

ITEM 2: REGISTRAR'S SUBMISSION PACKAGE

Virginia Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals

Analysis of Proposed Regulations: 18 VAC 115-20-10 et seq.

1. Basis of the Regulation:

Title 54.1, Chapter 24 and Chapter 35 of the *Code of Virginia* provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to assess fees, establish qualifications for licensure and the responsibility to promulgate regulations.

Chapter 35 establishes the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and authorizes that board to administer the licensure of professional counselors, and to establish requirements for the voluntary certification of its licensees as sex offender treatment providers.

§54.1-103 authorizes the board to promulgate regulations specifying additional training or conditions for individuals seeking licensure by reciprocity or endorsement.

2. Statement of Purpose:

In response to Governor Allen's Executive Order 15, the board conducted a comprehensive review of its regulations to ensure that the only regulations that remain in effect are those that are essential to protect the health, safety and welfare of the public. The board is proposing reformatting its regulations, eliminating obsolete and unnecessary language, and including new language where needed to clarify requirements.

The Executive Order also mandated that no regulation should remain in effect if there are less burdensome or intrusive alternatives available to achieve the purpose of the regulations. To reduce the burden of its regulation on applicants, the board is proposing several measures to facilitate the accrual of residency hours. The board also proposes an endorsement provision and a less burdensome process for reinstatement of a lapsed license to expedite licensure of applicants with lengthy experience licensed in other jurisdictions, and the return of licensees who have moved to other states.

To comply with a statutory mandate enacted by the 1994 General Assembly for the board to promulgate regulations for the voluntary certification of its licensees as sex offender treatment providers, the board is proposing a new regulation to direct its licensees to the Board of Psychology which has promulgated regulations for this certification.

The board is also proposing clarifying the degree program requirements and updating the course requirements to meet national standards.

3. Substance of the Regulations:

The key amendments for each regulation are summarized as follows:

A. Part I. General Provisions

To reduce duplication and eliminate the possibility for discrepancies with statute, the board proposes replacing definitions of terms which are set forth in statute with a reference to the *Code* section where they appear. For clarification, the board proposes adding definitions for “*exempt setting*,” “*non-exempt setting*” and “*jurisdiction*,” which are used in the regulations but not currently defined, and adding definitions for acronyms referenced in the proposed degree program requirements. The board also proposes adding definitions for the terms “*residency*” and “*resident*”, which replace the terms “*supervised experience*” and “*supervisee*” used in the current regulations. For conformance with proposed changes to the education and experience requirements, the board proposes removing the definition of “*practicum*” and the reference to this word in the definition of “*internship*.”

No fee changes are proposed, but a minor change has been made to more accurately describe the purpose of the existing fee to verify licensure to another jurisdiction.

The board proposes repeal of 18 VAC 115-20-30, because there is no reason to have the Regulations Governing the Certification of Substance Abuse Counselors incorporated by reference into this chapter.

The board proposes a new section, 18 VAC 115-20-35, to direct its licensees who are seeking certification as sex offender treatment providers to the Board of Psychology.

B. Part II. Requirements for Licensure

Amendments are proposed to 18 VAC 115-20-40 to remove unnecessary language and clarify the documentation required in the application package. The board also proposes elimination of the reference letter requirement.

A new section (18 VAC 115-20-45) is proposed to set forth new requirements for licensure by endorsement for experienced counselors licensed in other jurisdictions.

To reduce the levels of subdivision in the regulations, the board proposes separating the degree program, course work and experience requirements into three different sections and reorganizing the sections in to a format that is easier to follow. The new section setting forth degree program requirements includes a provision for the automatic acceptance of programs that are accredited by one of the two national accrediting bodies for counseling programs.

In addition to the formatting changes, the board proposes updating the education requirements based on current practice, public comment, and national accreditation standards. The board proposes requiring completion of four new content areas within the existing 60 graduate hour requirement, and specifies internship clock hours and client contact hours. The proposed new requirements will have a delayed effective date to allow programs time to make curriculum changes and to accommodate students who will be close to completing their 60 hours at the time the new regulations take effect. A provision is also included to provide for acceptance of course work completed previously that may have met the regulations in effect at the time.

The registration requirement set forth in 18 VAC 115-20-52 is not a new requirement, but has been relocated for emphasis. Throughout this section, the word “experience” has been replaced with “residency.” To reduce the burden of the residency requirement, the board proposes the following changes:

- Rescinding the requirement that ½ of the supervision occur on-site.
- Accepting group supervision hours as equivalent to face-to-face supervision hours (for up to ½ of the total hours).
- Adding two new licensure titles to the list of acceptable supervisors.
- Allowing 600-900 hours of pre-degree internship to count toward the residency.
- Changing the face-to-face supervision requirement from 1 hour per week to 1 hour per 20 hours of work experience to help individuals working part-time toward their residency requirement.

The board is proposing a requirement for two years of post-licensure clinical experience for individuals providing supervision to residents. The board also proposes rescinding the requirement for an annual evaluation reported to the board, and replacing it with a 3-month evaluation presented to the resident. Because residents work under many supervisors,

clarification is added that they must have at least one report of satisfactory competency in each area of the residency.

In response to frequent requests for the number of client contact hours expected during the residency, the board proposes specifying that 2000 client contact hours be accrued during the 4,000 hour residency. In response to frequent inquiries from residents and supervisors regarding billing and use of professional titles by residents, the board is proposing clarification of the language in subdivision B 9 of 18 VAC 115-20-52.

C. Part III. Examinations

The board proposes streamlining the sections setting forth the examination requirements by removing unnecessary language from 18 VAC 115-20-70 and 18 VAC 115-20-80 and combining the retained language into one section. These formatting changes do not represent changes in the actual examination requirements. An equivalency provision for endorsement applicants has been added to this section.

D. Part IV. Licensure Renewal; Reinstatement

A requirement to notify the board of a change of address within 60 days has been added to 18 VAC 115-20-100.

The board proposes a flat reinstatement application fee to replace the current requirement set forth in 18 VAC 115-20-120 which assesses cumulative renewal and penalty fees for all lapsed renewal periods, which can become excessive over a long period of time.

E. Part VI. Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

The board is recommending amendments to the standards of practice set forth in 18 VAC 115-20-150 to clarify the regulations and improve their enforceability. Language that duplicates statute was struck and related subdivisions were combined where appropriate. The board is recommending a new language for the prohibition on dual relationships that is more consistent with the regulations of other boards, and the codes of ethics of professional associations.

Minor changes are proposed for 18 VAC 115-20-160 and 18 VAC 115-20-170 to make these sections clearer and more concise.

4. Issues of the Regulation.

A. Definitions.

Several definitions in the regulations duplicate statute. The board identified several terms used in the regulations which are not common usage words and are not defined, such as “*exempt setting*” and “*jurisdiction*.” Changes in terminology in the proposed amendments necessitate changing some definitions to conform with the rest of the chapter. The board proposes referencing the Code for definitions that duplicate statute, and changing or adding other definitions as needed.

Advantages: Referencing definitions in the *Code* and removing unnecessary definitions streamlines the regulations and eliminates duplication. Additionally, the regulations will remain in conformance with statute in the event statutory definitions are amended. Inclusion of definitions for the terms “*exempt setting*,” “*nonexempt setting*,” and “*jurisdiction*” will help clarify these terms for individuals not familiar with them. Deletion of terms no longer used in the regulations and addition of with the new or replacement terms makes this section consistent with the other sections in the regulations.

Disadvantages: The proposed changes present no disadvantages to the general public, applicants, licensees, the board or the agency.

B. Fees

“*Endorsement*” is a misleading term for the verification of licensure fee for applicants applying for licensure in other jurisdictions. The board proposes more accurate language to explain the purpose of this fee.

Advantages: The proposed change clarifies what the fee is for, and prevents confusion for individuals who are applying to the board for licensure by endorsement.

Disadvantages: There are no disadvantages to the proposed change.

C. Substance Abuse Counseling.

Regulations Governing the Certification of Substance Abuse Counseling are not incorporated by reference in this chapter, as stated in 18 VAC 115-20-30. The board proposes repeal of this section.

Advantages: Removal of erroneous language prevents confusion.

Disadvantage: There is no disadvantage to removing this section.

D. Sex Offender Treatment Provider Certification

Section 54.1-3505 of the *Code of Virginia* mandates that the board promulgate regulations for the voluntary certification of its licensees as sex offender treatment providers, and to consider the standards recommended by the Advisory Committee on Certified Practices pursuant to §54.1-3610. The board has considered those standards, which are now the Board of Psychology's *Regulations Governing the Certification of Sex Offender Treatment Providers*, and has determined that those standards are acceptable for the voluntary certification of its licensees. Following the advise of the Attorney General's Office, the board is proposing inclusion of this section to direct its licensees seeking certification to the Board of Psychology.

Advantages: Promulgation of a separate set of regulations that are either incongruous with or a duplication of the Board of Psychology's regulations would be a poor use of the board's time and budget, and confusing to the public. Endorsement of the existing regulations allows for one set of requirements and practice standards for all certificate holders.

Disadvantages: There is no disadvantage to the proposed change.

E. Pre-requisites for licensure by examination

Reference letters do not provide useful information to supplement the supervisory evaluations. The board proposes rescinding the reference letter requirement, and making minor changes to clarify the documentation requirements.

Advantages: The proposed changes simplify the application process by rescinding the reference letter requirement, clarify the documentation required, and conform section number citations with changes in other sections of the chapter.

Disadvantages: There are no disadvantages to the proposed changes.

F. Pre-requisites for licensure by endorsement

Currently, applicants with lengthy experience as licensed practitioners in other jurisdictions must document the same information as new practitioners, which includes official documentation of supervised practice that may have taken place long ago and is therefore difficult or impossible to verify. In addition, experienced practitioners are required to sit for the board's examination, which may be comparable to the original examination taken for licensure in another jurisdiction. The board determined that a provision should be developed for licensure of experienced practitioners by endorsement.

Advantages: Endorsement of experienced practitioners will expedite the licensure process for these applicants by as many as 10 months, reducing delays in the ability to

obtain employment, open private practices and bill for services.

Disadvantages: The proposed changes present no disadvantages to applicants, the agency, or the general public.

G. Degree program requirements.

Among the most frequent requests for clarification from the public is the meaning of “a degree in counseling *or a related discipline.*” Many individuals who graduate from seminary schools or criminal justice programs believe that they may be eligible for licensure because their programs included a few courses in dealing with mental, emotional or behavioral problems. The board hopes to clarify the program requirement by defining it in terms of the scope of practice set forth in the *Code of Virginia* rather than by title, and to include descriptive language setting forth criteria for what constitutes a “*program*” in counseling according to national standards.

Also at issue is the amount of time spent by the credentials reviewers in determining the acceptability of an applicant’s graduate program. The board proposes automatic acceptance of programs approved by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or the Council on Rehabilitation Education (CORE), which will expedite the review process for applicants from those programs.

Advantages: The proposed program requirements outline in clear terms what the board expects applicants to document in terms of a graduate degree in counseling. Automatic acceptance of programs approved by national accrediting organizations simplifies the review process and expedites the application process for individuals who graduate from nationally accredited programs in counseling.

Disadvantages: No changes are proposed in the actual degree program requirements, so there are no disadvantages.

H. Course work requirements.

The board has not updated its course requirements in 20 years. Over that time, the profession has evolved, and graduate programs in counseling are providing more extensive training to prepare counselors for independent clinical practice. The board determined that the core areas need revision to more closely resemble current practice requirements. The board reviewed the program requirements of the two national accrediting bodies for programs in counseling (CACREP and CORE), and model legislation for regulation of the profession developed by the American Counseling Association, considered public comment offered at its meetings, and conducted a survey of Virginia’s graduate counseling programs to determine the availability of proposed course work. Based on the review and comment and survey results, the board determined that the regulations should specify a minimum internship hour

requirement of 600 clock hours with 240 hours of direct client contact, and that the course requirement fell short of the national standard in four content areas: addictive disorders, marriage and family systems theory, multicultural counseling and research. The board also determined that theories of human behavior are separate knowledge domains offered as distinct courses at most institutions of higher education.

Board members in private practice estimated that 25-30% of their clients have some type of addictive disorder or have a family member with an addictive disorder. Based on the extent of this problem in our society, and the importance of being able to recognize the warning signs to appropriately refer clients for substance abuse treatment, the board proposes requiring one course in addictive disorders. All but one counseling program responding to the Board's survey indicated that a distinct course in addictions is available. The one program that did not offer a distinct course felt that 3 semester hours in addictions could be obtained over several courses.

The board members agreed that without exception, client problems do not originate or exist in isolation, but stem from and involve family, societal or organizational systems. National standards reflect that training in both the individual and systems perspectives is considered essential for minimal competence in the practice of counseling. Although systems theory and techniques are founded on a vast body of knowledge that cannot be covered in one course, the board determined that at minimum, one course should be required to make students aware of this significant counseling perspective. All but one counseling program responding to the Board's survey indicated that a course in marriage and family systems theory is available. It is known that the institution housing that program has a distinct marriage and family therapy program where the course could be obtained.

Because counselors test and diagnose clients across the entire span of gender, age, race, religion and ethnicity, the board determined that it is essential that counselors be aware of how social and cultural factors can affect a client's test results, behavior and thinking. Without cultural awareness, a practitioner may misdiagnose a cultural behavior as a mental, emotional or behavioral problem. The board is proposing one course in multicultural counseling, theories and techniques. All but one counseling program responding to the Board's survey indicated that a distinct course in multicultural counseling is available. The one program that did not offer a distinct course felt that 3 semester hours in this content area could be obtained from a combination of different courses.

The board's standards of practice require that counselors stay abreast of new developments, concepts and practices. In order to do this, counselors must be able to interpret scholarly

published articles and evaluate the significance of the reported results. The importance of this

training is evident in the fact that it is a fundamental component of the graduate counseling curricula in almost all university programs. All counseling programs responding to the Board's survey indicated that a research course is available.

Another issue pertaining to the course work requirements is the lack of specificity in the semester hours required in each content area. Under the current regulations, one applicant may cover more than one content area with one course, while another may submit documentation of a specific course to each area, which results in disparate training for individuals obtaining the same license, and makes the determination of competency somewhat subjective. The board is proposing that each content area be covered by one 3 semester hour course, which is a more consistent and defensible requirement.

None of the proposed changes affect the 60 graduate hour requirement.

Advantages: The proposed changes bring the course work requirement up-to-date in terms of the national standard for the profession. Survey responses substantiate that these courses are considered standard by Virginia's institutions of higher learning. Since all core areas are covered on the licensure examination which is based on a job analysis of the profession, applicants will be better prepared to pass the licensure examination with a strong foundation in all core areas.

Disadvantages: The proposed changes limit the number of elective courses students can take within the 60 graduate hour requirement, but do not change the total number of hours required. The Board has ensured that there will be no disadvantages to individuals who complete their education prior to the effective date of the change by providing for acceptance of education that meets the regulations in effect at the time the coursework was completed. The Board has also included a 2 year delay for the effective date of the new requirements to allow programs to develop courses if needed, and to enable individuals enrolling in counseling programs to plan their curricula to meet the new requirements.

I. Residency

The primary issue for the supervised experience requirement is the difficulty for new graduates to find residency positions. Historically, government agencies were a principal source of training for new graduates, but a recent trend for these agencies is to require licensure as a hiring criterion to enable third party billing to offset budget cuts. The board considered reducing the residency hours, but this was met by strong opposition from the public. The board identified other ways to facilitate attainment of residency hours as listed under (3), Substance of the Regulations.

Due to frequent requests from applicants for guidelines on the number of client contact hours

required for the residency, the board proposes a requirement of 2000 hours of face-to-face client contact. This meets the expectation of most work settings that clinicians spend 50% of their time in direct service.

Another issue with the experience requirement is frequent confusion about residents' use of professional titles, solicitation of clients and billing for services. The board proposes removing the prohibition on client solicitation since supervisors are not always in a situation to find clients for the residents. The board also proposes clarifying that a resident cannot be paid directly by a client or third party payor, which does not prohibit the practice from billing for a resident's services and paying the resident a salary. The board also proposes clarification for use of title and proper notification of the residency status and supervisor information to the client.

During the review of the regulations, several board members expressed concern that the requirement that supervisors have "professional training in supervision." is ambiguous. Members who had served on the board's Disciplinary Committee regarded inadequate supervision as the source of some of the disciplinary problems that have come before the board. The board identified a need to establish specific requirements for supervisory training, but currently does not have statutory authority to do so. To provide some assurance of competency to supervise, the board is proposing a requirement that supervisors have 2 years post-licensure clinical experience.

Another issue the board considered during its review of the supervision requirements is that most residents have multiple supervisors over the period of the residency, and often do not receive annual evaluations. Because this review was intended to provide a means for residents to get feedback on their performance prior to the completion of their supervision contract, the board proposes changing this to a quarterly evaluation submitted to the resident, to be included with the application packet at the completion of the residency.

The board also proposes reformatting this section, deleting unnecessary language and changing language to clarify the requirements when needed.

Advantages: Changes in the residency hours will reduce the time spent in the residency by up to 6 months, reducing the cost incurred by residents for supervision, and expediting the licensure process. Changing the minimum supervision hours from one hour per week to one hour per 20 hours will reduce the burden on part-time residents who have difficulty obtaining frequent sessions with their supervisors which are sometimes paid for by the residents at the going rate for client visits. Clarification of ambiguous language on client contact hours, billing and solicitation should be helpful to both applicants and supervisors.

Disadvantages: Individuals in full-time residencies will not be permitted to obtain less than

two hours of face-to-face supervision each week (current regulations require a minimum of one hour per week). However, full-time residents generally obtain two hours of supervision each week in order to complete the requirement within two years (40 hours per week X 50 work weeks per year X 2 years = 4000 hours of work experience. It takes 2 hours of face-to face supervision each week to complete 200 hours within the 2 years). The proposed change to accept group supervision as equivalent to face-to-face will make it easier for full time residents to meet the requirement, as they generally have 1 hour of group staff meetings each week.

New licensees will have to wait two years until they are able to act as supervisors, but the impact on applicants will be minimal, as supervision by new licensees is extremely rare (<1% of applications received).

J. Character and Professional Integrity

At issue is the potential for conflict with the Americans with Disabilities Act, which prohibits denial of a government service (i.e. licensure) based on a disability. The board proposes repeal of this section.

Advantages: Repeal of this language eliminates conflict with federal law.

Disadvantages: There are no disadvantages.

K. Examination Requirements.

Examination requirements under the current regulations are set forth under three sections which can be reduced and consolidated by eliminating language that is unnecessary.

Advantages: Elimination of unnecessary language makes the regulations more concise.

Disadvantages: There are no disadvantages to the proposed changes.

L. Late Renewal

The late renewal reinstatement procedure set forth in 18 VAC 115-20-110 requires payment of cumulative licensure and penalty fees, which is overly burdensome for individuals who are returning to a Virginia practice after a lengthy absence. The Board proposes a simple reapplication fee for individuals who have not renewed their license for four years.

Advantages: Reinstatement will be much less costly for counselors who are returning to Virginia to practice.

Disadvantage: There is no disadvantage to the proposed change.

M. Standards of Practice

The primary issue in the Standards of Practice which the board addressed was the prohibition on dual relationships. In 1993, the board adopted an absolute, interminable prohibition on dual relationships. This was done to ensure that there was no ambiguity about the seriousness of dual relationship violations which represent the majority of the disciplinary cases to come before the board. However, the stringency of the rule exceeds the Code of Ethics of the American Counseling Association and may be unreasonable in some situations, such as occupational aptitude testing or career counseling, which do not create the same potential for client exploitation as treatment for emotional problems. The board proposes new language to set forth a more reasonable prohibition which will still provide adequate protection to the public.

The board also reviewed the regulation prohibiting provision of services by lectures or through electronic or other media. The board determined that activities such as advice programs and columns are commonplace, and that no evidence of harm to the public from these activities has ever been presented to the board. The board proposes repeal of this standard.

Another issue the board addressed is that the regulations require professional counselors to report violations of laws and regulations committed by other counselors, but not other licensed mental health service providers who may see the same clients. The board proposes expanding this rule to include violations by other licensed or certified mental health providers to provide guidance to counselors who are uncertain of their responsibility to report harm to a client by a provider in another license category.

The board has also identified language that is unnecessary and areas that could be streamlined by combining language in related sections where appropriate.

Advantages: The proposed changes make the standards more concise, more reasonable and easier to enforce.

Disadvantages: There are no disadvantages to the proposed changes.

5. Estimated Fiscal Impact

A. Projected number of persons affected and their cost of compliance:

Approximately three thousand licensees, and 300 new applicants and residents per year are affected by these regulations.

The endorsement provision should expedite processing of applicants who have been licensed in other states by about ten months. These applicants constitute approximately 5% of the 200 individuals that become licensed in Virginia each year. Assuming earnings of \$2000 to \$4000 per month, the potential earnings that might otherwise be lost could be \$20,000 to \$40,000. More significantly, endorsement applicants will be less likely to miss employment opportunities if issuance of the license is expedited, and counseling services will be more readily available to the public.

Acceptance of internship hours toward the residency should expedite licensure by approximately 3-6 months for the majority of applicants for licensure by examination.

The proposed reinstatement process will reduce the cost of reinstatement from \$1,000 or more, depending on the length of absence, to \$85.00.

Acceptance of CACREP and CORE programs will expedite the review process for many applicants.

B. Costs to the agency for implementation:

Approximately \$2000 will be incurred for printing and mailing public notices and amended regulations.

All costs to the agency are derived from fees paid by licensees, and no fee increases are necessary.

C. Costs to local governments

The proposed amendments will not fiscally impact local governments.

D. Economic Impact Analysis:

To be prepared by the Department of Planning and Budget.

Board of Licensed Professional Counselors,
Marriage and Family Therapists and Substance Abuse Professionals
18 VAC 115-20-10 et seq.

ITEM 3: STATUTORY AUTHORITY FROM THE ATTORNEY GENERAL

(Attached)

ITEM 4: STATUTORY MANDATE FOR REGULATORY ACTION

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.~~§ 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.*

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 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.

"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 Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and authorizes the board to regulate the practice of counseling.

§ 54.1-3503. Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals.

The Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals 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.

§ 54.1-3505 mandates that the Board promulgate regulations for the voluntary certification of its licensees as sex offender treatment providers.

§ 54.1-3505. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*
- 5. (Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.*
- 6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*
- 7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors.*

§ 54.1-3506 establishes the licensure requirement to engage in the 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.

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

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement. § 54.1-103. Additional training of regulated persons; reciprocity; endorsement. § 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 5: REASONS THE PROPOSED AMENDMENTS ARE ESSENTIAL

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. The board reviewed national standards for curriculum accreditation, model legislation developed by the American Counseling Association, considered staff comments regarding areas of the regulations that are confusing and considered public comment offered during the review process.

Article 2, Part V of the *Virginia Register Form, Style and Procedure Manual* recommends that **definitions** of important terms used more than once be included in the regulation to provide clarification and control over their meanings. Certain definitions pertaining to the practice of counseling are set forth in § 54.1-3500. The board is recommending eliminating definitions from the regulation that duplicate those listed in the *Code*, but including other terms that are important to the regulation

The board determined that licensure by examination is not the least burdensome alternative for practitioners from other states licensed by standards substantially equivalent to the board’s, and proposes an endorsement provision to relieve this burden. Likewise, the board determined that the fees for reinstatement could become excessive for practitioners returning to Virginia after a long absence, and is proposing a less burdensome reinstatement process. The board also acknowledged that the residency requirement is overly burdensome for applicants in some areas of the state, and proposes changes to help applicants obtain the required hours.

Regulations setting forth degree program requirements are frequently misunderstood by the public. This confusion could result in a wasted application fee, and frustration for individuals whose programs did not meet the requirements. The board proposes amendments to clarify the degree program requirements, and provide for automatic acceptance of nationally accredited programs.

Review of national program accreditation standards, and model legislation published by the American Counseling Association revealed that the course work requirement is outdated and does not adequately prepare students to practice counseling at the level the profession has evolved to over the past 20 years. The board is charged with establishing requirements for licensure as necessary to ensure the competence and integrity of its licensees to engage in counseling practice. Individuals practicing counseling in the private sector are required by law to hold a license. These practitioners must be properly trained to work autonomously

with clients at risk, such as mentally ill or emotionally disturbed individuals, or families with abuse problems. The board proposes updating the core course requirements based on national standards, but is not proposing any change to the total graduate hour requirement. Results of a survey submitted to Virginia's graduate counseling program indicate that the additional course work is readily available. Individuals who completed their 60 graduate hours prior to the effective date of the new rule may be licensed under the education requirements in effect when they completed their education.

The board office receives frequent calls for clarification of regulations governing the use of professional title, billing and solicitation for services. The board proposes new language to clarify and simplify these rules.

The board resolved that its prohibition on dual relationships is excessive in relation to the standards set forth by the American Counseling Association and by other boards, and proposes a more reasonable alternative with a five year prohibition for sexual intimacies with clients, provided there is no client exploitation involved.

The board also proposes general clarification and reformatting as needed, and removal of language that is unnecessary or conflicts with statute.

ITEM 6: ALTERNATIVES CONSIDERED IN THE DEVELOPMENT OF THE REGULATIONS:

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 definitions no longer used in the regulation.
3. Including definitions for words used in the regulations that may not readily understood by readers.
4. Changing definitions as needed to conform with other proposed changes.

The board proposes implementation of all the alternatives considered for *Definitions*.

PART II. REQUIREMENTS FOR LICENSURE

The board considered the following alternatives to facilitate the application process for applicants with experience as licensed professional counselors in other jurisdictions:

- Endorsing individuals who have been licensed in other states by meeting requirements equivalent to those in the board's regulations. The board is proposing language to implement this alternative.
- Providing for automatic endorsement of individuals who hold the National Certified Counselor credential administered by the National Board of Certified Counselors. The board rejected this alternative because the certification does not guarantee that all of the proposed course requirements have been met.
- Developing individual reciprocity agreements with other states. The board rejected this alternative on the advise of counsel that one endorsement provision is easier to administer than multiple reciprocity contracts.

In response to a request from the public for some type of separate designation for individuals trained as art therapists, the board considered developing requirements for a specialty designation for art therapists. The board rejected this alternative because there has been no documentation of harm from counselors practicing art therapy, specialty designations could result in limitations on practice for all counselors, national accrediting organizations exist for individuals who want to obtain a specialty designation, and specialty designations previously conferred by the board had been discontinued based on a JLARC recommendation that it was not a good system of regulation.

To clarify frequent confusion over the requirement for a graduate degree in counseling “*or a related discipline*,” the board considered recommendations from a 1993 Advisory Committee on Counselor Education and Supervision and input from public participants who attended board and committee meetings throughout the review process. The board considered the following alternatives to clarify the program requirements:

- Simply deleting the phrase “*or a related discipline*” from the program requirement set forth in 18 VAC 115-20-50.A. This alternative was rejected based on concerns from the public that it would eliminate degree programs that had the required content, but not the title “*Counseling*.”
- Replacing the phrase “or a related discipline” with a listing of acceptable degree titles. This alternative was rejected because program titles would not guarantee content, and are subject to change.
- Approving programs whose education and experience requirements meet the criteria set forth in the regulations, and automatically approving graduates from those programs to sit for the licensure examination. The board rejected this alternative because it does not have statutory authority to approve programs, and it would create a burden for university programs to implement the residency portion of the requirement.
- Amending the existing language to make the degree requirement more specific. The board proposes language to carry out this alternative.
- Providing for automatic acceptance of nationally accredited programs in counseling. The board proposes acceptance of this alternative.
- Providing for automatic acceptance of individuals holding National Counselor Certification. As explained previously, the board rejected this alternative because not all proposed course requirements are covered by this certification.

To update the course work requirements, the board referred to the accreditation standards of

the two national accrediting bodies for programs in counseling (CACREP and CORE), and model legislation developed by the American Counseling Association. The board also considered input from public participants who attended board and committee meetings throughout the review process, and conducted a survey of Virginia's graduate counseling programs to determine whether proposed course work is readily available. The board considered the following alternatives to update the core course requirements:

- Separating the human behavior core area from personality theories, as these are distinct domains offered as separate courses in counseling programs.
- Requiring that each core area be covered by one 3 semester hour course to ensure that all applicants have met the same educational standard for the license, and enable the board's Credentials Committee to make more uniform, defensible judgements about qualifications.
- Removing the reference to "practicum" in the internship requirement, since internship clearly delineates clinical practice, but "practicum" does not.
- Specifying clock hours and client contact hours for the internship to ensure that the requirement meets CACREP standards and qualifies as clinical practice.
- Specifying a requirement for a course work in research, systems theory and multicultural counseling to conform with national program standards established by CACREP and CORE.
- Specifying a requirement for course work in addictive disorders to prepare students to be able to recognize the signs and symptoms of addictive disorders which will effect up to 30% of the clients they will encounter in clinical practice. This alternative was requested by public participants attending the board and committee meetings.

The board proposes amendments to implement all of these alternatives.

In reviewing its residency requirements, the board considered comments from applicants regarding the difficulty of obtaining the residency hours, and reviewed the residency requirements of other state counseling boards. The board considered the following alternatives for the residency requirement:

- Proposing a reduction of the residency hours from the current 4,000 to 3,000 hours, with a corresponding reduction in the face-to-face supervision hour requirement to 150 hours. The board rejected this alternative due to strong public opposition based on concerns that it would jeopardize third party reimbursements for professional counselors, which have been achieved in Virginia only because of the strength of the academic and supervisory

requirements, and which are essential to sustain independent practice.

- Accepting a 2000 hour residency from programs approved by the board as meeting the requirements in the board's regulations. As explained previously, the approved program model was rejected by the board.
- Establishing client contact hours for the residency in response to frequent applicant inquiries about the expectation of the board. The board accepted this alternative and proposes specifying 2000 client contact hours within the 4000 hour residency.
- Accepting graduate internship hours toward the residency requirement. The board accepted this alternative with the provision that adequate course work was completed before the initiation of the internship, and that supervision met the residency supervision requirement. The proposed regulation sets forth acceptable supervision criteria for internship hours submitted toward the residency.
- Changing the face-to-face supervision requirement from one hour per week to one hour per 20 hours of experience to alleviate difficulties faced by individuals in part-time residencies. The board proposes language to implement this alternative.
- Rescinding the requirement that $\frac{1}{2}$ of the supervision occur on-site to alleviate difficulties for individuals who work in licensure-exempt settings that do not have qualified on-site supervisors available. The board accepted this alternative.
- Requiring that the residency content match the core course content. This alternative was rejected because the board was satisfied that the residency content in the current regulations is sufficient for minimal competency.

The board considered the following alternatives to clarify and simplify the supervisory requirements:

- Requiring all residency hours to be obtained under the supervision of a licensed professional counselor. The board rejected this alternative due to concerns that it would exacerbate the difficulties individuals are already facing in finding qualified supervisors. The board resolved to not to change the requirement for $\frac{1}{2}$ of the residency hours to be supervised by a licensed professional counselor, and added two new titles of licensed mental health professionals as acceptable for the other half of the supervision hours.
- Rescinding the annual evaluation requirement, which has had limited compliance, and does not add essential information for the evaluation of applicants. The board modified this requirement to limit the amount of paperwork supervisors submit to the board, but at

the same time ensure that residents are getting the needed feedback from supervisors.

- Developing specific training requirements for supervisors. The board rejected this alternative because it does not have the statutory authority to regulate supervisors. As an option, the board proposes requiring that supervisors have two years post-licensure clinical experience.

PART III. EXAMINATIONS

The board considered the following alternative for the examination requirement:

- Amending the language for examination waiver to specify that applicants for licensure by endorsement must have passed an examination deemed substantially equivalent to the board's examination.
- Removing language that is not essential to the regulation and reformatting the regulation for a more concise format.

PART IV. LICENSURE RENEWAL; REINSTATEMENT

As an alternative to requiring cumulative licensure renewal and penalty fees for individuals whose licenses have lapsed more than four years, the board proposes requiring a flat reinstatement application fee equivalent to the initial application fee.

PART VI. STANDARDS OF PRACTICE

As an alternative to its *Standards of Practice*, the board considered incorporating the Code of Ethics of the American Counseling Association by reference. This alternative was rejected on the basis that the Association's codes might exceed the minimum required to protect the public, may not all be enforceable, may not conform with Virginia law, and are subject to change without input from the board.

Based on the percentage of disciplinary matters the board handles that involve dual relationships of a sexual nature, the board determined that the prohibition on dual relationships needed clarification, and that in some cases an immutable prohibition could be unreasonable. The board developed alternative language based on the regulations of the Virginia Board of Medicine. The board initially considered a 2 year prohibition on sexual intimacies with clients which is in accordance with the Code of Ethics of the American Counseling Association. Based on concerns of the board's Disciplinary Committee that two years was not long enough to deter practitioners from engaging in intimate relationships with former clients, the board adopted a five year prohibition as an

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alternative.

ITEM 7: SCHEDULE FOR REVIEW AND REEVALUATION OF REGULATIONS

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|-------------------|------------------------------------------------------------------------------------------|
| November 22, 1998 | Submission of Preliminary determination package to the Department of Planning and Budget |
| March 1, 1999 | Publication of Proposed Regulations and Notice of Comment |
| April 30, 1999 | Public comment period ends |
| May 14, 1999 | Board adopts final regulation |
| July 7, 1999 | Regulation in effect |
| July, 2001 | Initiate biennial review of regulations |

ITEM 8: FISCAL IMPACT ANALYSIS

A. Projected number of persons affected and their cost of compliance:

Approximately three thousand licensees, and 300 new applicants and residents per year are affected by these regulations.

The endorsement provision should expedite processing of applicants who have been licensed in other states by about ten months. These applicants constitute approximately 5% of the 200 individuals that become licensed in Virginia each year. Assuming earnings of \$2000 to \$4000 per month, the potential earnings that might otherwise be lost could be \$20,000 to \$40,000. More significantly, endorsement applicants will be less likely to miss employment opportunities if issuance of the license is expedited, and counseling services will be more readily available to the public.

Acceptance of internship hours toward the residency should expedite licensure by approximately 3-6 months for the majority of applicants for licensure by examination.

The proposed reinstatement process will reduce the cost of reinstatement from \$1,000 or more, depending on the length of absence, to \$85.00.

Acceptance of CACREP and CORE programs will expedite the review process for all applicants.

B. Costs to the agency for implementation:

Approximately \$2000 will be incurred for printing and mailing public notices and amended regulations.

All costs to the agency are derived from fees paid by licensees, and no fee increases are necessary.

C. Costs to local governments

The proposed amendments will not fiscally impact local governments.

D. Economic Impact Analysis:

To be prepared by the Department of Planning and Budget.

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