

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

AUG 28 4 15 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Examiners in Counseling TITLE NUMBER: 27

CITE AUTHORITY: 30-31-5(a)(2)

AMENDMENT TO AN EXISTING RULE: YES  NO

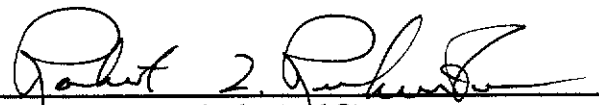
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_  
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

# West Virginia Board of Examiners in Counseling

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At Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston, West Virginia 25303-1600  
Phone: (304) 746-2512 Fax: (304) 746-1942

August 28, 2000

## Approval of Filing

### Fees, Series 2

The Board of Examiners in Counseling has given their approval for the filing of this legislative rule.



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Robert L. Rubenstein, Chair

# **West Virginia Board of Examiners in Counseling**

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At Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston, West Virginia 25303-1600  
Phone: (304) 746-2512 Fax: (304) 746-1942

## **Brief Summary of Proposed Rule Fees Title 27 Series 2**

Since July 1986, the Board of Examiners in Counseling has only had one series of rules. After working with this rule for all these years and dealing with the applicants and the public, it became obvious that a clearer and more concise set of rules were needed.

Series 2 pertains to all fees charged by the Board in order to operate properly. The major changes have been the addition of fees that will be charged to the agency, organization, institution or professional associations that will be offering continuing education to the West Virginia LPC. These charges are for reviewing and monitoring the continuing education programs.

The only change in the fees paid by the LPC is the pro-rated licensure fee that PERD found we needed to charge each new licensee. This was in their last report in spring 1999. This was our first opportunity to make this change. A copy of their report is attached.

# West Virginia Board of Examiners in Counseling

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At Marshall University Graduate College  
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Phone: (304) 746-2512 Fax: (304) 746-1942

## **Statement of Circumstances**

The Board decided to Repeal and Replace, Series 1 Licensing Rule, effective April 1, 1999 and replaces it with three (3) individual series.

Series 1, Licensing Rule. Series 2 Fees. Series 3, License Renewal and Continuing Education Requirements.

Purpose is to make the rules easier to read, update information and make some changes that are noted in the summary.

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 28, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Examiners in Counseling  
100 Angus E. Peyton Drive  
South Charleston, WV 25303-1600

304-746-2512 or 800-520-3852

LEGISLATIVE RULE TITLE: Fees

1. Authorizing statute(s) citation 30-31-5(a)(2)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 3, 2000

b. What other notice, including advertising, did you give of the hearing?  
Mailed out a summary of the rule and gave information  
on how to obtain a copy of the proposed rule to each LPC, US mail. Sent copy to  
West Virginia Counseling Association and West Virginia Licensed Professional  
Counselor Association. Sent copy to graduate counseling program chairs at  
Marshall, MUGC and WVU. Posted copy on our website.

c. Date of Public Hearing(s) or Public Comment Period ended:  
August 15, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     x     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

N/A

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jean Ann Johnson, Executive Secretary  
100 Angus E. Peyton Drive  
South Charleston, WV 25303-1600

Email: [jajohnson@marshall.edu](mailto:jajohnson@marshall.edu)  
Phone: 746-2512 or 800-520-3852  
Fax: 746-1942

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- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)
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- 
- 

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fees

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Examiners in Counseling

Address: 100 Angus E. Peyton Drive, South Charleston, WV 25303-1600

1. Effect of Proposed rule:

Table with columns: ANNUAL FISCAL YEAR (INCREASE, DECREASE, CURRENT, NEXT, THEREAFTER) and rows: ESTIMATED TOTAL COST, PERSONAL SERVICES, CURRENT EXPENSE, REPAIRS & ALTERATIONS, EQUIPMENT, OTHER.

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

N/A



Rule Title: Fees

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: N/A

C. Economic Impact on Citizens/Public at Large.  
N/A

Date: August 28, 2000

Signature of Agency Head or Authorized Representative:

Robert J. Richardson

FILED

TITLE 27  
LEGISLATIVE RULE  
BOARD OF EXAMINERS IN COUNSELING

AUG 28 4 15 PM '00

SERIES 2  
FEES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§27-2-1. General.**

1.1. Scope. -- This rule establishes fee requirements related to the licensing of professional counselors, renewal of the licensee, and application and monitoring of continuing professional education providers and their programs.

1.2. Authority. —W. Va. Code §§30-31-5.

1.3. Filing Date.—

1.4. Effective Date.—

**§27-2-2. Definitions.**

2.1. Application fee -- Fee that is due at the time the initial application is submitted.

2.2. Bad check fee. -- Fee for a payment made by a check that is returned due to insufficient funds, closed account or similar failure to negotiate payment.

2.3. Initial licensing fee. -- Fee for the pro-rate amount due when licensee is initially licensed. This fee is based on the date licensee is licensed through the next scheduled expiration date.

**§27-2-3. Application of Rule.**

This legislative rule applies to all persons applying to become a licensed professional counselor, all licensed professional counselors and providers of continuing professional education programs.

**§27-2-4. Fee Schedule**

4.1. All fees paid to the Board are not refundable.

4.2. All fees, with the exception of those for examination, are payable to the West Virginia Board of Examiners in Counseling (WVBEC).

4.3. License fees.

4.3.a. The fee for the initial application for licensure is one hundred twenty dollars (\$120.00);

4.3.b. The fee for reciprocity application processing is one hundred twenty dollars (\$120.00);

4.3.c. The fee required for the issuance of the initial license certificate shall be based on the current renewal rate set in this rule;

4.3.d. The fee for biennial license renewal is seventy-five dollars (\$75.00);

(1). The fee for resubmitting the renewal application for the third time in one renewal period is seventy-five dollars (\$75.00).

4.3.e. The fee for examination score endorsement is twenty dollars (\$20.00);

4.3.f. The fee for name change of all records is five dollars (\$5.00);

4.3.g. The fee for endorsement to another state or a National and/or State certification is twenty dollars (\$20.00);

4.3.h. The fee for a duplicate certificate is ten dollars (\$10.00);

4.3.i. The fee for filling a request for public information, print or electronic data, and/or other services relating to the Board, its members, or licensed professional counselors, is calculated based on the actual cost of materials, employee time, and/or services required to comply with the request;

4.3.j. The fee for a bad check is twenty dollars (\$20.00); and,

4.3.k. The annual fee for monitoring the Restricted Practice License counselors is twenty-five dollars (\$25.00).

4.4. Continuing professional education provider and programs fees.

4.4.a. The application fee to become an approved provider of continuing professional education biennially is one hundred fifty dollars (\$150.00);

4.4.b. The application fee to become an approved provider of continuing professional education for one event only is fifty dollars (\$50.00);

4.4.c. The fee to monitor the continuing professional education records and activities of an approved provider for the purpose of quality assurance is fifty dollars (\$50.00) for one event in each biennial and one hundred dollars (\$100.00) for more than one event in each biennial; and,

4.4.d. The biennial fee to re-certify as an approved provider is one hundred dollars (\$100.00), payable only after the Board has notified the provider that it is eligible to re-certify.

(1). An approved provider who does not pay a fee to re-certify within thirty (30) days of notice forfeits all rights and privileges of an approved provider.

4.5. Examination fees.

4.5.a. The fee for the examination required by the Board is established by and payable to the National Board for Certified Counselors (NBCC) or its designee; and,

4.5.b. The additional fee to administer the exam will be based on the current cost of the facilities, number of proctors for the exam, and the employee's time to process the exam.

## West Virginia Board of Examiners in Counseling

At Marshall University Graduate College

100 Angus E. Peyton Drive

South Charleston, WV 25303-1600

Phone: (304) 746-2512 Fax: (304) 746-1942

Email: jajohnson@marshall.edu

### **Proposed Rule: Fees, Series 2**

For your information: The Board has 1123 Licensed Professional Counselors.

During the comment period, July 14, 2000 through August 15, 2000, the Board received **two (2)** letters concerning this rule.

The **two** letters received commented on subdivision:

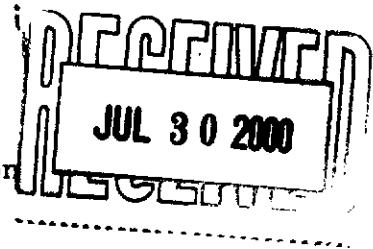
**4.3.1.** The fee for filing a request for public information, print or electronic date, and/or other services **relating** to the Board, its members, or licensed professional counselors, is calculated based on the actual cost of materials, employee time, and/or services required to comply with the request.

One of the letters stated that WVBEC should not charge for answering questions. We think perhaps that they misread the subdivision. The Board does not and will not charge for answering questions.

The Board has had financial troubles in the past. This fee is for individuals wanting the information they are able to request under the Freedom of Information Act. It also covers the address labels that continuing education providers often want us to provide. The Board will do exactly as it states "calculate the charges based on the actual cost of materials, employee time, and/or services required to comply with the request".

**Instead of raising renewal fees and application fees to cover requests reflected in this subdivision, the Board opts to leave the proposed rule as written.**

*Letter 2*  
*2 pages*



Sharon Markle  
President, West Virginia Counseling Association  
622 North Penn Avenue  
Harrisville WV 26362

West Virginia Board of Examiners in Counseling  
Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston WV 25303-1600

July 26, 2000

RE: Proposed Rules for the 2001 Legislative Session

The following comments reflect discussions held on 07-22-2000 at the West Virginia Counseling Association's Board of Directors meeting in Charleston, West Virginia.

Proposed Rule 27-1-8.6

~~This rule will negatively impact LPCs in private practice in border counties who might apply to be licensed in other states having more stringent clinical standards. If the rule is passed as written, the very application for licensure in another state (if that application is denied) endangers LPC licensure already established in West Virginia. Likewise, should an LPC seek licensure in another field in West Virginia and should that application be rejected, he or she endangers LPC licensure already established. It is our opinion that denial of West Virginia LPC licensure should only occur when applicants do not meet WVBE standards and qualifications. It is our further opinion that revocation of licensure should occur only when LPCs have been found to have violated WVBE rules or standards. The denial or revocation of LPC licensure should not be based on the actions of another board (of West Virginia, of another state, of another credential or of another jurisdiction).~~

*NOT  
THIS  
RULE  
See  
page  
2*

We recommend that the proposed rule be eliminated.

Proposed Rule 27-1-12.1 (and other proposed rules based on this proposed elevation of the American Counseling Association's Code of Ethics to the status of a WVBE promulgated rule)

~~The idea that any voluntary association's code of ethics might be elevated to the status of law is problematic in many ways:~~

1. The creation of West Virginia law properly belongs to the West Virginia legislature and, by extension, to the specific Boards that it creates, and should not be created by any body not answering directly to the West Virginia Legislature;

2. The American Counseling Association, (which neither represents school counselors nor mental health counselors), represents only some of those in the counseling profession. It is unfair of the board to demand that LPCs not practice according to the codes of ethics of their specific national associations;

3. The official body representing LPCs in West Virginia (the West Virginia Licensed Professional Counselors Association) is chartered not by the American Counseling Association but by the American Mental Health Counseling Association. This, in and of itself, should indicate the inappropriateness of using the ACA Code of Ethics as a standard for practice for West Virginia LPCs.

In summary, we recommend that no voluntary association's code of ethics be elevated to the status of law as ethical codes are aspirations and law describes minimally acceptable behavior.

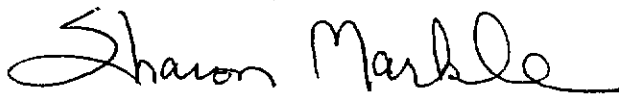
Proposed Rule 27-<sup>2</sup>A-4.3.1

Rule 2  
FEES

The effect of this rule may be to stifle public inquiry and to stop LPCs from attempting to clarify issues or concerns confusing to them. Neither of these likely results are in the public interest.

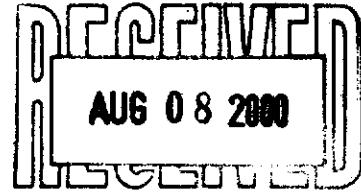
It is our recommendation that WVBEAC not charge for answering questions and that this proposed fee be eliminated. If this proposed rule actually is intended to provide a mechanism to charge for LPC address-sharing with potential providers of continuing education, etc., then we suggest that it be more clearly written.

Respectfully Submitted,



Sharon Markle, MA, LPC, NCC  
West Virginia Counseling Association President

-Letter 3-  
4 pages



Barry Row, LPC  
Rt 1 Box 52  
Belington WV 26250

ATTN: COMMENT  
West Virginia Board of Examiners in Counseling  
Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston WV 25303-1600

August 7, 2000

These comments are in reference to the proposed rules for the 2001 legislative year

I believe that proposed rule 27-1-8.6 should be eliminated. I believe that licensure should be denied, and that an LPC's license should be revoked, only upon cause. Some boards, for example, revoke licensure upon non-payment of recertification or license maintenance fees: for something so innocent or wrong-doing to result in the possibility of losing one's LPC license is simply wrong.

NOT  
THIS  
Rule

I recommend that proposed rule 27-1-12.1 (and other rules based on this one) be eliminated. The American Counseling Association is a voluntary organization that many of us have chosen not to support as we feel they don't represent our professional best interests. Mental health counselors and school counselors, for example, have different national professional organizations. Counseling is a diverse field. To legislative support any voluntary association---or to make it's Code of Ethics into West Virginia law---is to in effect ignore that diversity. I recommend that no voluntary association's Code of Ethics be singled out by the WVREC as determining ethical conduct for West Virginia's Licensed Professional Counselors.



I believe that proposed rule 27-<sup>2</sup>~~A~~-4.3.i is unacceptably vague. I also find the notion of charging for responding to requests for information to be just short of insulting. I believe that the public has the right to make inquiries of the Board, and that LPCs should also be free to make inquiries of the Board (without being concerned that the responses to such inquiries would include billing at an undetermined rate). I recommend that the proposed rule be entirely eliminated.

Regarding 27-4-4.4a-----4.4d:

I believe that the fees to become an approved provider of continuing professional education are excessive. For example, to be approved to offer two events every two years would cost the prospective provider a total of \$350.00 (a \$150.00 initial application fee, \$100.00 for such to be monitored, and an additional \$100 to re-certify). This fee structure, if proposed and adopted, will insure that West Virginia LPCs will have fewer continuing education options available in-state. I fear that it will also insure that the options we will have will be offered by national groups insensitive to the cultural nuances and needs of Appalachians. I believe that the best continuing education I have ever completed, I had in small groups. This proposed fee schedule will discourage small-group continuing education programs or make such programming prohibitively expensive. I fear that the proposed fee structure will result in crowded rooms and less opportunity for presenter-attendee interaction---and neither of these will help West Virginia consumers of counseling services.

NOT  
THIS  
RULE

RE: Proposed Rule 27-1-6.3.b.

My guess is that the Proposed Rule, by limiting an approved professional supervisor to four supervisees, attempts to insure quality supervision. Obviously, there is an upper limit to the number of supervisees that a supervisor can ethically supervise. I question why the Board has specified an upper limit of four. The NBCC Standards For The Ethical Practice of Clinical Supervision recognizes no upper limit and that national standard (adopted June 12, 1998, a copy of which is enclosed) is the most current standard of practice that I am aware of. A well-trained supervisor, especially if his or her supervisees are developmentally at an advanced level, can provide quality supervision to more than four supervisees. I would recommend that the upper limit be dropped altogether (or raised to at least 6 supervisees per supervisor).

RE: Proposed Rule 27-1-6.3.c

I applaud the Board's efforts to secure quality supervision for persons in the process of becoming LPCs. I believe, however, that the proposed rule does not go far enough---I believe that supervisors should have to show evidence of having their supervision supervised. A good model for constructing such a definition is provided in the certification program (within NBCC) which leads to recognition as an Approved Clinical Supervisor. That certification requires at least 20 hours of supervision of supervision. In short, I think one can be licensed for two years, have five years of counseling experience, and

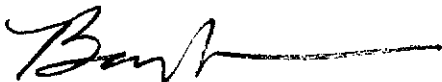


academic training in supervision---and still be a less than adequate supervisor. By requiring proof of having supervision of one's supervision, at least you could be a little more certain that poor supervisors had been weeded out (or had become at least minimally skilled as supervisors). Pragmatics may have determined leaving out the supervision of supervision---it would be my hope that the Board, in the near future, might consider "beefing up" it's requirements, and requiring more of approved supervisors.

NOT  
THIS  
RULE

Lastly, I am responding to a rule change NOT proposed by the Board. It has been 12 years since licensure for LPCs became a reality in West Virginia. It may have made sense, at the time, to exempt state employees from licensure but that exemption has hurt the profession terribly. LPCs are not, because they are excluded by the West Virginia Division of Personnel (secondary to their being exempted from licensure), eligible as a class for employment by the state. Social Workers are eligible, Psychologists are eligible . . . but LPCs are not even listed by the Division of Personnel. It is time, in my opinion, to remove state employees from the licensure exemption. So doing would very definitely strengthen the license itself and it would insure that many now-exempt counselors working in West Virginia would be accountable to someone for their professional behavior. I have absolutely no data to support this idea, but it seemly likely to me that the majority of persons being treated by counselors in West Virginia are being treated by unlicensed counselors whose professional behavior is not accountable to any board. Consumers deserve better. I would recommend that LPC licensure not be exempted for all NEW state-employed counselors (a method of approach that would eliminate no one currently employed but insure that LPCs, as a class, are eligible for state employment in the future).

Respectfully Submitted



Barry Row, NCC, LPC, DABFC  
National Certified Counselor #16412  
West Virginia Licensed Professional Counselor #431  
Diplomate of the American Board of Forensic Counselors

*In addition to following the NBCC Code of Ethics pertaining to the practice of professional counseling, clinical supervisors shall:*

1. Ensure that supervisees inform clients of their professional status (e.g., intern) and of all conditions of supervision.  
Supervisors need to ensure that supervisees inform their clients of any status other than being fully qualified for independent practice or licensed. For example, supervisees need to inform their clients if they are a student, intern, trainee or, if licensed with restrictions, the nature of those restrictions (e.g., associate or conditional). In addition, clients must be informed of the requirements of supervision (e.g., the audiotaping of all counseling sessions for purposes of supervision).
2. Ensure that clients have been informed of their rights to confidentiality and privileged communication when applicable. Clients also should be informed of the limits of confidentiality and privileged communication.  
The general limits of confidentiality are when harm to self or others is threatened; when the abuse of children, elders or disabled persons is suspected and in cases when the court compels the counselor to testify and break confidentiality. These are generally accepted limits to confidentiality and privileged communication, but they may be modified by state or federal statute.
3. Inform supervisees about the process of supervision, including supervision goals, case management procedures, and the supervisor's preferred supervision model(s).
4. Keep and secure supervision records and consider all information gained in supervision as confidential.
5. Avoid all dual relationships with supervisees that may interfere with the supervisor's professional judgment or exploit the supervisee.  
Although all dual relationships are not in of themselves inappropriate, any sexual relationship is considered to be a violation. Sexual relationship means sexual contact, sexual harassment, or sexual bias toward a supervisee by a supervisor.
6. Establish procedures with their supervisees for handling crisis situations.
7. Provide supervisees with adequate and timely feedback as part of an established evaluation plan.
8. Render assistance to any supervisee who is unable to provide competent counseling services to clients.
9. Intervene in any situation where the supervisee is impaired and the client is at risk.
10. Refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate counseling services.
11. Refrain from offering supervision outside of their area(s) of competence.
12. Ensure that supervisees are aware of the current ethical standards related to their professional practice, as well as legal standards that regulate the practice of counseling.  
Current ethical standards would mean standards published by the National Board for Certified Counselors (NBCC) and other appropriate entities such as the American Counseling Association (ACA). In addition, it is the supervisor's responsibility to ensure that the supervisee is aware that state and federal laws might regulate the practice of counseling and to inform the supervisee of key laws that affect counseling in the supervisee's jurisdiction.
13. Engage supervisees in an examination of cultural issues that might affect supervision and/or counseling.
14. Ensure that both supervisees and clients are aware of their rights and of due process procedures.

ADOPTED BY THE NBCC BOARD OF DIRECTORS: June 12, 1998

A distinct reason for the apparent lack of funding for the Board can be seen by looking at its licensing fees. The Legislative Auditor's Office did a fee comparison of other West Virginia Licensing Boards. Currently, the Board charges \$50 for its application fee and \$25 every 2 years for its renewal fee. As Table 2 indicates, in most instances the BOEC is charging a lower rate for its application and licensing fees than these other Boards.<sup>1</sup>

West Virginia Boards	Application/Licensing Fee	Renewal Fee
<b>BOEC</b>	<b>\$50</b>	<b>\$25/2yrs</b>
Licensed Practical Nurse	\$85	\$40/yr
Registered Nurse	\$51.50	\$25/yr
Occupational Therapy	\$190	\$60/yr
Certified Occupational Therapy Assistant	\$140	\$50/yr.
Radiologic Technologist	\$75	\$50/yr
Dental Hygienists	\$35	\$50/yr
Physical Therapy	\$110	\$50/yr
Physical Therapy Assistant	\$110	\$35/yr
Social Work	\$55	\$45/2yrs

*This section*

The BOEC's renewal fee is collected once every two years. An applicant applying for a license between the renewal dates only pays the application fee. If they become licensed between renewal years, they are not required to pay a pro-rated amount. This means that applicants applying between renewal periods are not paying any fees to practice as LPC's until the next renewal period. An applicant could practice as a LPC for more than a year without paying a license fee. This is not fair to those who paid the renewal fee. By pro-rating its renewal fee for those who are licensed between renewal periods, all practicing LPC's will have paid the required fee to be licensed. Furthermore, it was found that between July 1995 and June 1997 the Board lost an estimated \$1,884 by not pro-rating the renewal fee. Considering the Board's tight financial situation, this amount of money can make a difference.

<sup>1</sup>Effective April 1, 1999, the Legislature passed new rules allowing the BOEC to raise its license and renewal fees. The application fee is now \$120 and the renewal fee is \$75 for 2 years.