WEST VIRGINIA CODE CHAPTER 30 ARTICLE 35

WV Legislature

§30-35-1. License to practice.

(a) After June 30, 1997, anyone who represents or implies to the public by use of the title "dietitian" or "licensed dietitian" or any other title intended to convey the impression that he or she is authorized to practice dietetics in this state must be licensed pursuant to this article.

(b) No person may use any title, sign, card or other device which indicates that such person is a licensed dietitian unless expressly authorized and licensed pursuant to the provisions of this article: Provided, That a dietitian registered by the commission on dietetic registration may use the title of registered dietitian: Provided, however, That the requirements and provisions of this article do not apply to any person employed as a cook at any public or private educational institution in this state.

(c) Nothing in this article may be construed to affect individuals who furnish nutrition information on food, food materials or dietary supplements or who engage in explanation to customers about food, food materials or dietary supplements in connection with the marketing and distribution of those products, and who do not use the title "dietician" or "licensed dietician."

WV Legislature

§30-35-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them:

(a) "Board" means the West Virginia board of licensed dietitians;

(b) "Commission on dietetic registration" means the commission on dietetic registration that is a member of the national commission for health certifying agencies;

(c) "Fund" means the board of examiners for dietitians' administrative fund created pursuant to the provisions of section five of this article;

(d) "Licensed dietitian" means any person who has obtained a license to practice as a licensed dietitian from the West Virginia board of licensed dietitians;

(e) "Medical nutrition therapy" or "nutrition therapy" means nutritional diagnostic assessment and nutrition therapy services for the purpose of disease management; and

(f) "Registered dietitian" means a person registered by the commission on dietetic registration.

WV Legislature

§30-35-2a. Scope of practice.

(a) The primary scope of practice of licensed dietitians is the provision of medical nutrition therapy. Licensed dietitians may also perform other nutrition-related services to promote the general health, well-being and the prevention of chronic diseases or conditions.

(b) Nothing in this article may be construed to prohibit or otherwise limit the practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice.

WV Legislature

§30-35-3. Board of licensed dietitians.

(a) There is continued the West Virginia board of licensed dietitians. The board consists of five members who shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall make appointments from a list of not less than eight names submitted to the Governor by the West Virginia dietetic association. Each member of the board shall be a citizen of the United States and a resident of this state. Four members shall have experience as a registered or licensed dietitian for a minimum of three years preceding the date of appointment. One member of the board shall be a lay person who is not a registered or licensed dietitian and not subject to the practice requirements of this subsection.

(b) The Governor shall appoint members of the board for overlapping terms of four years: Provided, That each member shall serve no more than two consecutive four-year terms: Provided, however, That appointments to fill a vacancy may not be considered as one of two consecutive terms: Provided further, That terms in effect on the effective date of this section shall be considered as one of two consecutive terms.

(c) In the event a board member is unable to complete a term, the Governor shall appoint a person with similar qualifications to complete the unexpired term. Each vacancy occurring on the board shall be filled by appointment within sixty days after the vacancy is created.

(d) Each member of the board may receive compensation for attendance at official meetings not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law and may be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(e) Annually, the members shall elect a chair, vice chair and secretary. The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair's duties in the absence of the chair. All meetings shall be general meetings for the consideration of any matter which may properly come before the board. A majority of the board constitutes a quorum for the transaction of business. The board shall meet at least once a year and at such other times and places as it may determine; and shall meet on the call of the chair. It is the duty of the chair to call a meeting of the board on the written request of three members of the board. The board shall keep an accurate record of all proceedings and maintain the board records. The board may employ personnel necessary to accomplish the performance of its duties: Provided, That the board may not expend more than it has available to it solely through the fees established in this article or as established in accordance with section six, article one of this chapter.

WV Legislature

§30-35-4. Powers and duties of board.

(a) The board may, in its discretion, perform the following functions and duties, depending on the financial resources available to the board:

(1) Promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to implement and effectuate the provisions of this article, including, but not limited to, legislative rules establishing the following:

(A) A code of professional ethics;

(B) Continuing education requirements and standards;

(C) Examination, licensure and renewal requirements of duly qualified applicants; and

(D) Procedures and guidelines for the suspension or revocation of a license.

(2) Adopt procedural and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code;

(3) Adopt an official seal;

(4) Conduct license examinations of duly qualified applicants;

(5) Issue and renew licenses and issue interim permits to duly qualified applicants;

(6) Impose and collect fees for the issuance and renewal of permits or licenses;

(7) Suspend, revoke and reinstate licenses;

(8) Conduct hearings on licensing issues and any other matter properly within the jurisdiction of the board;

(9) Maintain a record of all proceedings of the board; and

(10) Submit a biennial report to the Governor describing the activities of the board.

(b) The Legislature finds and declares that this board is intended to be fully self supported through the fee structure provided for in this article, and that the board shall not require any legislative appropriation beyond the revenues the board receives in fees. Accordingly, in the event the board has insufficient moneys to perform its duties under this article, the board shall prioritize its duties under this article so at all times to remain within the money available to it through the fees established in this article. The board created in this article has only discretionary duties.

WV Legislature

§30-35-5. Fees; special revenue account; expenditures and transfers.

(a) All fees and other moneys collected by the board pursuant to the provisions of this article shall be deposited in an appropriated special revenue account designated the "board of examiners for licensed dietitians," which is hereby created in the State Treasury.

(b) All expenses incurred by the board shall be paid from the special fund provided in subsection (a) herein. No compensation or expense incurred pursuant to the provisions of this article may be charged against the General Revenue Funds of this state. Expenditures shall be made only in accordance with appropriation by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code. Expenditures from the special fund shall be for the purposes set forth in this article and are not authorized from collections: Provided, That for the fiscal year ending June 30, 1996, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(c) Amounts collected which are found from time to time to exceed the funds needed to effectuate the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

WV Legislature

§30-35-6. Provisional permits; renewals; fees.

(a) The board may issue a provisional permit to engage in practice as a licensed dietitian to any person who has not met the experience requirements set forth in this article upon the filing of an application and submission of evidence of successful completion of the education requirements of this article. A provisional permit expires one year from the date of issuance. Renewals may be issued for a period not to exceed three years upon request by the applicant and submission of a satisfactory explanation for the applicant's failure to become licensed.

(b) The fee for a provisional permit or renewal is $50, which shall be submitted with the application. All fees collected shall be deposited to the credit of the fund provided in section five of this article.

WV Legislature

§30-35-7. Qualifications; licensure; examinations; waivers and fees.

(a) An applicant for a license to engage in practice as a licensed dietitian shall submit to the board written evidence, verified by oath, that he or she:

(1) Complies with the code of ethics adopted by the board;

(2) Has completed a major course of study in human nutrition, dietetics, food systems management or the equivalent thereof and possesses a baccalaureate or post-baccalaureate degree; and

(3) Has completed a planned continuous professional experience component in dietetic practice of not less than nine hundred hours under the supervision of a registered or licensed dietitian.

(b) Each applicant is required to pass a written examination demonstrating competence in the discipline of dietetics and nutrition. Each written examination may be supplemented by an oral examination. The board shall determine the times and places for examinations.

(c) When an applicant successfully passes an examination or examinations, the board shall issue to the applicant a license to engage in practice as a licensed dietitian. In the event an applicant has failed to pass examinations on three occasions, the applicant shall, in addition to the other requirements of this section, present to the board other evidence of his or her qualifications that the board prescribes.

(d) Upon application and submission of the applicable fee, the board may waive the examination requirements of this section and issue a license to practice as a licensed dietitian to an applicant who is registered by the commission on dietetic registration or who has been duly licensed as a nutritionist or dietitian under the laws of another state if the standards for licensing in that state are no less stringent than those required under the provisions of this article.

(e) Any person applying for a dietitian license shall submit a fee of $50 or a reasonable fee established by legislative rule pursuant to section six, article one of this chapter with the application to the board, which shall be deposited to the credit of the fund provided in section five of this article.

WV Legislature

§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.

(a) The license of every person licensed under the provisions of this article shall be annually renewed except as otherwise provided by this section. At such times as the board, in its discretion, may determine, the board shall mail a renewal application to every person whose license was initially granted or renewed during the previous calendar year. All persons seeking renewal shall submit a completed application and a $50 annual renewal fee or a reasonable renewal fee established by legislative rule pursuant to section six, article one of this chapter. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if it is accurate, issue to the applicant a certificate of renewal of the license for the current year. The certificate of renewal entitles its holder to practice dietetics for the period stated on the certificate of renewal.

(b) Any licensee who allows his or her license to lapse by failing to renew for a period not exceeding three years may be reinstated by the board upon receipt of a satisfactory explanation for the failure to renew his or her license and payment of the annual renewal fee plus a reinstatement fee of $25 or a reasonable reinstatement fee established by legislative rule pursuant to section six, article one of this chapter.

(c) Any person allowing his or her license to lapse for a period exceeding three years is required, to be reinstated as a licensed dietitian, to pass a written examination established by the board and to pay to the board a licensing fee of $50 or a reasonable licensing fee established by legislative rule pursuant to section six, article one of this chapter.

(d) Any person engaged in the practice of licensed dietetics during the time his or her license has lapsed is in violation of the provisions of this article and is subject to the penalties provided in section fourteen of this article.

(e) Any licensed dietitian who desires to retire from practice temporarily shall submit a written notice of the retirement to the board. Upon receipt of the notice the board shall place the name of that person upon the inactive list. Any person remaining on the inactive list may not engage in the practice of licensed dietetics in this state and is not subject to the payment of any renewal fees. Upon submission of an application for renewal of license and payment of the renewal fee for the current year, a licensed dietitian may resume active practice.

WV Legislature

§30-35-9. Contents of license or provisional permit.

Each license or provisional permit issued by the board shall bear a serial number, the full name of the applicant, the date of expiration of any such license, or the date of issuance and expiration of any such provisional permit and the seal of the board, and shall be signed by the secretary of the board. The licensee shall display the license in his or her place of business in view of the public.

WV Legislature

§30-35-10. Denial, revocation or suspension of license; grounds for discipline.

(a) The board may at any time upon its own motion, and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are grounds for denial, suspension or revocation of a license issued pursuant to the provisions of this article.

(b) The board may deny, revoke or suspend any license to engage in the practice of licensed dietetics issued pursuant to the provisions of this article, or any application therefor, or may otherwise discipline a licensee or applicant upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license or renewal to practice as a licensed dietitian;

(2) Has been grossly negligent or exhibited unprofessional or unethical conduct in the practice as a licensed dietitian;

(3) Is habitually intemperate or is addicted to the use of alcohol or controlled substances;

(4) Is mentally incompetent; or

(5) Has willfully or repeatedly violated any of the provisions of this article.

WV Legislature

§30-35-11. Procedures for hearing.

(a) Whenever the board denies an application for any original or renewal license or denies an application for a license or suspends or revokes any license, it shall make an interim order to that effect and serve a copy thereof on the applicant or licensee by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby be returned to the board by the holder within twenty days after receipt of the copy of such order.

(b) Any person adversely affected by any such order is entitled to a hearing thereon pursuant to the provisions of article five, chapter twenty-nine-a of this code if, within twenty days after receipt of a copy of the order, he or she files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order. The board may require the person demanding such hearing to give reasonable security for the cost of the hearing. If such person does not substantially prevail at the hearing, the costs therefor shall be assessed against him or her and may be collected by civil action or other proper remedy.

(c) Upon a receipt of a written demand for a hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) The provisions of article five, chapter twenty-nine-a of this code apply to and govern the hearing and administrative procedures in connection therewith.

(e) All administrative hearings shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code.

(f) At any hearing the person who demanded the same may represent himself or herself or be represented by an attorney admitted to practice in this state.

(g) After any such hearing and consideration of all testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code. A copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and the attorney of record.

(h) The decision of the board is final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section twelve of this article.

WV Legislature

§30-35-12. Judicial review.

(a) Any applicant or licensee adversely affected by a decision of the board rendered after a hearing held pursuant to the provisions of section eleven of this article is entitled to judicial review thereof. All of the provisions of section four, article five, chapter twenty-nine-a of this code apply to, and govern, such review.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

WV Legislature

§30-35-13. Actions to enjoin violations.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article or any final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against the person and any other persons who have been, are or are about to be, involved in any practice, act or omission, so in violation, enjoining the person or persons from any violation or violations. Such application may be made and prosecuted to conclusion regardless of whether any violation has resulted or shall result in prosecution or conviction pursuant to the provisions of section fourteen of this article.

(b) Upon application by the board, any circuit court of this state with appropriate jurisdiction may, by mandatory or prohibitory injunction, compel compliance with the provisions of this article and all final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

WV Legislature

§30-35-14. Prohibitions and penalties.

(a) It is a misdemeanor for any person, corporation or association to:

(1) Sell, fraudulently obtain, furnish or assist in selling, fraudulently obtaining or furnishing any dietitian license or license record;

(2) Engage in the practice as a licensed dietitian under cover of any diploma, license or record illegally or fraudulently obtained;

(3) Represent or imply to the public that he or she is authorized to use the title "dietitian" or "licensed dietitian" or any other title intended to convey that impression, unless duly licensed pursuant to the provisions of this article;

(4) Engage in the practice as a licensed dietitian during the time his or her license is suspended or revoked; or

(5) Otherwise violate any provisions of this article.

(b) Any person, corporation or association who violates the provisions of subsection (a) of this section or any rule promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for each offense.

WV Legislature

§30-35-15.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature