

## EXECUTIVE SUMMARY

In compliance with Executive Order Number Fifteen (94), the Board of Professional Counselors has conducted a comprehensive review of its regulations, entitled ***VR 560-01-03 Regulations Governing Substance Abuse Counselors***. The purpose of the regulation is to set forth qualifications for certification and standards of practice required of certified substance abuse counselors in the Commonwealth. There are approximately 690 individuals currently certified as substance abuse counselors (CSAC's) and approximately 200 applicants per year. Since certification is a voluntary program, there is no impact on local governments.

### ***Recent Regulatory Revisions - Biennial Review***

The Public Participation Guidelines of the Board of Professional Counselors require a comprehensive review of its regulations each biennium. Accordingly, the Board published a Notice of Intended Regulatory Action on November 16, 1992. During the following year, the Board and its staff, working with advisors and the Office of the Attorney General, reviewed VR 560-01-03 (Regulations Governing the Certification of Substance Abuse Counselors) for statutory authority, necessity and cost of examination and certification renewal.

Proposed amendments to regulations were published on September 20, 1993 and a public hearing held on December 17, 1993. Written comments were accepted until February 13, 1994. The Board considered the comments received, and recommended reducing the renewal fees and privatizing examination development, administration and fee collection. The Board implemented reduced renewal fees and adopted regulations which provided that examination fees be paid directly to the examination services vendor. Revised regulations became effective May 4, 1994.

Simultaneously, the Board implemented the formation of a 10 member Task Force on Substance Abuse Regulation to perform an in-depth study of the education and experience requirements adopted in 1988. This Task Force was composed of professionals representing various employment settings and associations.

The Task Force first met on September 16, 1992, held approximately 10 meetings, and presented recommendations for education requirements, supervision requirements and standards of practice to the Board of Professional Counselors following its December 20, 1993 meeting. On February 25, 1994, the Board accepted the recommendations of the Task Force, with some minor revisions, as proposed regulations.

In order to comply with Executive Order Number Fifteen, the Board suspended

promulgation of proposed regulations and proceeded with its review of VR 560-01-03.

***Public Comment on Review***

The Plan for Regulatory Review was approved by the Secretary of Health and Human Resources in August of 1994. The Board then submitted to the Registrar for publication on October 3, 1994, a Notice of Regulatory Review with public comment requested by written submission to the Board until December 15, 1994 or by a Public Hearing held on December 2, 1994. Notices for the hearing were published in the Register and sent to all interested parties on a Public Participation Guidelines Mailing List maintained by the Board.

Comments are summarized as follows:

- (1) The Board was requested to increase minimum educational requirements and to upgrade certification standards to assure greater public and consumer safety.
- (2) The Board was urged to support either mandatory certification for substance abuse counselors in the public sector or legislation to provide for licensure of substance abuse counselors.
- (3) The Department of Youth and Family Services has initiated a program to have its substance abuse counselors certified to ensure that they have the knowledge, skills and abilities to provide sound substance abuse counseling services.
- (4) A speaker from Southwestern Virginia addressed the difficulty of finding appropriate supervision for substance abuse counselor trainees in that region, because the rural community service Boards cannot compete with the more affluent regions for qualified personnel.
- (5) Several comments received recommended requiring the bachelor's degree in human services as a baseline for the educational requirement with 550 hours of substance abuse-specific education.

In summary, all public comments supported increasing educational requirements for persons charged with providing competent mental health care services to persons with substance abuse disorders.

***Recommendations***

VR 560-01-03: Regulations Governing the Certification of Substance Abuse Counselors) was thoroughly reviewed and analyzed by the Board of Professional Counselors and by a Task Force of professionals appointed by the Board. A public hearing was held on December 2, 1994 and public comment received until December 15, 1994. As a result of the review and in response to comments received, the Board recommends the following:

1. That VR 560-01-03 be continued with amendments.
2. That clarifications be made in definitions, general requirements for certification, and standards of conduct.
3. That regulations which are unnecessary, duplicative of statute, or conflicting with federal law (ADA) be eliminated.
4. That a section be added to define and specify limitations of practice of the CSAC.
5. That educationl requirements for certification be strengthened.
6. That endorsement criteria include a nationally recognized certification.
7. That language prohibiting discrimination against a client based on race, religion, age, sex, or disability be included.
8. That a provision to allow the Board to request evidence of continuing education as demonstration of competency in a particular area be added.

## INTRODUCTION OF REVIEW

In compliance with Executive Order Number Fifteen (94), the Board of Professional Counselors has conducted a comprehensive review of its regulations, entitled ***VR 560-01-03 Regulations Governing Substance Abuse Counselors***.

The **Plan for Regulatory Review** was submitted to the Secretary of Health and Human Resources and approved by August 15, 1994. The Board then submitted to the Registrar for publication on October 3, 1994, a Notice of Regulatory Review for the regulation noted above. Public comment was requested by written submission to the Board until December 15, 1994 or by a Public Hearing held on December 2, 1994. Notices for the hearing were published in the Register and sent to all interested parties on a Public Participation Guidelines Mailing List maintained by the Board.

The **purpose of the review** of each regulation, as published in the Register was to ensure the following: (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable.

The **purpose of VR 560-01-03: Regulations Governing Substance Abuse Counselors** is to set forth the qualifications for certification and the standards of practice required of certified substance abuse counselors in the Commonwealth.

### **Recent Regulatory Revisions - Biennial Review**

The Public Participation Guidelines of the Board of Professional Counselors require a comprehensive review of its regulations each biennium. Accordingly, the Board published a Notice of Intended Regulatory Action on November 16, 1992. During the following year, the Board and its staff, working with advisors and the Office of the Attorney General, reviewed VR 560-01-03 (Regulations Governing the Certification of Substance Abuse Counselors) for statutory authority, necessity and cost of examination and certification renewal.

Proposed amendments to regulations were published on September 20, 1993 and a public hearing held on December 17, 1993. Written comments were accepted until February 13, 1994. The Board considered the comments received, and recommended

reducing the renewal fees and privatizing examination development, administration and fee collection. The Board implemented reduced renewal fees, and adopted regulations which provided that examination fees be paid directly to the examination services vendor. These regulations became effective May 4, 1994.

Simultaneously, the Board implemented the formation of a 10 member Task Force on Substance Abuse Regulation to perform an in-depth study of the education and experience requirements adopted in 1988. This Task Force was composed of professionals representing various employment settings and associations. The Task Force was chaired by a certified substance abuse counselor from the Board of Professional Counselors, and included two other Board members with substance abuse counseling expertise, a professor from Virginia Commonwealth University's Alcohol and Drug Education Rehabilitation program, the Director of Substance Abuse Service from the Department of Youth and Family Services, and representatives from the Mental Health, Mental Retardation and Substance Abuse Department, the Substance Abuse Certification Alliance of Virginia, the Virginia Association of Clinical Counselors, the Virginia School Counselors Association, and the Virginia Association of Alcohol and Drug Abuse Counselors.

The Task Force first met on September 16, 1992, held approximately 10 meetings, and presented recommendations for education requirements, supervision requirements and standards of practice to the Board of Professional Counselors following its December 20, 1993 meeting. On February 25, 1994, the Board adopted the recommendations of the Task Force as proposed regulations, with some minor revisions.

A Notice of Intended Regulatory Action was published on May 16, 1994. At its September 16, 1994 meeting, the Board began the review of its regulations in compliance with Executive Order Number Fifteen and voted to include most of the Task Force's recommended amendments. The Board is scheduled to complete a review of these regulations and respond to public comments by March 31, 1995.

### **Entities Affected by the Regulations**

There are approximately 690 individuals currently certified as substance abuse counselors (CSAC's) and approximately 200 applicants per year. Since certification is a voluntary program, there is no impact on local governments.

## **SUMMARY OF PUBLIC COMMENT**

Pursuant to Executive Order Number Fifteen, a Notice of Meeting was published in Register and mailed to individuals on the Board's public participation mailing list inviting comment at a Public Hearing held December 2, 1994. The verbal comments are summarized as follows:

- (1) The Substance Abuse Counselors Alliance of Virginia (SACAVA) welcomed the Board's proposals to increase minimum educational requirements and to recognize national credentials. Upgrading the certification standards will assure greater public and consumer safety and will elevate the professional standing of the CSAC. Many other states are increasing their certification standards for substance abuse counselors.
- (2) One speaker who had served on the Task Force that reviewed regulations urged the Board to support either mandatory certification for substance abuse counselors in the public sector or legislation to provide for licensure of substance abuse counselors. It was noted that there are over 1800 counselors in the exempt public sector who are not credentialed.
- (3) The Department of Youth and Family Services now has 32 substance abuse programs to respond to identified substance abuse problems of incarcerated youth in state facilities. The agency has initiated a program to have its substance abuse counselors certified to ensure that they have the knowledge, skills and abilities to provide sound substance abuse counseling services.
- (4) One speaker expressed disappointment that oral examinations are no longer required, and urged the Board to strengthen requirements for certification. In addition, the speaker supported mandatory certification for substance abuse counselors in the public sector.
- (5) A speaker from southwestern Virginia addressed the difficulty of finding appropriate supervision for substance abuse counselor trainees in that region, because the rural community service Boards cannot compete with the more affluent regions for qualified personnel.

In addition, the public was given sixty days in which to submit written comment on the regulations. One comment was received recommending the bachelor's degree in human services as a baseline for the educational requirement, including 550 hours of substance abuse-specific education.

In summary, all public comments supported increasing educational requirements for

persons charged with providing competent mental health care services to persons with substance abuse disorders.

At the request of the Agency Regulatory Coordinator, the regulations were also reviewed by members of the staff of the Department of Health Professions. Those comments, which were primarily for additional clarity and the elimination of duplicative regulation, were considered and included in the recommended changes.

### **BOARD RESPONSE TO COMMENT**

## ANALYSIS OF THE REGULATIONS

### STATUTORY MANDATE FOR THE REGULATION

**VR 560-01-03 Regulations Governing The Certification of Substance Abuse Counselors** was promulgated under the general authority of Title 54.1, Chapter 24 and Chapter 35 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To take appropriate disciplinary action for violations of applicable law and regulations.*
9. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

Chapter 35, Article 1. establishes the Board of Professional Counselors and sets forth the specific powers and duties of the Board.

**§ 54.1-3503. Board of Professional Counselors.**--*The Board of Professional Counselors shall regulate the practice of counseling.*

*The Board shall consist of nine members, seven of whom shall be professional counselors licensed in Virginia, who shall represent the various specialties recognized in the profession. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling in an accredited college or university in this Commonwealth, two counselors engaged in full-time private practice and one certified substance abuse counselor. In addition, two citizen members shall be appointed to the Board. The terms of the members of the Board shall be four years.*

**§ 54.1-3504. Nominations.**--*Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Counselors Association and the Virginia Mental Health Counselors Association. The Governor may notify such organizations of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.*

**§ 54.1-3505. Specific powers and duties of the Board.**--*In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:*

1. *To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
3. *To designate specialties within the profession.*

**Part I.** establishes the definitions and fees as required for these regulations. The statutory mandate to levy fees sufficient to cover expenses of the Board is found in § 54.1-2400 (5)

and in:

*§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

**Part II.** establishes certification requirements to include the prerequisites for examination, educational and experience requirements, and documentation of supervision. The statutory mandate for a certification program is found in the definitions in Chapter 35, which establishes the Board of Professional Counselors and again in § 54.1-2400.1:

*§ 54.1-3500. Definitions.--As used in this chapter, unless the context requires a different meaning:*

*"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.*

**§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.**

A. *As used in this section:*

*"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility."*

Specific requirements for certification are not mandated; however, the Board has statutory authority for additional requirements from the following section of the Code:

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

**Part III.** establishes the requirement of an examination to determine the qualification of an applicant for certification. Statutory authority for examinations is in § 54.1-2400 (2). (See above)

**Part IV.** establishes the requirements renewal and reinstatement of certification as authorized by § 54.1-2400 (4). (See above)

**Part V.** establishes the standards of practice for certificate holders and sets forth grounds

for disciplinary actions by the Board, as authorized by § 54.1-2400 (7) and (8).

## **REASONS THE REGULATION IS ESSENTIAL**

**VR 560-01-03** is essential in order to provide the regulatory framework for certification of substance abuse counselors, as defined in § 54.1-3500. Through regulation, minimum qualifications and standards of practice give assurance to the patient and to the public that the individual delivering counseling services has the necessary training, knowledge, and ethical behavior.

Because of the exemptions from requirements of licensure allowed in Chapter 35, it is estimated that most practitioners of substance abuse counseling do not have certification. For instances, the Department of Mental Health, Mental Retardation, and Substance Abuse Services does not require certification for its counselors. Consequently, there is no uniform definition or criteria for a "qualified" counselor. Certification is voluntary, but VR 560-01-03 provides a standard for minimal competency and practice; and many in the public sector are now seeking certification as evidence of qualification.

**Part I. of VR 560-01-03** establishes the definitions and fees as required for these regulations.

- (1) With the exception of "certified substance abuse counselor" which is found in Code, the definitions in Part I are not essential but are considered to be reasonable for understanding of and compliance with these regulations.
- (2) The Board does have a statutory mandate to levy fees which are both reasonable and sufficient to cover the expenses of the regulatory program. Its regulation establishing fees are therefore essential.

**Part II.** establishes certification requirements to include the prerequisites for examination, educational and experience requirements, and documentation of supervision.

- (1) Specific requirements for certification are not mandated; however, the Board has statutory authority to set forth those requirements necessary to protect the public by assuring that a practitioner who holds himself out as "certified" has the minimum qualifications.
- (2) Educational and experience are necessary criteria to demonstrate that the applicant for certification has the knowledge, understanding, and background to

deliver competent services.

(3) Requirements in Part II are intended to assure that certificate holders have the entry-level competencies necessary for practice and are intended to protect the public from the incompetent and uneducated practitioner.

(4) In public comments received and in the report from the 10-member Task Force that reviewed regulations, current educational requirements in Part II are considered substandard for adequate protection of the public. They are not sufficient to ensure that CSAC's have the knowledge and skills to provide counseling services without a risk of harm.

**Part III.** establishes the requirement of an examination to determine the qualification of an applicant for certification.

(1) Testing is a necessary barrier to certification or licensure in order to provide a base for minimal competency and knowledge.

(2) Criteria for an examination are based on the major areas of responsibility in substance abuse counseling and the tasks that must be performed within each. Tasks that are critical to performance are tested. The determination of critical tasks is made by an assessment of the consequence of improper performance. In other words, "What harm will occur if the counselor cannot perform this task adequately?"

**Part IV.** establishes the requirements renewal and reinstatement of certification.

(1) Renewal is a necessary function of the Board in order to maintain current records on certificate holders.

(2) Additional requirements for reinstatement of a certificate which has been lapsed for more than four years are necessary to give evidence that the CSAC currently possesses a minimal level of skill and knowledge to adequately perform required tasks.

(3) Regulations setting forth requirements for notification of name change are not essential or necessary, since § 54.1-111. requires a certificate holders to provide accurate information on an application. It is recommended that the regulation be eliminated.

**Part V.** establishes the standards of practice for certificate holders and sets forth grounds

for disciplinary actions by the Board.

(1) In addition to unlawful acts set forth in § 54.1-111., the regulations establish the standards of practice considered to be essential for protection of the public from unethical or negligent practice. Those standards are minimal expectations for ethical practice in the profession, which have developed through case history of actual or potential harm to clients.

(2) As a sub-specialty of professional counseling, the certified substance abuse counselor is held to the same standard of conduct as the license professional counselor; so Part V of these regulations is virtually identical to those regulations.

## ALTERNATIVES TO REGULATIONS

The Board considered the following alternatives for achieving the essential purpose of the regulations the delivery of competent mental health services to persons diagnosed as having substance abuse problems or addictions:

- I. Continue the administration of CSAC's under the existing regulation without amendments:

Advantage: There would be no need to promulgate new regulations, and agency money and staff time would be saved.

Disadvantages:

(a) The in-depth study of the regulations by the Task Force revealed that the current requirements are substandard in the ever-changing field of addictions counseling, and do not provide sufficient protection to the client and family members who are depending on competent services by appropriately educated and trained substance abuse counselors.

(b) There is a need for clarification of the standards of practice and the education and experience requirements in these regulations.

- II. Amend the regulations as suggested by the Task Force on Substance Abuse Regulation, which noted that the current regulations are substandard and contain less than the minimal education necessary to assure delivery of competent services.

The Task Force concluded that the minimal educational standards necessary to provide public protection would include a bachelors degree in human services with 550 hours of didactic training in substance abuse education. Additional recommendations are to accept endorsement by national certifying bodies, clarify the experience requirements and standards of practice, and eliminate unnecessary name-change fees.

Proceeding with regulatory review would provide an opportunity for the Board to adopt the regulations necessary to make safe substance abuse counseling services available to the public.

- III. Eliminate Board regulations on education, experience, and examination as

prerequisites for certification and accept credentialing by SACAVA, the Virginia affiliate Board of the International Certification Consortium for Alcohol and Other Drug Abuse, as a standard for certification through endorsement. The Board would continue to provide regulations related to renewal, reinstatement and standards of practice as necessary to assure the continued professional and ethical practice of those holding certification.

Advantage:

(a) This would facilitate the application process and reduce the staff time devoted to review of applications for certification. It would also eliminate the requirement for taking and passing the current examination.

(b) Since SACAVA standards for certification are currently higher than those of the Board, option three would also elevate minimal standards of knowledge and competency in related tasks

Disadvantages:

(a) The current educational and experience requirements for SACAVA certification exceed the minimal requirements of the Board. SACAVA would have to develop another level of certification in order to include many individuals who could qualify for certification under current regulations.

(b) SACAVA's oral examination requirement would need to be eliminated to meet Code of Virginia requirements.

## **STATEMENT OF CLARITY**

The regulations have been reviewed by a Task Force of advisors and Board members, by the Board of Professional Counselors, by staff of the agency, and by the Assistant Attorney General who serves as Counsel to the Board for clarity and ease of understanding. Amendments have been suggested to eliminate some duplicative regulations, provide clarification, and correct editorial errors.

## **EFFECTIVENESS OF THE REGULATION**

Total number of certified substance abuse counselors: 690.

Total number of individuals registering for supervision each year: 200 (approximate).

Although discipline complaints registered against substance abuse counselors are relatively few; the nature of the complaints are usually serious, involving of sexual abuse, breach of confidentiality, and incompetent practice.

**STATEMENT OF STATUTORY AUTHORITY FOR THE REGULATION BY THE  
OFFICE OF THE ATTORNEY GENERAL (See attached)**

## RECOMMENDATIONS

VR 560-01-03 (Regulations Governing the Certification of Substance Abuse Counselors) was thoroughly reviewed and analyzed in 1992-93 by a ten (10) member Task Force appointed by the Chair of the Board of Professional Counselors. The Task Force's recommendations for amendments to the regulations were subsequently presented to the Board on February 24, 1994. This review was conducted in compliance with the Public Participation Guidelines of the Board of Professional Counselors which requires a comprehensive review of its regulations each biennium. As a result of the work of the Task Force, a public hearing held on December 2, 1994 and a period of public comment ending December 15, 1994 the board recommends the following:

1. That VR 560-01-03 be continued with amendments.
2. That § 1.1. include a definition of "experiential learning".
3. A deletion of the name-change fee from § 1.3.
4. That § 1.4. define and specify limitations of practice of the CSAC.
5. That § 2.1. be clarified, and references to character and professional integrity be deleted.
6. That § 2.1.5.G. (endorsement criteria) include a nationally recognized certification.
7. That § 2.2. require an applicant to hold a bachelor's degree in social sciences with 2,000 hours of supervised experience, or a high school diploma with 4,000 hours of supervised experience.
8. That § 2.2 require a minimum of 550 course work hours specific to substance abuse.
9. That § 2.3 provide a broader range of acceptable supervision.
10. That § 2.4 be deleted as the language is unnecessary.
11. That § 2.5 be deleted in that it conflicts with the Americans with Disabilities Act.
12. That unnecessary language in § 3.1 related to examination procedures be deleted, as examination services have been privatized.

13. That § 3.1 include a requirement that any candidate who has failed two consecutive examinations be required to reapply.
14. That language in § 4.3 relating to name change be deleted.
15. That § 5.1.A. be deleted in that this language is already included in other sections of the regulations and the Code of Virginia.
16. That § 5.1.B. include a provision to allow the Board to request evidence of continuing education as demonstration of competency in a particular area.
17. That standards related to disclosure of counseling records in § 5.1.B. be strengthened.
18. That standards related to dual relationships in § 5.1.B. be clarified.
19. That § 5.1.B. include language prohibiting discrimination against a client based on race, religion, age, sex, disability, etc.