including those behaviors that will result in referral to a higher level of care, cessation of treatment, or dismissal from care.

C. The treatment agreement shall include notice that the practitioner will query and receive reports from the Prescription Monitoring Program and permission for the practitioner to:

1. Obtain urine drug screen or serum medication levels, when requested; and

2. Consult with other prescribers or dispensing pharmacists for the patient.

D. Expected outcomes shall be documented in the medical record, including improvement in pain relief and function or simply in pain relief. Limitations and side effects of chronic opioid therapy shall be documented in the medical record.

18VAC90-70-210. Opioid therapy for chronic pain.
A. The practitioner shall review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health at least every three months.

B. Continuation of treatment with opioids shall be supported by documentation of continued benefit from the prescribing. If the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

C. Practitioners shall check the Prescription Monitoring Program at least every three months after the initiation of treatment.

D. The practitioner shall order and review a urine drug screen or serum medication levels at the initiation of chronic pain management and thereafter randomly at the discretion of the practitioner but at least once a year.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-70-220. Additional consultation.
A. When necessary to achieve treatment goals, the prescriber shall refer the patient for additional evaluation and treatment.

B. When a practitioner makes the diagnosis of opioid use disorder, treatment for opioid use disorder shall be initiated or the patient shall be referred for evaluation and treatment.

18VAC90-70-230. Medical records.
The prescriber shall keep current, accurate, and complete records in an accessible manner and readily available for review to include:

1. The medical history and physical examination;

2. Past medical history;

3. Applicable records from prior treatment providers or any documentation of attempts to obtain those records;

4. Diagnostic, therapeutic, and laboratory results;

5. Evaluations and consultations;

6. Treatment goals;

7. Discussion of risks and benefits;

8. Informed consent and agreement for treatment;

9. Treatments;

10. Medications, including date, type, dosage and quantity prescribed, and refills;

11. Patient instructions; and

12. Periodic reviews.

PART VII. DISCIPLINARY PROVISIONS.

18VAC90-70-240. Grounds for disciplinary action against the license of a certified midwife.

The boards may deny licensure or relicensure, revoke or suspend the license, or place on probation, censure, reprimand, or impose a monetary penalty on a licensed certified midwife for the following unprofessional conduct:

1. Has had licensure to practice midwifery in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly held himself out or represented himself to the public as a physician or is able to, or will practice independently of a physician;

3. Has performed procedures or techniques that are outside the scope of practice as a licensed certified midwife and for which the licensed certified midwife is not trained and individually competent;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing, or certified midwifery;

5. Has become unable to practice with reasonable skill and safety as the result of physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals, or any other type of material;

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration, or distribution of drugs;

7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-70-90;

8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful;

9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program; or

10. Has practiced as a licensed certified midwife during a time when the practitioner's certification as a certified midwife by the American Midwifery Certification Board has lapsed.

18VAC90-70-250. Hearings.

A. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern proceedings on questions of violation of 18VAC90-70-240.

B. The Committee of the Joint Boards of Nursing and Medicine shall conduct all proceedings prescribed in this chapter and shall take action on behalf of the boards.

18VAC90-70-260. Delegation of proceedings.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the committee may delegate an informal fact-finding proceeding to an agency subordinate.

B. Criteria for delegation. Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the chair of the committee.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the committee to conduct an informal fact-finding proceeding may include current or past board members, professional staff, or

other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The Executive Director of the Board of Nursing shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The committee may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.