



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: 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
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CITE STATUTORY AUTHORITY: §30-35-4 & § 30-1-24

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:

HB 118 REQUIRES THE AGENCY TO WRITE THIS RULE.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/29/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/29/2019

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?

EMAILED COPY OF RULE TO ALL LICENSEES AND POSTED RULE ON BOARD'S WEB PAGE.

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

HB 118 REQUIRES THIS RULE, ALLOWING INDIVIDUALS CONVICTED OF CRIMES TO APPLY FOR A PROFESSIONAL LICENSE.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

MANDATED BY HB 118, PASSED DURING THE 2019 SPECIAL SESSION OF THE LEGISLATURE.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

THERE WILL NOT BE ANY LOSS OF REVENUE FOR THE BOARD. INDIVIDUALS QUALIFYING UNDER THIS RULE WILL PAY THE LICENSING FEE.

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

ONLY IMPACT WILL BE ON THE INDIVIDUAL THAT QUALIFIES FOR A LICENSE. THEY WILL HAVE TO PAY THE LICENSE FEE AND ALL COST ASSOCIATED WITH THE RULE.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	UNKNOWN	UNKNOWN	UNKNOWN
Personal Services	UNKNOWN	UNKNOWN	UNKNOWN
Current Expenses	UNKNOWN	UNKNOWN	UNKNOWN
Repairs and Alterations	UNKNOWN	UNKNOWN	UNKNOWN
Assets	UNKNOWN	UNKNOWN	UNKNOWN
Other	UNKNOWN	UNKNOWN	UNKNOWN
2. Estimated Total Revenues	UNKNOWN	UNKNOWN	UNKNOWN

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

THE BOARD HAS NO IDEA IF ANYONE WILL QUALIFY OR APPLY FOR A LICENSE UNDER THIS RULE. IF AN INDIVIDUAL DOES APPLY, THEY WILL BE REQUIRED TO PAY THE LICENSE FEE AND ANY OTHER COST ASSOCIATED WITH DETERMINING WHETHER THEY QUALIFY FOR A LICENSE.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Grady M Bowyer -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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 & §30-1-24

1.3. Filing Date. – ~~March 25, 2019~~

1.4. Effective Date. – ~~April 1, 2019~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of ten (10) years from final filing

§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.

2.4. “Unreversed”, as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

§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. Reinstatement fee \$ 50.00; and

4.1.3. A charge of \$ 10.00 will be assessed for each license paper verification per state.

4.1.4. 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.

§31-1-6. 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.

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

6.3. 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 of \$ 50.00.

§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 paragraph 4.1.2.3 of this rule.

§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 paragraph 4.1.2.3 of this rule.

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:

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

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

8.1.2.3. Pay to the Board the licensing fee as stated in 4.1.2.1.

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

31CSR1

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.

9.2. The Board may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession of Dietetics or Nutrition Therapy requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the board shall consider at a minimum:

9.2.1. The nature and seriousness of the crime for which the individual was convicted;

9.2.2. The passage of time since the commission of the crime;

9.2.3. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

9.2.4. Any evidence of rehabilitation or treatment undertaken by the individual.

9.3. Because the term “moral turpitude” is vague and subject to inconsistent applications, boards may not rely upon the description of a crime for which an applicant has been convicted as one of “moral turpitude” as a basis for denying licensure: Provided, That if the prior conviction for the underlying crime bears a rational nexus to the profession or occupation requiring licensure, the board may consider the conviction.

9.4. If an applicant is disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant to apply for initial licensure if:

9.4.1. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

9.4.2 The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

9.4.3. The conviction was not for an offense of a violent or sexual nature: Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the board.

9.5. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The board shall provide the determination within 60 days of receiving the petition from the applicant. The board may charge a fee to recoup its costs for each petition.

9.6. The requirements of this section do not apply to the criteria that boards may consider when making determinations regarding relicensure or discipline of licensees.