WEST VIRGINIA LEGISLATURE

REGULAR SESSION. 1986

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ENROLLED

HOUSE BILL No. 1346

(By Delegate Minard and Delegate Hatfield)

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Passed March 8, 1986

In Effect Ninety days 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 to licensing of professional counselors; legislative purpose; definitions; exemption of certain activities and persons from licensure; creating the West Virginia board of examiners in counseling; qualifications, composition and appointment of members of board; powers and duties of board; prohibiting the practice of counseling without a license; qualifications required of applicants for a license to practice counseling; license application fees; issuance of licenses by the board; renewal of licenses required biennially; license renewal fees; grounds for suspension or revocation of license; providing procedures for hearing upon denial, suspension or revocation of a license; hearings to be governed by the administrative procedures act; judicial review of decisions of the board to be governed by the administrative procedures act; criminal penalties; and authorizing action to enjoin violations.

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 PROFESSIONAL COUNSELORS.
§30-31-1. Legislative purpose.

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 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, 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.

As used in this article:

(1) "Applicant" means any person making an application for an original or renewal license under the provisions of this article;

(2) "Board" means the West Virginia board of examiners in counseling established by this article;

(3) "Counseling" means rendering, offering to render or supervising those who render any service 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;

(4) "Counselor" means one who holds himself or herself out to the public as engaged in the practice of counseling 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;

(5) "Licensed professional counselor" means a counselor as defined herein who holds a valid license to practice counseling issued pursuant to this article; and

(6) "Mental health 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, achievements, 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.

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

(a) Nothing in this article applies 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 counseled;

(2) The official duties of persons employed as counselors by the state of West Virginia, any of its departments, agencies, divisions, bureaus, 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 any such governmental entity;

(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
corporations, organizations, associations or charities;

(5) The official duties of persons who are employed by a licensed professional counselor, whose duties are supervised by a licensed professional counselor and who 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 professional counselors as defined by section two of this article;

(6) The activities of a student of counseling which are part of the prescribed course of study at an accredited educational institution and are supervised by a licensed professional counselor or by a teacher, instructor or professor of counseling 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, nurses, teachers and clergymen 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 professional counselors as defined by section two 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 her employment with such department, a county board of education or a regional education service agency; or

(2) A nonresident counselor who holds a license or certificate to engage in the practice of counseling issued by another state, the qualifications for which in the opinion of the board are at least as stringent as those provided in section seven 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 licensed profes-
§30-31-4. Board of examiners in counseling; appointment and qualifications of members.

(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 advise and consent of the Senate, subject to the following provisions:

(1) The board shall be composed of two counselor educators engaged in the teaching of counseling at an accredited institution of higher education, three practicing counselors and two persons chosen from the general public. The five members of the board who are counselor educators and practicing counselors must be licensed pursuant to this article and have a minimum of three years of experience except for the initial appointees who must meet the qualifications provided in subdivision (2) of this subsection.

(2) The initial appointees who are practicing counselors must be persons who have been rendering counseling services for at least three years. The initial appointees who are counselor educators must be persons who have been teaching counseling at an accredited institution of higher education 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-six. 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. Each subsequent appointee shall commence serving a term of five years on the board beginning on the first day of July in the year of his or her appointment. No board member may serve more than two consecutive full five-year terms.
(3) On or before the first day of July, one thousand nine hundred eighty-seven, and each year thereafter in which the term of a member is to expire, the governor shall appoint a qualified candidate for each vacancy on the board occurring by reason of the expiration of a term.

(4) Within sixty days of the occurrence of a vacancy on the board which occurs for any reason other than the expiration of a term, the governor shall appoint a qualified candidate to serve the unexpired term of the member whom he or she succeeds.

(c) Before entering upon the performance of his or her duties, each member of the board shall take the oath required by section five, article IV of the constitution of this state. No member of the board may be removed from office by the governor except for official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.

(d) On the second Monday in July, one thousand nine hundred eighty-six, the board shall hold its first annual business meeting to elect a chairperson and secretary from its membership, organize the affairs of the board and transact such other business as may come before it. Such meeting shall be called at a time and place in this state designated by an appointee named by the governor as a temporary chairperson to serve until a chairperson is elected. The board shall hold an annual business meeting at the call of the chairperson in July, one thousand nine hundred eighty-seven, and in each year thereafter, to elect a chairperson and secretary and 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 of the board shall receive per diem compensation of fifty dollars for each day actually engaged in the duties of his or her office and reimbursement for all reasonable and necessary expenses actually incurred in the performance of his or her duties.
77 as a member of the board.

§30-31-5. Powers and duties of board; disposition of board funds.

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

2 (1) Issue, renew, deny, suspend or revoke licenses to engage in the practice of counseling and place a licensed counselor on probation in accordance with the provisions of this article and, 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;

3 (2) Promulgate reasonable rules 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 setting forth:

4 (i) Any and all specific master's and doctoral degree programs considered to be equivalent to a master's or doctoral degree program in counseling for purposes of licensure under subdivision (4), subsection (a), section seven of this article;

5 (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;

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

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

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

9 (4) Adopt an official seal to be affixed to all licenses issued by 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 other actions as may be reasonably necessary 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 or her with the treasurer of the state and credited to an account to be known as the “Board of Examiners in Counseling Fund.” The compensation and expenses of 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 may be expended for such purpose.

§30-31-6. License required.

Beginning on the first day of July, one thousand nine hundred eighty-seven, and thereafter, no person may engage in, offer to engage in or hold himself or herself out to the public as being engaged in the practice of counseling unless such person is licensed or exempted from licensing 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 a legal resident of the state of West Virginia;

(2) Satisfy the board that he or she is of good moral character and merits the public trust, as evidenced:

(i) If the applicant has never been convicted of a felony or a crime involving moral turpitude, by submitting 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

(ii) 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 (a) 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 (b) 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;

(3) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code;

(4) 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 have at least two years of supervised professional experience in counseling of such a nature as shall be designated by the board, including at least one year's experience after earning an aforementioned master's degree or equivalent; or 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 have
at least one year of supervised professional experience
in counseling of such a nature as shall be designated by
the board after earning an aforementioned doctorate
degree or equivalent; and

(5) Have passed a standardized national certification
examination in counseling approved by the board.

(b) The following persons are 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 (4), subsection (a) of this
section, and who makes an application to the board for
a license before the first day of July, one thousand nine
hundred eighty-seven;

(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 (3), 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; or

(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) Every 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 the applicant. The board shall deny a
license to any applicant who does not meet all of the
qualifications.

(b) Every license to engage in the practice of counsel-
ing must be renewed biennially during the month of
July. To renew a license, a licensed professional
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. Any 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) Each application to renew a license shall contain
or be accompanied by evidence of continued professional
development in the practice of counseling as determined
by the board by rule promulgated in accordance with
the provisions of chapter twenty-nine-a of this code and
any such other reasonable information as the board may
consider 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 professional counse-
lor 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
five of its members, shall place a licensed professional
(c) Any licensed professional counselor whose license has been suspended or revoked or who has been placed on probation pursuant to board action under the provisions of subdivisions (1) or (2) of this subsection may be reinstated upon a showing of competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as determined by the board.


(a) Whenever the board denies an application for any license or renewal of any license or suspends or revokes any license or places any licensed professional counselor on probation, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensed professional counselor, as the case may be, at
his or her last known address, by certified mail, return receipt requested. The 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 the copy of the order.

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

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

(e) 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 has the power and authority to issue subpoenas and subpoenas duces tecum
which shall be issued and served within the time, for
the fees and shall be enforced, as specified in section one, article five, chapter twenty-nine-a of this code and all of the provisions of said section one dealing with subpoenas and subpoenas duces tecum apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or herself or be represented by an attorney licensed to practice law in this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his or her assistants without additional compensation.

(g) 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. A copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding the hearing, and his or her attorney of record, if any.

(h) The decision of the board is 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 is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern such judicial review with the effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of
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 or her 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 this article, any of the reasonable rules promulgated hereunder 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.


All information communicated to or acquired by a licensed professional counselor while engaged in the practice of counseling with a client is privileged information and may not be disclosed by the counselor 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 licensed professional counselor.

§30-31-14. 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 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. The application may be made and prosecuted
to conclusion whether or not any such violation or
violations have resulted or result in prosecution or
conviction under the provisions of section twelve 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 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 applica-
tion 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 or her assistants and in
such proceedings in the circuit court by the prosecuting
attorneys of the several counties as well, all without
additional compensation.

§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-two, unless sooner
terminated or unless continued or reestablished pursu-
ant to that article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Hugo Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joseph C. Wells
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Richard L.寂静
President of the Senate

Joseph P. Albright
Speaker of the House of Delegates

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The within was approved this the 24th
day of March, 1986.

Andrea Joseph
Governor
PRESENTED TO THE
GOVERNOR
Date 3/20/66
Time 2:50 p.m.