

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS

DEPARTMENT OF HEALTH PROFESSIONS

ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION

In compliance with Executive Order 15, the Board conducted a comprehensive review of its regulations, entitled 18 VAC 115-30-10 et seq. (VR 560-01-03): Regulations Governing the Certification of Substance Abuse Counselors. 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.

Prior to this mandate, a Board-appointed Task Force on Substance Abuse Regulations began the process of reviewing the regulations in 1992 for clarity and effectiveness in protecting the public. The Task Force met over a period of 18 months, considered public comment, and drafted proposed changes to the regulations. At the time Executive Order Fifteen was issued, the Task Force assimilated the directives and requirements for an analysis into their ongoing review of the regulation. Additional public comment was solicited at a public hearing held on December 2, 1994.

The primary regulatory issue addressed by participants at the hearing was the need to strengthen minimum educational requirements for certification. Leaders in Virginia's substance abuse community argued that the current level of education (high school diploma or G.E.D.) required in the regulation is below the national standard. Subsequently, the Virginia Association of Alcoholism and Drug Abuse Counselors sought passage of legislation to establish licensure for substance abuse treatment practitioners working independently with an education requirement equivalent to that for professional counselor licensure. However, the voluntary certification addressed in this preliminary determination was not affected by this legislation.

Another problem addressed through public comment was the difficulty in some regions of the state for trainees to obtain board-approved supervision. To make supervision more accessible throughout the state, alternative credentialing requirements for supervisors

need to be considered by the Board.

One comment pointed to the practicality of recognizing the credentials of individuals holding certain national credentials in substance abuse counseling for endorsement by the Virginia Board. Currently, the process of documenting education and experience for Virginia certification is redundant for individuals who have already provided such documentation for their national certificate or license, or for equivalent certification in another state.

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

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

- 18 VAC 115-30-10, *Definitions*, includes some terms that are already defined in statute and others that are not essential to the meaning of the regulations.
- 18 VAC 115-30-10 is erroneous, as the regulations are not incorporated by reference 18 VAC 115-20-10.
- The name change fee set forth in 18 VAC 15-30-30 is unnecessary.
- There is no fee set forth for verification of credentials to other jurisdictions, which involves copying materials.
- 18 VAC 115-30-40, *Certification*, general does not provide for endorsement of applicants who are certified by national certifying bodies by equivalent requirements, and does not include a simplified application process for endorsement.
- The education and experience requirements need to be simplified and clarified.
- 18 VAC 115-30-80, *Character and Professional Integrity*, may be in conflict with the Americans with Disabilities Act.
- 18 VAC 115-30-90, *General Examination Requirements*, does not provide a limit for the number of years after approval that individuals can sit for the examination. This obligates the Board to license individuals who do not meet current requirements for certification and creates an administrative dilemma, as inactive files may be destroyed after three years according to the agency's retention schedule.

- The reinstatement process set forth in 18 VAC 115-30-120 is excessively burdensome for individuals who are returning to a Virginia practice after practicing in another jurisdiction for several years.
- Some of the practice standards set forth in 18 VAC 115-30-140 need strengthening to improve enforceability.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

§ 54.1-2400 provides statutory authority for the Board to promulgate regulations that establish qualifications for certification and to effectively administer the regulatory program.

§ 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

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18 VAC 115-30-10 et seq.

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.

§§ 54.1-2400.1.(A) and 54.1-3500 define the term "certified substance abuse counselor", thereby providing the mandate for a certification program for substance abuse counselors:

§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

***"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.**

§ 54.1-3500. Definitions.--As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals.

***"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.**

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 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 can be simplified for practitioners from other states licensed by standards substantially equivalent to the Board’s and identified the need to consider national certifications that might be acceptable for endorsement. The Board also determined that a less burdensome reinstatement procedure for lapsed licenses should be considered.

The Board will review the education requirements to ensure that they meet the minimum standard to ensure competency and protect the public.

The Board identified a need to simplify and clarify the general requirements for licensure.

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

To address regulations that create obstacles to obtaining certification, the Board will consider the following changes to reduce the regulatory burden on applicants:

- i. Provide for endorsement of applicants who are certified by national certifying bodies, and simplify the application process for these applicants, and for those who are currently certified by other states by substantially equivalent requirements.
- ii. Review the education requirements to ensure that they meet the minimum standard to ensure competency and protect the public.
- iii. Broaden the credentials acceptable for providing supervision to allow individuals in remote areas of the state to find supervision more readily.

- iv. Accept certain nationally-recognized professional certifications for endorsement of applicants to certification in Virginia in lieu of requiring those holding such certifications to follow the application process outlined in regulation.
- v. Simplify the application process for endorsement of individuals currently certified by other states by equivalent requirements.
- vi. Simplify the renewal process for extended late renewals
- vii. Eliminate unnecessary fees.
- viii. Strike language which is duplicative of statute and update the regulation as needed to comply with any recent statutory change.
- ix. Clarify language outlining educational and experience requirements and Standards of Practice governing confidentiality and dual relationships.

ITEM V: EFFECT ON FAMILY FORMATION, STABILITY AND AUTONOMY

Drug and alcohol addiction are diseases which invariably will negatively impact everyone within the family unit. Spousal and child abuse and neglect, criminal activity and financial ruin are problems frequently associated with substance abuse. The effects of physical and emotional abuse on children have been reported extensively, and it is generally accepted that abuse increases the likelihood that a child will one day become an abusive parent, building on a chain of abuse passed down from one generation to the next.

Individuals who receive the education and training in substance abuse that is required for certification are more likely to be successful in treating the abuser. Trained counselors will recognize that treatment must involve all family members, and work towards building a functional family unit.