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**Call to Order – Holly Tracy, LPC, LMFT, Committee Chairperson**

- Welcome and Introductions
- Mission of the Board-----Page 2

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**Approval of Agenda**

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**Approval of Minutes**

- Regulatory Committee Meeting – May 14, 2021\* -----Page 3

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**Public Comment**

*The Committee will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.*

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**Unfinished Business**

- Discussion and Consideration of Telehealth Guidance Document\*
  - Updated Draft BOC Telehealth Guidance Document ----- Page 7

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**New Business**

- Regulatory Update (Verbal Report) – Erin Barrett, JD, Senior Policy Analyst
- Review and Consideration of Guidance Documents\*
  - 115-2 Impact of Criminal Convictions -----Page 13
  - 115-2.1 Use of Hypnosis -----Page 18
  - 115-1.9 Certifications Accepted for CSAC Endorsements -----Page 19
  - 115-4.1 Evidence of Clinical Practice -----Page 20
  - 115-8 Approved Degrees in Human Services for QMHP Registration -----Page 21
  - 115-4.11 Confidential Consent Agreements -----Page 22
- Discussion of Reinstatement for Licensed Residents
- Discussion of the Need for Active/Inactive Status for Licensed Residents
- Consideration of Request for LMFT Reciprocity with Maryland\*-----Page 24

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**Next Meeting – July 15, 2022**

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**Meeting Adjournment**

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\*Requires a Committee Vote. This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the public body at the meeting and will be available to the public pursuant to Virginia Code Section 2.2-3707(F).



Virginia Department of  
**Health Professions**  
Board of Counseling

## **MISSION STATEMENT**

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Our mission is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.

**VIRGINIA BOARD OF COUNSELING  
REGULATORY COMMITTEE MEETING**

**DRAFT**

**Friday, May 14, 2021**

**TIME AND PLACE:** Consistent with Amendment 28 to HB29 (the Budget Bill for 2018-2020) and the applicable provisions of § 2.2-3708.2 in the Freedom of Information Act, the Committee convened the meeting virtually to consider such regulatory and business matters as are presented on the agenda necessary for the committee to discharge its lawful purposes, duties, and responsibilities.

**PRESIDING:** Holly Tracy, LPC, LMFT, Chairperson

**COMMITTEE MEMBERS PRESENT:** Johnston Brendel, Ed.D, LPC, LMFT  
Kevin Doyle, Ed.D, LPC, LSATP  
Vivian Sanchez-Jones, Citizen Member  
Terry Tinsley, PhD, LPC, LMFT, CSOTP

**STAFF PRESENT:** Sandie Cotman, Licensing Specialist  
Jaime Hoyle, JD, Executive Director  
Jennifer Lang, Deputy Executive Director  
Charlotte Lenart, Deputy Executive Director-Licensing  
Sharniece Vaughan, Licensing Specialist  
Elaine Yeatts, DHP Senior Policy Analyst

**ADOPTION OF AGENDA:** Agenda was adopted as presented.

**APPROVAL OF MINUTES:** With no requested changes the minutes from the January 22, 2021 Regulatory Meeting passed unanimously.

**PUBLIC COMMENT:** There were no public comments.

**PRESENTATION:** Dr. LoriAnn Stretch providing a PowerPoint presentation on her recommendations for telehealth regulatory and guidance document amendments.

After a question and answer session, the Committee shared their appreciation to Dr. Stretch.

Dr. Doyle suggested that the Board provide suggestions for best practices in a newsletter and a virtual summit.

The Committee discussed the movement toward Artificial Intelligence (AI) and the need for the Board to be prepared for this type of technology. Ms. Yeatts suggested that this issue be taken to the Department of Health Profession Board. Dr. Doyle, as the representative for the Board of Health Professions, and Ms. Hoyle will submit a letter with the Committee's request.

Dr. Brendel stated that this is the appropriate time to initiate immediate guidance through a newsletter, and during the interim the Board can update the guidance document on telehealth and for the long range propose changes to the regulations. Ms. Hoyle reminded the Committee that the guidance document purpose is it explain the Regulations.

Staff will take the suggestions outlined in Dr. Stretch's report and create a draft guidance document by updating the language and tying the recommendations back to regulations. Once completed, staff will present to draft to the Attorney General Office for their feedback and present the draft at the next Regulatory Committee meeting.

Ms. Yeatts suggested that perhaps the Board should invite the other Behavioral Science Boards to review the draft to in order for all three Board to come up consistent guidance on providing telehealth services.

**COUNSELING COMPACT:**

Dr. Brendel would like the Board to consider being one of the first ten states to initial rulemaking so that Virginia can be a member of the compact commission. Dr. Doyle stated that one state has passed counseling compact legislation and four states are currently pursuing changes to their legislation. The Committee discussed the objections and pushback in reference to the required education wording. The frustration in the field and the momentum for ease of portability appears to be overweighing the objections in the degree/coursework requirements.

Ms. Yeatts suggested that the Board wait to review the rules that will be established by the commissions before making a decision to initial rulemaking to join the compact. Dr. Doyle agreed that Ms. Yeatts suggestion is valid.

**LEGISLATIVE AND REGULATORY ACTIONS:**

Ms. Yeatts discussed the Board's current regulatory actions.

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Unprofessional conduct-conversion therapy (Action 5225); Final – At Governor's Office for 24 days

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Periodic review (action 5230); Proposed - At Governor's Office for 158 days

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Resident license (action 5371); Final – Effective 6/23/2021

18VAC 115-40 Regulations Governing the Certification of Rehabilitation Providers - Periodic review (Action 5305); Final – At Governor's Office for 24 days

18VAC 115-90 Regulations Governing the Licensure of Art Therapists (under development) – NOIRA – Register Date: 3/1/2021, Comment ended: 3/31/2021

Ms. Yeatts discussed the Art Therapy Advisory Board's role and the recent Art Therapy Advisory Board meeting. Ms. Yeatts stated that there was no consensus on proposed regulatory language. The Advisory Board will meet again and will present the proposed Regulations at the next Committee meeting.

**NEW BUSINESS:**

**Definition of Human Service Degree**

The Committee discussed the QMHP reviews and the need for a human services definition that outlines the elements of a human service. Having a human services definition would better inform the applicant and help support the consistency of the reviews.

After much discussion, the Committee stated that it is apparent by the types of disciplinary files that they review that there is a need for additional training and education. The Board's mission is to protect the public and the Committee felt that the review of the coursework needed to be more restrictive to ensure that applicants have the minimum education and training in order to provide services to the most vulnerable population.

Staff will research different organizations that may define human services to provide a draft to the Committee at the next meeting. Ms. Hoyle suggested that we might want to initiate additional training requirements prior to providing services to try to prevent future disciplinary issues.

Ms. Lenart indicated that the Board continues to see applicants that are registering for QMHP-C and QMHP-A without registering for the QMHP-Trainee registration when employed at a DBHDS licensed facility. Staff continues to try to educate applicants and supervisor on the registration requirement. Staff will discuss this issue with DBHDS and DMAS to see if all three Agencies can work together to educate applicants and Agencies on the requirements.

Ms. Lang suggest that maybe in the future the Board consider requiring ethics training prior to being approved for registration.

The Committee discussed the acceptance of Sociology degrees until May 31, 2021. The Board agreed that the applicant must submit an application prior to May 31, 2021 in order for the degree to be accepted as a human service degree toward QMHP-C registration.

**Code Change for Agency Subordinate Authority to Conduct Credential Reviews**

Ms. Hoyle and Ms. Lang discussed the possible need for a change in the Code to allow Agency Subordinate to conduct credential

reviews to help streamline the process. Ms. Lang gave information on the role of the Agency Subordinate and Informal Conference Committee.

Ms. Lang will take this issue to both the Board of Psychology and Board of Social Work for their thoughts. Ms. Yeatts indicated that potential change would affect all Boards within the Agency.

**NEXT SCHEDULED MEETING:** The next Committee meeting is scheduled for August 6, 2021 at 10:00 a.m.

**ADJOURNMENT:** The meeting adjourned at 12:25 p.m.

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Holly Tracy, LPC, LMFT  
Chairperson

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Date

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Jaime Hoyle, JD  
Executive Director

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Date

DRAFT

## Virginia Board of Counseling

### Guidance on Technology-Assisted Counseling

The Board of Counseling regulations for Standards of Practice (see attachment) are prefaced by the following:

*The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of counseling.*

Therefore, the Standards of Practice set forth of the regulations and in the Code of Virginia apply regardless of the method of delivery. Whereas regulations are enforceable by the Board, and a violation may result in disciplinary action, a guidance document on the role of technology in the practice of counseling is adopted by the Board to assist in interpreting and understanding the standards.

To that end, the Board offers the following guidance of how practitioners can best utilize technology in the safe and professional delivery of counseling services:

- **Intake and assessment.** Practitioners should assess whether clients are prepared to engage intellectually, emotionally, physically, linguistically, and functionally with technology for the purpose of telehealth services and verify that each client understands the purpose, risks, and operation of any technology to be used in the delivery of telehealth services.
- **Informed consent.** Practitioners should obtain oral or written informed consent from clients in a language understandable to the client at the onset of telehealth services and explain that the client may request in-person counseling services or a referral for in-person counseling services. Informed consent should be documented in the client's record. If the client is a minor, consent should be obtained from the minor's legal guardian, and where appropriate, assent should be obtained from the minor.
- **Professional boundaries.** Practitioners should establish professional boundaries with each client regarding the appropriate use and limitations of technology within the counseling relationship.
- **Client verification.** Practitioners should verify the client's identity and have verification procedures through passwords or identification throughout the delivery of telehealth services. A practitioner should verify the client's location each time telehealth services are provided.

- **Contingency plans.** Practitioners should have an alternate means of communication with the client in case of technical failure or emergency and should also maintain an emergency plan with the client to include contact information of emergency services local to the client's location.
- **Confidentiality.** Practitioners must follow state and federal privacy laws and regulations related to health care information and the client's right to access their records and ensure the security of all transmissions of protected health information.
- **Virtual presence.** Practitioners who maintain a virtual presence with a client should clearly distinguish between personal and professional presence and maintain a social media policy. Practitioners who maintain a website should provide working electronic links to relevant certification and licensure boards to ensure clients can verify credentials and protect their rights. Practitioners should not use electronic search engines or social media to gather information about clients without the client's signed, written consent. Clients must have full disclosure of how the information gathered will be used before giving consent.
- **Training and competence.** Practitioners should only utilize telehealth services consistent within their areas of competence achieved through education, training, and supervision; they should have some specific training for the provision of telehealth services, especially in the matter of protecting confidentiality and security.
- **Multiculturalism.** Practitioners should account for cultural, linguistic, and accessibility considerations that may impact the effectiveness and quality of telehealth services.

When working with a client who is not in Virginia, practitioners are advised to check the regulations of the state board in which the client is located.

***Regulations Governing the Practice of Professional Counseling\*\****

**18VAC115-20-130. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;
3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the

implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature;

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative in accordance with § [32.1-127.1:03](#) of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

- a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;
- b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or
- c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;
2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;
3. Not engage in any romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § [54.1-2400.1](#) of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

***\*\*Similar Standards of Practice are found in:***

<a href="#">18 VAC 115-30</a>	Regulations Governing the Certification of Substance Abuse Counselors
<a href="#">18 VAC 115-40</a>	Regulations Governing the Certification of Rehabilitation Providers
<a href="#">18 VAC 115-50</a>	Regulations Governing the Practice of Marriage and Family Therapy
<a href="#">18 VAC 115-60</a>	Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners

## **VIRGINIA BOARD OF COUNSELING**

### **Impact of Criminal Convictions, Impairment, and Past History on Licensure, Certification or Registration by the Virginia Board of Counseling**

#### **INTRODUCTION**

This document provides information for persons interested in becoming a licensed professional counselor, licensed marriage and family therapist, licensed substance abuse treatment practitioner, certified substance abuse counselor, certified substance abuse counseling assistant, certified rehabilitation provider, registered qualified mental health professional or registered peer recovery specialist. It clarifies how convictions, impairment, and other past history may affect the application process and subsequent licensure, certification or registration by the Board of Counseling.

*Until an individual applies for licensure, certification or registration, the Board of Counseling is unable to review, or consider for approval, an individual with a criminal conviction, history of action taken in another jurisdiction, or history of possible impairment. The Board has no jurisdiction until an application has been filed.*

#### **GUIDELINES FOR PROCESSING APPLICATIONS FOR LICENSURE, CERTIFICATION OR REGISTRATION: APPLICATION, EXAMINATION, ENDORSEMENT, AND REINSTATEMENT**

Applicants for licensure, certification, or registration by application, examination, endorsement and reinstatement who meet the qualifications as set forth in the law and regulations may be issued a license, certificate or registration pursuant to authority delegated to the Executive Director of the Board in accordance with the Board of Counseling Regulations.

An applicant whose license, certification or registration has been revoked or suspended in another jurisdiction is not eligible for licensure, certification or registration in Virginia unless the credential has been reinstated by the jurisdiction which revoked or suspended it.

Affirmative responses to any questions on applications related to grounds for the Board to refuse to admit a candidate to an examination, refuse to issue a license, certificate or registration or impose sanction shall be referred to the Executive Director to determine how to proceed. The Executive Director, or designee, may approve the application without referral to the Credentials Committee in the following cases:

1. The applicant presents a history of substance use disorder with evidence of continued abstinence and recovery. The Executive Director cannot approve applicants for reinstatement if the license, certificate or registration was revoked or suspended by the Board or if it lapsed while an investigation was pending.
2. The applicant has a history of criminal conviction(s) which does not constitute grounds for denial or Board action or the applicant's criminal conviction history meets the following criteria:

- The applicant's conviction history consists solely of misdemeanor convictions that are greater than 10 years old.
- The applicant's conviction history consists of one misdemeanor conviction greater than 5 years old and all court requirements have been met.
- The applicant's conviction history consists of one misdemeanor conviction less than 5 years old, the applicant is in full compliance or has met all court requirements, and the applicant has accepted a pre-hearing consent order to approve the application with a reprimand.
- The applicant's conviction history consists of one non-violent felony conviction greater than 10 years old and all court/probationary/parole requirements have been met.

### **BASIS FOR DENIAL OF LICENSURE, CERTIFICATION OR REGISTRATION**

The Board of Counseling may refuse to admit a candidate to any examination or refuse to issue a license, certificate or registration to any applicant with a conviction of a felony or a misdemeanor involving moral turpitude. The Board may also refuse licensure as a professional counselor, marriage and family therapist, and substance abuse treatment practitioner, certification as a substance abuse counselor, substance abuse counselor assistant or rehabilitation provider, and registration as a qualified mental health professional or peer recovery specialist to an applicant unable to practice with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or as the result of any mental or physical condition.

Misdemeanor convictions involving moral turpitude mean convictions related to lying, cheating or stealing. Examples include, but are not limited to: reporting false information to the police, shoplifting or concealment of merchandise, petit larceny, welfare fraud, embezzlement, and writing worthless checks. While information must be gathered regarding all convictions, misdemeanor convictions other than those involving moral turpitude will not prevent an applicant from becoming licensed, certified, or registered. However, if the misdemeanor conviction information also suggests a possible impairment issue, such as DUI and illegal drug possession convictions, then there still may be a basis for denial during the application process.

Criminal convictions for ANY felony may cause an applicant to be denied licensure, certification or registration. *Each applicant is considered on an individual basis. There are NO criminal convictions or impairments that are an absolute bar to licensure, certification or registration by the Board of Counseling.*

**ADDITIONAL INFORMATION NEEDED REGARDING CRIMINAL CONVICTIONS,  
PAST ACTIONS, OR POSSIBLE IMPAIRMENTS**

Applications for licensure, certification or registration include questions about the applicant's history, specifically:

1. Any and all criminal convictions ever received;
2. Any past action taken against the applicant in another state or jurisdiction, including denial of licensure, certification or registration in another state or jurisdiction; and
3. Any mental or physical illness, or chemical dependency condition that could interfere with the applicant's ability to practice.

*Indicating "yes" to any questions about convictions, past actions, or possible impairment does not mean the application will be denied.* It means more information must be gathered and considered before a decision can be made, which delays the usual application and testing process. Sometimes an administrative proceeding is required before a decision regarding the application can be made. The Board of Counseling has the ultimate authority to approve an applicant for testing and subsequent licensure, certification or registration, or to deny approval.

**The following information will be requested from an applicant with a criminal conviction:**

- A certified copy of all conviction orders (obtained from the courthouse of record);
- Evidence that all court ordered requirements were met (i.e., letter from the probation officer if on supervised probation, paid fines and restitution, etc.);
- A letter from the applicant explaining the factual circumstances leading to the criminal offense(s); and
- Letters from employers concerning work performance (specifically from Counseling-related employers, if possible).

**The following information will be requested from the applicant with past disciplinary action or licensure/certification/registration denial in another state:**

- A certified copy of the Order for disciplinary action or denial from the other state licensing entity; and certified copy of any subsequent actions (i.e. reinstatement), if applicable;
- A letter from the applicant explaining the factual circumstances leading to the action or denial; and
- Letters from employers concerning work performance (Counseling-related preferred) since action.

**The following information may be requested from applicants with a possible impairment:**

- Evidence of any past treatment (i.e., discharge summary from outpatient treatment and inpatient hospitalizations);
- A letter from the applicant's current treating healthcare provider(s) indicating diagnosis, treatment regimen, compliance with treatment, and ability to practice safely;

Guidance document: 115-2

~~Adopted~~Revised: ~~November 15, 2013~~May 13, 2022  
Revised: February 9, 2018Effective: July 7, 2022

- A letter from the applicant explaining the factual circumstances of condition or impairment and addressing ongoing efforts to function safely (including efforts to remain compliant with treatment, maintain sobriety, attendance at AA/NA meetings, etc.); and
- Letters from employers concerning work performance (specifically from counseling-related employers, if possible).

NOTE: Some applicants may be eligible for the Health Practitioner’s Monitoring Program (HPMP), which is a monitoring program for persons with impairments due to chemical dependency, mental illness, or physical disabilities. Willingness to participate in the HPMP is information the Board of Counseling will consider during the review process for applicants with a history of impairment or a criminal conviction history related to impairment. Information about the Virginia HPMP may be obtained directly from the DHP homepage at [www.dhp.virginia.gov](http://www.dhp.virginia.gov).

Once the Board of Counseling has received the necessary and relevant additional information, the application will be considered. Some applicants may be approved based on review of the documentation provided. Other applicants may be required to meet with Board of Counseling members for an informal fact finding conference to consider the application. After the informal fact-finding conference, the application may be: i) approved, ii) approved with conditions or terms, or iii) denied.

NOTE: Failure to reveal criminal convictions, past disciplinary actions, and/or possible impairment issues on any application for licensure, certification or registration is grounds for disciplinary action by the Board of Counseling, even after the license, certification, or registration has been issued. It is considered to be “procurement of license by fraud or misrepresentation,” and a basis for disciplinary action that is separate from the underlying conviction, past action, or impairment issue once discovered. Possible disciplinary actions that may be taken range from reprimand to revocation of a license, certificate or registration.

### **FOLLOWING LICENSURE, CERTIFICATION OR REGISTRATION**

Criminal convictions and other actions can also affect an individual already licensed, certified or registered by the Board of Counseling. Any felony conviction, court adjudication of incompetence, or suspension or revocation of a license, certificate or registration held in another state will result in a “mandatory suspension” of the individual’s license, certificate or registration to practice in Virginia. This is a nondiscretionary action taken by the Director of DHP, rather than the Board of Counseling, according to § 54.1-2409 of the Code of Virginia. The mandatory suspension remains in effect until the individual applies for reinstatement and appears at a formal hearing before the Board of Counseling and demonstrates sufficient evidence that he or she is safe and competent to return to practice. At the formal hearing, three fourths of the Board members present must agree to reinstate the individual’s license, certificate or registration to practice in order for it to be restored.

Guidance document: 115-2

~~Adopted~~Revised: ~~November 15, 2013~~May 13, 2022  
Revised: ~~February 9, 2018~~Effective: July 7, 2022

### **GETTING A CRIMINAL RECORD EXPUNGED**

Having been granted a pardon, clemency, or having civil rights restored following a felony conviction does not change the fact that a person has a criminal conviction. -That conviction remains on the individual's licensure, certification or registration record. Therefore, any criminal conviction *must* be revealed on any application for licensure, certification or registration, unless it has been expunged. Individuals should secure private legal counsel for questions related to criminal conviction expungement, a process over which the Board has no control.

~~Chapter 23.1 of Title 19.2 of the Code of Virginia describes the process for expunging criminal records. If a person wants a conviction to be removed from their record, the individual must seek expungement pursuant to §19.2-392.2 of the Code of Virginia. Individuals should seek legal counsel to pursue this course, which involves specific petitions to the court, State Police procedures, and hearings in court.~~

**Commented [VP1]:** Would recommend deleting this. It's legal advice. Would add sentence to previous paragraph that the Board has no control over expungements of criminal convictions and that the individual should seek legal counsel.

Guidance document: 115-2.1

Revised: May ~~18, 2018~~ 13, 2022  
Effective: July 7, 2022

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**Virginia Board of Counseling**  
**Guidance on Use of Hypnosis and Hypnotherapy**

The Board recognizes hypnosis and hypnotherapy as an appropriate tool for professionals licensed by the Board, when such techniques are within the training and competency of the licensee.

Excerpt from Newsletter, April 1987  
Reaffirmed, August 9, 2008  
Amended, May 18, 2018

## **Virginia Board of Counseling**

### **National Certifications approved by the Board for Certification as a Substance Abuse Counselor by endorsement**

In Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants, Section 18VAC115-30-45 states that: “Every application for certification by endorsement shall submit verification of a current certification in good standing issued by [\[the National Association for Alcoholism and Drug Abuse Counselors, or “NAADAC”\]](#) or other board-recognized national certification in substance abuse counseling obtained by educational and experience standards substantially equivalent to those set forth in this chapter.”

For the purpose of meeting the requirement of Section 45, the Board has determined that the following national certifications are deemed substantially equivalent:

- The National Certified Addiction Counselor Level II (NCAC II) accreditation from the National Certification Commission for Addiction Professionals (NCC AP)/NAADAC, the Association of Addiction Professionals;
- The Master Addiction Counselor (MAC) accreditation from the National Certification Commission for Addiction Professionals (NCC AP)/NAADAC, the Association of Addiction Professionals;
- The Advanced Alcohol & Drug Counselor (AADC) accreditation from the International Certification & Reciprocity Consortium (IC&RC); or
- The Master Addictions Counselor (MAC) accreditation from the National Board of Certified Counselors, (NBCC).

Guidance document: 115-4.1

Reaffirmed: May ~~18, 2018~~13, 2022  
Effective: July 7, 2022

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## **Virginia Board of Counseling**

### **Evidence of Clinical Practice for Licensure by Endorsement**

-Clarification was requested regarding the use of evidence of licensed clinical active practice under one license (i.e. LPC) to apply for another license (i.e. MFT). -The Board confirmed that the applicant must verify experience as a licensee holding the same type of license in another jurisdiction that they are applying for in Virginia. -Verified experience under any other license type will not be considered. -The guidance is consistent with other health regulatory boards that accept evidence of clinical practice in the profession for which a license in Virginia is being sought (i.e. practice experience as a nurse cannot be counted as clinical practice in physical therapy for licensure by endorsement).

## Board of Counseling

### Approved Degrees in Human Services and Related Fields for QMHP Registration

Regulations for the Virginia Board of Counseling provide in 18VAC115-80-40 that a person may qualify as a QMHP-A with a “master’s or bachelor’s degree in human services or a related field from an accredited college.” Section 18VAC115-80-50 provides that “a person may qualify as a QMHP-C with a “master’s or bachelor’s degree in human services or in special education from an accredited college.”

The Board defines “human services” as an area of study that focuses on the mental health, biological, psychological, behavioral, and social aspects of human welfare with emphasis on the direct services designed to improve it. The Board recognizes the following degrees as “human services or related fields:”

Art Therapy  
Behavioral Sciences  
Child Development  
Child and Family Studies/Services  
Cognitive Sciences  
Community Mental Health  
Counseling (Mental health, Vocational, Pastoral, etc.)  
Counselor Education  
Early Childhood Development  
Education (with a focus in psychology and/or special education)  
Educational Psychology  
[Elementary Education](#)  
Family Development/Relations  
Gerontology  
Health and Human Services  
Human Development  
Human Services  
Marriage and Family Therapy  
Music Therapy  
Nursing  
Psychiatric Rehabilitation  
Psychology  
Rehabilitation Counseling  
School Counseling  
Social Work  
Special Education  
Therapeutic Recreation  
Vocational Rehabilitation

## Virginia Board of Counseling

### CONFIDENTIAL CONSENT AGREEMENTS

The Code of Virginia (§ 54.1-2400) authorizes the health regulatory boards to resolve certain allegations of practitioner misconduct by means of a *Confidential Consent Agreement* (“CCA”). This agreement may be used by a board in lieu of public discipline, but only in cases involving minor misconduct and non-practice related infractions, where there is little or no injury to a patient or the public, and little likelihood of repetition by the practitioner.

A CCA shall not be used if the board determines there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients, or (ii) conducted his/her practice in a manner as to be a danger to patients or the public.

A CCA shall be considered neither a notice nor an order of a health regulatory board, both of which are public documents. The acceptance and content of a CCA shall not be disclosed by either the board or the practitioner who is the subject of the agreement.

A CCA may be offered and accepted any time prior to the issuance of a notice of informal conference by the board. By law, the agreement document must include findings of fact and may include an admission or a finding of a violation. The entry of a CCA in the past may be considered by a board in future disciplinary proceedings. A practitioner may only enter into only two confidential consent agreements involving a standard of care violation within a 10-year period. The practitioner shall receive public discipline for any subsequent violation within the 10-year period, unless the board finds there are sufficient facts and circumstances to rebut the presumption that such further disciplinary action should be made public.

The **Board of Counseling** has adopted the following list of violations of Regulation or Statute that may qualify for resolution by a Confidential Consent Agreement:

#### 1. Advertising

Example: A licensee or certificate holder using the title “Dr.” without specifying “Ph.D.,” “Ed.D.,” or such similar designation after his or her name.

#### 2. Continuing education

Example: Insufficient or improper coursework to meet the requirements. Confidential Consent Agreements will not, however, be used in instances where a licensee is found to have untruthfully reported compliance.

**3. Record keeping**

Example: To include such infractions as failure to record in a timely fashion; omission or inaccurate recording of dates, names, or times; and illegibility to the point of reasonably being unreadable.

**4. Inadvertent breach of confidentiality**

Example: Providing information about a client to another person without authorization, such as responding to, “what time is my wife’s appointment?” By acknowledging the appointment the licensee has verified that he or she is treating someone.

**5. Failure to report a known violation**

Example: A licensee working at an agency is “instructed” by a supervisor (non-licensee) not to report a violation. As a result, the licensee does not report the violation under fear of action from his or her employer.

**6. Fees and billing issues**

Example: The licensee charges more than originally agreed upon. This would also apply in situations of unintentionally billing for the wrong date(s).

**7. Posting of notice**

Example: A licensee, certificate holder or registrant fails to post client notification as required by § 54.1-3506.1.



## DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

DHP – MAILROOM

MAR 01 2022

February 22, 2022

Dr. Johnston Brendel, Ed.D, LPC, LMFT , Board Chair

Virginia Board of Counseling

Perimeter Center

9960 Maryland Drive, Suite 300

Henrico, Virginia 23233-1463

RECEIVED

MAR 01 2022

BEHAVIORAL  
SCIENCES

Dear Dr. Brendel,

My name is Mary "Nicki" Drotleff and I am the Chair for the Board of Professional Counselors and Therapists (BOPCT) in Maryland. I am a licensed Marriage and Family Therapist.

There is much interest on the part of the Board and Maryland MFTs to enter into a reciprocity agreement with both Virginia and District of Columbia. We believe that reciprocity is the best possible outcome for licensees, constituents, and consumers. I will send this letter to your Executive Director, Jaime Hoyle and the BOPCT Executive Director, Tony Torain.

Please let me know your availability to begin the dialogue to bring this to fruition for our respective jurisdictions. I can be reached by phone; 301-793-8528 or e-mail; [Nicki.drotleff@maryland.gov](mailto:Nicki.drotleff@maryland.gov).

I look forward to hearing from you soon.

Sincerely,

CC: Jaime Hoyle

Tony Torain