



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC115-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Counseling
<b>Action title</b>	Regulatory reform changes
<b>Date this document prepared</b>	3/14/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

Amendments will clarify requirements for applicants and students to better understand the regulatory criteria for licensure. Less restrictive requirements include: 1) deletion of requirement for a transcript in applying for licensure if one was already submitted for approval of a residency; 2) reduction in the clinical practice required for licensure by endorsement (24 months in past 60 months versus five of the past six years) if the applicant does not meet equivalent education and experience requirements; 3) allowance for use of real-time visual technology to be used to meet requirement for face-to-face supervision; 4) deletion of specific requirements for an internship, such as hours of on-site supervision and completion of 30 hours prior to initiation; 5) inclusion of local governmental agencies, such as community service boards, as continuing education providers.

Further specification of the prohibition against sexual relationships between licensees and clients, supervisees or students will provide greater protection for the public in seeking or receiving clinical counseling services. Likewise, establishing fraud, deceit or harm to the public

as grounds for possible disciplinary actions will enable the Board to deal effectively with practitioners.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On March 1, 2013, the Board of Counseling adopted amendments to 18VAC115-20-10 et seq., Regulations Governing the Practice of Counseling by a fast-track action.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

***§ 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.*
- ...*
- 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. ...*

Specific authority for regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

**§ 54.1-3503. Board of Counseling.**

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

**§ 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*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the amended regulation is to clarify and simplify requirements for applicants seeking licensure as a professional counselor. Changes such as allowing face-to-face supervision to be conducted by use of real-time technology and eliminating certain specific requirements for internships will facilitate completion of practical experience without compromising the training necessary to ensure that applicants have the competency to provide safe, effective clinical services to clients. Changes to standards of practice relating to sexual relationships will clarify that the prohibition applies to romantic relationships, not just sexual intimacies. A clearer standard will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or student relationship. Additionally, establishing fraud, deceit or harm to the public as grounds for possible disciplinary actions will enable the Board to deal effectively with practitioners.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The action is clarifying or less restrictive regulation, has been vetted by the Virginia Counselors Association, and has unanimous approval of the Board of Counseling. The Board does not expect it to be controversial.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

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Further specification of the prohibition against sexual relationships between licensees and clients, supervisees or students will provide greater protection for the public in seeking or receiving clinical counseling services. Likewise, establishing fraud, deceit or harm to the public as grounds for possible disciplinary actions will enable the Board to deal effectively with practitioners..

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) There are no disadvantages to the public. A clearer standard on sexual relationships will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or student relationship.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent issues.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

To achieve less restrictive regulations, there are no alternative methods, other than the promulgation of amendments to the licensure requirements.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no costs for electronic notifications to the Public Participation Guidelines. There are no on-going expenditures relating amendments to regulations for professional counselors.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The entities that are likely to be affected by these regulations are persons working toward licensure as a professional counselor or persons already licensed.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an</b></p>	<p>There are currently 3654 licensed professional counselors (LPC). It is unknown how many</p>

<p><b>estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>applicants or residents may be affected. It is estimated that the majority of LPC’s operate their practices within a small business.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There are no costs to small businesses or other entities.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Applicants who have submitted transcripts for approval of supervision will not have to submit them again in applying for licensure. Residents who are working in remote areas will be able to use real-time technology for face-to-face supervision. Licensees will have additional options for meeting continuing education requirements.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

In 2011, the Board posted a Notice of Intended Regulatory Action to promulgate amendments to Chapter 20 resulting from a review of its regulations. The intent was to follow the NOIRA for this chapter with similar actions on Chapters 50 and 60, regulations for marriage and family therapists and licensed substance abuse practitioners. This fast-track action incorporates those 2011 changes that are consistent with the Regulatory Reform project, as they are clarifying or less restrictive on applicants and/or licensees. The 2011 changes that cannot be characterized as reform are being held for a later regulatory action.

There are no less costly or intrusive alternatives to regulation of the profession as mandated by the law.

**Periodic review/small business impact review result**

***If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.***

*If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

The following comments were received as a result of the Notice of Periodic Review:

Committer	Comment	Agency response
Virginia Counselors Association – Summer Tetterton, President	<ul style="list-style-type: none"> <li>• References to 18VAC115-20-50 should be deleted</li> <li>• Supervision of residents should only be by licensed professional counselors and not other behavioral health practitioners</li> <li>• Requirements for informed consent incomplete; should require counselors to reveal own qualifications</li> <li>• Term “dual” relationship is not necessary and potentially confusing</li> <li>• Prohibition on bartering should be deleted</li> </ul>	<ul style="list-style-type: none"> <li>• References are deleted</li> <li>• Recommended change more restrictive &amp; therefore not included in this action</li> <li>• Recommended change more restrictive &amp; therefore not included in this action</li> <li>• Board did not agree and kept the term in regulation</li> <li>• Regulation requires counselors to <i>avoid</i> relationships that could impair judgment or increase risk of harm. Bartering is an example; there is no complete prohibition.</li> </ul>
Dr. Jeffrey Chase Dept. of Psychology, Radford University	Board should consider clinical and/or counseling psychology master’s programs as meeting the academic requirements to initiate credentialing for licensure as a professional counselor.	Committer is requesting a reinterpretation of the current laws and regulations. Legislation in the 2013 Session emphasizes that a professional counselor is one who is trained in <i>the application of principles, standards, and methods of the counseling profession, including counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.</i> Therefore, education and training in other disciplines that use counseling as a

		technique does not qualify a person as a professional counselor.
Joanna Bryant	Agrees with comment from Dr. Chase	See response above
Alyson Wolesslagle	Agrees with comment from Dr. Chase. Has a degree in clinical psychology and wants a license as a professional counselor	See response above

1) In accordance with the § 54.1-3503 of the Code of Virginia, the Board is required to promulgate regulations for the practice of counseling: *The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.*

Therefore, there is a continued need for the regulation.

2) Summary of comment above.

3) The regulation is organized and written similarly to all other chapters promulgated by the Board of Counseling; it appears to be clear and easily understood.

4) The regulation does not overlap with federal or state law, which is not specific about the criteria for licensure or the standards of practice.

5) The regulation is frequently reviewed for consistency with changes in technology and practice. Accordingly, it has been amended 13 times in the last 10 years.

The economic impact of this regulation is minimal for a licensure scheme. Fees of \$105 per year are required to maintain a license and do not appear to be burdensome or inhibiting the growth of the profession as there was a growth rate in the number of licensed professional counselors of 7.8% in the last biennium.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

There is no impact on the family.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10	Sets out definitions of words and terms used in regulations	Subsection B is amended to add or delete terms consistent amended regulation and with current meanings of words or terms.



		<p>Acronyms for CACREP, COAMFTE and CORE are deleted because those entities are being deleted in degree program requirements in section 49.</p> <p>The terms being added are “ancillary counseling services,” “clinical counseling services” and “face-to-face.” All are terms are currently used in regulation; the meanings are not changing. Definitions are added for greater clarity and ease of reading and complying with the regulations in which the terms are used.</p> <p>The definition for the word “internship” is amended for consistency with the way it is used in academic settings. There is no implication for the way it is used or applied in regulation.</p> <p>The definition of “residency” is amended to clarify that the residency begins after completion of graduate education, not just after the internship. It is not possible to begin a residency until educational requirements are met, so the current definition could be misleading.</p>
20	Sets the fees charged by the Board	Subsection A is amended to delete renewal fees in 2010 for a one-time fee reduction no longer in effect.
40	Establishes prerequisites for licensure by examination	<p>There are no new requirements; there is a less burdensome requirement for submission of a transcript. If an applicant has already submitted a transcript to qualify for approval of a residency, he would not be required to include the transcript as part of his licensure application. <i>The change will result in a cost-avoidance for applicants and facilitate the application process which is sometimes delayed while the Board waits for an educational program to send the transcript.</i></p> <p>Section 52 requires supervision of a resident to be provided by a person licensed in the jurisdiction in which the experience is being obtained. Verification of current licensure of the supervisor is required if that person held an out-of-state license; the amended regulation states that requirement as part of the application process.</p> <p>Another amendment will specify that “verification” of any mental or health license in another jurisdiction is required. <i>The word “verification” is used rather than “documentation” because some states prefer to verify electronically rather than send written documentation, for which the charge the applicant. Therefore, the change is less burdensome for applicants. The specification of a “mental health or health” license or certificate narrows the requirement to only those professional licenses akin to the license which the applicant is seeking in Virginia.</i></p> <p>The amendment adding a provision that the applicant have no unresolved disciplinary action is consistent with the current process. <i>Applicants are asked about disciplinary actions in other jurisdiction, and states are asked to verify the status of a license. If there is <u>unresolved</u> action, the applicant would not be approved pending the outcome of the case in the other state. If a disciplinary action has taken place in the past, the Board will consider the matter on a case-by-case basis. Section 140 of its regulations</i></p>

		<i>establishes grounds for denial, so the Board has authority to deny or issue the license based on the facts presented.</i>
45	Establishes prerequisites for licensure by endorsement	<p>An amendment in subsection A clarifies that licensure by endorsement is the pathway for anyone who holds or has held a license in another U. S. jurisdiction.</p> <p>Other amendments in subsection A are either identical to changes in the licensure by examination section or clarification that the applicant must have passed an examination required for a counseling license in another state. Currently, that is the only type of examination and license that would be endorsed by Virginia for a license as a professional counselor. The amendment is clarifying only.</p> <p>An amendment in subsection B significantly reduces the regulatory burden by allowing an applicant who does <u>not</u> have the educational and experience credentials equivalent to those required for Virginia licensure to provide evidence of clinical practice for 24 of the last 60 months preceding his application. The current requirement is five out of the last six years of clinical practice. Clinical practice is defined as direct clinical counseling services or supervision of those services. Clinical practice in another jurisdiction is currently required for this alternative pathway to licensure, but the amendment will make it possible for some applicants who are currently not eligible to be licensed.</p>
49	Sets out the requirements for a degree program	<p>Subsection A currently provides that all programs approved by CACREP or CORE are recognized as meeting the definition of graduate degree programs. Students and others sometimes interpret this section to mean that a non-CACREP program would not be approved. In fact, Liberty and Longwood have counseling programs that are not CACREP approved but meet the Board’s requirements. Conversely, some people believe that their degree from every CACREP or CORE program would be acceptable, even if the coursework in that program did not meet the requirements of section 51. To eliminate the confusion, the Board has deleted the “automatic” approval language in subsection A and retained the basic criteria for an approved program in subsection B. CACREP and non-CACREP approved programs that meet those criteria would be acceptable.</p>
51	Sets out the coursework requirements	<p>The amendments to subsection A are clarifying for a clearer understanding of the current requirement. An applicant must “successfully” complete the “coursework” in the subject matter listed. The supervised internship must be at least 600 hours, but may be more than that. Internship hours in excess of 600 hours may be counted towards the residency requirement (section 52).</p>
52	Sets out the residency requirements	<p>In subsection A, reference to a section now repealed (50) and an expired deadline for registration of supervision in exempt settings are deleted.</p> <p>In subsection B, amendments reduce the hourly requirement for a residency from 4,000 to 3,400 to provide for inclusion of the internship within the graduate degree program.</p> <p>Accordingly, specific requirements for an internship relating</p>

		<p>to on-site and off-site supervision, completion of graduate hours prior to beginning an internship and licensure of supervisors are eliminated in the regulatory proposal. Since the completion of an internship is already required within a graduate education program, the Board will rely on the program to oversee the supervision and quality of the internship experience. Internships that exceed the minimum requirement of 600 hours (generally 900 hour-internships in certain programs), may be counted towards the residency for up to an additional 300 hours.</p> <p>In subsection C, a provision that expired in 2010 is deleted. In subsection D, an amendment references the current definition of supervision.</p>
70	Establishes requirements for examination	<p>The addition of subsection E addresses a question raised by an applicant who had completed his residency hours but failed the licensure examination. Such a person may either discontinue counseling-related activities or continue to work under an approved supervisor. Currently, the Board has no specific time frame in which the examination must be passed.</p>
100	Sets out the requirements for annual renewal of licensure	<p>The addition of subsection E clarifies in regulation the legal requirement for a person to have a current active license in order to practice his profession. To continue practice on an expired license may constitute grounds for disciplinary action. If there is a short gap between the expiration date and renewal, the Board may consider use of a confidential consent agreement or an advisory letter – neither of which is considered disciplinary action. Each situation is evaluated on the facts of the case.</p>
106	Sets out the criteria for continuing competency activity	<p>Subsection B is amended to:</p> <ol style="list-style-type: none"> <li>1) Allow acceptance of CE offerings from local governmental agencies in addition to state and federal; and</li> <li>2) Change the name of an approved organization consistent with its current identity.</li> </ol>
110	Sets out the requirements for reinstatement of a lapsed license or reactivation of an inactive license	<p>An amendment to subsection B adds a requirement for verification of any mental health license the applicant holds or has held in another jurisdiction. The information is currently included on a reinstatement application, so it is already required and necessary to ensure that there are no outstanding disciplinary problems in another state that my constitute grounds for denial.</p> <p>The amendment to subsection C for reactivation is needed for consistency with reinstatement. In both situations, the Board has an obligation to ensure that the person who has not held an active licensure for more than one year has the continued ability to resume clinical practice.</p>
130	Sets out the standards of practice for counseling	<p>Changes in subsection D were recommended by Board counsel to clarify that the prohibition on a sexual relationship with a client or former client includes a romantic relationship that does not involve sexual intimacy. Occasionally, respondents will attempt to argue that the relationship did not result in sexual intimacy and therefore is not prohibited. The Board’s interpretation of “sexual relationship” is broad enough to include a romantic involvement because it seriously jeopardizes the counselor/client relationship. The standards of the private professional association are more</p>

		<p>stringent than those of the Board, calling for a lifetime prohibition on any sexual or romantic relationship with a former client.</p> <p>The subsection has also been amended to clarify that the prohibition against inappropriate relationships includes students. Currently, the Board would interpret a student as being “supervised” by a profession in his didactic coursework and/or internship experience. The amendment makes that interpretation more clear.</p>
140	Sets out the grounds for disciplinary action or denial of licensure	<p>There are two amendments recommended to ensure that the Board has appropriate authority to take disciplinary action. The changes will: 1) clarify that procurement of a license by fraud or misrepresentation includes the submission of the application or supervisory forms necessary for issuance of a license; and 2) add as grounds the performance of an act likely to deceive, defraud or harm the public. The latter change is consistent with language for some other professions (Medicine – § 54.1-2915) and is necessary to be able to take disciplinary action for an act which is clearly fraudulent or harmful but for which there are no specific grounds to cite.</p>