

## **Comments Received: Proposed Title 17, Series 7**

There were 3 different people who commented on this rule. Their comments and Dr. Harlow's responses to the comments are below.

Changes to the rule were made to correct the numbering of the rule and to remove "massage therapy". No content was changed no additions were added.

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### **Response and Comment #1**

Merideth Smith,

Kathy Lynch here. As I stated previously, thank you for your comments of September 3<sup>rd</sup>. Jeffrey Harlow, Ph.D., Executive Director for the Board has reviewed your comments. Dr. Harlow responds:

1. It is assumed that it will not involve misdemeanors or juvenile offences since the psychology law's only limitations in this regard is a felony conviction.
2. The new rule leaves up to the licensing boards to determine the "rational nexus to the practice of psychology." Certainly, as noted in the proposed rule, violent or sexual convictions would be considered in rational nexus to the practice of psychology.
3. Due process is described in the current law and rules.
4. During the last 25 year there have been only two applicants who had felony convictions. They were both granted an opportunity to apply and start the supervision process.
5. The five year period only pertains to applicants who had "been denied licensure because of prior convictions." It is a reasonable time limit.

Jeffrey Harlow, Ph.D., Executive Director

**Kathleen Lynch**  
*Administrative Assistant*  
**WV Board of Examiners of Psychologists**  
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*\*New Web Address\**  
<https://psychbd.wv.gov>

**From:** Merideth Smith <[msmith@psimedinc.com](mailto:msmith@psimedinc.com)>  
**Sent:** Tuesday, September 03, 2019 4:01 PM

**To:** WV Board of Examiners of Psychologists <[psychbd@wv.gov](mailto:psychbd@wv.gov)>

**Subject:** [External] Series 7 comments

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I have serious concerns about the proposed language of series 7. For the reasons listed below I believe the psychology board is setting up a system to discourage individuals with lived experiences who would bring diversity in voice and thought to our field. These rules would set up a system that would unintentionally disenfranchise individuals who have paid their debt to society without any clear increased protection to the field of psychology or the patients we serve. Individuals who have gone through the rehabilitation process and served their debt to society can bring important contributions to our field and may be able to have more meaningful impact on our patient's lives as many of them have lived criminal justice experiences as well. I have listed my concerns and recommendations below. I hope that the board will seriously consider taking more steps to ensure they are not unduly burdening or discouraging individuals who have rehabilitated and served their time and may bring a new perspective and understanding to WV mental health needs..

- 1) What types criminal convictions and what time frames are being considered. Is a misdemeanor being treated the same as a felony? Is an offense that occurred 20+ years prior to application for licensure being treated the same as an offense that occurred within a year of applying? Is the board requiring juvenile offenses? Without more specifics, the proposed series would result in draconian steps and restrictions that would result in disenfranchisement of individuals who have served their time.
- 2) The definition of what will be considered as disqualifying is very broad and not well defined. What does it mean to bear a rational nexus to the practice of psychology? Would a drug offense count? A DUI? An assault? What is to prevent the board from verging into making moral judgement of a crime rather than its direct impact on the ability to practice psychology? Licensing boards who have used broad nonspecific criteria, frequently result in disqualifying candidates for crimes that may result in moral considerations rather than actual impact on the services that will be provided.
- 3) With point 2 in mind, what is the due process procedure. If someone wants to contest the board's decision, how would they do this? What checks are in place to ensure there is not behavioral drift away from the intent to not disqualify all previous felons from qualification?
- 4) How many individuals would this impact on a year to year basis? How frequently has this issue come up and what study has the psychology board done to determine the impact of this series on the field of psychology in WV? I could not find references to this series in the minutes on the website so no background information was available.
- 5) Why five years before reapplying? What evidence lead the board to pick this number?

I would recommend the following:

- 1) Define type of convictions and time frame of relevant convictions that will be considered. Any conviction from any time is unreasonable and leads to overly broad exclusions, ultimately narrowing of the diversity of voices in our field and placing undue burden on individuals who want to join our field.

- 2) Better define what may be relevant to the practice of psychology
- 3) Provide a due process procedure to contest board decisions.
- 4) Several groups have been working on licensing laws and the unintended consequences of felony convictions. They have conducted studies, reviewed other state practices, and have made recommendations. I personally have participated in a the WV State Civil Rights Committee where this was a topic discussed. We are currently submitting recommendations to the US Civil Rights Committee and I would gladly discuss more if the board is interested.
- 5) Recommend another proof read of the series. e.g., " 5.3. The applicant may submit with the petition for licensure eligibility evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to **practice massage therapy.**"

Merideth Smith, Ph.D., CCHP  
Director of Clinical Services  
Licensed Psychologist  
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## Response and Comment #2

Terry Sigley,

Jeffrey Harlow has reviewed your comments and responds:

Thank you for your feedback. The error has been corrected.

Jeffrey Harlow, Ph.D., Executive Director

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**From:** teezbrd <[teezbrd@comcast.net](mailto:teezbrd@comcast.net)>  
**Sent:** Tuesday, September 03, 2019 6:54 PM  
**To:** WV Board of Examiners of Psychologists <[psychbd@wv.gov](mailto:psychbd@wv.gov)>  
**Subject:** [External] Proposed law change.

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I think that the proposed law change is fair and reasonable and I support it. I would recommend a modification in section 17-7-5.3. The end of that passage says they will practice massage therapy and I think that should be psychology.

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### Response and Comment #3

Kenneth Devlin,

Jeffrey Harlow has reviewed your comments and responds:

These decisions will be made with the advice of the Board's Attorney General Representative. Thank you for your comments.

Jeffrey Harlow, Ph.D., Executive Director

*Kathleen Lynch*  
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**From:** kenneth devlin <[kdevlin@gmail.com](mailto:kdevlin@gmail.com)>  
**Sent:** Wednesday, September 04, 2019 12:51 PM  
**To:** WV Board of Examiners of Psychologists <[psychbd@wv.gov](mailto:psychbd@wv.gov)>  
**Subject:** [External] Consideration of Prior Criminal Convictions in Initial Licensure Determinations

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This decision is a legal decision based on past histories of illegal behavior with judgments. It is a task for a competent legal authority (Attorney General's Office) with input from the relevant Board(s).

If handled by Boards, it will be an endless process of litigation between the Board's and the applicant.

*Kenneth J Devlin, MA*  
*Licensed Psychologist*