



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Counseling TITLE-SERIES: 27-05
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Series 5 Disciplinary and Complaint

CITE STATUTORY AUTHORITY: W. Va. Code §30-31-1 et seq. and 30-1-1 et seq

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/30/2023 11:59 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Cheryl Henry
ADDRESS: 815 Quarrier Street, Suite 212
Charleston, WV 25301
EMAIL: cheryl.j.henry@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule specifies the procedure for the investigation and resolution of complaints against counselors and therapists.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Due to the PERD audit, line 5.1.e. (the complaint must be notarized) is being removed.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no new economic impact on the revenues of the state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no new economic impact on special revenue accounts.

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

The residents of the state will no longer have to pay to have the document notarized.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

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

Yes

Cheryl Henry -- 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 27
PROCEDURAL RULE
BOARD OF EXAMINERS IN COUNSELING

SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES
FOR COUNSELORS

§27-5-1. General.

1.1. Scope. -- This rule specifies the procedure for the investigation and resolution of complaints against counselors.

1.2. Authority. -- W. Va. Code §30-31-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. -- ~~July 19, 2016.~~

1.4. Effective Date. -- ~~August 19, 2016.~~

§27-5-2. Application.

This rule applies to all persons practicing or making application to practice as professional counselors.

§27-5-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1. "Applicant" means any person making application for an original or renewal license to practice counseling.

3.2. "Board" means the West Virginia Board of Examiners in Counseling.

3.3. "License" means a license issued by the Board to practice counseling.

3.4. "Licensed Professional Counselor" means a person who practices counseling pursuant to W. Va. Code §30-31-1.

3.5. "Ethics investigator" means a person who is hired and/or engaged by the Board for the purpose of ~~reviewing~~ investigating complaints against counselors and therapists.

§27-5-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of an Applicant for Licensure or Licensee.

4.1. The Board may deny an application for license, place a licensee on probation, limit or

restrict a license, suspend a license, or revoke any license issued by the Board, upon satisfactory proof that a licensee or applicant has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence, including, but not limited to, the following:

- (1). Used narcotics ~~drugs~~, other controlled substances or alcohol to the extent that it affects his or her professional competency;
- (2). Is under a declaration of mental incompetence;
- (3). Has obtained or attempted to obtain a counseling license by fraud, deceit or willful misrepresentation;
- (4). Has violated the current code of ethics adopted by the Board;
- (5). Has impersonated another licensed professional counselor;
- (6). Has practiced, condoned, facilitated or collaborated with any form of discrimination against any person or group;
- (7). Has engaged in any action that violates or diminishes the civil or legal rights of clients;
- (8). Has been involved with the sexual exploitation of clients;
- (9). Has claimed, either directly or by implication, professional qualifications that differ from his or her actual qualifications;
- (10). Has practiced outside the areas of competence and services provided that are listed on his or her professional disclosure statement;
- (11). Has engaged in activities resulting in personal gain based upon information accessible solely as a result of the confidential relationship, regardless of the absence of harm or detriment to the client;
- (12). Has condoned, facilitated, or collaborated in unethical practices, which he or she is obligated to report to the West Virginia Board of Examiners in Counseling; or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-31-1 et seq. and/or the Legislative Rules, all series, of the Board.

§27-5-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board, which charges a licensed professional counselor, therapist, or applicant with a violation of W. Va. Code §30-31-1 et seq. and/or the Legislative rules, all series, of the Board. The Board may provide a form for that purpose, ~~but a complaint may be filed in any written form.~~ In addition to describing the alleged violation, which prompted the complaint, the complaint must contain the following:

5.1.a. The name and address of the licensed professional counselor or therapist against whom the complaint is lodged;

5.1.b. The date or dates the incident or incidents occurred;

5.1.c. The name of any professional who may have treated the client after the alleged incident;

5.1.d. The name or names of witnesses to the incident or incidents; ~~and,~~

~~5.1.e. The complaint must be notarized.~~

5.2. A complaint against a licensed professional counselor or therapist shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence, as cited in subsection 4.1 in this rule or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-31-1 et seq. and/or the Legislative rules, all series, of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board will maintain a complaint log, which records the receipt of each complaint, its nature and its disposition.

5.5. The Board will maintain a separate file on each complaint received, and each file will have a number assigned to it.

5.6. Upon receipt of a complaint, the Board will issue one of the following acknowledgments to the complainant:

5.6.a. That the matter will be reviewed by the Board;

5.6.b. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.c. That more information will be required ~~in order~~ to adequately review the individual complaint.

5.7. The Board will send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or applicant in question for his or her written comment, he or she must submit a written response to the Board within thirty (30) days of the date of correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees or applicants will be considered properly served when sent to their last known address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board may promptly send a copy of the response, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.b. of this rule, the Board will authorize any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations in the complaint. ~~The~~ A review of complaints and ~~any view~~ or investigation may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator(s) for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator must, within sixty (60) days, review and investigate the complaint and provide the Board with a report. The report must include a statement of the allegations, a statement of facts, an analysis of the complaint, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator will, upon request, have the opportunity to conduct an ~~investigation~~ investigative interview with the licensee or applicant in question or other ~~involved parties~~ parties involved. A report of the interview will be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint.

5.14. The Board or the committee must give notice of the conference, the notice must include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. Failure to attend a conference will not prejudice any party to the case.

5.15. The Board, its Executive Director, the investigating committee, or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its chairperson to issue a subpoena or subpoena duces tecum. A brief statement explaining the need for the subpoena must accompany any subpoena.

5.16. Upon receipt of the respondent's response or at any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a licensed professional counselor may be sanctioned by the Board. The committee or ethics investigator must make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

5.17. If the investigative or complaint file is closed on the basis that the Licensed Professional Counselor has not been found to have violated any of the board's governing statutes or rules, the Board shall remove all information relating to that investigation from his or her file.

§27-5-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that a licensed professional counselor's conduct, practices, or acts constitute an immediate danger to the public.

§27-5-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the Legislative rules, all series, of the Board:

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Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.