



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Counseling, Department of Health Professions
VAC Chapter Number:	18 VAC 115-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Professional Counseling.
Action Title:	Periodic Review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This chapter sets forth the education, experience and examination requirements for licensure for the independent practice of professional counseling, establishes fees to cover the administrative costs of the licensing and disciplinary activities, and sets forth standards of conduct which provide the basis for disciplinary action in the event of practitioner misconduct.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

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 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 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.

§54.1-3500 establishes the title of *professional counselor* and sets for the scope of practice for the profession.

§ 54.1-3500. Definitions

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

"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

"Board" means the Board of Counseling.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Counseling" means the therapeutic process of: (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses which interfere with mental health.

"Counseling treatment intervention" means those cognitive, affective, behavioral and systemic counseling strategies, techniques and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Marriage and family therapist" means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.

"Marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, which shall include appraisal, counseling, and referral activities.

"Practice of marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.

"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.

"Professional counselor" means a person trained in counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.

"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.

§ 54.1-3503 establishes the Board of Counseling and authorizes the Board to regulate the practice of counseling.

§ 54.1-3503. Board of Counseling. *The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.*

The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.

The terms of the members of the Board shall be four years

§54.1-3506 requires licensure for the independent practice of counseling.

§ 54.1-3506. License required. In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the Board's intent to review all chapters of its regulations governing licensing and certification was posted on the Virginia Regulatory Town Hall, published in the Registrar of Regulations on August 15, 2000, and mailed to individuals who requested listing on the public participation mailing list. The Richmond Association of Clinical Counselors wrote in support of establishing training standards for supervisors.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Goal: To establish adequate education, experience and examination requirements to ensure the competency of practitioners and protect the public.

Effectiveness: The Board completed a review of its education requirement in April, 2000. The Board discovered that the language in the recently amended coursework requirement, which has a delayed effective date of April, 2002, requires that all 60 graduate hours satisfy the twelve core areas. The Board did not intend to restrict all courses to the twelve core areas, as long as the minimum three-semester hour requirement in each area has been satisfied. Otherwise, the Board is satisfied that the recently amended requirement is adequate to ensure minimum competency.

The Board is also satisfied that the residency requirement ensures minimum competency. Other than clarifying that the 4,000-hour residency is post-degree, no changes will be recommended.

The Board also considered the requirement for supervisors to “have received professional training in supervision,” which is often questioned by supervisors because the language is rather vague. The Board’s Supervision Committee has been studying the issue of supervisor training over the past year. The Board conducted a survey of recently licensed professional counselors to assess the adequacy of supervision and identify any specific problems that may point to the need for additional training for supervisors. Both residents and supervisors responding to the survey reported favorably regarding the adequacy of the supervised experience in preparation for licensure. However, the majority of supervisors responding (77%) recommended that there should be a minimum number of years in practice prior to acting as a supervisor. Nearly half felt that didactic training in supervision and/or an active caseload while supervising were also important. The survey did not indicate a deficiency in supervisor training, as over 95% of those responding had independently sought training on their own. The Board would like to consider what requirements for supervisors should be included in the regulations.

Goal: To establish consistent and effective standards of ethics to provide a basis for disciplinary action of unscrupulous practitioners.

Effectiveness: The Board has concerns about the degree of inconsistency in the standards of practice among its regulations. Because many practitioners hold more than one license or certification, it is important for the Board to promulgate consistent bases for disciplinary action across all categories of licensure and certification.

Goal: To establish fees sufficient to cover the expenses of operating the licensing and disciplinary programs.

Effectiveness: Fee increases became effective April, 2000 to offset a projected budget deficit and conform the fee structure to Principles for Fee Development applied to all Boards in the Department of Health Professions. While the spending of the Board is within the projected revenues, the deficit carried forward from the '98-'00 biennium will

result in a projected deficit for the current biennium of approximately \$256,997. The Department will continue to monitor revenue and expenditures and revisit the financial position of the Board in 2002.

Clarity:

Although the Board considers the regulations generally clear and easy to understand, it has identified several areas where unnecessary or outdated language needs to be omitted or updated, and several areas where new language is needed for clarification or improved consistency with its other regulations

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Over the past five years, the Board has promulgated three new chapters for the licensure of marriage and family therapists and substance abuse treatment practitioners and the certification of rehabilitation providers. The Board has also completed extensive reviews of its long-existing regulations for professional counselor licensure and substance abuse counselor certification. Although the Board attempted to mirror established regulations in the development of the new regulations, the regulatory processes were progressing along different timelines, and improvements identified during one review might not meet the initial purpose of another review. To address the inconsistencies among its regulations, the Board has compared all of its chapters section by section and identified areas of that could be made uniform. This will be a definite advantage to individuals who are working toward more than one category of licensure or certification at the same time, and to the licensees who are supervising more than one type of licensure candidate.

Another issue identified in the review is the lack of consistency in the standards of practice among the Board's regulations. The importance of this has been especially evident in disciplinary proceedings with individuals who hold licensure in more than one category. The Board would also like to amend the standards of practice to provide consistent bases for disciplinary action across all categories of licensure.

The Board has considered the following alternatives to improve the effectiveness of supervision during the 4000-hour residency:

- Require a course in supervision
- Require continuing education for all supervisors
- Require five years post-degree work experience for individuals to serve as supervisors
- Require both post-degree experience and a graduate course in supervision

- Require both post-degree experience and continuing education
- Limit number of supervisees (rejected, increase difficulty to obtain supervision)

The Board rejected the last alternative because it would increase the difficulty for trainees to obtain supervision. The Board’s Supervision Committee will continue to consider the relevance and effectiveness of the other alternatives, and the potential impact on trainees.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board recommends correcting the coursework requirement to allow for counseling courses outside the twelve core areas, provided the three semester hour minimum has been met for each area.

Where language is generic among regulations, such as definitions of terms, instructions for application, supervision, renewal and reinstatement, and rules for taking and repeating the examinations, the Board recommends amending the regulation to make the language consistent with its other chapters. To provide more fair and consistent bases for disciplinary action, especially in the areas of dual relationships and confidentiality the Board recommends amending the standards of practice and grounds for disciplinary action to conform to its other regulations.

The Board would like to consider additional requirements for supervisors which may entail work experience, course work or continuing education.

Substance

Please detail any changes that would be implemented.

18 VAC 115-20-10. The Board recommends striking the definition for “candidate for licensure,” which is not used in the regulation.

18 VAC 115-20-40. Minor changes are recommended to conform the language in this section to similar sections in the Board’s regulations for other licensure titles. No changes to the actual requirements would be proposed.

18 VAC 115-20-51. The Board recommends correcting the coursework requirement to allow for counseling courses outside the twelve core areas, provided the three-semester hour minimum has been met for each area. No other changes would be proposed.

18 VAC 115-20-52. The Board recommends a minor change to indicate that the 4000-hour residency is post-graduate degree. The Board also recommends including a requirement for additional education or work experience for individuals who act as supervisors.

18 VAC 115-20-70. Minor phrasing and formatting changes are recommended to conform this section with comparable sections in the Board's regulations for other licensure titles.

18 VAC 115-20-90. The Board recommends adding a requirement for 45 clock hours of additional education or training in the areas of deficiency for individuals who fail the examination twice. This language is set forth in the regulations for substance abuse treatment practitioner licensure and for marriage and family therapist licensure. Minor phrasing and formatting changes are recommended to conform this section with comparable sections in the Board's regulations for other licensure titles.

18 VAC 115-20-100. Adding a requirement for licensees to notify the Board of a legal name change is recommended. Minor phrasing and formatting changes are also recommended to conform regulations in this section with other licensure titles.

18 VAC 115-20-120. The Board recommends using the word "applicant" throughout the regulation and striking the word "candidate" in this section, as it is unnecessary to use two different words to describe an applicant.

18 VAC 115-20-130. The Board recommends amending the standards of practice as needed to improve consistency with its other chapters.

18 VAC 115-20-140. The Board recommends this section to mirror the comparable sections in its other chapters. This will add disciplinary action in another jurisdiction as grounds for disciplinary action by the Board.

18 VAC 114-20-150. The Board recommends striking the word "suspended" under subsection A because the consent orders include a specific period of time for the suspension, which may exceed two years.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will not have any significant effect on the ease or difficulty of obtaining a license or certificate, and will have no influence on the authority and rights of parents in the education, nurturing or supervision of their children, will not impact self-pride or self-sufficiency of licensees, and will not affect the marital commitment or family income.