

DRAFT UNAPPROVED
AGENDA

VIRGINIA BOARD OF HEALTH PROFESSIONS
RETREAT
May 5, 2016
Board Room #2 11:00 a.m.

- 1) Review of Statutes and Regulations – Page 2**
- 2) Review of Bylaws and Guidance Documents – Page 30**
- 3) Current Projects – Page 52**
- 4) Direction for the Future**
 - i) Role in Scope of Practice Reviews**
 - ii) Role in Review of Health Workforce Issues**
 - iii) Role in Monitoring Emerging Practice Trends**
 - iv) Other**

**Statutes Regarding the
Virginia Board of Health Professions**

May 5, 2016

Contents

Chapter 1. General Provisions 3

§ 54.1-109. Reviews and appeals 3

§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of health regulatory boards prohibited..... 3

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation..... 4

 § 54.1-2410. Definitions 5

54.1-2411. Prohibited referrals and payments; exceptions..... 6

§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation..... 8

§ 54.1-2413. Additional conditions related to practitioner-investors 9

§ 54.1-2414. Applicability of chapter; grace period for compliance 9

§ 54.1-2500. Definitions..... 10

§ 54.1-2503. Boards within Department..... 10

 54.1-2509. Reimbursement of Board members for expenses 13

 § 54.1-2510. Powers and duties of Board of Health Professions 13

§ 54.1-2729.1. Scope of chapter 14

§ 54.1-2729.2. Dialysis patient care technician; definition 14

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty 15

 § 54.1-2730. Scope of chapter..... 15

 § 54.1-2731. Prohibited terms; penalty. 16

Chapter 1. General Provisions

§ 54.1-109. Reviews and appeals

Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, **Board of Health Professions**, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1979, c. 408, § 54-1.19; 1988, c. 765; 1992, c. 659; 1993, c. 499 .

§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of health regulatory boards prohibited

A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

B. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and accounted for and deposited into a special fund by the Director of the Department of Health Professions shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and **Board of Health Professions** and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2.

1981, c. 558, § 54-1.28:1; 1988, c. 765; 1993, c. 499; 2006, c. 631; 2009, c. 472.

Chapter 24. General Provisions

§ 54.1-2400. General powers and duties of health regulatory boards

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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.

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation¹

The **Board of Health Professions** shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.
2. Accountability of health regulatory bodies to the public.
3. Promotion of consumers' access to a competent health care provider workforce.
4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.
5. Facilitation of professional and geographic mobility of competent providers.
6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;
2. Health delivery system data;
3. Reimbursement issues;
4. Accreditation of education programs; and
5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

1996, c. 532.

¹ NOTE: The Department contracted with Eastern Virginia Medical School to conduct the study with Board's approval of findings.

Chapter 24.1 Practitioner Self-Referral Act

§ 54.1-2410. Definitions

As used in this chapter or when referring to the **Board of Health Professions** regulatory authority therefor, unless the context requires a different meaning:

"Board" means the **Board of Health Professions**.

"Community" means a city or a county.

"Demonstrated need" means (i) there is no facility in the community providing similar services and (ii) alternative financing is not available for the facility, or (iii) such other conditions as may be established by Board regulation.

"Entity" means any person, partnership, firm, corporation, or other business, including assisted living facilities as defined in § [63.2-100](#), that delivers health services.

"Group practice" means two or more health care practitioners who are members of the same legally organized partnership, professional corporation, not-for-profit corporation, faculty practice or similar association in which (i) each member provides substantially the full range of services within his licensed or certified scope of practice at the same location as the other members through the use of the organization's office space, facilities, equipment, or personnel; (ii) payments for services received from a member are treated as receipts of the organization; and (iii) the overhead expenses and income from the practice are distributed according to methods previously determined by the members.

"Health services" means any procedures or services related to prevention, diagnosis, treatment, and care rendered by a health care worker, regardless of whether the worker is regulated by the Commonwealth.

"Immediate family member" means the individual's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, parent, stepparent, parent-in-law, or sibling.

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (§ [32.1-123](#) et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Office practice" means the facility or facilities at which a practitioner, on an ongoing basis, provides or supervises the provision of health services to consumers.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

1993, c. 869; 2000, c. [201](#).

54.1-2411. Prohibited referrals and payments; exceptions

A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of subsections D or E of this section or of subsections D or E of § [54.1-2413](#), a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.

B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;
2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;
3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;
4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and
6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within 90 days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final

administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

C. When an exception is granted pursuant to subsection B:

1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;
2. Information on the practitioner's investment shall be provided if requested by any third party payor;
3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and
4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;
2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least \$50,000,000 related to the furnishing of health services;
3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;
4. All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;
5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
6. The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and
7. The practitioner's investment interest does not exceed one half of one percent of the entity's total equity.

E. In addition, a practitioner may refer a patient to such practitioner's immediate family member or such immediate family member's office or group practice for health services if all of the following conditions are met:

1. The health services to be received by the patient referred by the practitioner are within the scope of practice of the practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice;
2. The practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice is qualified and duly licensed to provide the health services to be received by the patient referred to the practitioner;
3. The primary purpose of any such referral is to obtain the appropriate professional health services for the patient being referred, which are to be rendered by the referring practitioner's immediate family member or by the treating practitioner within such immediate family member's office or group practice who is qualified and licensed to provide such professional health services; and
4. The primary purpose of the referral shall not be for the provision of designated health services as defined in 42 U.S.C. § 1395nn and the regulations promulgated thereunder.

1993, c. 869; 2005, c. 402.

§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation

- A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.
- B. The Board shall promulgate, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), regulations to:
 1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;
 2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § 54.1-2411;
 3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;
 4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to subsection B of § 54.1-2411;
 5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this chapter by practitioners and for investigations and determinations of violations of this chapter by entities;
 6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and
 7. Establish such other regulations as may reasonably be needed to administer this chapter.

C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § 54.1-2411 shall be subject to a monetary penalty of no more than \$20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § 54.1-2401.

1993, c. 869 .

§ 54.1-2413. Additional conditions related to practitioner-investors

A. No hospital licensed in the Commonwealth shall discriminate against or otherwise penalize any practitioner for compliance with the provisions of this chapter.

B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which would be prohibited by this chapter if the practitioner made the referrals directly.

C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be prohibited by this chapter.

D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

E. Notwithstanding the provisions of this chapter, a referral to an entity in which the referring practitioner or his immediate family member is an investor shall not be in violation of this chapter if (i) the health service to be provided is a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, and an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, applies, or (ii) the health service to be provided is not a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, but would qualify for an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, if the health service were a designated health service.

1993, c. 869; 2005, c. 402; 2010, c. 743.

§ 54.1-2414. Applicability of chapter; grace period for compliance

This chapter shall apply, in the case of any investment interest acquired after February 1, 1993, to referrals for health services made by a practitioner on or after July 1, 1993. However, in the case of any investment interest acquired prior to February 1, 1993, compliance with the provisions of this chapter is required by July 1, 1996.

1993, c. 869 .

§ 54.1-2500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the **Board of Health Professions**.

"Department" means the Department of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

1977, c. 579, § 54-950; 1980, c. 678; 1983, c. 115; 1985, c. 448; 1986, c. 564; 1987, c. 686; 1988, c. 765.

Chapter 25. Department of Health Professions

§ 54.1-2503. Boards within Department

In addition to the **Board of Health Professions**, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Long-Term Care Administrators, Board of Medicine, Board of Nursing, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

1977, c. 579, § 54-950.2; 1980, c. 678; 1983, c. 115; 1987, c. 686; 1988, c. 765; 1992, cc. 706, 841; 1993, c. 869; 2000, cc. 473, 688; 2005, cc. 610, 924.

§ 54.1-2505. Powers and duties of Director of Department

The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;

2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;
5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the **Board of Health Professions**;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and **Board of Health Professions** shall be paid. Such fees shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and **Board of Health Professions** and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2;
12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;
13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;
14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation,

indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law, including the laws relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. Upon request and affidavit from an attorney for the Commonwealth, the Director shall provide documents material to a criminal investigation of a person licensed by a health regulatory board; however, peer review documents shall not be released and shall remain privileged pursuant to § 8.01-581.17. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;

16. To keep records of the names and qualifications of registered, certified or licensed persons;
17. To exercise other powers and perform other duties required of the Director by the Governor;
18. To issue subpoenas in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;
19. To establish, and revise as necessary, a health practitioners' monitoring program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title;
20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title; and
21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § 54.1-2400.6 or § 54.1-2909.

1977, c. 579, § 54-955; 1980, c. 678; 1983, c. 528; 1986, c. 564; 1988, cc. 266, 765; 1997, c. 439; 2002, c. 481; 2003, cc. 753, 762; 2004, c. 64; 2006, c. 631; 2009, c. 472.

§ 54.1-2507. Board of Health Professions; membership, appointments, and terms of office

The **Board of Health Professions** shall consist of one member from each health regulatory board appointed by the Governor; and five members to be appointed by the Governor from the Commonwealth at large. No member of the **Board of Health Professions** who represents a health regulatory board shall serve as such after he ceases to be a member of a board. The members appointed by the Governor shall be subject to confirmation by the General Assembly and shall serve for four-year terms *or terms concurrent with their terms as members of health regulatory boards, whichever is less.*

(1977, c. 579, §54-951; 1985, c. 448, 1986, c. 564, 1988, c. 765; 2016 c.105)

§ 54.1-2508. Chairman; meetings of Board; quorum

The chairman of the **Board of Health Professions** shall be elected by the Board from its members. The Board shall meet at least annually and may hold additional meetings as necessary to perform its duties. A majority of the Board shall constitute a quorum for the conduct of business.

54.1-2509. Reimbursement of Board members for expenses

All members of the Board shall be compensated in accordance with § 2.2-2813 from the funds of the Department.

977, c. 579, § 54-953; 1980, c. 678; 1986, c. 564; 1988, c. 765; 2012, c. 361)

§ 54.1-2510. Powers and duties of Board of Health Professions

The **Board of Health Professions** shall have the following powers and duties:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;
2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;
3. To review and comment on the budget for the Department;
4. To provide a means of citizen access to the Department;
5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;
6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to departmental information;
7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;

8. To make bylaws for the government of the **Board of Health Professions** and the proper fulfillment of its duties under this chapter;
9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board;
10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the Board on proposed board regulations;
11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;
12. To examine scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;
13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports relating to complaints of violations by practitioners of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle;
14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in Chapter 24.1 of this subtitle; and
15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 of this subtitle.

(1977, c. 579, § 54-955.1; 1980, c. 678; 1984, cc. 447, 720, 734; 1986, c. 564; 1988, c. 765; 1993, c. 869.)

Chapter 27.01 - Dialysis Patient Care Technicians

§ 54.1-2729.1. Scope of chapter

This chapter shall not preclude or affect the ability of unregulated persons to perform services relating to the technical elements of dialysis, such as equipment maintenance and preparation of dialyzers for reuse by the same patient.

2003, c. 995.

§ 54.1-2729.2. Dialysis patient care technician; definition

"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the **Board of Health Professions** to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician, nurse practitioner or physician assistant. However, a person who has completed a training program in dialysis patient care may engage in provisional practice to obtain practical experience in providing direct patient care under direct and immediate supervision in accordance with § 54.1-3408, until he has taken and received the results of any examination required by a certifying organization approved by the Board or for 24 months from the date of initial practice, whichever occurs sooner.

2003, c. 995; 2006, c. 75.

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty

A. No person shall hold himself out to be or advertise or permit to be advertised that he is a dialysis patient care technician or dialysis care technician as defined in this chapter unless such person has obtained certification from an organization approved by the **Board of Health Professions** as examining candidates for appropriate competency or technical proficiency to perform as dialysis patient care technicians or dialysis care technicians.

B. The title restrictions provided by this section shall apply to the use of the terms "dialysis patient care technician" and "dialysis care technician" or any other term or combination of terms used alone or in combination with the terms "licensed," "certified," or "registered," as such terms also imply a minimum level of education, training, and competence. A person who is authorized for provisional practice to provide direct patient care while obtaining practical experience shall be identified as a "trainee" while working in a renal dialysis facility.

C. The **Board of Health Professions** may require such continuing competency training as it may deem necessary for dialysis patient care technicians or dialysis care technicians.

D. Any person who willfully violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

2003, c. 995; 2006, c. 75.

Chapter 27.1. Dietitians and Nutritionists

§ 54.1-2730. Scope of chapter

Nothing in this chapter shall preclude or affect in any fashion the ability of any person to provide any assessment, evaluation, advice, counseling, information or services of any nature that are otherwise allowed by law, whether or not such services are provided in connection with the marketing and sale of products.

(1995, c. 391.)

§ 54.1-2731. Prohibited terms; penalty.

A. No person shall hold himself out to be or advertise or permit to be advertised that such person is a dietitian or nutritionist unless such person:

1. Has (i) received a baccalaureate or higher degree in nutritional sciences, community nutrition, public health nutrition, food and nutrition, dietetics or human nutrition from a regionally accredited college or university and (ii) satisfactorily completed a program of supervised clinical experience approved by the Commission on Dietetic Registration of the American Dietetic Association;
2. Has active registration through the Commission on Dietetic Registration of the American Dietetic Association;
3. Has an active certificate of the Certification Board for Nutrition Specialists by the Board of Nutrition Specialists;
4. Has an active accreditation by the Diplomats or Fellows of the American Board of Nutrition;
5. Has a current license or certificate as a dietitian or nutritionist issued by another state; or
6. Has the minimum requisite education, training and experience determined by the **Board of Health Professions** appropriate for such person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist.

The restrictions of this section apply to the use of the terms "dietitian" and "nutritionist" as used alone or in any combination with the terms "licensed," "certified," or "registered," as those terms also imply a minimum level of education, training and competence.

B. Any person who willfully violates the provisions of this section shall be guilty of a Class 3 misdemeanor.

(1995, c. 391.)

Regulations of the Virginia Board of Health Professions

- **Dialysis Patient Care Technicians**
- **Dietitians and Nutritionists**
- **Practitioner Self-Referral Act**

Commonwealth of Virginia



**VIRGINIA DEPARTMENT OF HEALTH
PROFESSIONS
REGULATIONS
GOVERNING THE CERTIFICATION OF
DIALYSIS TECHNICIANS**

Title of Regulations: 18 VAC 75-40-10 et seq.

Statutory Authority: Chapter 27.01 of Title 54.1 of the *Code of Virginia*

Effective: May 18, 2005

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18 VAC 75-40-10. Definitions.

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

“Board” means the Board of Health Professions.

“Dialysis patient care technician” or “dialysis care technician” means a person who has obtained certification from an organization approved by the Board to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician, nurse practitioner or physician assistant.

18 VAC 75-40-20. General provisions; scope of practice.

A. In accordance with Chapter 27.01 of Title 54.1 of the Code of Virginia and this chapter, only those persons who hold certification from an entity approved by the Board as prescribed in 18 VAC 75-40-30 shall:

1. Provide direct patient care in a Medicare-certified renal dialysis facility.
2. Administer medications in accordance with subsection O of § 54.1-3408 of the Code of Virginia.

B. Dialysis patient care technicians or dialysis care technicians shall practice only under the supervision of a licensed practitioner of medicine or a registered nurse.

C. Dialysis patient care technicians or dialysis care technicians shall administer medications only under the orders of a licensed physician, nurse practitioner, or physician assistant and under the direct and immediate supervision of a registered nurse.

D. Persons who do not hold such certification shall not hold the restricted titles or use any other title or term that implies a minimum level of education, training and competence. Unregulated persons shall only perform services relating to the technical elements of dialysis, such as equipment maintenance and preparation of dialyzers for reuse by the same patient.

18 VAC 75-40-30. Criteria for use of the titles of dialysis patient care technician or dialysis care technician.

In order to use the titles of dialysis patient care technician or dialysis care technician or administer medications in a Medicare-certified renal dialysis facility, a person shall hold one of the following certifications:

1. Certified Clinical Hemodialysis Technician (CCHT) by the Nephrology Nursing Certification Commission (NNCC);
2. Certified Hemodialysis Technician (CHT) by the Board of Nephrology Examiners Nursing and Technology (BONENT);
3. Certified in Clinical Nephrology Technology (CCNT) by the National Nephrology Certification Organization (NNCO); or
4. Certification or licensure as a dialysis technician or similar title by another jurisdiction in the United States provided the standards for certification or licensure or substantially equivalent to those in Virginia.

Commonwealth of Virginia



REGULATIONS

GOVERNING STANDARDS FOR DIETITIANS AND NUTRITIONISTS

VIRGINIA BOARD OF HEALTH PROFESSIONS

Title of Regulations: 18 VAC 75-30-10 et seq.

**Statutory Authority: §§ 54.1-2400 and Chapter 27.1 of Title 54.1
of the *Code of Virginia***

Revised Date: December 11, 1996

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Regulations of the Board of Health Professions

(As authorized by § 54.1-2731 A 6 of the Code of Virginia)

18VAC75-30-10. Requirements for use of title of dietitian or nutritionist.

In addition to the criteria established in §54.1-2731 of the Code of Virginia, a person may hold himself out to be a dietitian or nutritionist who has met the following requirements:

1. Has a baccalaureate degree with a major in foods and nutrition or dietetics or has equivalent hours of food and nutrition course work;
2. Has two years of work experience in nutrition or dietetics concurrent with or subsequent to such degree; and
3. Is employed by or under contract to a governmental agency.

Commonwealth of Virginia



REGULATIONS

GOVERNING PRACTITIONER SELF- REFERRAL

VIRGINIA BOARD OF HEALTH PROFESSIONS

Title of Regulations: 18 VAC 75-20-10 et seq.

**Statutory Authority: §§ 54.1-2400 and Chapter 24.1 of Title 54.1
of the *Code of Virginia***

Revised Date: September 10, 2007

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
Part I. General Provisions.....	3
18VAC75-20-10. Definitions.....	3
18VAC75-20-20. Public Participation Guidelines.....	3
18VAC75-20-30 to 18VAC75-20-50. [Repealed].....	3
Part II. Advisory Opinions and Exceptions.....	3
18VAC75-20-60. Application for advisory opinions.....	3
18VAC75-20-70. Application for exception.....	4
18VAC75-20-80. Fees.....	5
Part III. Discipline.....	5
18VAC75-20-90. Disciplinary action against entities.....	5
18VAC75-20-100. Disciplinary action against practitioners.....	5
18VAC75-20-110. Hearings.....	5

Part I. General Provisions.

18VAC75-20-10. Definitions.

Statutory definitions of words and terms related to the Practitioner Self-Referral Act are established in §54.1-2410 of the Code of Virginia.

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

"Act" means the Practitioner Self-Referral Act, Chapter 24.1 (§54.1-2410 et seq.) of Title 54.1 of the Code of Virginia.

"Applicant" means a practitioner or entity who has applied to the board for an advisory opinion on the applicability of the Act, or for an exception to the prohibitions of the Act.

"Appropriate regulatory board" means the regulatory board within the Department of Health Professions which licenses or certifies the practitioner.

"Board" means the Board of Health Professions.

"Committee" means an informal conference committee of the Board of Health Professions.

"Department" means the Department of Health Professions.

18VAC75-20-20. Public Participation Guidelines.

18VAC75-10-10 establishes the guidelines for participation by the public in rulemaking activities of the board.

18VAC75-20-30 to 18VAC75-20-50. [Repealed]

Part II. Advisory Opinions and Exceptions.

18VAC75-20-60. Application for advisory opinions.

A. Any practitioner or entity may request an advisory opinion on the applicability of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The request shall contain the following information:

1. The name of the practitioner or entity;
2. Identification of the practitioner or entity and description of the health care services being provided or proposed;
3. The type and amount of existing or proposed investment interest in the entity;

4. A description of the nature of the investment interest and copies of any existing or proposed documents between the practitioner and the entity including but not limited to leases, contracts, organizational documents, etc.; and

5. Certification and notarized signature of the practitioner or principal of the entity requesting the advisory opinion that the information and supporting documentation contained therein is true and correct.

C. The application shall be reviewed for completeness, and the board may request such other additional information or documentation it deems necessary from the practitioner or entity.

D. Upon a determination that a request for an advisory opinion is complete and that it has sufficient information, the board shall notify the practitioner or entity that it will consider its request.

E. At the conclusion of an informal conference, the committee shall issue an advisory opinion to the practitioner or entity, which shall be presented for ratification by the board.

18VAC75-20-70. Application for exception.

A. A practitioner or entity may request an exception to the prohibitions of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The application shall contain the following information:

1. The name and identifying information of the practitioner or entity;

2. The information and documentation regarding community need and alternative financing as required by §54.1-2411 B of the Code of Virginia;

3. Certification and notarized signature of the practitioner or principal of the entity requesting the exception that the information contained in the application and supporting documentation is true and correct.

C. The application shall be reviewed for completeness, and the board may request additional information and documentation from the applicant.

D. Upon a determination that an application is complete and that it has sufficient information, the board shall notify the applicant that it will consider the request.

E. At the conclusion of an informal conference, the committee shall issue a decision regarding the request for an exception to the applicant, which shall be presented for ratification by the board.

F. Exceptions to the Act shall be valid for a period of no more than five years.

G. Subject to verification by the board, an exception shall be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

18VAC75-20-80. Fees.

- A. An application fee for an opinion on applicability of the Act shall be \$500.
- B. An application fee for an exception to the Act shall be \$1,000.
- C. The renewal fee for board approval of exceptions to the Act shall be \$250.

Part III. Discipline.**18VAC75-20-90. Disciplinary action against entities.**

The board shall determine violations of prohibitions of the Act on the part of an entity other than a practitioner as defined in §54.1-2410 of the Code of Virginia in accordance with the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC75-20-100. Disciplinary action against practitioners.

- A. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner as defined in §54.1-2410 of the Code of Virginia, the department, on behalf of the board, shall provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of §54.1-2510 of the Code of Virginia.
- B. Violations of the Act by a practitioner shall be determined by the appropriate regulatory board within the department and shall be subject to disciplinary action by that board in accordance with §54.1-2412 D of the Code of Virginia.
- C. Upon closure of a case involving an alleged violation of the Act by a practitioner, the appropriate regulatory board shall provide a copy of the final order or of the letter of dismissal of the case to the board.
- D. The board shall review periodically the disposition of cases involving allegations of violation of the Act by practitioners to ensure the protection of the public and the fair and equitable treatment of health professionals, as authorized by subdivision 11 of §54.1-2510 of the Code of Virginia.

18VAC75-20-110. Hearings.

The provisions of the Administrative Process Act (§9-6.14:1 et seq. of the Code of Virginia) shall govern proceedings on questions of violations of the Act.

Part IV. Delegation to an agency subordinate**18VAC75-20-120. Decision to delegate.**

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal conference to an agency subordinate to consider an application for an advisory opinion or an exception to the provisions of the Act.

18VAC75-20-130. Criteria for delegation.

Applications that may be delegated shall be those approved by the chairman and executive director of the board.

18VAC75-20-140. Criteria for an agency subordinate.

A. An agency subordinate authorized by the board to conduct an informal conference may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in the organizational structure of entities providing the health care services identified in the application.

B. The board shall delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a conference based on the qualifications of the subordinate and the type of case being heard.

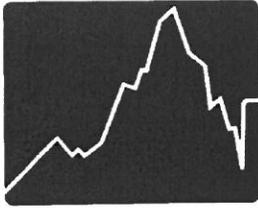
Guidance Documents of the Virginia Board of Health Professions

75-2 [Appropriate Criteria in Determining the Need for Regulation of Any Health Care Occupation or Professions, revised February 1998.](#)

75-3 [Mission and Vision of the Board of Health Professions, adopted April, 1998.](#)

75-4 [Bylaws of the Board of Health Professions, adopted May 28, 2015](#)

The Code of Virginia requires annual publication of lists of guidance documents from state agencies. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.



VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS

VIRGINIA BOARD OF HEALTH PROFESSIONS

**Policies and Procedures for the Evaluation of the
Need to Regulate Health Occupations and Professions**

TABLE OF CONTENTS

Introduction	3
Authority	4
Policy	5
• Statute	5
• The Criteria and Their Application	7
• Alternatives to Occupational and Professional Regulation	9
Procedures	9
• Who may request a study and how?	9
• How is a study conducted?	10
• What happens to the results?	12
Appendix	13

Introduction

Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions: 1998 was developed to inform interested parties concerning the Virginia Board of Health Professions' authority to investigate the need for state regulation of health care providers and its approach in conducting such investigations. This report revises and supersedes a document of the same title published in 1992. This revision was prompted by the results of a study mandated by the 1996 Session of the General Assembly as set forth in §54.1-2409.2 of the *Code of Virginia* (see insert). * The study required an examination of the appropriateness of the Board's evaluation standards.

§54.1-2409.2. Board to set criteria for determining need for professional regulation.

The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.
2. Accountability of health regulatory bodies to the public.
3. Promotion of consumers' access to a competent health care provider workforce.
4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.
5. Facilitation of professional and geographic mobility of competent providers.
6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation, including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;
2. Health delivery systems data;
3. Reimbursement issues;
4. Accreditation of education programs; and
5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

* A copy of *The Study of the Appropriate Criteria to be Applied in Determining the Need for Regulation of Any Health Care Occupation or Profession* is available upon request.

Among the findings of this comprehensive study is that the Board's current seven criteria are appropriate: 1) risk of harm to the consumer, 2) specialized skills and training, 3) autonomous practice, 4) scope of practice, 5) economic impact, 6) alternatives to regulation, and 7) least restrictive regulation. A complete description of each is found on page 5. An accompanying finding, however, is that the application of the criteria could be strengthened by factoring in additional quantitative and qualitative evidence-based information.

In response to this finding, the Board now requires in its analysis consideration of a job analysis or role delineation study completed within the last two to three years as well as malpractice insurance coverage information. It is held that consistent review of these two sources of objective information should enable the Board to better apply Criteria One through Five.

Authority

The Virginia Board of Health Professions was established by the General Assembly in 1977 to advise the Governor and the General Assembly on matters related to the regulation of health occupations and professions and to provide policy coordination for the twelve health regulatory boards administered by the Virginia Department of Health Professions. It is comprised of seventeen members appointed by the Governor with five citizen members and a member from each of the twelve health regulatory boards.

The powers and duties of the Board are established in *Code of Virginia* § 54.1-2510. Among these duties is the following:

. . . [The Board shall] evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions [of Title 54] to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed [emphasis added]. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation.

It must be made clear that the General Assembly, and not the Board, is the body empowered to make the final determination of the need for state regulation of a health care profession or occupation. The General Assembly has the authority to enact legislation specifying the profession to be regulated, the degree of regulation to be

imposed, and the organizational structure to be used to manage the regulatory program (e.g., board, advisory committee, registry).

The Board's role is purely advisory. It has the authority and responsibility to study and make recommendations concerning the need to regulate new (i.e., currently unregulated) occupations and professions (i.e., a "sunrise" review) as well as to routinely re-examine the appropriateness of the regulatory schemes for currently regulated professions and occupations.

Policies

The Board's evaluation policies are grounded in the Commonwealth's philosophy on occupational regulation as expressed in statute and in the Board's own *Criteria for Evaluating the Need for Regulation* (i.e., the Criteria). Alternatives to regulation are also always considered.

Statute

The following statement epitomizes the Commonwealth's philosophy on the regulation of professions and occupations: ***The occupational property rights of the individual may be abridged only to the degree necessary to protect the public.*** This tenet is clearly stipulated in statute and serves as the Board's over-arching philosophy in its approach to all its reviews of professions or occupations:

. . . the right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is found that such abridgement is necessary for the preservation of the health, safety and welfare of the public. (Code of Virginia §54.1-100)

Further statutory guidance is provided in this same *Code* section. The following conditions must be met before the state may impose regulation on a profession or occupation:

- 1. The unregulated practice of a profession or occupation can endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;**

2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

In addition, although the General Assembly has established that the following factors be considered in evaluating the need for the regulation of *commercial* occupations and professions, the Board has determined that these factors should be considered in evaluating proposals for the regulation of *health* professions, as well.

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to public health.
2. The opinion of a substantial portion of the people who do not practice the particular profession . . . on the need for regulation.
3. [Intentionally deleted]
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, evidence by established and published codes of ethics.
6. Whether the profession requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.
10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

(Code of Virginia §54.1-311(B)1-2, 4-10)

The Criteria and Their Application

Based on the principles of occupational and professional regulation established by the General Assembly, the Board has adopted the following criteria to guide evaluations of the need for regulation of health occupations and professions.

VIRGINIA BOARD OF HEALTH PROFESSIONS CRITERIA FOR EVALUATING THE NEED FOR REGULATION

Initially Adopted October, 1991

Readopted February, 1998

Criterion One: Risk for Harm to the Consumer

The unregulated practice of the health occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of health services, or (d) from any combination of these factors.

Criterion Two: Specialized Skills and Training

The practice of the health occupation requires specialized education and training, and the public needs to have benefits by assurance of initial and continuing occupational competence.

Criterion Three: Autonomous Practice

The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.

Criterion Four: Scope of Practice

The scope of practice is distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties, methods of examination, instrumentation, or therapeutic modalities.

Criterion Five: Economic Impact

The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioner, and the cost of operation of regulatory boards and agencies.

Criterion Six: Alternatives to Regulation

There are no alternatives to State regulation of the occupation which adequately protect the public. Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.

Criterion Seven: Least Restrictive Regulation

When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Health Professions.

In the process of evaluating the need for regulation, the Board's seven criteria are applied differently, depending upon the level of regulation which appears most appropriate for the occupational group. The following outline delineates the characteristics of licensure, certification, and registration (the three most commonly used methods of regulation) and specifies the criteria applicable to each level.

Licensure. Licensure confers a monopoly upon a specific profession whose practice is well defined. It is the most restrictive level of occupational regulation. It generally involves the delineation in statute of a scope of practice which is reserved to a select group based upon their possession of unique, identifiable, minimal competencies for safe practice. In this sense, state licensure typically endows a particular occupation or profession with a monopoly in a specified scope of practice.

RISK: High potential, attributable to the nature of the practice.

SKILL & TRAINING: Highly specialized accredited post-secondary education required; clinical proficiency is certified by an accredited body.

AUTONOMY: Practices independently with a high degree of autonomy; little or no direct supervision.

SCOPE OF PRACTICE: Definable in enforceable legal terms.

COST: High

APPLICATION OF THE CRITERIA: When applying for licensure, the profession must demonstrate that Criteria 1 - 6 are met.

Statutory Certification. Certification by the state is also known as "title protection." No scope of practice is reserved to a particular group, but only those individuals who meet certification standards (defined in terms of education and minimum competencies which can be measured) may title or call themselves by the protected title.

RISK: Moderate potential, attributable to the nature of the practice, client vulnerability, or practice setting and level of supervision.

SKILL & TRAINING: Specialized; can be differentiated from ordinary work. Candidate must complete education or experience requirements that are certified by a recognized accrediting body.

AUTONOMY: Variable; some independent decision-making; majority of practice actions directed or supervised by others.

SCOPE OF PRACTICE: Definable, but not stipulated in law.

COST: Variable, depending upon level of restriction of supply of practitioners.

APPLICATION OF CRITERIA: When applying for statutory certification, a group must satisfy Criterion 1, 2, 4, 5, and 6.

Registration. Registration requires only that an individual file his name, location, and possibly background information with the State. No entry standard is typically established for a registration program.

RISK: Low potential, but consumers need to know that redress is possible.

SKILL & TRAINING: Variable, but can be differentiated for ordinary work and labor.

AUTONOMY: Variable.

APPLICATION OF CRITERIA: When applying for registration, Criteria 1, 4, 5, and 6 must be met.

Professions currently practiced only with a license include medicine, nursing, dentistry, pharmacy, optometry, veterinary medicine, and psychology, among others. Rehabilitation

providers and massage therapists are certified by the state. Currently in Virginia, there are no health occupations or professions that are registered.

Alternatives to Occupational and Professional Regulation

When a risk or potential risk has been demonstrated but it is not substantiated that licensure, certification, or registration are appropriate remedies, other alternatives may be warranted. These alternatives should always be considered as less restrictive means of addressing the need to adequately protect the public health, safety, and welfare than restricting the occupational property rights of individuals.

Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods for protecting the public that do not require the regulation of specific occupations or professions.

Procedures

The Board has established general guidelines and procedures for the conduct of its evaluation studies. These procedures are intended to assist in the fair and equitable assessment of the need to regulate a profession or occupation or to determine the need for changing a current regulatory approach. These procedures are aimed at translating the Board's policies into operational terms. Three questions are addressed: Who may request a study and how? How is a study conducted? and What happens to the results?

Who may request a study and how? Requests for the Board to conduct an evaluation may come from a number of sources:

- the General Assembly
 - as a legislative resolution
 - as a request from an individual member,
- the Governor,
- the Director of the Department of Health Professions,
- Professional or Occupational Associations and Organizations,
- Concerned Members of the Public.

For requests from organizations or individuals, the review process commences with a formal letter of intent proposing the study. Because the time frame for such studies can require over a year (from request to recommendations), it is important that a contact person or persons be identified in this letter who will provide continuity to the review process. It should be noted that this time frame does not include consideration of the Board's recommendations by the Governor or General Assembly. Nor does it take into

account the extensive work that must be accomplished between the time the General Assembly may enact enabling legislation and the promulgation of regulations which would be required to implement such legislation.

Prior to filing a request, it is recommended that the responsible individual(s) meet with Director of the Department of Health Professions and the Executive Director for the Board. At this meeting, proposal preparation may be discussed in detail and a suggested timetable agreed upon.

How is a study conducted?

When a request for study is presented to the Board, the Board may agree to go forward or it may ask for additional information from the professional or organizational group in question. If the Board agrees to go forward with the study, the matter is referred to the Regulatory Research Committee, which conducts the study and prepares a report with recommendations for the full Board's review and final recommendations.

The Committee reviews and approves a staff prepared workplan, which details the background for the study, its scope, and the specific methodology to be employed. The specific questions to be addressed are detailed here and reflect those questions outlined in the Appendix. Traditional workplans include a comprehensive review of the relevant literature and provide opportunities for receipt of public comment. In some instances, further information is gathered through Board sponsored surveys of practitioners, other states, or other parties knowledgeable about the issues germane to the profession or occupation.

As discussed earlier, as a result of the recent review on the Criteria, it was determined that the evidentiary basis for application of the Criteria should be strengthened whenever possible. As such, the Board will now routinely refer to recent job analyses (or role delineation studies) and actuarial risk assessments of malpractice insurers.

Commonly used to develop credentialing examinations, a job analysis (or role delineation study) abstracts the knowledge, skills, and abilities that define a profession and help distinguish it from related professions. In its simplest terms, a job analysis provides a detailed job description. An occupation or profession is broken down into performance domains, which broadly define the profession being delineated. Then each performance domain is broken down further into tasks. The tasks are categorized further into knowledge, skills, and ability statements.

Malpractice insurance underwriters establish premium rates and the extent of coverage based upon their actuarial assessment of the risk posed by the insured group. Data on

civil suits, assessments of the type of work and work settings involved in practice, and evaluations of similar professions' claim histories, among other factors are considered.

Job analyses and data derived from malpractice insurance were selected to strengthen the Board's evidentiary basis for three reasons. First, they are generally readily available. Most health occupations and professions have professionally developed examinations based on job analyses, and most professions have malpractice insurance. Second, because they were designed for purposes other than to promote the regulation of the respective profession, these sources are viewed as relatively objective. Third, and most important, they are viewed as providing insight into better applying the most crucial criterion, Criterion One – Risk of Harm to the Consumer.

It has often been difficult or impossible to obtain objective information about actual harm to consumers gathered collectively by profession, precisely because the group is unregulated. The literature is usually unavailing, and evaluation of anecdotal evidence, alone, makes attributions to the profession (and not simply individuals) questionable. Thus, to make fair assessments about the *potential* risks to the public when actual data are lacking, the Board's evaluations of criticality based on recent job analyses and actuarial risk predictions found in the rationale for malpractice insurance coverage will be factored into the reasoning.

Job analyses and actuarial risk predictions are not only useful in applying Criterion One. To appropriately apply the entire Criteria, the Board must have a thorough understanding of what comprises the practice of the profession and the necessary educational and training background required for entry level competency.

To answer the questions posed by the Criteria, the Board will review the job analysis information garnered and apply its own measures of importance or *criticality*. Criticality "generally refers to the extent to which the ability to perform the task is essential to the performance on the job." (National Organization for Competency Assurance (1996) p.54).

To collect data on criticality, Likert-type scales will be used. The scales will vary depending upon specific issues being evaluated. For example, for Criterion One, information about potential harm that would result if the task were not performed competently would need to be evaluated. Scales such as those below would be appropriate. All major tasks will be reviewed, and the data tabulated to provide an overall score on each criterion for consideration by the Board.

Sample Criticality Scales for Rating Risk of Harm

Using the occupation as veterinary technician as an example, the following are sample scales for rating the risk of harm.

TASK 1: Scaling teeth above the gum line.

What is the effect of poor performance on public health & safety?

1. No risk
2. Little risk
3. Some risk
4. Significant risk
5. Severe risk

TASK 2: Preparing patient for surgery by shaving surgical area.

Could this activity be omitted on some occasions without having a major impact on client well-being?

1. Can sometimes omit – This activity could sometimes be omitted for some clients without a substantial risk of unnecessary complications, impairment of function or serious distress.
2. Can never omit – This activity could NEVER be omitted without a substantial risk of unnecessary complications, impairment of function, or serious distress.

Based on Correspondence with Kara Schmidt October 30, 1997 11:35 a.m.

These scores, along with the malpractice insurance risk assessment, literature review, public comment, and any other sources of information the Committee would like to explore will serve as the basis to answer the questions expressed in the workplan. Their responses form the basis for their report and recommendations.

What happens to the results?

Once completed, the Committee's study report including recommendations is forwarded to the full Board. Upon adoption or revision of the report, the Board prepares its report for the consideration of the Director of the Department, the Secretary of Health and Human Resources, the Governor, and the General Assembly.

Once the final draft is approved, the Board or the source of the study may disseminate the report as they deem appropriate.

Appendix

QUESTIONS TO BE CONSIDERED FOR THE EVALUATION OF THE NEED FOR REGULATION OF A HEALTH OCCUPATION OR PROFESSION

A. GENERAL INFORMATION

1. What occupational or professional group is seeking regulation?
2. What is the level or degree of regulation sought?
3. Identify by title the association, organization, or other group representing Virginia-based practitioners. (If more than one organization, provide the information requested below for each organization.)
4. Estimate the number of practitioners (members and nonmembers) in the Commonwealth.
5. How many of these practitioners are members of the group preparing the proposal? (If several levels or types of membership are relevant to this proposal, explain these level and provide the number of members, by type).
6. Do other organizations also represent practitioners of this occupation/profession in Virginia? If yes, provide contact information for these organizations.
7. Provide the name, title, organizational name, mailing address, and telephone number of the responsible contact person(s) for the organization preparing this proposal.
8. How was this organization and individual selected to prepare this proposal?
9. Are there other occupations/professions within the broad occupational grouping? What organization(s) represent these entities? (List those in existence and any that are emerging).
10. For each association or organization listed above, provide the name and contact information of the *national* organizations with which the state associations are affiliated.

B. QUESTIONS WHICH ADDRESS THE CRITERIA

Criterion One: Risk for Harm to the Consumer. *The unregulated practice of the health occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of health services, or (d) from any combination of these factors.*

1. Provide a description of the typical functions performed and services provided by members of this occupational group.
2. Has the public actually been harmed by unregulated providers or by providers who are regulated in other states? If so, how is the evidence of harm documented (i.e., court case or disciplinary or other administrative action)? Was it physical, emotional, mental, social, or financial?
3. If no evidence of actual harm is available, what aspects of the provider group's practice constitute a potential for harm?
4. To what can the harm be attributed? Elaborate as necessary.
 - lack of skills
 - lack of knowledge
 - lack of ethics
 - lack of supervision
 - practices inherent in the occupation
 - characteristics of the client/patients being served
 - characteristics of the practice setting
 - other (specify)
5. Does a potential for fraud exist because of the inability of the public to make an informed choice in selecting a competent practitioner?
6. Does a potential for fraud exist because of the inability for third party payors to determine competency?

7. Is the **public** seeking regulation or greater accountability of this group?

Criterion Two: Specialized Skills and Training. The practice of the health occupation requires specialized education and training, and the public needs to have benefits by assurance of initial and continuing occupational competence.

1. What are the educational or training requirements for entry into this occupation? Are these programs accredited? By whom?
 - Are sample curricula available?
 - Are there training programs in Virginia?
2. If no programs exist in Virginia, what information is available on programs elsewhere which prepare practitioners for practice in the Commonwealth? What are the minimum competencies (knowledge, skills, and abilities) required for entry into the profession? How were they derived?
3. Are there national, regional, and/or state examinations available to assess entry-level competency?
 - Who develops and administers the examination?
 - What content domains are tested?
 - Are the examinations psychometrically sound -- in keeping with *The Standards for Educational and Psychological Testing*?
4. Are there requirements and mechanisms for ensuring continuing competence? For example, are there mandatory education requirements, re-examination, peer review, practice audits, institutional review, practice simulations, or self-assessment models?
5. Why does the public require state assurance of initial and continuing competence? What assurances do the public have already through private credentialing or certification or institutional standards, etc.?
6. Are there currently recognized or emerging specialties (or levels or classifications) within the occupational grouping? If so,
 - What are these specialties? How are they recognized? (by whom and through what mechanisms – e.g., specialty certification by a national academy, society or other organization)?
 - What are the various levels of specialties in terms of the functions or services performed by each?
 - How can the public differentiate among these levels or specialties for classification of practitioners?
 - Is a “generic” regulatory program appropriate, or should classifications (specialties/levels) be regulated separately (e.g., basic licensure with specialty certification)?

Criterion Three: The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.

1. What is the nature of the judgments and decisions which the practitioner must make in practice?
 - Is the practitioner responsible for making diagnoses?
 - Does the practitioner design or approve treatment plans?
 - Does the practitioner direct or supervise patient care?
 - Does the practitioner use dangerous equipment or substance in performing his functions?

If the practitioner is not responsible for diagnosis, treatment design or approval, or directing patient care, who is responsible for these functions?
2. Which functions typically performed by this practitioner group are **unsupervised**, i.e., neither directly monitored or routinely checked?
 - What proportion of the practitioner’s time is spent in unsupervised activity?
 - Who is legally accountable/liable for acts performed with no supervision?
3. Which functions are performed **only under supervision**?
 - Is the supervision *direct* (i.e., the supervisor is on the premises and responsible) or *general* (i.e., supervisor is responsible but not necessarily on the premises)?
 - Who provides the supervision? How frequently? Where? For what purpose?
 - Who is legally accountable/liable for acts performed under supervision?
 - Is the supervisor a member of a regulated profession (please elaborate)?

- What is contained in a typical supervisory or collaborative arrangement protocol?
3. Does the practitioner of this occupation supervise others? Describe the nature of this supervision (as in #3 above).
 4. What is a typical work setting like, including supervisory arrangements and interaction of the practitioner with other regulated/unregulated occupations and professions?
 5. Does this occupational group treat or serve a specific consumer/client/patient population?
 6. Are clients/consumers/patients **referred to** this occupational group for care or services? If so, by whom? Describe a typical referral mechanism.
 7. Are clients/consumers/patients **referred from** this occupational group for care or services? If so, to what practitioners are such referrals made? Describe a typical referral mechanism. How and on what basis are decisions to refer made?

Criterion Four: The scope of practice is distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties, methods of examination, instrumentation, or therapeutic modalities.

1. Which functions of this occupation are **similar to** those performed by other health occupational groups?
 - Which group(s)?
 - Are the other groups regulated by the state?
 - If so, why might the applicant group be considered different?
2. Which functions of this occupation are **distinct from** other similar health occupational groups?
 - Which group(s)?
 - Are the other groups regulated by the state?
3. How will the regulation of this occupational group affect the scope of practice, marketability, and economic and social status of the other, similar groups (whether regulated or unregulated)?

Criterion Five: The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioner, and the cost of operation of regulatory boards and agencies.

1. What are the range and average incomes of members of this occupational group in the Commonwealth? In adjoining states? Nationally?
2. What are the typical current fees for services provided by this group in the Commonwealth? In adjoining states? Nationally?
3. Is there any evidence that cost for services provided by this occupational group will increase if the group becomes state regulated? In other states, have there been any effects on fees/salaries attributable to state regulation?
4. Would state regulation of this occupation restrict other groups from providing care given by this group?
 - Are any of the other groups able to provide similar care at lower costs?
 - How is it that this lower cost is possible?
5. Are there current shortages/oversupplies of practitioners in Virginia? In the region? Nationally?
6. Are third-party payers in Virginia currently reimbursing services of the occupational group? By whom? For what?
 - If not in Virginia, elsewhere in the country?
 - Are similar services provided by another occupational group reimbursed by third-party payers in Virginia? Elsewhere? Elaborate.
7. If third-party payment does not currently exist, will the occupation seek it subsequent to state regulation?

Criterion Six: There are no alternatives to State regulation of the occupation which adequately protect the public. [Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.]

1. What laws or regulations currently exist to govern:
 - Facilities in which practitioners practice or are employed?
 - Devices and substances used in the practice?
 - Standards or practice?

2. Does the institution or organization where the practitioners practice set and enforce standards of care? How?
3. Does the occupational group participate in a nongovernmental credentialing program, either through a national certifying agency or professional association (e.g., National Organization for Competency Assurance)?
 - How are the standards set and enforced in the program?
 - What is the extent of participation of practitioners in the program?
4. Does a Code of Ethics exist for this profession?
 - What is it?
 - Who established the Code?
 - How is it enforced?
 - Is adherence mandatory?
5. Does any peer group evaluation mechanism exist in Virginia or elsewhere? Elaborate.
6. How is a practitioner disciplined and for what causes? Violation of standards of care? Unprofessional conduct? Other causes?
7. Are there specific legal offenses which, upon conviction, preclude a practitioner from practice?
8. Does any other means exist within the occupational group to protect the consumer from negligence or incompetence (e.g., malpractice insurance, review boards that handle complaints)? How are challenges to a practitioner's competency handled?
9. What is the most appropriate level of regulation?

Mission of the Board of Health Professions

To serve as an active agent and provide an objective forum for people in Virginia for the delivery of safe, effective and appropriate health professional services.



Vision for the Board of Health Professions - Reasons for its existence

- To improve access to safe and effective health care at the most appropriate levels.
- To provide a forum and offer solutions for common issues/problems facing the health care professions.
- To promote appropriate regulation.
- To encourage efficient resolution of disciplinary cases.
- To provide a forum for debate/consensus for scope of practice issues between health care professions.
- To determine the need for regulation of unregulated professions and examine emerging professions and treatments.
- To conduct studies mandated by the General Assembly or requested by the public.
- To provide a forum for dialogue, communication and plans for action.
- To effectively orient new members and continue to focus the Board on its important Mission.
- To more effectively execute its statutory authority.
- To put appropriate information about health care practitioners in the hands of consumers.
- To have a system to monitor the effect and impact of professional regulation on the delivery of appropriate health care.
- To educate and inform policy makers - the Governor, the Secretary and the General Assembly.

VIRGINIA BOARD OF HEALTH PROFESSIONS**BYLAWS****ARTICLE I. Name.**

This body shall be known as the Virginia Board of Health Professions as set forth in the *Code of Virginia* Chapter 25, Title 54.1, Subtitle III, hereinafter referred to as the Board.

ARTICLE II. Powers and Duties.

The powers and duties of the Board (§54.1-2510 *Code of Virginia*) are:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director (of the Department of Health Professions) and the boards (within the Department of Health Professions);
2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of Title 54.1, Subtitle III, *Code of Virginia*, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;
3. To review and comment on the budget for the Department;
4. To provide a means of citizen access to the Department;
5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;
6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to Departmental information;
7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;

8. To make bylaws for the government of the Board of Health Professions and the proper fulfillment of its duties under Chapter 25 of the *Code of Virginia*;
9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board of Health Professions;
10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant Board shall be invited to present during any comments by the Board on proposed board regulations;
11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;
12. To examine the scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;
13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports related to complaints of violations by practitioners to Chapter 24.1 (§54.1-2410 et seq.) of the *Code of Virginia*, entitled "Practitioner Self-Referral Act.";
14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in the "Practitioner Self-Referral Act" (Chapter 24.1 §54.1-2410 et seq. of the *Code of Virginia*); and
15. To take appropriate actions against entities, other than practitioners as defined in §54.1-2410 et seq. of the *Code of Virginia*, for violations of the "Practitioner Self-Referral Act."

ARTICLE III. Members.

1. The membership of the Board shall be the persons appointed by the Governor of the Commonwealth as set forth in the *Code of Virginia* (§54.1-2507).
2. Members of the Board shall attend all regular and special meetings of the Board unless prevented by illness or other unavoidable cause.

ARTICLE IV. Officers and Election.

1. The Officers of the Board shall be the Chairman and Vice Chairman.

2. The Officers shall be elected by the Board members at the Annual Meeting of the Board each fall.
3. The term of office shall be for the next calendar year following the election, or until the successor shall be elected as herein provided.
4. A vacancy occurring in any elected position shall be filled by the Board at the next meeting.

ARTICLE V. Duties of Officers.

1. The Chairman shall preside at all meetings of the Board; appoint all committees, except as where specifically provided by law; call special meetings; and perform duties as prescribed by parliamentary authority.
2. The Vice Chairman shall act as Chairman in the absence of the Chairman.

ARTICLE VI. Executive Committee.

1. This Committee shall consist of the Officers.
2. The Committee shall review matters of interest to the Board and may make recommendations to the Board.
3. The Chairman of the Board shall be the Chairman of the Committee.

ARTICLE VII. Committees.

1. The Chairman may appoint committees as necessary to assist in fulfilling the duties of the Board.
2. The committees shall be advisory to the Board and shall offer recommendations to the Board for final action.

ARTICLE VIII. Meetings.

1. The Board shall meet at least one time per year on a date at the discretion of the Board.

2. Special meetings shall be called by the Chairman or by written request to the Chairman of any three members of the board, provided that there is at least seven days' notice given to Board members.
3. A quorum for any Board meeting shall consist of a majority of the members of the board. A quorum for any committee shall consist of a majority of committee members. No member shall vote by proxy.
4. A majority vote of the members present shall determine all matters at any meeting, regular or special, unless otherwise provided herein.
5. Members shall attend all scheduled meetings of the Board and committees to which they serve. In the event of two consecutive absences at any meeting of the Board or its committees, the Chairman shall make a recommendation to the Director of the Department of Health Professions for referral to the Secretary of Health and Human Resources and Secretary of the Commonwealth.

ARTICLE IX. Parliamentary Authority.

The rules contained in the current edition of Robert's Rules of Order shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules the Board may adopt and any statutes applicable to the Board.

ARTICLE X. Amendment of Bylaws.

The bylaws may be amended at any meeting of the Board by an affirmative vote of two-thirds of the members present, provided the proposed amendment was distributed to all members of the Board at least 30 days in advance.

Approved by the Board of Health Professions on May 28, 2015.