WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Committee Substitute
SENATE BILL NO. 322

(By Mr. Nelson)

PASSED April 13, 1985
In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 322
(By Mr. Nelson)

(Originating in the Committee on Government Organization.)

[Passage April 13, 1985; in effect from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating generally to licensing of professional counselors; legislative purpose, definitions; exemption of certain activities and persons from licensure; limitations on licensed counselors; creating the West Virginia board of examiners in counseling; qualifications, composition and appointment of members of such board; vacancies; oath; meetings; honoraria and expenses; moneys of board to be deposited into treasury of state; board of examiners in counseling fund; no general revenues to board; powers and duties of such board; prohibiting the practice of counseling without a license; qualifications required of applicants for a license to practice counseling; license application fees; issuance of such licenses by the board; renewal of such licenses required biennially; license renewal fees; lapse and renewal thereafter; continued professional development required; grounds for suspension or revocation of license and
probationary procedures; providing procedures for hearing upon denial, suspension or revocation of a license or probationary period order; such hearing to be governed by the administrative procedures act; representation of board; judicial review of decisions of the board to be governed by the administrative procedures act; quorum; subpoenas; representation; decision in writing; review; appeal; penalties for violations; authorizing action to enjoin violations; procedures; disclosure; termination of board.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-one, to read as follows:

ARTICLE 31. LICENSED COUNSELORS.

§30-31-1. Legislative purpose.

1 The Legislature hereby finds that in the public interest, persons should not engage in the practice of counseling or therapy in this state without the requisite experience and training; and that there is presently no adequate means to protect the interests of the citizens of this state from the unauthorized, unqualified and unprofessional practice of such counseling. It is therefore declared to be the public policy of this state that the practice of counseling affects the general welfare and public interest of the state and its citizens; that persons without the necessary qualifications, training, education and experience, and persons not of good character, should not engage in the practice of counseling; that the unauthorized, unqualified and unprofessional practice of counseling may be best prevented, and the interest of the public best served, by regulating and controlling such practice as provided in this article; and that this article should be liberally construed to effect such objects and purposes.

§30-31-2. Definitions.

1 As used in this article:
2 (a) "Applicant" means any person making an application for an original or renewal license under the provisions of this article;

(b) "Board" means the West Virginia board of examiners in counseling established by this article;
(c) "Counseling" means rendering, offering to render or supervising those who render any service to any person or entity for compensation or other personal gain involving the application of mental health counseling procedures to help in learning how to solve problems or make decisions related to careers, personal growth, marriage, family or other interpersonal or intrapersonal concerns;
(d) "Counseling procedures" include, but are not restricted to, the use of methods and techniques which contribute to self-understanding, desired personal behavior change or more effective interpersonal behavior; assessment techniques useful in appraising aptitudes, abilities, achievement, interest or attitudes; informational and community resources for career, personal or social development; individual and group techniques which facilitate problem-solving behavior or decision making; and supervision, referral and placement techniques and methods which serve to further the goals of counseling;
(e) "Counselor" means one who holds himself out to the public as engaged in the practice of counseling or by any other title or description of counseling procedures as defined herein, and, in so doing, represents that he or she has the knowledge, training, expertise and ethical standards necessary to engage in such practice;
(f) "Executive committee" means the executive committee of the West Virginia association for counseling and development; and
(g) "Licensed counselor" means a counselor as defined herein who holds a valid license to practice counseling issued pursuant to this article.

§30-31-3. Activities exempted; persons exempted from licensing; limitations on licensed counselors.

(a) Nothing in this article shall be construed to apply to the following activities:
(1) Teaching, lecturing or engaging in research in counseling so long as such activities do not otherwise involve the practice of counseling directly affecting the welfare of the person counselled;
(2) The official duties of persons employed as counselors
(3) The official duties of persons employed as counselors by any department, agency, division or bureau of the United States of America;

(4) The official duties of persons serving as counselors, whether as volunteers or for compensation or other personal gain, in any public or private nonprofit corporation, association or charity;

(5) The official duties of persons employed by licensed counselors which duties are supervised by a licensed counselor and so long as such persons represent themselves by a title such as "counselor trainee," "counselor intern," "counselor assistant" or other reasonable facsimile of such title, and do not represent themselves as licensed counselors as defined by section two of this article;

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

(7) The activities and services of qualified members of other recognized professions such as physicians, psychologists, psychoanalysts, social workers, lawyers, nurses, teachers and clergymen or pastoral staff performing counseling 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 counselors as defined by section two of this article.

(b) Nothing in the article shall be construed to require 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 employment with such department, a county board of education or a regional educational service agency; and
(2) A nonresident counselor who holds a license or certificate to engage in the practice of counseling in his state or country of residence, who has substantially the same qualifications for licensing provided in section seven of this article in the opinion of the board, and who renders counseling services in this state for no more than thirty days in any calendar year.

(c) Nothing in this article shall be construed as permitting licensed counselors to administer or prescribe drugs or otherwise engage in the practice of medicine as defined by this code.

§30-31-4. Board of examiners in counseling.

(a) There is hereby created a West Virginia board of examiners in counseling, consisting of seven members who shall be appointed by the governor by and with the advice and consent of the Senate, subject to the following provisions:

(1) The board must at all times be composed of two members who are counselor educators, three members who are practicing counselors, and two members who are chosen from the general public. The members who are counselor educators and practicing counselors must be licensed pursuant to this article except as otherwise provided in subdivision (2) of this subsection. The membership of the board shall represent the differences in gender, racial and ethnic origins and the different levels of graduate degrees and specialty represented in the West Virginia association for counseling and development, though not all such differences necessarily need be reflected at the same time in board membership. Every board member is ineligible for reappointment to the board for a period of three years after the expiration of his term or resignation from the board.

(2) Within thirty days after the effective date of this article, the executive committee shall submit to the governor a list of qualified candidates for membership on the board including at least four counselor educators, six practicing counselors and four members of the general public from which the initial appointments must be made. The initial appointees who are counselor educators or practicing counselors must be persons who have been rendering counseling services for at least three years or who
have been teaching counseling at an accredited higher
educational institution for at least three years.

Each initial appointee shall commence serving a term on
the board on the first day of July, one thousand nine
hundred eighty-five. One initial appointee who is a
practicing counselor and one initial appointee who is
chosen from the general public shall serve terms of one year;
one initial appointee who is a practicing counselor and one
initial appointee who is a counselor educator shall serve
terms of two years; and the remaining initial appointees
shall serve terms of three years.

On or before the first day of May, one thousand nine
hundred eighty-six, and each succeeding year thereafter,
the executive committee shall submit two qualified
candidates for each vacancy on the board occurring by
reason of expiration of a term from which the appointment
must be made. Each such appointee shall commence serving
a three-year term on the board on the first day of July of the
year of his appointment.

Within thirty days after any vacancy on the board
occurring for any reason other than expiration of a term, the
executive committee shall submit two qualified candidates
for each such vacancy from which the appointment must be
made. Each such appointment must be made within thirty
days after the submission of candidates by the executive
committee. Each such appointee shall fill the unexpired
term of member whom he succeeds.

Before entering upon the performance of his duties,
each member of the board shall take the oath required by
Section Five, Article IV of the Constitution of this state. Any
board member may be removed by the governor for
incompetence, neglect of duty, malfeasance in office or
moral turpitude upon notice and hearing.

The board shall hold at least one regular meeting
each year to elect a chairperson and vice-chairperson from
its membership and to transact such other business as may
come before it. Additional meetings may be held at the call
of the chairperson or at the written request of any three
members. Four members of the board constitute a quorum.
Each member shall receive all reasonable and necessary
expenses actually incurred in attending meetings in
addition to an honorarium set by the board and approved by
the governor: Provided, That all such expenses and honoraria do not exceed the funds available to the board.

§30-31-5. Powers and duties of board.

(a) In addition to the duties set forth elsewhere in this article, the board shall:

(1) Issue, renew, deny, suspend or revoke licenses to engage in the practice of counseling and place licensed counselors on probation in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(2) Promulgate reasonable rules and regulations pursuant to article three, chapter twenty-nine-a of this code, implementing the provisions of this article and the powers and duties conferred upon the board hereby including, but not limited to, rules and regulations setting forth:

(i) Any and all specific master’s degree programs deemed to be equivalent to a master’s degree program in counseling for purposes of licensure under subdivision (3), subsection (a), section seven of this article,

(ii) The nature of supervised professional experience approved by the board for the purposes of licensure under subdivision (4), subsection (a), section seven of this article,

(iii) A code of ethics for licensed counselors patterned after the codes of ethics of related professional groups, and

(iv) Forms for license applications and license renewal applications;

(3) Keep accurate and complete records of its proceedings, certify the same as may be appropriate and submit an annual report to the governor in such form as the governor may require;

(4) Adopt an official seal to be affixed to all licenses issued by the board;

(5) Appoint an examiner to determine the eligibility of applicants for a license to engage in the practice of counseling;

(6) Employ, direct, discharge and define the duties of any and all professional, clerical or other personnel necessary to effectuate the provisions of this article;

(7) Take any such other actions as may be reasonably
necessary or appropriate to effectuate the provisions of this article; and
(8) Accept gifts, grants and donations from any source for the purposes of or incidental to this article.
(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of examiners in counseling fund." The honoraria to and reimbursement of all reasonable and necessary expenses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from the fund, and no part of the state's general revenue fund shall be expended for such purpose.

§30-31-6. License required.

Beginning two years after the date all initial appointees to the board commence serving their terms, no person shall engage in, offer to engage in or hold himself or herself out to the public as being engaged as a counselor or by any other title or description of counseling procedures unless such person is licensed pursuant to this article.

§30-31-7. Qualifications of applicants for license; application fee.

(a) To be eligible for a license to engage in the practice of counseling, an applicant must:
(1) Be of good moral character and professional ethics;
(2) Be a legal resident of the state of West Virginia;
(3) Not have been convicted of a felony or crime involving moral turpitude;
(4) Not use narcotic drugs, other controlled substances or alcohol to the extent it affects his professional competency;
(5) Have a doctorate in counseling, the requirements for which included a least ninety graduate semester hours or the equivalent above the hours required for a master's degree in counseling, the requirements for which included at least forty-five graduate semester hours or the equivalent from an accredited counseling program;
(6) Have completed a minimum of two years experience in the practice of counseling after having received a
of counseling after having received a doctor's degree in counseling; and
(7) Have passed a standardized national certification examination in counseling approved by the board.
The board may exempt any applicant from specific hours of counseling curriculum where the applicant has demonstrated to the satisfaction of the board a proficient knowledge of the subject matter contained in the particular course of counseling curriculum to be exempted by examination or as otherwise prescribed in rules and regulations promulgated pursuant to article three, chapter twenty-nine of the code.
(b) The following persons shall be eligible for a license to engage in the practice of counseling without having passed a standardized national certification examination in counseling:
(1) Any person who meets the qualifications set forth in subdivisions (1) through (6), subsection (a) of this section, and who makes an application for a license within one year after the date all initial appointees to the board commence serving their terms;
(2) Any person who:
   (i) Is a resident of or employed in this state on the effective date of this article,
   (ii) Makes an application for a license within twelve months after the date all initial appointees to the board commence serving their terms,
   (iii) Meets the qualifications set forth in subdivisions (1) through (4), subsection (a) of this section, and
   (iv) Was in the practice of counseling for two years of the five calendar years next preceding the effective date of this article; and
(3) Any person who holds a license or certificate to engage in the practice of counseling issued by any other state, the qualifications for which license or certificate are determined by the board to be at least as great as those provided in this article.
(c) Any applicant must submit an application for a license to practice counseling to the secretary of the board in such manner, on such forms and containing such information as the board may prescribe, and pay to the board a nonrefundable application fee of fifty dollars.
§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

(a) Whenever the board finds that an applicant meets all of the qualifications of this article for a license to engage in the practice of counseling, it shall forthwith issue a license to such applicant; and otherwise the board shall deny the same.

(b) Every license to engage in the practice of counseling must be renewed biennially during the month of July. To renew a license, a licensed counselor must submit an application for renewal to the secretary of the board on such forms as the board may prescribe, and pay to the board a renewal fee of twenty-five dollars. Any license which is not so renewed shall automatically lapse. A license which has lapsed may be renewed within two years of its expiration date by payment to the board of the appropriate renewal fee for each period or part thereof during which the license was not renewed.

(c) The board shall require that an application for renewal contain or be accompanied by evidence of continued professional development in the practice of counseling. The board may require that an application for renewal contain any such other reasonable information as the board may deem appropriate.

§30-31-9. Suspension or revocation of license.

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

(b) The board, upon the affirmative vote of at least two thirds of its members, shall place a licensed counselor on probation, or suspend or revoke any license when it finds that the holder thereof has:

(1) Been convicted of a felony or a crime involving moral turpitude;

(2) Used narcotic drugs, other controlled substances or alcohol to the extent that it affects his professional competency;
(3) Been declared mentally incompetent by a court of competent jurisdiction;
(4) Obtained or attempted to obtain a license issued under the provisions of this article by fraud, deceit or willful misrepresentation;
(5) Failed or refused to comply with the provisions of this article or any rule and regulation promulgated by the board hereunder or any order or final decision of the board;
(6) Has violated the current code of ethics adopted by the board;
(7) Has impersonated another licensed counselor; or
(8) Has allowed his or her name or license issued under the provisions of this article to be used by or with any person or persons to perform counseling services.


(a) Whenever the board shall deny an application for any license or renewal of any license or shall suspend or revoke any license, or place any licensed counselor on probation, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensed counselor, as the case may be, at his or her last known address, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said copy of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he 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 placing a licensed counselor on probation, suspending or revoking a license or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing, such costs shall be assessed against him and may be collected by an action at law or other proper remedy.
Upon receipt of a written demand for such 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.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing, any member of the board shall have the power and authority to issue subpoenas or subpoenas duces tecum on behalf of any affected which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

At any such hearing the person who demanded the same may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

After any such hearing and consideration of all of the 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, and 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 his attorney of record, if any.

The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this article.
§30-31-11. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section ten of this article, shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

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.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-31-12. Penalties.

Any person who violates any of the provisions of section six or subdivision seven or eight, subsection (b) of this article, or any order or any final decision of the board is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§30-31-13. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or 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 such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or
persons from any such violation or violations. Such 
application may be made and prosecuted to conclusion 
whether or not any such violation or violations have 
resulted or shall result in prosecution or conviction under 
the provisions of section thirteen of this article. 
Upon application by the board, the circuit courts of this 
state may by mandatory or prohibitory injunction compel 
compliance with the provisions of this article, the 
reasonable rules and regulations promulgated hereunder 
and all orders and 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. 
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 actions. 
The board shall be represented in all such proceedings by 
the attorney general or his assistants and in such 
proceedings in the circuit court by the prosecuting 
attorneys of the several counties as well, all without 
additional compensation.


No licensed counselor may disclose any information 
acquired from persons in the professional counseling 
capacity that was necessary to enable the rendering of 
services to those persons 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 oneself or others; or
(c) When the person waives the privilege by bringing 
charges against the board-licensed counselor.

§30-31-15. Termination of board.

The West Virginia board of examiners in counseling shall 
be terminated pursuant to the provisions of article ten,
chapter four of this code on the first day of July, one thousand nine hundred ninety-one, unless sooner terminated or unless continued or reestablished pursuant to such article and chapter.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ................. this the ................. day of ................. May 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/30/85
Time 6:36 p.m.