WEST VIRGINIA CODE CHAPTER 30 ARTICLE 31

WV Legislature

§30-31-1. License required.

It is unlawful for any person to practice or offer to practice professional counseling or marriage and family therapy in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that the person is a licensed professional counselor or a licensed marriage and family therapist unless the person has been licensed under the provisions of this article, and the license has not expired, been suspended, revoked or exempted.

WV Legislature

§30-31-2. Applicable law.

The practices of professional counseling and marriage and family therapy, and the board of Examiners of Counseling are subject to the provisions of article one of this chapter, the provisions of this article and any rules promulgated hereunder.

WV Legislature

§30-31-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Applicant” means a person making an application for a license or renewal under the provisions of this article.

(b) “Board” means the West Virginia Board of Examiners in Counseling.

(c) “Clinical counseling procedures” means an approach to counseling that emphasizes the counselor's role in systematically assisting clients through all of the following including, but are not limited to, observing, assessing and analyzing background and current information; utilizing assessment techniques useful in appraising aptitudes, abilities, achievements, interests or attitudes; diagnosing; and developing a treatment plan. The goal of these procedures is the prevention or elimination of symptomatic, maladaptive or undesired behavior, cognitions or emotions in order to integrate a wellness, preventative, pathology and multicultural model of human behavior to assist an individual, couple, family, group of individuals, organization, institution or community to achieve mental, emotional, physical, social, moral, educational, spiritual, vocational or career development and adjustment through the life span of the individual, couple, family, group of individuals, organization, institution or community.

(d) “Licensed professional counselor” means a person licensed under the provisions of this article to practice professional counseling.

(e) “Licensee” means a person holding a license issued under the provisions of this article.

(f) “Licensed marriage and family therapist” means a person licensed under the provisions of this article to practice marriage and family therapy.

(g) “Marriage and family therapy” means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective or behavioral, specifically within the context of marriage and family systems, that involve the professional application of theories and techniques to individuals, couples and families, singly or in groups.

(h) “Permit” means a temporary permit to practice professional counseling or marriage and family therapy issued by the board under the provisions of this article.

(i) “Permittee” means a person holding a temporary permit under the provisions of this article.

(j) “Professional counseling” means the assessment, diagnosis, treatment and prevention of mental, emotional or addiction disorders through the application of clinical counseling procedures. Professional counseling includes the use of psychotherapy, assessment instruments, counseling, consultation, treatment planning and supervision in the delivery of

WV Legislature

services to individuals, couples, families and groups.

WV Legislature

§30-31-4. Board of Examiners in Counseling.

(a) The West Virginia Board of Examiners in Counseling is continued. The members of the board in office on July 1, 2009, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advice and consent of the Senate, a licensed marriage and family therapist from a list of three nominees submitted by The West Virginia Association of Marriage and Family Therapy, to replace the citizen member whose term ends on June 30, 2009, and for any vacancy thereafter.

(c) Commencing July 1, 2009, the board shall consist of the following seven members:

(1) Two licensed professional counselors engaged in the teaching of counseling at an accredited institution of higher education;

(2) Three licensed professional counselors;

(3) One licensed marriage and family therapist; and

(4) One citizen, who is not licensed under the provisions of this article and who does not perform any services related to the practice of the professions regulated under the provisions of this article.

(d) Each member shall be appointed by the Governor by and with the advice and consent of the Senate. The term is for five years.

(e) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and has qualified.

(f) Each licensed member shall maintain an active license with the board: Provided, That the initial marriage and family therapist appointed to the board must qualify for licensure under the provisions of section nine of this article.

(g) Each member of the board shall be a resident of West Virginia during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

WV Legislature

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board shall constitute a quorum.

(n) The board shall hold at least two annual meetings. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

WV Legislature

§30-31-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses;

(3) Establish procedures for submitting, approving and rejecting applications for a license;

(4) Determine the qualifications of any applicant for a license;

(5) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(11) Establish a fee schedule;

(12) Issue, renew, deny, suspend, revoke or reinstate a license;

(13) Conduct disciplinary hearings of persons regulated by the board;

(14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be

WV Legislature

necessary and appropriate;

(18) Establish the continuing education requirements for licensees;

(19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(20) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Contract with third parties to administer the examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and

(3) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

WV Legislature

§30-31-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses to practice professional counseling and marriage and family therapy;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examination;

(6) Standards for approval of courses;

(7) Procedures for the issuance and renewal of a license or permit;

(8) A fee schedule;

(9) Continuing education requirements for licensees;

(10) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee;

(11) Requirements to reinstate a revoked license;

(12) Specific master's and doctoral degree programs considered to be equivalent to a master's or doctoral degree program required under this article;

(13) The nature of supervised professional experience approved by the board for the purposes of licensure of this article;

(14) A code of ethics; and

(15) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board's rules in effect on July 1, 2009, shall remain in effect until they are amended or repealed and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

WV Legislature

§30-31-7. Fees; special revenue account.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the state Treasury designated the "Board of Examiners in Counseling Fund". The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the state Treasury.

WV Legislature

§30-31-7a.

Repealed.

Acts, 2009 Reg. Sess., Ch. 177.

WV Legislature

§30-31-8. Requirements for license to practice counseling.

(a) To be eligible for a license to practice professional counseling, an applicant must:

(1) Be of good moral character;

(2) Be at least eighteen years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in counseling of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in counseling of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in counseling approved by the board;

(7) Not have been convicted of a felony or crime involving moral turpitude under the laws of any jurisdiction:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant

WV Legislature

since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice counseling issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is $50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who has been continually licensed under this article since 1987, pursuant to prior enactments permitting waiver of certain examination and other requirements, is eligible for renewal under the provisions of this article.

(e) A license to practice professional counseling issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article: Provided, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

WV Legislature

§30-31-9. Requirements for a license to practice marriage and family therapy.

(a) To be eligible for a license to practice marriage and family therapy, an applicant must:

(1) Be of good moral character;

(2) Be at least eighteen years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in marriage and family therapy as approved by the board;

(7) Not have been convicted of a felony or crime involving moral turpitude under the laws of any jurisdiction:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a

WV Legislature

rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a person licensed to practice marriage and family therapy as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes, and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice marriage and family therapy issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is $50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who is licensed for five years as of July 1, 2010, and has substantially similar qualifications as required by subdivisions (1), (2), (3), (4), (5)(A)(i) or (5)(B)(i), (7) and (8),

WV Legislature

subsection (a) of this section is eligible for a license to practice marriage and family therapy until July 1, 2012, and is eligible for renewal under section ten of this article.

WV Legislature

§30-31-10. Renewal requirements.

(a) A licensed professional counselor and a licensed marriage and family therapist shall annually or biennially renew his or her license at a time determined by the board, by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license and a late fee for any renewal not properly completed and received with the appropriate fee by the board at the appropriate date.

(c) The board shall require as a condition of renewal that each licensee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

WV Legislature

§30-31-11. Persons exempted from licensure.

(a) The following activities are exempt from the provisions of this article:

(1) Teaching, lecturing or engaging in research in professional counseling or marriage and family therapy so long as such activities do not otherwise involve the practice of professional counseling or marriage and family therapy directly affecting the welfare of the person counseled;

(2) The official duties of persons employed as professional counselors or marriage and family therapists by the State of West Virginia or any of its departments, agencies, divisions, bureaus or political subdivisions, counties, county boards of education, regional education service agencies, municipalities or any other facilities or programs established, supported or funded, in whole or in part, by the governmental entity;

(3) The official duties of persons employed as professional counselors or marriage and family therapists by any department, agency, division or bureau of the United States of America;

(4) The official duties of persons serving as professional counselors or marriage and family therapists, whether as volunteers or for compensation or other personal gain, in any public or private nonprofit corporations, organizations, associations or charities;

(5) The official duties of persons who are employed by a licensed professional counselor or licensed marriage and family therapist, whose duties are supervised by a licensed professional counselor or licensed marriage and family therapists and who represent themselves by the title provisionally licensed counselor or provisionally licensed marriage and family therapist, and do not represent themselves as licensed professional counselors or licensed marriage and family therapists as defined in this article;

(6) The activities of a student of professional counseling or marriage and family therapy which are part of the prescribed course of study at an accredited educational institution and are supervised by a licensed professional counselor, licensed marriage and family therapist or by a teacher, instructor or professor of counseling or marriage and family therapy acting within the official duties or scope of activities exempted by this section; or

(7) The activities and services of qualified members of other recognized professions such as physicians, psychologists, psychoanalysts, social workers, lawyers, clergy, nurses or teachers performing counseling or marriage and family therapy consistent with the laws of this state, their training and any code of ethics of their professions so long as such persons do not represent themselves as licensed professional counselors or licensed marriage and family therapists as defined by section three of this article.

(b) Nothing in the article requires licensing of the following persons pursuant to this article:

(1) A school counselor who holds a school counseling certificate issued by the West Virginia Department of Education and who is engaged in counseling solely within the scope of his or

WV Legislature

her employment with the department, a county board of education or a regional education service agency; or

(2) A nonresident professional counselor or marriage and family therapist who holds a license or other authorization to engage in the practice of professional counseling or marriage and family therapy issued by another state, the qualifications for which in the opinion of the board are at least as stringent as those provided in section eight and section nine of this article, and who renders counseling services in this state for no more than thirty days in any calendar year.

(c) Nothing in this article permits a licensed professional counselor or licensed marriage and family therapist to administer or prescribe drugs or otherwise engage in the practice of medicine as defined in articles three and fourteen of chapter thirty of this code.

WV Legislature

§30-31-12. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or the imposition of sanctions against the licensee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license of, impose probationary conditions upon or take disciplinary action against, any licensee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

(4) A violation of a lawful order or rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

WV Legislature

(7) Engaging in an act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

WV Legislature

§30-31-13. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee has violated any provision of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

WV Legislature

§30-31-14. Judicial review.

Any licensee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

WV Legislature

§30-31-15. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee has committed a criminal offense under this article, the board may bring the information to the attention of an appropriate law-enforcement official.

(b) Effective July 15, 2009, a person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

WV Legislature

§30-31-16. Disclosure.

All information communicated to or acquired by a licensee while engaged in the practice of counseling or marriage and family therapy with a client is privileged information and may not be disclosed by the licensee except:

(a) With the written consent of the client, or in the case of death or disability, with the written consent of a personal representative or other person authorized to sue, or the beneficiary of any insurance policy on the client's life, health or physical condition;

(b) When a communication reveals the contemplation of an act dangerous to the client or others; or

(c) When the client, or his or her personal representative, waives the privilege by bringing charges against the licensee.

WV Legislature

§30-31-17. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

WV Legislature