

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

Form #2

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2001 JUN 25 P 4:46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WEST VIRGINIA BOARD OF LICENSED DIETITIANS TITLE NUMBER: 31

RULE TYPE: LEGISLATIVE CITE AUTHORITY: W.VA. CODE §30-35-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: LICENSURE AND RENEWAL REQUIREMENTS


IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JULY 25, 2001 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WEST VIRGINIA BOARD OF  
LICENSED DIETITIANS  
54 TWIN VIEW LANE  
HUNTINGTON, WV 25704

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: LICENSURE AND RENEWAL REQUIREMENTS

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WEST VIRGINIA BOARD OF LICENSED DIETITIANS

Address: 54 TWIN VIEW LANE

HUNTINGTON, WV 25704

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	0	0	0	0	0
<b>PERSONAL SERVICES</b>	0	0	0	0	0
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	0	0	0	0	0

2. Explanation of Above Estimates:  
N/A

3. Objectives of These Rules:  
TO MODIFY THE RULE TO ADD CAUSES FOR DENIAL, PROBATION, LIMITATION, DISCIPLINE, SUSPENSION OR REVOCATION OF LICENSES FOR DIETITIANS.

Rule Title: LICENSURE AND RENEWAL REQUIREMENTS

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: JUNE 25, 2001

Signature of Agency Head or Authorized Representative:

Helen Lodge

## **LICENSURE AND RENEWAL REQUIREMENTS PROPOSED RULE**

W. Va. Code §§30-35 established the West Virginia Board of Licensed Dietitians (Board). The purpose of this rule is to define licensure and renewal requirements for dietitians. The proposed modification outlines causes for denial, probation, limitation, discipline, suspension or revocation of licenses for dietitians.

**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 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. Repeal and Replace. --

**§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.

**§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;

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.

**§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.

**§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.

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

7.2.1. Pay to the Board the license renewal fee;

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

7.2.3. Beginning the first day of July 1999, 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. Beginning the first day of July 2001, 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 expire. 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.

#### **§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.

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 licensure fee.

**§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;

9.1.7. Had his or her license to practice as a dietitian in any other state, territory, jurisdiction or foreign nation revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing authority thereof, or has been denied licensure in any other state, territory, jurisdiction, or foreign nation;

9.1.8. Been or is unable to practice as a dietitian with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals or any other type

of material, or by any reason of any physical or mental abnormality;

9.1.9. Demonstrated a lack of professional competence to practice medical nutrition therapy or other nutrition/dietetic related services with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a dietitian indicating his or her failure to properly treat a patient and may require the dietitian to submit to inquiries or examinations, written or oral, by members of the Board, by its agent, or designee, as the Board considers necessary to determine the professional qualifications of the licensee;

9.1.10. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical nutrition therapy or other nutrition/dietetic related services, or the ethics of the dietetic profession, or unprofessional conduct as presented in the Board's rule, Code of Professional Ethics, 31 CRS 2 of the Board Rules, irrespective of whether or not a patient is injured by the conduct, or has committed any act contrary to honesty, justice or good morals, whether the act is committed in the course of his or her practice or otherwise and whether committed within or without this State;

9.1.11. 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/dietetic related services. Any plea of nolo contendere will be considered conviction for the purposes of this rule;

9.1.12. Advertised, practiced or attempted to practice under a name other than his or her own;

9.1.13. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of the West Virginia Dietitian Practice Act;

9.1.14. Aided, assisted, procured or advised any unlicensed person to practice as a

licensed dietitian contrary to this rule or the West Virginia Dietitian Practice Act;

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

9.1.16. Made or filed a report which the licensee knows to be false, intentionally or negligently failed to file a report or record required by state or federal law, willfully impeded or obstructed the filing or induced another person to do so. The reports or records will include only those which are signed in the capacity as a licensed dietitian;

9.1.17. Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a licensed dietitian, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, renal dialysis facilities or pharmacies. The provisions of this subdivision will not be construed to prevent a licensed dietitian from receiving a fee for professional consultation service;

9.1.18. Exercised influence within a patient-dietitian relationship for purposes of engaging a patient in sexual activity;

9.1.19. Made deceptive, untrue or fraudulent representations in the practice of medical nutrition therapy or employed a trick or scheme in the practice of medical nutrition therapy or other nutrition/dietetic related services when the trick or scheme fails to conform to the generally prevailing standards of treatment in the medical nutrition therapy and nutrition/dietetic services community;

9.1.20. Solicited patients, either personally or through an agent, through use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;

9.1.21. Failed to keep written records

justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results and treatment rendered, if any;

9.1.22. Exercised influence on the patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or of a third party;

9.1.23. Engaged in malpractice or failed to practice medical nutrition therapy or other nutrition/dietetic related services with that level of care, skill and treatment which are recognized by a reasonable, prudent, dietitian engaged in the same or similar speciality as being acceptable under similar conditions and circumstances;

9.1.24. Performed any procedure or prescribed any therapy which, by the prevailing standards of medical nutrition therapy or other nutrition/dietetic related services in the community, would constitute experimentation on a human subject, without first obtaining full, informed and written consent from the patient;

9.1.25. Performed professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform;

9.1.26. Delegated professional responsibilities to a person whom the licensee knew or had reason to know was not qualified by training, experience or licensure to perform the responsibilities;

9.1.27. Violated or attempted to violate any law or lawfully promulgated rule of this State, or any other state, the Board, the United States or any other lawful authority (without regard to whether the violation is criminally punishable), which relates to or in part regulates the practice of dietitians, when the licensee or applicant knows or should know that the action is in violation of the law, rule or regulation; or has violated a lawful order of the Board; or has failed to comply with a lawfully issued subpoena of the Board; or has violated an order of any court entered pursuant to any proceedings commenced by the Board;

9.1.28. Knowingly maintained a professional connection or association with any person who is in violation of the West Virginia Dietitian Practice Act or the rules of the Board; or has knowingly aided, assisted, procured or advised any person to practice medical nutrition therapy or other nutrition/dietetic services contrary to the West Virginia Dietitian Practice Act or to the Rules of the Board; or knowingly performed any act which in any way aids, assists, procures, advises or encourages any unlicensed person or entity to practice medical nutrition therapy; or have divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation or other entity for bringing or referring a patient;

9.1.29. Offered, undertaken or agreed to cure or treat disease by a secret method, procedure, treatment or medicine; or has treated for any human condition, by a method, means, or procedure which the licensee has refused to divulge upon demand of the Board;

9.1.30. Engaged in false or deceptive advertising. "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; or

9.1.31. Engaged in advertising that is not in the public interest. Advertising that is not in the public interest includes the following.

9.1.31.1. Advertising that has the effect of intimidating or exerting undue pressure;

9.1.31.2. Advertising which is false, deceptive, misleading, sensational or flamboyant;

9.1.31.3. Advertising which guarantees satisfaction or a cure;

9.1.31.4. Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This paragraph does not apply to advertising which contains an offer to negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and

9.1.31.5. Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

9.2. For the purposes of subdivision 9.1.5 of this rule, acts declared to constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof includes, but are not limited to:

9.2.1. Issuing or publishing in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:

9.2.1.1. Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments or infirmities by any method, procedure, treatment or medicine which the licensee knows or has reason to know has little or no therapeutic value;

9.2.1.2. Represents or professes or holds himself or herself out as being able and willing to treat diseases, ailments or infirmities under a system or school of practice:

A. Other than that for which he or she holds a degree or diploma from a school otherwise recognized by the Board; or

B. Which he or she professes to be self-taught, self-developed.

9.2.2. A serious act, or a pattern of acts committed during the course of a dietetic practice which, under the attendant circumstances, would be considered to be gross incompetence, gross

ignorance, gross negligence or malpractice, including the performance of any unnecessary service or procedure;

9.2.3. Conduct which is calculated to bring or has the effect of bringing the dietetic profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical nutrition therapy or other nutrition/dietetic services consistent with dietetic practice within the State;

9.2.4. Any charges or fees for any type of service rendered within forty-eight (48) hours of the initial visit, if the licensee advertises free service, free examination or free treatment;

9.2.5. Failing to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner licensed under Chapter 30 of the W. Va. Code;

9.2.6. Charging or collecting an excessive or unconscionable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

9.2.6.1. The time and effort required;

9.2.6.2. The novelty and difficulty of the procedure or treatment;

9.2.6.3. The skill required to perform the procedure or treatment properly;

9.2.6.4. Any requirements or conditions imposed by the patient or circumstances;

9.2.6.5. The nature and length of the professional relationship with the patient;

9.2.6.6. The experience, reputation, and ability of the licensee; and

9.2.6.7. The nature of the circumstances under which the services are provided.

9.2.7. In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken under the provisions of section 5.18. of this rule, the Board may require the licensee to reduce or pay back the fee.