# GUIDANCE DOCUMENT OF THE VIRGINIA BOARD OF MEDICINE

## COMPETENCY ASSESSMENTS FOR THREE PAID CLAIMS

In 2005 the General Assembly passed law to require competency assessments for licensees with three medical malpractice claims (judgments or settlements) paid in the most recent ten-year period. The original law was amended in 2007 and again in 2011. It is found in Section 54.1-2912.3 of the Code of Virginia and now reads as follows:

***§ 54.1-2912.3. Competency assessments of certain practitioners.***

*The Board shall require an assessment of the competency of any person holding an active license under this chapter on whose behalf three separate medical malpractice judgments or medical malpractice settlements of more than $75,000 each are paid within the most recent 10-year period. The assessment shall be accomplished in 18 months or less by a program acceptable to the Board. The licensee shall bear all costs of the assessment. The results of the assessment shall be reviewed by the Board and the Board shall determine a plan of corrective action or appropriate resolution pursuant to the assessment. The assessment, related documents and the processes shall be governed by the confidentiality provisions of § 54.1-2400.2 and shall not be admissible into evidence in any medical malpractice action involving the licensee. The Board shall annually post the number of competency assessments undertaken on its website.*

*(2005, cc. 649, 692; 2007, c. 861; 2011, c. 808.)*

In the implementation of the initial law, it was determined that at least one of the paid claims must have occurred on or after July 1, 2005.

### Identification of Licensees Subject to the Law

The Data Division of the Department of Health Professions will proactively identify the licensees that appear to have three medical malpractice judgments or settlements of more than $75,000 in the most recent ten-year period by searching the Board of Medicine's Physician Profiles on a quarterly basis. Identification of individuals subject to this law may also occur through the review of other data held by the Board.

### Notification of Subject Licensees

Licensees that appear to be subject to this law will be sent a letter by certified mail apprising them of their responsibility to obtain a competency assessment. If a licensee believes that he/she has received the letter in error, or needs further clarification regarding the assessment, he/she is instructed to call the Board.

## Process of Obtaining a Competency Assessment

It is the responsibility of the subject licensee to make the arrangements for the assessment. The Board has determined that a licensee may obtain a competency assessment from one of the national programs that conduct such assessments. The list includes, but is not limited to, the Federation of State Medical Boards Post-Licensure Assessment Program and the Center for Personalized Education for Physicians.

The Board has also determined that a subject licensee may obtain the competency assessment with a medical school faculty member of the same specialty. Should the licensee choose this approach, the following steps should be followed.

1) Contact the appropriate department of the medical school where the assessment will be sought.
2) Identify a faculty member (evaluator) of the same specialty that is willing to perform the assessment.
3) With the evaluator, prepare an outline of the proposed approach to the assessment. The evaluator has the latitude to determine the format of the assessment. At a minimum, the paid claims that triggered the assessment should be discussed, as well as matters pertinent to an assessment of global competency to practice. This would include a subject licensee's fund of knowledge, medical judgment and in a procedural specialty, skills. The assessment can include more elements if deemed necessary by the parties.
4) Send the outline of the proposed assessment to the Executive Director for approval prior to proceeding.
5) After receiving approval, proceed with the assessment.
6) Provide the evaluator with all documents required by the approved outline. The Board will not provide information to the evaluator.
7) Provide the evaluator with a written release of liability for the assessment and report to the Board.
8) Ensure that the evaluator sends the report of the competency assessment to the Board.
9) Compensate the evaluator for his/her time.

## Completion of Assessment and Report to the Board

1) The assessment must be completed within 18 months of the Board's notification to the licensee.

2) The Board will review the report of the assessment and communicate its recommendations to the subject licensee. The Board may choose to close the matter or require further assessment. While the competency assessment is, in and of itself, not a disciplinary matter for the licensee, it is possible that the assessment could lead to the initiation of a disciplinary process.

3) The competency assessment and the process are confidential pursuant to § 54.1-2400.2 of the Code of Virginia. However, if matter becomes disciplinary, Notices and Orders associated with the process will be public.

# Virginia Board of Medicine
# Competency Assessment Form

Please ask the evaluator to print/type the requested information.

Doctor to be evaluated: _____

Virginia License Number: _____

Evaluator: _____

Evaluator's Address: _____

_____

Evaluator's Telephone Number: _____

Evaluator's Email Address: _____

Date(s) of face to face meeting(s): _____

1. **Review of the facts regarding the paid claim cases:**

   The evaluator may request the doctor provide him with any documentation necessary to assist in the competency assessment which may include:

   - Complaint or motion for the Judgment
   - Answer or Grounds of Defense
   - Medical Records, including relevant radiology images
   - Expert Witness Designations
   - Deposition Transcripts of all Parties and expert Witnesses
   - Court Orders
   - Settlement Agreements
   - Lessons learned, risk management and practice changes

     *(attach additional sheets as necessary)*

2. **Describe this doctor's fund of knowledge, medical judgment or decision-making and in the case of procedural specialties, skills.**

   The evaluator may request:

   - Board certification information
   - CME records
   - Other educational information. *(attach additional sheets as necessary)*

3. **Doctor's strengths:**

4. **Doctor's weaknesses:**

5. **Is there a need for remediation?**

6. **Is this doctor safe to practice?**

_____ _____

Evaluator Signature Date:

Please return to the attention of Dr. Harp at
Virginia Board of Medicine
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463