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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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September 12, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Jean Ann Johnson
Counseling, WV Board of Examiners in
100 Angus E. Peyton Drive
South Charleston, WV 25303

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Licensing Rule, 27CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.

- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.

- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

00 SEP -1 AM 9:32

Agency: West Virginia Board of Examiners in Counseling

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: Licensing Rule, 27CSR1

PERTINENT DATES

Filed for public comment: July 3, 2000

Public comment period ended: August 15, 2000

Filed following public comment period: August 28, 2000

Filed LRMRC: August 28, 2000

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 states that this rule applies to all persons practicing or making application to practice counseling.

Section 4 relates to requirements for application. It sets forth information which the applicant must supply to the Board including transcripts, professional recommendations and personal reference letters.

Section 5 relates to classification of applicants. It provides for reciprocity and sets forth the documentation required by the Board to determine eligibility for reciprocity.

Section 6 relates to qualification of applicants. It sets forth the degrees which meet the statutory education requirements. It sets forth requirements for supervised professional experience including standards for supervisors. Finally, this section requires an applicant to provide, to the Board, verification that he or she has attained a successful score on a certification examination in counseling approved by the Board.

Section 7 relates to examination failure. It allows an applicant who fails a licensure examination to retake the examination twice within an 18 month period. Following two failures, it requires an applicant to provide the Board with documentation of additional education and experience as required by the Board.

Section 8 relates to issuance of a license. It sets forth the contents of a license.

Section 9 relates to licensure. It requires the Board to issue a license to qualified applicants.

Section 10 requires a licensee to display a professional disclosure statement at the place where they perform services and make copies available to clients upon request. It sets forth the information which must be included in the statement.

Section 11 references the statute regarding disclosure of information.

Section 12 adopts the American Counseling Association's Code of Ethics as part of the proposed rule.

Section 13 sets forth the various responsibilities of licensees including notifying the Board of any change of name or address and notifying the Board of any professional misconduct by another licensed professional counselor.

Section 14 states that a person whose license has expired and continues to practice is in violation of the law.

Section 15 relates to relations with the public and other professions. It contains provisions regarding misrepresentations, deceptive advertising and commissions.

Section 16 provides for the revocation or suspension of a license of a licensee or the refusal to renew or issue a license based upon a valid court order indicating the licensee has violated a child support ruling.

Section 17 requires the Board to publish notice of Board meetings in the State Register five days prior to the meeting.

AUTHORITY

Statutory authority: W.Va. Code, §30-31-5, which provides, in part, as follows:

...(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...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

The Board received several comments in opposition to adopting the Code of Ethics by reference. The Board feels the adoption is necessary based on some of the complaints they have received over the past several years.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.