



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Dietitians TITLE-SERIES: 31-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 31-01 Licensure and Renewal Requirements

PRIMARY CONTACT

NAME: WV BOARD OF LICENSED DIETITIANS
ADDRESS: 723 Kanawha Blvd E
Room 105 Union Bldg
CHARLESTON, WV 25301
EMAIL: gradymbowyer@suddenlink.net
PHONE NUMBER: 304-377-8468 3047278946

CITE STATUTORY AUTHORITY: § 30-35

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§ 30-35 STATES THAT THE FEE IS "FIFTY DOLLARS OF REASONABLE FEE ESTABLISHED BY LEGISLATIVE RULE PURSUANT TO SECTION SIX, ARTICLE ONE OF THIS CHAPTER".

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/8/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/17/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

POSTED ON BOARD'S WEB PAGE & MAILED POSTCARD TO ALL ACTIVE LICENSEES.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

PLACE FEE STRUCTURE IN RULE INSTEAD OF CODE & INCREASE FEES FOR THE FIRST TIME SINCE FORMATION OF THE BOARD IN 1997. CODE STATES "FIFTY DOLLARS OR A REASONABLE FEE ESTABLISHED BY LEGISLATIVE RULE"

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NO IMPACT AS LICENSEING FEES ARE USED FOR OPERATION OF THE BOARD. REQUIRED TO BE SELF FUNDED.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

ONLY IMPACT WILL BE ON THE INDIVIDUALS LICENSED BY THE BOARD.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2016 Increase/Decrease (use "-")	2017 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	23000.00	11500.00	34,500.00
Personal Services	10,000.00	1,000.00	11,500.00
Current Expenses	13,000.00	5,000.00	18,000.00
Repairs and Alterations			
Assets	0.00	2,000.00	2,000.00
Other	0.00	3,500.00	3,500.00
2. Estimated Total Revenues	23,000.00	11,500.00	34,500.00

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

THIS IS THE ONLY FEE INCREASE REQUESTED SINCE THE FORMATION OF THE BOARD IN 1997. BY INCREASING THE LICENSE FEE BY \$ 25.00 AND THE LATE FEE BY \$ 50.00, THE BOARD WILL MAINTAIN SELF SUFFICIENCY, AS REQUIRED BY LAW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**TITLE 31
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF LICENSED DIETITIANS**

**SERIES 1
LICENSURE AND RENEWAL REQUIREMENTS**

§31-1-1. General.

1.1. Scope. -- This rule establishes examination, licensure, discipline, fees and renewal requirements for licensees and applicants for licensure.

1.2. Authority. -- W. Va. Code §30-35-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- this rule shall terminate and have no further force or effect upon the expiration of 10 years from its effect date.

§31-1-2. Definitions.

2.1. "Board" means the Board of Licensed Dietitians.

2.2. "Commission on Dietetic Registration" means the commission on dietetic registration that is a member of the national commission for health certifying agencies.

2.3. "False or Deceptive Advertising" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results or includes representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

§31-1-3. Board Approval for Licensure.

3.1. The Board shall issue a license to an applicant who meets the requirements of W. Va. Code §§30-35-1 et seq. and rules promulgated by the Board.

§31-1-4. Licensure Qualifications.

4.1. An applicant for licensure by the Board as a dietitian applicant shall:

4.1.1. Make application to the Board prior to the date of examination for licensure on the license application form approved by the Board including any documentation required by the Board;

4.1.2. Pay to the Board the appropriate application fee; and renewal fees;

4.1.2.1. Original license \$ 75.00

4.1.2.2. Renewal fee \$ 75.00

4.1.2.3. Provisional fee \$ 75.00

4.1.2.4. Late renewal fee \$ 125.00

4.1.2.5. Reinstatement fee \$ 125.00

4.1.3. Take the required written examination at any of the sites approved by the Board at any time the site is open to administer the exam.

§31-1-5. Waiver of Requirements.

5.1. The Board shall not grant a waiver from the written examination for an individual who holds a current license from another state with equivalent standards or who holds the registration by the Commission on Dietetic Registration unless the applicant has filed the license application, including required documentation, and paid the application fee as stated in 4.1.2.1.

§30-1-6. Provisional Permit.

6.1. The purpose of the provisional permit is to allow an individual who has not yet passed the required examination to practice dietetics after completing the education and post-graduate professional experience as required by W. Va. Code §30-35-7.

6.3. The Board shall issue the provisional permit for a period of one (1) year.

6.4. The permittee may renew a provisional permit annually for up to three (3) additional years upon proof of the completion of a minimum of ten (10) hours of continuing professional education in the previous one (1) year permit period, a satisfactory explanation of the failure to become fully licensed, the completion of the provisional permit renewal application form, and the payment of the provisional permit renewal fee as stated in 4.1.2.3.

§31-1-7. Renewal.

7.1. The license of every person licensed under W. Va. Code §30-35 shall be renewed annually except as otherwise provided by W. Va. Code §§30-35-1 et seq.

7.2. Every person licensed under W. Va. Code §§30-35-1 et seq., requesting renewal of a license shall:

7.2.1. Pay to the Board the license renewal fee as stated in 4.1.2.2;

7.2.2. Submit an application for renewal on the professional license renewal form prescribed by the Board;

7.2.3. Complete a minimum of twenty (20) hours of continuing professional education activities every two (2) years in compliance with the Board's rule Continuing Professional Education

Requirements 31 CSR 5.

7.2.4. Provide evidence of completion of continuing education during the previous two (2) year period on a form provided by the Board and submitted with the renewal application for licensure. The documentation is required every two years and is not required to accompany the applications for the intervening years.

7.3. Upon receipt of a written application and documented proof that a licensed dietitian has been unable to comply with the continuing education requirements of this section due to illness, injury or other documented reasons, the Board may waive this continuing education requirement.

7.4. A suspended license is subject to expiration and may be renewed as provided in this section. A licensee with a suspended license who renews the license, may not engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended, until the Board reinstates the license.

7.5. A license revoked on disciplinary grounds will expires. The Board shall reinstate a revoked license after its expiration when the licensee, as a condition of reinstatement, pays a reinstatement fee that equals the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus a professional license reinstatement fee as stated in 4.1.2.5.

§31-1-8. Reinstatement of Expired Licenses.

8.1. The Board may reinstate the licenses of licensees who fail to renew their licenses by the end of the license period.

8.1.1. For a licensee who has allowed his or her license to lapse for a period not to exceed three years, the license may be reinstated by the Board. The applicant for reinstatement shall:

8.1.1.1. Submit a written request for reinstatement of their professional license to the Board, including a satisfactory explanation for the failure to renew, within three (3) years after the expiration date of his or her license;

8.1.1.2. Complete ten (10) hours of approved continuing education for each year the license has lapsed; and

8.1.1.3. Pay to the Board the annual renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, and the professional license reinstatement fee as stated in 4.1.2.5..

8.1.2 For a licensee who has allowed his or her license to lapse for a period in excess of three (3) years, the license may be reinstated by the Board. The applicant for reinstatement shall:

8.1.1.1. Submit a written request for reinstatement of their professional license to the Board;

8.1.1.2. Pass the written examination required of applicants for licensure; and

8.1.1.3. Pay to the Board the licensing fee as stated in 4.1.2.1 and the reinstatement fee as stated in 4.1.2.5..

§31-1-9. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Dietitians.

9.1. The Board may deny an application for license or a provisional permit, place a licensee on probation, suspend a license or provisional permit, limit or restrict a license or provisional permit or revoke any license or provisional permit issued by the Board, upon satisfactory proof that the licensee has:

9.1.1. Knowingly made, or presented or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other material in connection with an application for a license;

9.1.2. Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license;

9.1.3. Become addicted to a controlled substance;

9.1.4. Become a chronic or persistent alcoholic;

9.1.5. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or member of the public;

9.1.6. Willfully violated a confidential communication with a client or patient;

9.1.7. Demonstrated a lack of professional competence to practice medical nutrition therapy or other nutrition or dietetic-related services with a reasonable degree of skill and safety for patients;

9.1.8. Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medical nutrition therapy or other nutrition or dietetic-related services. A plea of nolo contendere may be considered conviction for the purposes of this rule;

9.1.9. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.10. Aided, assisted, procured or advised any unlicensed person to practice as a licensed dietitian contrary to this rule or provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.11. Failed to perform any statutory or legal obligation placed upon a licensed dietitian;

9.1.12. Made or filed a report which the licensee knows to be false, or intentionally or negligently failed to file a report or record required by state or federal law;

9.1.13. Paid or received any commission, bonus, rebate or other financial incentive, or engaged in any split-fee arrangement with any organization, agency or person, for referring patients to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, renal dialysis facilities or pharmacies;

9.1.14. Exercised influence on a patient or client for purposes of exploiting for financial gain or

engaging in sexual activity;

9.1.15. Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and treatment;

9.1.16. Engaged in false or deceptive advertising; advertised, practiced or attempted to practice under a name other than his or her own; charged or collected any fee for any type of services rendered within forty-eight (48) hours of the initial visit, if the licensee advertised free consultation or treatment;

9.1.17. Charged an excessive or unconscionable fee. If the Board finds that an excessive or unconscionable fee has been charged and collected, the Board may require the licensee to reduce or reimburse the fee. Factors to be considered in determining the reasonableness of a fee include the following:

- 9.1.17.1. The time and effort required;
- 9.1.17.2. The novelty and difficulty of the procedure or treatment;
- 9.1.17.3. The skill required to perform the procedure or treatment properly;
- 9.1.17.4. Any requirements or conditions imposed by the patient or circumstances;
- 9.1.17.5. The nature and length of the professional relationship with the patient;
- 9.1.17.6. The experience, reputation and ability of the licensee; and
- 9.1.17.7. The nature of the circumstances under which the services are provided.