



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Psychologists TITLE-SERIES: 17-07

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: CONSIDERATION OF PRIOR CRIMINAL
CONVICTIONS IN INITIAL LICENSURE
DETERMINATIONS AND APPLICATION FOR
WAIVER OF INITIAL LICENSING FEES FOR
CERTAIN INDIVIDUALS

CITE STATUTORY AUTHORITY: W. Va. Code §30-1-24

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 4252

Section §64-9-24 Passed On 3/25/2020 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2020

This rule shall terminate and have no further force or effect from the following date:

July 01, 2025

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

Yes

Kathy G Lynch -- 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 17
LEGISLATIVE RULE
BOARD OF EXAMINERS OF PSYCHOLOGISTS

SERIES 7
CONSIDERATION OF PRIOR CRIMINAL CONVICTIONS IN INITIAL LICENSURE
DETERMINATIONS AND APPLICATION FOR WAIVER OF INITIAL LICENSING FEES
FOR CERTAIN INDIVIDUALS

§17-7-1. General.

- 1.1. Scope. -- This rule establishes procedures for consideration of prior criminal convictions in initial licensure determinations and for a waiver of initial licensing fees for certain individuals.
- 1.2. Authority. -- W. Va. Code §30-1-24, and W. Va. Code §30-21-6.
- 1.3. Filing Date. – May 13, 2020
- 1.4. Effective Date. – July 1, 2020
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon July 1, 2025.

§17-7-2. Definitions.

- 2.1. "Board" means the Board of Examiners of Psychologists established pursuant to W. Va. Code §30-21-1 *et seq.*
- 2.2. "Initial license" means obtaining a license in West Virginia for the practice of psychology or school psychology for the first time.
- 2.3. "License" or "licensure" means the official authorization by the board to engage in the practice of psychology or school psychology.
- 2.4. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.
- 2.5. "Initial" means obtaining a license in West Virginia for the practice of psychology or school psychology for the first time.
- 2.6. "Local labor market" means every county in West Virginia, and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia, pursuant to W.Va. Code §21-1C-2.
- 2.7. "Low-income individual" means an individual in the local labor market as defined in W. Va. Code §21-1C-2, whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program (TANF), Medicaid, or the Supplemental Nutrition Assistance Program (SNAP).

2.8. "Military families" means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried.

2.9. "Initial licensing fees" includes the application fee and/or the annual supervision fee, which the candidate must pay when they are applying to obtain a license to practice psychology in WV for the first time.

§17-7-3. Rational nexus to the practice of psychology or school psychology.

3.1. The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of psychology or school psychology. In determining whether a criminal conviction bears a rational nexus to psychology or school psychology, the board shall consider at a minimum:

- 3.1.1. The nature and seriousness of the crime for which the individual was convicted;
- 3.1.2. The passage of time since the commission of the crime;
- 3.1.3. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensed psychologist or school psychologist; and
- 3.1.4. Any evidence of rehabilitation or treatment undertaken by the individual.

§17-7-4. Application after denial.

4.1. Notwithstanding any other provision of the West Virginia Code to the contrary, if an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

- 4.1.1. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;
- 4.1.2. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and
- 4.1.3. 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 on a case by case basis.

§17-7-5. Petition for licensure eligibility determination.

5.1. 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.

5.2. The petition shall be submitted on an application form prescribed by the board and 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.

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 psychology.

5.4. The board shall provide the determination within 60 days of receiving the petition and the applicable fee from the applicant.

5.5. The fee for an applicant petitioning for a licensure eligibility determination shall be \$75.00 and upon acknowledgement of eligibility by the board and upon the submission of an application for licensure, the eligibility fee shall be deducted from the applicable initial licensure application fee.

§17-7-6. Application for Waiver of Initial Licensure Fees.

6.1. The Board shall issue a license to an applicant who meets the requirements of W. Va. Code §30-31-1 *et seq.* and the rules promulgated by the Board, and the Board shall waive the initial licensure fee if the applicant qualifies as a “low-income individual” or as a member of one or more “military families” as defined in this rule.

6.2. Low-income individuals, as defined in this rule, may seek a waiver of the initial licensure fee for licensure as a psychologist or school psychologist by submitting with their complete application a low-income waiver of initial licensure fee form, provided by the Board on its website www.psychbd.wv.gov and all required verification documents as prescribed by the Board. The Board shall review the application and issue a decision within 30 days of receipt of the complete application.

6.3. Military families, as defined in this rule, may seek a waiver of the initial licensure fee for licensure as a psychologist or school psychologist by submitting with their complete application a military service verification form, provided by the Board on its website www.psychbd.wv.gov and all required verification documents as prescribed by the Board. The Board shall review the application and issue a decision within 30 days of receipt of the complete application.