

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

**BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE
AND FAMILY THERAPISTS**

DEPARTMENT OF HEALTH PROFESSIONS

ITEM 1: SPECIFIC REASON FOR THE PROPOSED REGULATION

In compliance with Executive Order 15, the Board conducted a comprehensive review of its regulations, entitled 18 VAC 115-20-10 et seq. (VR 560-01-02): Regulations Governing the Practice of Professional Counseling. The purpose of the review was to ensure that the regulation is (i) essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) mandated or authorized by law; (iii) the least burdensome alternative and most reasonable solution; and (iv) clearly written and easily understandable.

In order to identify problems with the existing regulation, the Board solicited public comment at a public hearing held on December 4, 1995. An individual representing the Department of Mental Health, Mental Retardation and Substance Abuse Services' Health Planning Region V Substance Abuse Directors requested that the Board establish specialty designations under the professional counselor license, in particular a specialty in substance abuse counseling.

Prior to that hearing, the Board of Health Professions had completed a review on the need to regulate counseling-related professions. The impetus for this review was a 1995 study on the need to regulate art therapists conducted at the request of Delegate Robert F. McDonnell which concluded that a more comprehensive examination of counseling-related groups was needed. The review proposed four policy options for regulation of art therapists. Comments from Delegate McDonnell and the Art Therapy Association encouraged implementation of specialty designation under the professional counselor license.

The Board also reviewed informal feedback received by staff from applicants requesting clarification or expressing frustration about the regulation. The Board considered this feedback during its analysis of the regulation and consideration of alternatives.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

The Board identified the following problems during its analysis of each section of the regulations:

- 18 VAC 115-20-10, *Definitions*, includes some terms that are already defined in statute and others that are not essential to the meaning of the regulation.
- Some of the terms used in the regulation that are not defined may not be clear to the applicant.
- Examination fees set forth in 18 VAC 115-20-20 are no longer established or collected by the Board.
- Regulations Governing the Certification of Substance Abuse Counselors exist as separate regulations, and are not incorporated by reference, as stated in 18 VAC 115-20-30.
- 18 VAC 115-20-40, *Requirements, general*, lacks an endorsement procedure for applicants with lengthy experience as licensed practitioners in other states who have met substantially equivalent requirements to the Board's regulations. Currently, these applicants must document the same information as new practitioners, which involves verification of supervised practice that may have taken place long ago and is therefore difficult or impossible to verify. In addition, requiring examinations for experienced practitioners may exceed the minimum requirement needed to ensure competency.
- Some of the language in 18 VAC 115-20-50, *Education and experience requirements for licensure examination* could be simplified, reorganized, or more appropriately moved to another part of the regulation.
- Core areas of course work set forth in 18 VAC 115-20-50 may be outdated.
- No standards exist in the current regulation for determination of whether an applicant's degree is "counseling related", resulting in case-by-case determinations of eligibility which are time-consuming, complicated, expensive and possibly arbitrary.
- The Board is expecting that public interest in specialty designations will continue to increase as the counseling profession continues to evolve specialized treatment modalities. Specialty designations can help the public distinguish practitioners who have a desired specialized competency from those who do not.
- The supervised experience requirement in 18 VAC 115-20-50 is complex, and may be overly burdensome in terms of the hourly requirement. Opportunities for supervision in

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

both the private and public settings are limited due to the unavailability of paid employment for unlicensed practitioners.

- The language in 18 VAC 115-20-60, *Character and Professional Integrity*, is in conflict with the Americans with Disabilities Act.
- 18 VAC 125-20-70, *General Examination Requirements*, contains language which is not essential to the regulation. The examination waiver set forth in this section may need to be amended to correspond with the waiver extended to applicants for licensure by endorsement.
- The reinstatement process set forth in 18 VAC 115-20-110 is excessively burdensome for individuals who are returning to a Virginia practice after practicing in another jurisdiction for several years.
- 18 VAC 115-20-130, *Standards of Practice*, contains some language that duplicates statute.
- 18 VAC 115-20-140, *Grounds for revocation, suspension, probation, reprimand, censure, or denial or renewal of license* contains some language that is unnecessary. Subsection C would more appropriately be placed under 18 VAC 115-20-150.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

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, and take disciplinary action for violations of law and regulations.

§ 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.*

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

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 and Chapter 25 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 take appropriate disciplinary action for violations of applicable law and regulations.*
9. *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 (§ 9-6.14:1 et seq.). 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.*

Licensure to practice counseling is mandated under § 54.1-3506, and the Board is mandated under § 54.1-3503 to regulate the practice of counseling.

Section 54.1-3503 establishes the Board of Professional Counselors and Marriage and Family Therapists and directs that Board to regulate the practice of professional counseling.

§ 54.1-3503. Board of Professional Counselors and Marriage and Family Therapists.-
The Board of Professional Counselors and Marriage and Family Therapists shall regulate the practice of counseling and marriage and family therapy.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

The Board shall consist of nine members, six of whom shall be professional counselors and one of whom shall be a marriage and family therapist licensed in Virginia, who shall represent the various specialties recognized in the profession. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling or marriage and family therapy in an accredited college or university in this Commonwealth, two counselors engaged in full-time private practice and one certified substance abuse counselor. However, the marriage and family therapist 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 a clinical member of the American Association for Marriage and Family Therapy. In addition, two citizen members shall be appointed to the Board.

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

Section 54.1-3500 sets forth definitions for words and terms used in Chapter 35.

§ 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 Professional Counselors and Marriage and Family Therapists.

"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.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

"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.

"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.

Although statute does not specifically mandate the inclusion definitions in its regulations, Part V, Article 2 of the Virginia Register Form, Style and Procedure Manual recommends that definitions of terms be included to provide clarification to terms and allow the regulation writer to control the meaning of a word.

The Board is authorized to establish **fees** and renewal schedules for licensure under §54.1-2400 (5) (see above) and § 54.1-113.

§ 54.1-113. Regulatory boards to adjust fees.--*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*

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

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.

The Board is authorized under § 54.1-103 to specify additional training or conditions for renewal of a license, and to enter into agreements with other jurisdictions to provide for licensure by reciprocity.

§ 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.*

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

Executive Order 15 stated that “shortcomings in prior rulemaking make essential the comprehensive review of all existing regulations” and directed all Boards to ensure that regulations are clear, essential to protect the public health and safety, and constitute the least burdensome alternatives.

In its review, the Board determined that the current application process is overly burdensome for practitioners from other states licensed by standards substantially equivalent to the Board’s and identified the need to develop a process for endorsement of these applicants. The Board also determined that a less burdensome reinstatement procedure for lapsed licenses should be considered.

The Board identified a need to update the general requirements for licensure by developing standard criteria for acceptable degree programs and adjusting the hour requirement for supervised experience to reduce the burden on applicants and to simplify and expedite the application process.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

In response to increasing public interest in specialty designations expressed at the public hearing, and at other public hearings held at the Department of Health Professions, the Board members agreed that regulations providing for specialty designations should be considered.

The Board determined that the regulations could be improved by reformatting, clarifying language that is vague, and eliminating language that is either superfluous or obsolete.

ITEM 4: ALTERNATIVES TO REGULATION

PART I. GENERAL PROVISIONS

Definitions were examined for their regulatory function and their usefulness in clarifying the specific meaning of general terms as used in the context of the regulation.

Alternatives considered for *Definitions* include:

1. Removing duplication by eliminating definitions such as *Board* which are already defined in statute, and referencing the *Code* section where definitions appear.
2. Removing superfluous definitions for common usage terms whose meanings are not altered in the context of the regulation. Before eliminating any term from the regulation, the potential for adversely affecting an applicant's understanding of the regulation will be considered.
3. Including a definition for *on-site*, which has a specific meaning as used in subdivision B.1.b and B.2.e. of 18 VAC 115-20-50 but is not defined in current regulation or statute.
4. Including definitions for *continuous* and *integrated*, which are not enforceable without definition as used in subdivision B.1.a of section 18 VAC 115-20-50.

In the analysis of *Fees*, the Board did not consider the principal fees in regulation (application, registration of residency, licensure and renewal) because the regulatory review process had been initiated, and was completed on January 22, 1997 for a reduction in these fees to deplete excess revenue as mandated by § 54.1-113 of the *Code of Virginia*.

Other fees in the regulation were examined to ensure that they are essential and reasonable levies for the purpose intended. The Board determined that late renewal fee set forth in 18 VAC 125-20-20 may be too lax to discourage short-term lapses in renewals, but otherwise overly burdensome for individuals who are returning to a Virginia practice after practicing in

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

another jurisdiction for several years. As an alternative to the current penalties, the Board is considering a penalty fee plus biennial renewal fee for the current biennium for license lapsed less than four years. For individuals whose licenses have lapsed for more than four years, the Board is considering a flat reinstatement fee equal to the fee for initial application, plus the penalty fee and renewal fee for that renewal period. This is less cumbersome than the current process of assessing a penalty fee and renewal fee for each biennium the license was not renewed.

No regulation is incorporated by reference into these regulations as erroneously stated in 18 VAC 115-20-30, *Substance Abuse Counseling*. The Board will propose elimination of this section.

PART II. REQUIREMENTS FOR LICENSURE

In its review of 18 VAC 115-20-40, *Requirements, General*, the Board noted that although an endorsement provision is included, no applicant holding licensure in another jurisdiction had ever been endorsed. The following alternatives were considered to address the problem:

- 1) Establish criteria and a process to allow licensed professional counselors from other states with equivalent requirements to become licensed by endorsement.
- 2) Work toward establishing reciprocity agreements with other jurisdictions that have similar or higher requirements for licensure, with an initial focus on the most neighboring states.

Shortly after the current regulation became effective in 1993, an Advisory Committee reviewed the *Education and experience requirements for licensure examination* (18 VAC 115-20-50) and submitted recommendations for revisions to the Board. These recommendations were tabled for consideration in the next biennial review, which was superseded by Executive Order 15. In its review of this section of the regulation, the Board considered the Advisory Committee's report, along with comments received from applicants on areas that need clarification. One problem area identified is the lack of specificity in the degree requirement in "counseling or a related discipline" set forth in subsection A of this section. The Board considered the following alternatives to eliminate ambiguity in the degree requirement:

- 1) Amend the existing language to make the degree requirement more specific.
- 2) Develop a list of approved programs in Virginia which have met criteria developed by the 1993 Advisory Committee on Counselor Education and Supervision.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS

18 VAC 115-20-10 et seq.

- 3) Recognize programs accredited by the Council of Accreditation for Counseling and Related Educational Programs (CACREP) and the Commission on Rehabilitation Education (CORE) as meeting the definition of a graduate degree in counseling.
- 4) Accept National Counselor Certification as fulfillment of the requirement for a graduate degree in counseling.

Another problem area the Board identified in subsection A is the core content listing which does not contain descriptive information or credit hour specification per area as frequently requested by applicants. The following alternatives were considered to address these issues:

- 1) Consider the course work requirements outlined in *The 1994 ACA Model Legislation for Licensed Professional Counselors* (Journal of Counseling and Development 74:209-220 (attached)).
- 2) Consider a revised core course listing developed by the 1993 Advisory Committee on Counselor Education and Supervision (attached).
- 3) Establish a minimum credit hour requirement in each core area.
- 4) Replace the word "practicum" with "internship", and establish a minimum clock hour requirement for the internship.

In subsection B of this section, the Board addressed frequent applicant confusion over the language outlining the supervision requirement. To Board considered the following alternatives to clarify this requirement:

- 1) Consider the approved program model recommendation of the 1993 Advisory Committee on Counselor Education and Supervision. Approved programs would contain the core course work requirements in the regulation and a 2,000 hour residency program. This would allow graduates of approved university programs to sit for the examination upon receipt of the graduate degree without having to register additional supervision or wait for a credentials review. The Board will solicit input from Virginia's graduate counseling programs and professional associations on the feasibility of establishing programs containing residencies in Virginia.
- 2) Restructure subsection B to conjoin related subdivisions and provide a more coherent format.
- 3) Move subdivisions describing documentation processes to 18 VAC 115-20-40 (*Requirements, general*), a more appropriate location for this type of information.

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

- 4) Develop new language to more accurately specify the clinical and supervised hour requirements.

Another regulation in this section considered by the Board is the annual evaluation requirement set forth in subdivision B.4.b. This requirement was established to provide a means for trainees to get feedback on their performance prior to the completion of their supervision contract. Requiring that supervisors provide the annual evaluation form to the Board office does not ensure that any feedback was received by the trainee. Since this requirement was established, the Board has not received any problematic reports. The Board considered the following alternatives to improve feedback from the supervisor to the trainee:

- 1) Require that the supervisor provide the trainee with a completed evaluation report at the end of each quarter.
- 2) Require that copies of the quarterly evaluations be mailed with the application package.

In light of increasing public demand for licensure of specialties in counseling, the Board members agreed that the criteria for licensure should provide flexibility to accommodate specialty designations. The Board considered the following alternatives:

- 1) Develop a basic core curriculum and supervision requirement for all counselors, with additional requirements for specific enhanced training and supervision in the specialty area.
- 2) Recognize national certification for specialty designations under the professional counselor license.

The Board determined that the language in 18 VAC 115-20-60 *Character and Professional Integrity*, is in conflict with the Americans with Disabilities Act, and should be eliminated from the regulation.

PART III. EXAMINATIONS

Prior to 1993, the Board required both an oral examination and a written examination developed and administered by the National Board of Certified Counselors (NBCC). The oral examination requirement was rescinded due to an amendment to § 54.1-2400 of the *Code of Virginia* prohibiting oral examinations by any Board in the Agency. Because of concerns about the quality of the NBCC written exam, and inability to test applied knowledge through an oral exam, the Board contracted Applied Measurement Professionals to develop a written

BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS
18 VAC 115-20-10 et seq.

examination that would test diagnostic and therapy skills. The resulting examination, which is being used today, is a state-of-the-art written clinical simulation exam which was pioneered in Virginia, and is being considered for use in other states.

General examination requirements, 18 VAC 115-20-70, includes a waiver of the state practice examination for individuals licensed in other jurisdictions by standards equivalent to the Board's. The Board examined the regulation in terms of whether exemption from this examination should be considered for any other type of candidate. The Board also considered whether the current language in all of Part III was appropriate under the current examination contract.

Alternatives considered for *General examinations requirements, Written examination, and Reexamination* are:

- 1) Amending the language in subsection A and B of 18 VAC 115-20-70 to allow for endorsement of applicants licensed in other states who have met or exceeded the Board's requirements.
- 2) Striking requirements that are now policies of the examination service, unless removal of any such language affects the clarity of the regulation.
- 3) Striking references to the examination fee that might create confusion or conflict with examination service policy.

PART IV. LICENSURE RENEWAL; REINSTATEMENT

Upon review of 18 VAC 115-20-110, *Late renewal; reinstatement*, the Board determined the late renewal fee set forth in 18 VAC 125-20-20 may be too lax to discourage short-term lapses in renewals, but otherwise overly burdensome for individuals who are returning to a Virginia practice after practicing in another jurisdiction for several years. As an alternative to the current penalties, the Board is considering the time limits and late renewal penalties imposed by other Boards in the agency, and establishing a reinstatement application procedure with a flat reinstatement fee for lapsed licenses.

PART VII. STANDARDS OF PRACTICE

In its analysis of *Standards of Practice* (18 VAC 115-20-130), the Board considered the standards of ethics of the American Counseling Association and examined the existing regulatory language to ensure that it is understandable, enforceable, and functions effectively to protect the public.

Alternatives considered for *Standards of Practice* are:

- 1) Comparing and contrasting this part of the regulation with the standards of ethics of the American Counseling Association to determine if certain parts of the ACA standards can be incorporated by reference.
- 2) Striking subdivisions which are set forth in statute.
- 3) Combining related subdivisions to make the regulations more concise.

The Board determined that 18 VAC 115-20-140, *Grounds for revocation, suspension, probation, reprimand, censure or denial of renewal of license*, could be simplified. The following alternatives were considered as improvements to this section:

- 1) Eliminate subsections A and B which duplicate statute.
- 2) Combine the language in subsection B into fewer subdivisions, and add punctuation to subdivision B.1. to clarify intent.
- 3) Move subsection C to a more appropriate section (18 VAC 115-20-150).

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY AND AUTONOMY

The Board is proposing several amendments to the regulation that will facilitate the licensure process: Reducing supervision hour requirements, eliminating non-essential fees, endorsing applicants licensed in other jurisdictions by equivalent standards, updating the curriculum content set forth in the regulation to correspond with the approved graduate programs , providing for specialty designations, and simplifying the reinstatement procedure for lapsed licenses. As practitioners are unable to bill for services without a license, any change that expedites the issuance of that license will positively impact the formation, stability and autonomy of practitioners' families. Families whose members are in need of counseling services may benefit from the increased availability of services.