

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

DEPARTMENT OF HEALTH PROFESSIONS

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS

18 VAC 115-60-10 et seq. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners

ITEM 1: LEGAL AUTHORITY FOR THE REGULATION

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

§ 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) 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 appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
 - 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
 - 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
 - 11. 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. 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.*
 - 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

§54.1-3500 establishes the title of *licensed substance abuse treatment practitioner*, and defines the practice of *substance abuse treatment*.

§ 54.1-3500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

"Board" means the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals.

"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.

"Counseling" means the therapeutic process of: (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses which interfere with mental health.

"Counseling treatment intervention" means those cognitive, affective, behavioral and systemic counseling strategies, techniques and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Marriage and family therapist" means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.

"Marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, which shall include appraisal, counseling, and referral activities.

"Practice of marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.

"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.

"Professional counselor" means a person trained in counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.

"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.

§ 54.1-3503 establishes the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and authorizes the board to regulate the practice of substance abuse treatment.

§ 54.1-3503. Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals.

The Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.

The terms of the members of the Board shall be four years.

§ 54.1-3505 mandates that the board promulgate regulations for the qualifications, education and experience for substance abuse treatment practitioner licensure.

§ 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.*

4. *To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*

5. *(Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.*

6. *To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*

7. ***To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors.***

§ 54.1-3506 establishes the licensure requirement to engage in the practice of substance abuse treatment.

§ 54.1-3506. License required.

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall

render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

§54.1-3507 sets forth the scope of practice for licensed substance abuse treatment practitioners and mandates completion of a master's degree with specified number of graduate hours including substance abuse education courses, and a specified number of hours of experience in substance abuse treatment.

§ 54.1-3507. Scope of practice of and qualifications for licensed substance abuse treatment practitioners

A. A licensed substance abuse treatment practitioner shall be qualified to (i) perform on an independent basis the substance abuse treatment functions of screening, intake, orientation, assessment, treatment planning, treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, recordkeeping, and consultation with other professionals; (ii) exercise independent professional judgment, based on observations and objective assessments of a client's behavior, to evaluate current functioning, to diagnose and select appropriate remedial treatment for identified problems, and to make appropriate referrals; and (iii) supervise, direct and instruct others who provide substance abuse treatment.

B. Pursuant to regulations adopted by the Board, an applicant for a license as a licensed substance abuse treatment practitioner shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of graduate studies, including a specified number of didactic substance abuse education courses at, and has received a master's degree in substance abuse or a substantially equivalent master's degree from, a college or university accredited by an accrediting agency recognized by the Board; and (ii) completed a specified number of hours of experience involving the practice of substance abuse treatment supervised by a licensed substance abuse treatment practitioner, or by another person with substantially equivalent education, training and experience. The applicant shall also pass an examination, as required by the Board.

54.1-3508 grants authority to the board to issue a license to a person who possesses qualifications, education or experience substantially equivalent to the requirements of §54.1-3507.

§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience. - Notwithstanding the provisions of § 54.1-3507, (i) the Board may issue a license as a licensed substance abuse treatment practitioner to a person who, after the effective date of the regulations promulgated pursuant to subdivision 7 of § 54.1-3505, has applied for such a license and who, in the judgment of the Board, possesses qualifications, education or experience substantially equivalent to the requirements of § 54.1-3507; however, any such applicant shall have completed at least one year of supervised clinical experience in substance abuse treatment,

and (ii) for a period of time to be determined by the Board but not less than one year after the effective date of the regulations, the Board shall issue such a license to any such person who, in the judgment of the Board, possesses qualifications, education or experience acceptable to the Board and has completed at least one year of supervised clinical experience in substance abuse treatment.

ITEM 2: POTENTIAL ISSUES TO BE ADDRESSED

During its development of the requirements for licensure of substance abuse treatment practitioners, much of the public comment the Board received addressed the interpretation of § 54.1-3508 which authorizes the board to issue a license to individuals with “substantially equivalent” qualifications, education, or experience to the requirements of § 54.1-3507. Some individuals felt strongly that the intent of the 1997 General Assembly was to provide for licensure of experienced certified substance abuse counselors, who may have no formal education beyond a high school diploma or G.E.D. Others argued that the General Assembly had clearly intended not to allow licensure for anyone with less than a master’s degree, based on previous rejection of a 1996 bill which proposed a three tiered licensure system for different levels of education. Representatives of the professional associations in substance abuse counseling admitted that their memberships were split on this issue.

When developing the new regulations which will take effect on January 19, 2000, the board attempted to develop criteria that would ensure competency for independent practice by individuals who do not hold master’s degrees. The members had two concerns with promulgating a permanent equivalency to a master’s degree. One concern was that it would diminish the integrity of the license by providing a path to licensure which eliminates the need for any applicant to work toward a master’s degree. The other concern was that an independent practitioner without a strong academic foundation in mental health counseling would not have the level of training necessary to competently manage substance abuse issues and identify coexisting psychological and emotional problems which are estimated to occur in 95% of substance abuse disorders. As an alternative, the Board considered developing a one year provision for licensure of individuals without master’s degrees, but was advised by counsel that statute did not authorize development of a time-limited licensure requirement. In an effort to provide resolution to the issue, the Virginia Association of Alcoholism and Drug Abuse Counselors supported legislation enacted by the 1999 General Assembly (Chapter 863) which amended § 54.1-3508 to mandate that the Board develop licensure requirements for a period of not less than one year to license individuals who do not meet the current requirements. The Board is now responding to that mandate.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

If the Board does not develop a time-limited provision for licensure of individuals who do not meet all of the licensure requirements, it will be out of compliance with the new legislative mandate. In the effort to develop requirements, the Board has taken into consideration the kinds of education and experience that will protect the public health and safety by conferring competency for independent practice, which includes the ability identify psychological and emotional problems which coexist with the substance abuse, and appropriately refer clients for treatment of these problems. A considerable amount of public comment received during development of the new regulations addressed the fact that formal educational opportunities in this emerging profession have been scarce, and many of the most highly skilled counselors gained their knowledge from a combination of courses, workshops, seminars and independent study. In an effort to be inclusive of professionals who have obtained their training from a wide variety of sources, the Board developed combinations of education and experience which it feels provide equivalent training for competent independent practice.

ITEM 4: ALTERNATIVES TO REGULATION

The Board considered proposals submitted over the past year by professional associations for substantially equivalent requirements for licensure (attached). The Board took these proposals in to consideration, and plans to promulgate three time-limited provisions for licensure. For each option, the applicant must hold a current certification as a substance abuse counselor, achieve a passing score on a Board-approved exam, and present three comprehensive reports attesting to competency to practice autonomously

	Option I (One year window)	Option II (Three year window)	Option III (One year window)
Education	Masters degree with 40 graduate hours in human services	Bachelor's degree with 21 graduate hours in human services	
Post-Certification Experience in substance abuse treatment	Five years	Ten years	Twenty years
Supervisory experience			Five years

The third option, which does not require an advanced degree is restricted to individuals who have been working as certified substance abuse counselors for at least twenty years, and who have supervised other substance abuse counselors for at least five years. The Board proposes allowing more time for the second option to allow more time for certified substance abuse counselors who are pursuing a bachelor's degree to obtain the required hours of coursework.