

CHAPTER 43-47 COUNSELORS

43-47-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of counselor examiners.
2. "Counseling" means the application of human development and mental health principles in a therapeutic process and professional relationship to assist individuals, couples, families, and groups in achieving more effective emotional, mental, marital, family, and social or educational development and adjustment. The goals of professional counseling are to:
 - a. Facilitate human development and adjustment throughout the lifespan;
 - b. Prevent, assess, and treat emotional, mental, or behavioral disorder and distress which interferes with mental health;
 - c. Conduct assessments for the purpose of establishing treatment goals and objectives; and
 - d. Plan, implement, and evaluate treatment plans using professional counseling strategies and interventions.
3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.
4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.
5. "Licensed professional counselor" means a person who is trained in counseling or a related human service field and has been granted a professional counselor license by the board.

43-47-02. Board of counselor examiners - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the board of counselor examiners which consists of five members, including two practicing counselors, one counselor educator, and two members of the public.
2. Members of the board are appointed for terms of three years, except of those first appointed, one must be appointed for a term of one year, two must be appointed for terms of two years, and two must be appointed for terms of three years. Each member holds office until the member's successor is duly appointed. The governor may remove any member for misconduct, incompetency, or neglect of duty after providing the member with a written statement of the charges and an opportunity for a hearing.
3. The board shall annually select a chairman from among its members. The board shall meet at least twice a year. Additional meetings may be held at the discretion of the chairman or upon written request of any three members of the board.
4. Each member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.

43-47-03. Duties and responsibilities of board.

In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Publish an annual list of the names and addresses of all persons licensed under this chapter.
2. Approve and administer an examination for counselors.
3. Set, by rule, and collect a fee for the filing of each application for a license under this chapter and set, by rule, and collect a fee for the renewal of a license under this chapter.
4. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.

5. Establish continuing education requirements for license renewal.
6. Issue provisional or probationary licenses.
7. Establish a code of ethics for the practice of counseling.

43-47-03.1. Authority to appoint or employ.

The board may appoint or employ persons to assist the board in carrying out its duties under this chapter.

43-47-04. Representation to the public.

Only persons licensed under this chapter may use the title "professional counselor" or "associate professional counselor", or the abbreviations "LPC" or "LAPC". The license issued by the board must be prominently displayed at the principal place of business of the counselor.

43-47-05. Counseling practice - Exceptions.

1. This chapter does not prevent any person licensed by the state from doing work within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a professional counselor or associate professional counselor.
2. This chapter does not apply to the activities, services, or use of an official title on the part of a person employed as a counselor by any federal, state, or local political subdivision or by a private or public educational institution, if the person is performing counseling within the scope of employment.
3. This chapter does not prevent students or trainees who are enrolled in programs leading to counseling degrees from interning within the limitations set by the rules adopted by the board under chapter 28-32.
4. This chapter does not prevent a licensed attorney from providing services within the scope of the practice of law.
5. This chapter does not prevent a member of the clergy of any religious denomination from providing services within the scope of ministerial duties.
6. This chapter does not prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations if these persons do not hold themselves out to the public as professional counselors or associate professional counselors.

43-47-06. Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, a person may not engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Provided personal and professional recommendations that meet the requirements adopted by the board and satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor or licensed psychologist, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be

- registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
- d. Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
 - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
 - a. Has a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Provided personal and professional recommendations that meet the requirements adopted by the board and satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
 - c. Provided a written plan for supervised experience which meets the requirements adopted by the board.
 4. The board may waive the formal examination requirements for a professional counselor license if the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar to or greater than those set by the board.
 5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
 6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may not be extended beyond two years, except upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

43-47-06.1. Board may establish specialty licenses.

The board may provide a counselor specialty license to any licensed professional counselor who meets the standards established by the board for that particular specialty. The board shall adopt standards for specialty licenses equal to or greater than those established by the national board of certified counselors, which governs the standards for particular specialties. The board may not create a specialty license for which the scope of practice is defined under any other chapter in this title.

43-47-06.2. Payment of delinquent license fees - Reinstatement.

A person who has been licensed under this chapter, and whose license has not been renewed because of the failure to pay the annual license fee, must be reinstated and the license renewed if within one year from the date of nonrenewal the person pays to the secretary of the board the amount of the annual license fee in default and a late fee to be determined by rule of the board.

43-47-06.3. Criminal history record checks.

The board shall require an applicant for licensure under subsections 2, 3, and 4 of section 43-47-06 and section 43-47-06.1 to submit to a statewide and nationwide criminal history record check and may require a licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner

provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

43-47-07. Disciplinary proceedings.

The board may deny, refuse to renew, suspend, or revoke any license issued under this chapter upon finding by a preponderance of the evidence that the applicant or licensee:

1. Has been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to practice counseling and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1;
2. Has been grossly negligent in the practice of counseling and has injured a client or other person to whom the individual owed a duty; or
3. Has violated any rule of the board.

43-47-07.1. Costs of prosecution - Disciplinary proceedings.

The board may impose a fee against any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

43-47-08. Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant.
2. A counselor who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.
3. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including patient records, and copy, photograph, or take samples. It may require the counselor to give statements under oath, submit to a physical or psychological examination, or both, by a physician or physicians or other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written request from the board constitutes authorization to release information. Patient records that are released to the board are not public records.
4. After review of the complaint, the counselor's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines that there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall so notify the complaining party and the counselor in writing.
5. Unless there is a patient release on file allowing the release of information at the public hearing, patient records acquired by the board in its investigation are confidential and closed to the public. All portions of board meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

43-47-09. Confidentiality.

Except as authorized by law, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

43-47-10. Penalty.

Any person who violates this chapter is guilty of a class B misdemeanor.