

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

DEPARTMENT OF HEALTH PROFESSIONS

BOARD OF SOCIAL WORK

18 VAC 140-20-10 et seq. Regulations Governing the Practice of Social Work

ITEM 1: LEGAL AUTHORITY FOR THE REGULATION

Chapter 575 of the 1999 Acts of the Assembly adds section 57.1-3708 which mandates that the board establish continuing education requirements for licensure renewal.

§ 54.1-3708. Continuing education requirements.

The Board shall establish in regulations requirements for the continuing education of licensed social workers.

The board may approve persons who provide continuing education or accredit continuing education programs in order to accomplish the purposes of this section.

The Board is authorized under § 54.1-103 to specify additional training or conditions for renewal of a license.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement. § 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

- A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*
- B. *The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
- C. *The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take

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disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

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

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
- 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall*

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serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

- 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

Section 54.1-3703 establishes the Board of Social Work and authorizes the board to regulate the practice of social work.

§ 54.1-3703. Board of Social Work; members--The Board of Social Work shall regulate the practice of social work..

The Board shall be composed of seven members, five of whom shall be licensed social workers who have been in active practice of social work for at least five years prior to appointment and two of whom shall be citizen members. The terms of the members of the Board shall be four years.

Section 54.1-3706 mandates licensure for the practice of social work

§ 54.1-3706. License required.--In order to engage in the practice of social work, it shall be necessary to hold a license.

ITEM 2: POTENTIAL ISSUES TO BE ADDRESSED

In complying with the mandate to establish continuing education requirements, the board must determine what types of education would be most meaningful in terms of continued competency, while considering the cost and availability of education to licensees in a wide variety of practice situations in both metropolitan and rural areas of the state.

The board identified several practice areas which require exposure to contemporary knowledge to maintain competency in the practice of social work:

1. Professional ethics: The need for continued exposure to professional ethics is evidenced in many of the board's disciplinary cases. Without continued exposure to ethics, practitioners may not be aware of changes to the laws and standards of practice governing social work in Virginia.
2. Advances in mental health treatment methods: As with any health profession, new treatment methods develop over time. Clients may not be getting the best quality of care if a practitioner is using outdated treatment methods. Additionally, third party payors restrict the length of time permitted for therapy, which requires knowledge of treatment methods which are more effective over the restricted time period. Practitioners should also be aware of new specialty treatment areas in order to make effective referrals for clients.

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3. Advances in allied health treatment methods. Social workers practice in hospitals, nursing homes and in association with medical practices, and must have a working knowledge of the latest medical treatment methods, including psychotropic medications.
4. Cultural changes. Cultural changes in society may impact diagnoses and treatment methods.

The implementation of continuing education requirements creates difficulties for individuals who choose to maintain the license, but are no longer practicing due to retirement, illness, or relocation to another jurisdiction. To accommodate these individuals, the board proposes developing an inactive licensure status to waive the continuing education requirement for individuals who are not practicing. Issues to be addressed include establishing a reasonable fee that is less than that for active licensure renewal, and a reasonable number of continuing education hours for individuals who wish to reactivate their licenses.

Many practitioners hold multiple licenses under the Boards of Social Work, Psychology and Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. Inconsistencies in the ethical standards among these boards sometimes result in discrepancies in the level of disciplinary action taken for the same offense. The Boards of Psychology and Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals recently proposed new language for the prohibition of dual relationships, implementing time-limited prohibitions on sexual relationships with former clients. The Board of Social Work has determined that implementation of a time-limitation would provide a clear parameter to the Disciplinary Committee to assist that Committee in making determinations in dual relationship cases. This would help make disciplinary decisions less subjective and more consistent both within the Board and among all three behavioral sciences boards.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

The board must comply with legislation enacted by the 1999 General Assembly by promulgating continuing education requirements for licensure renewal. If the board does not also promulgate a provision for inactive licensure, individuals who are not practicing due to illness, retirement or relocation to another jurisdiction will be forced to let their license lapse if they are unable to meet the continuing education requirements for renewal.

Failure to develop a dual relationship prohibition that is time-limited will result in continuation of inequitable disciplinary action in dual relationship cases.

ITEM 4: ALTERNATIVES TO REGULATION

As alternatives, the board is reviewing the continuing education requirements of other state social work boards and other boards regulating health professions in the Commonwealth. The Board is interested in a model that would allow some degree of self-determination by the practitioner along with some required content, specifically in the area of professional ethics. For the hour requirement, the board is considering a range of 30-40 hours per biennium, in accordance with the requirements of other state social work boards (attached), with the majority of the hours coming from organized learning activities, and a portion from self-directed learning activities.

The board has identified the need to establish a broad range of approved sources to accommodate practitioners in remote areas. Organized learning may include such activities as the board is considering accepting academic coursework and continuing education, in-service training, seminars or workshops sponsored by universities, national professional organizations, and federal, state or local social service agencies or licensed health facilities and hospitals. The board plans to develop criteria to provide for approval of programs offered by independent entities or individuals. Self-directed learning may include such activities as the initial preparation and presentation of a social work course, in-service-training, seminar or workshop, publication of a professional social work paper and field instruction of graduate students interns. The board plans to develop criteria for approval of other kinds of independent activities submitted for consideration by licensees, to ensure the educational value of those activities.

For administration of both program/activity approval and the monitoring of licensee compliance, alternatives being considered include the existing auditing process established in the agency's Enforcement Division used by several other boards, outsourcing the work to a private vendor, forming a special advisory committee of licensees to do the work, and using standing committees of the board. The board is mindful of the need to ensure that any vendor approving programs is not itself a provider of continuing education, to avoid any conflict of interest.

Once approval to publish the Notice of Intended Regulatory Action is granted, the board plans to develop a survey to obtain input from licensees on the cost, availability and acceptability of these kinds of programs. The board will also consider any comment received during its meetings and public comment periods on any proposed regulations.

Alternatives considered for inactive licensure status will involve the renewal fee and reactivation requirements. The renewal fee will be established at a significantly reduced rate compared with that for active licensure renewal. Alternative fee structures will be developed by the agency's Finance Office for the board's consideration. At the request for reactivation to active status, the licensee may be required to pay the difference in the inactive and active

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licensure renewal fee for that renewal period. Reactivation to active status may require satisfaction of the continuing education requirements, with a maximum number of hours to be determined by the board. The board will consider accepting continuing education received during the inactive period in compliance with national certification standards, or those of other licensing jurisdictions.

As alternatives to the Board's current dual relationship prohibition, the board will consider the language recently proposed by the Boards of Psychology and Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals, the American Association of State Social Work Boards' Model State Social Work Practice Act, and the ethical codes of the National Association of Social Workers and the Clinical Social Work Federation (attached).