

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL -5 P 3:34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV State Board of Examiners for Licensed Practical Nurses TITLE NUMBER: 10

CITE AUTHORITY: WV Code 30-7A-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Policies Regulating Licensure of the Licensed
Practical Nurse

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

#5.60

WEST VIRGINIA
STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES

LANETTE L. ANDERSON, R.N., B.S.N., J.D.
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July 5, 2005

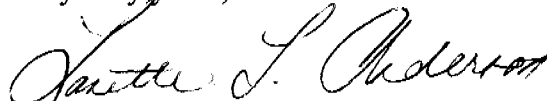
Ms. Judy Cooper
Administrative Law Division
Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Dear Ms. Cooper:

Enclosed please find the appropriate documentation required for Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee pursuant to the process of Legislative Rule-Making. The West Virginia State Board of Examiners for Licensed Practical Nurses approved said Rules during its regularly scheduled meeting on June 15, 2005.

If any problems exist with what is submitted herein, please advise. Your assistance in this matter is appreciated.

Very truly yours,


Lanette L. Anderson, R.N., B.S.N., J.D.
Executive Director

LLA/a

Enclosures:

WEST VIRGINIA
STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES

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July 5, 2005


Legislative Rule Making Review Committee
Building 1 Suite 152
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

To All Interested Persons:

Enclosed please find the appropriate documentation required for filing an agency approved rule pursuant to the process of Legislative Rule-Making. The West Virginia State Board of Examiners for Licensed Practical Nurses approved said Rules during its regularly scheduled meeting on June 15, 2005. The Comment Period for these Rules ended on April 13, 2005 with one comment received; said comment is attached.

If any problems exist with what is submitted herein, please advise. Your assistance in this matter is appreciated.

Very truly yours,


Lanette L. Anderson, R.N., B.S.N., J.D.
Executive Director

LLA/a

Enclosures:

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 5, 2005

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Lanette L. Anderson, Executive Director

WV State Board of Examiners for LPNs

101 Dee Drive, Suite 100 Charleston, WV 25311

(304) 558-3572 Fax (304) 558-4367 Email landerson@state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF
EXAMINERS FOR LICENSED PRACTICAL NURSES

SERIES 2 - POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE

SUMMARY OF PROPOSAL

Proposed changes to this Rule are primarily editorial in nature. The exceptions are the statements which relate to licensure of foreign-educated nurses, procedures for licensure endorsement to another state, and the requirement for direct qualified supervision of a graduate practical nurse until he/she passes the national licensure examination.

TITLE 10
LEGISLATIVE RULES
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SERIES 2 - POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

The West Virginia LPN Board, like other regulatory agencies in other states, has noted an increase in the number of applicants from nursing schools located outside the United States. This may be due in part to the nursing shortage here in this country. A review of Rules from other state boards of nursing, as well as literature from the National Council of State Boards of Nursing (NCSBN), has indicated that it is the standard among these boards to address the foreign-educated nurse, especially with regards to English competency. Other proposed changes to the Rule address the change in verification of licensure due to the Board's participation in the NURSIS licensure data base maintained by NCSBN. In addition, direct qualified supervision is proposed for graduate practical nurses practicing on temporary permits prior to passing the national licensure examination. Clarification of grounds for disciplinary action based upon cases reported to the Board office is also proposed.

Rule Title: Policies Regulating Licensure of the Licensed Practical Nurse

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Proposed revised Rules only address licensure issues regarding licensed practical nurses.

Date: July 5, 2005

Signature of Agency Head or Authorized Representative

Janette J. Anderson

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Policies Regulating Licensure of the Licensed Practical Nurse

Type of Rule: Legislative Interpretive Procedural

Agency: WV State Board of Examiners for Licensed Practical Nurses

Address: 101 Dee Drive, Suite 100
Charleston, WV 25311

Phone Number: (304) 558-3572 Email: lpnboard@state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact on state government costs or revenue.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF
EXAMINERS FOR LICENSED PRACTICAL NURSES
SERIES 2
POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE

2005 JUL -5 P 3: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§10-2-1. General.**

1.1. Scope. -- This legislative rule establishes the Policies Regulating Licensure of the Licensed Practical Nurse.

1.2. Authority. -- WV Code §30-7A-5

1.3. Filing Date. --

1.4. Effective Date. --

§10-2-2. Qualifications for Licensure

2.1. Any person who wishes to obtain a license to practice practical nursing shall submit to the board satisfactory evidence that he or she:

2.1.a. is of good moral character;

2.1.b. has at least a tenth grade education or its equivalent;

2.1.c. completed a course of study in an accredited program of practical nursing as defined by the board, in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, 10 CSR 1, and hold a diploma from the program.

2.1.d. completed any other general education requirements prescribed by the board.

2.2. Any person who served on active duty in the medical corps of any of the Armed Forces of the United States for at least one (1) year within the three (3) year period immediately preceding the date of application, shall submit satisfactory evidence that he or she:

2.2.a. successfully completed the course of instruction required to qualify him or her for rating as a medical specialist advanced, medical service technician, advanced hospital corpsman, medical service specialist, Class "A" hospital corpsman, or other equivalent rating in his or her branch of the armed forces; and

2.2.b. received an "honorable" discharge.

2.3. Any person who was educated in a nursing program in a country located outside of the United States or its territories must meet the following requirements for licensure:

2.3.a. satisfactory completion of a basic nursing education program approved by the appropriate authorities in the country where the program is located.

2.3.a.1. The nursing education program must be equivalent to the minimum standards prevailing for state board approved schools of practical nursing in West Virginia at the time of graduation.

2.3.a.2. Any deficiencies in the nursing program (theory and clinical practice) must be satisfactorily completed in a state board approved school of nursing.

2.3.b. satisfactory documentation of English language proficiency by one of the following methods:

2.3.b.1. submit evidence that the nursing education, text books, and majority of the clinical experience were in English; or

2.3.b.2. submit an original report showing a score of at least 530 for the written exam or 200 for the computer exam on the Test of English as a Foreign Language (TOEFL) plus a score of at least 50 on the Test of Spoken English (TSE); or,

2.3.b.3. submit an original report showing a score of at least 700 on the Test of English for International Communication (TOEIC) plus a score of at least 50 on the Test of Spoken English (TSE); or,

2.3.b.4. provide a VisaScreen certificate.

2.3.c. If duly licensed in another country, provide official verification, translated into English, from the licensing authorities in that country.

§10-2-3. Examination for Licensure

3.1. All applicants shall pass an a United States national licensure examination prior to licensure.

3.2. The board shall contract with the National Council of State Boards of Nursing, Inc. for use of the national licensure examination.

3.3. The board shall use the national passing standard established by the National Council of State Boards of Nursing, Inc. as the passing score for the licensure examination.

§10-2-4. Licensure by Examination

4.1. An applicant for licensure by examination shall obtain an application for examination from the board and return it to the board office with the fee required in, West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the licensure examination.

4.1.a. A graduate of an accredited program of practical nursing shall cause the program of practical nursing from which he or she graduated to send a copy of his or her official transcript directly to the board office.

4.1.b. A veteran shall submit to the board office a photostatic copy of the certificate issued to him or her upon completion of his or her course of instruction and a copy of his or her discharge from the armed forces and shall cause the Personnel Records Division of the Armed Forces to provide copies of training and discharge records directly to the Board office.

4.1.c. A graduate of a program of practical nursing located outside the United States or its territories must cause a complete transcript, translated into English, to be sent to the Board office directly from the nursing program .

4.2. Each applicant for licensure by examination is subject to a criminal history records check. Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records shall be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the applicant's state of residence, and the United State Federal Bureau of Investigation. An applicant is exempt from this requirement if a criminal history records check was conducted within the 24 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant.

4.3. An applicant for licensure by examination who is a graduate of an accredited program in practical nursing, may work under qualified the direct supervision of a registered professional nurse, licensed physician, or licensed dentist and render nursing services during the period between graduation and notification of the results of the first licensing examination following graduation upon issuance of a temporary permit from the board. The board shall issue a temporary permit, valid for up to ninety (90) days from the date of graduation, to cover the period of time between graduation and notification of the results of the first licensing examination. A candidate who does not pass the licensure examination on the first attempt shall return the temporary permit to the board office within three (3) days of receipt of the notice that he or she did not pass the examination. The board may not extend the temporary permit.

§10-2-5. Notification of Examination Results

5.1. The board shall notify, in writing, each applicant who has passed the licensure examination and shall send to the applicant a certificate of original licensure and a license to practice as a licensed practical nurse in West Virginia for the current year.

5.2. The board shall notify, in writing, each applicant who does not pass the licensure examination. The applicant shall not accept employment as a licensed practical nurse, except as provided for in subsection 4.3. of this rule, until he or she passes the licensure examination.

5.3. If the candidate authorizes release of examination results to the program, the board shall notify the program from which the candidate graduated that the candidate either passed or failed the licensure examination.

5.4. An applicant who does not pass the licensure examination for practical nurses and wishes to take the licensure examination for a second time shall notify the board office, in writing. The board fee for the second licensure examination is the same as for the first time applicant. The board does not charge a fee to take the examination for the third time. The board fee for successive licensure examinations is the same as for the first time applicant.

§10-2-6. Licensure by Waiver

6.1 The board shall not issue a license by waiver.

6.2. Any person who obtained a license by waiver prior to June 30, 1968, and completes extension courses equal in theory to that of a graduate of an approved practical nursing program, as determined by the Board, may take the licensure examination

prescribed by the Board for graduate practical nurses and obtain a license without the designation "Waiver" on the license.

§10-2-7. Licensure by Endorsement

7.1. The board shall issue a license by endorsement to any applicant who is duly licensed or registered as a practical nurse, or who is entitled to perform similar services under the same or a different title in any other state, territory or foreign country, if the applicant meets other requirements for licensed practical nurses in this state.

7.2. Each applicant for endorsement is subject to a criminal history records check. Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the applicant's state of residence, and the United States Federal Bureau of Investigation. An applicant is exempt from this requirement if a criminal history records check was conducted within the 12 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant.

7.3. An applicant for endorsement shall complete an endorsement application and submit the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the board, 10 CSR 4. The applicant for endorsement shall have the board of nursing in the state of original licensure send verification of original licensure to the board office. Upon receipt of the application for endorsement, the fee, and verification of current licensure in another state, the board may issue a letter of intent to endorse. The applicant for endorsement may use the letter of intent to endorse, in conjunction with a current license from another state, for employment as a licensed practical nurse in West Virginia for a maximum of six (6) months. The board shall not renew the letter of intent to endorse.

§10-2-8. Endorsement to Another State

The board shall provide verification of original licensure and verification of current licensure to another state upon receipt of a written request from the licensee, a request from a board of nursing in another state, and payment of the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses, Fees for Services Rendered by the Board, 10 CSR 4. Should the board participate in the NURSUS or similar licensure verification system as maintained by the National Council of State Boards of Nursing, the licensee will follow the process of endorsement to another state in accordance with the procedures set in place for that system.

§10-2-9. Annual Renewal of License

9.1. Each license issued by this board expires on June 30 of each year. In order to continue practicing a licensee shall renew his or her license annually.

9.1.a. The board shall renew the license of each licensee upon receipt of:

9.1.a.1. a completed application for renewal of the license;

9.1.a.2. a statement in each even numbered year from the renewal applicant that he or she meets the continuing competence requirements specified in West Virginia State Board

of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.1.a.3. the fee for renewal of a license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10CSR4.

9.2. A license for which a renewal application is postmarked after June 30 is lapsed.

9.2.a. The board may reinstate a lapsed license upon receipt of:

9.2.a.1. a completed application for reinstatement of the lapsed license;

9.2.a.2. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.2.a.3. the fee for reinstatement of a lapsed license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4.

9.3. Any person practicing practical nursing without a current license, valid temporary permit or current letter of intent to endorse is considered an illegal practitioner and is subject to the penalties provided for in WV Code §30-7A-10.

§10-2-10. Non-Practicing Status

Any person with a current West Virginia license may request non-practicing status. While on non-practicing status, the person may not be employed as a licensed practical nurse and is not subject to the payment of licensing fees. A person requesting non-practicing status is not subject to the continuing competence requirements in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6.

10.1 The board may reinstate a license from non-practicing status upon receipt of:

10.1.a. a completed application for reinstatement of the license from non-practicing status;

10.1.b. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

10.1.c. the fee for reinstatement of a license from non-practicing status as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4.

§10.2.11. Change of Name or Address, Duplicate License

11.1. A licensee shall notify the board of a change in his or her name or address.

11.2. A licensee may request a duplicate license if he or she changes his or her name or address. The board shall issue the duplicate license providing the current license is returned to the board office with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4. A copy of a

marriage certificate or divorce decree is required for a name change. There is no fee for name and address changes requested at the time a license is renewed or reinstated.

11.3. A licensee may request a duplicate license in the event of loss of the original license. The licensee shall complete an affidavit verifying loss and submit the affidavit to the Board with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the board issuing a duplicate license.

§10-2-12. Disciplinary Proceedings: Grounds for Discipline

12.1. The Board may take disciplinary action in accordance with Chapter 29A of the WV Code, upon satisfactory proof that an applicant for endorsement or examination, or a licensee:

12.1.a. is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing which includes:

12.1.a.1. falsely representing facts on an application for licensure by examination or licensure by endorsement or on an application for renewal or reinstatement of a license; or

12.1.a.2. having another person appear in his or her place or impersonating an applicant for examination, endorsement or renewal or reinstatement of a license;

12.1.b. has been convicted of a felony;

12.1.c. is habitually intemperate or is addicted to the use of habit-forming drugs;

12.1.d. is mentally incompetent;

12.1.e. is guilty of professional misconduct, which includes but is not limited to:

12.1.e.1. impersonated another licensed practitioner, or permitted another person to use his or her license for the purpose of nursing for compensation;

12.1.e.2. provided false or incorrect information to an employer regarding the status of a license;

12.1.e.3. practiced practical nursing in the State of West Virginia without a current West Virginia license, a valid temporary permit, or a letter of intent to endorse, except as provided in WV Code §30-7A-9;

12.1.e.4. failed to report through proper channels the incompetent, unethical, or illegal practice of another person who is providing health care.

12.1.e.5. practiced practical nursing with gross incompetence or gross negligence on a particular occasion, or incompetence or negligence on more than one occasion;

12.1.e.6. practiced practical nursing while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability;

12.1.e.7. was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state or territory where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct

under the laws of this state;

12.1.e.8. permitted, aided or abetted an unlicensed, uncertified, or registered person to perform activities requiring a license, certificate or registration;

12.1.e.9. practiced practical nursing while his or her license was suspended;

12.1.e.10. willfully failed to register or notify the Board of any changes of name or mailing address;

12.1.e.11. was convicted of a felony or a misdemeanor with substantial relationship to the practice of practical nursing in a court of competent jurisdiction;

12.1.e.12. failed to follow established policies and procedures in the practice setting to safeguard patient care;

12.1.e.13. abandoned patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;

12.1.e.14. committed an intentional act which could adversely affect the physical or psychological welfare of a patient;

12.1.e.15. physically or verbally abused, or failed to provide adequate protection or safety for an individual in the context of a nurse/patient relationship;

12.1.e.16. used the nurse/patient relationship to exploit or influence a patient;

12.1.e.17. refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board;

12.1.e.18. failed to exercise technical competence in carrying out nursing care;

12.1.e.19. misappropriated medications, supplies, or personal items of a patient or the employer;

12.1.e.20. self-administered, administered to another, knowingly participated in or permitted the administration of, any prescription drug without a legal, valid prescription, or the use or administration of any illegal drug;

12.1.e.21. falsified patient records, or intentionally charted incorrectly; or failed to document appropriately to maintain an accurate record for each patient;

12.1.e.22. knowingly falsified an application for employment;

12.1.e.23. failed to conform to standards of nursing practice as defined in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Legal Standards of Nursing Practice, 10 CSR 3;

12.1.e.24. knowingly provided false information regarding completion of continuing competency requirements for renewal, reinstatement or endorsement of a license;

12.1.e.25. failed to comply with terms and conditions imposed by the board based on previous disciplinary action of the board;

12.1.e.26. impeded or obstructed an investigation by the board by failing to comply or respond to requests for action or information, whether the failure is intentional or merely negligent; and

12.1.e.27. violated the confidentiality of information or knowledge concerning a patient; and,

12.1.e.278. other acts, which in the opinion of the board, constitute professional misconduct.

12.1.f. Practiced or attempted to practice without a license or continued violation of any of the provisions of WV Code §30-7A-1 et. seq.

§10-2-13. Complaint procedures

13.1. Any individual may make a complaint to the board concerning a licensee.

13.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.

13.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:

13.3.a. the alleged violation which prompted the complaint;

13.3.b. the name and address of the individual against whom the complaint is lodged;

13.3.c. the date or dates the incident or incidents occurred; and

13.3.d. the name or names of witnesses to the incident.

13.4. All complaints shall be referred to the Executive Secretary, Assistant Executive Secretary or Counsel for the Board, who shall act as a representative for the board.

13.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint.

13.6. The representative shall conduct an investigation to determine the validity of the allegations contained in the complaint.

13.7. The board shall issue subpoenas to gather necessary facts and evidence to determine the validity of the allegations contained in the complaint.

13.8. The board shall provide copies of complaint forms and other available evidence to the licensee against whom a complaint is filed. The licensee shall respond within fourteen (14) days of receipt of the complaint, to the allegations contained in the complaint by making an appointment with the staff representative to meet in person or by preparing a written statement and returning it to the board.

13.9. The representative for the board shall evaluate the complaint, licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation.

13.10. The representative for the board may recommend that a case be dismissed if probable cause for further action is

not identified. Cases recommended for dismissal due to lack of probable cause shall be referred to the Disciplinary Review Committee of the board established by the board under West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Open Meetings and Bylaws, 10 CSR 5, for review of the complaint and investigative information. The committee may approve dismissal of the case or direct the staff representative to proceed with further investigation if the committee believes further investigation is necessary.

13.11. The representative for the board may negotiate terms of a consent agreement, set forth in section 14 of this rule, with a licensee, if probable cause for disciplinary action is established.

13.12. The Disciplinary Review Committee shall review the terms of the consent agreement and all investigative information. The committee may approve the consent agreement, request revisions to the Consent Agreement or reject the consent agreement.

13.13. If the Disciplinary Review Committee rejects the consent agreement, the staff representative shall set the case for hearing.

13.14. If the licensee contests the allegations and refuses to enter into a consent agreement the representative shall set the case for hearing. All hearings shall be in accordance with the WV Code, Chapter 29A, Administrative Procedures Act.

13.15. Members of Disciplinary Review Committee shall be disqualified from the formal hearing process if the case has been presented to the committee for consideration prior to the formal hearing.

13.16. A hearing shall be held before a hearing examiner or before members of the board.

13.17. The board shall make a determination on the matter based on the facts, evidence submitted, testimony and recommendations of the hearing examiner.

13.18. The board shall formulate and issue a final order which shall include findings of fact, conclusions of law and the decision of the board on the matter.

13.19. The licensee, his or her attorney of record, if any, and the individual who filed the complaint shall be provided with a copy of the decision and accompanying findings of fact and conclusions of law, whether it is the result of a formal hearing or the execution of a consent agreement.

13.20. The decision of the board is final unless reversed, vacated or modified upon judicial review.

§10-2-14. Investigations

14.1. Upon complaint or on its own initiative, the board or its representative may investigate conduct which is occurring or has occurred which violates West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing.

14.2. For the purpose of conducting investigations:

14.2.a. The executive secretary or chairperson of the board may subpoena documents or witnesses;

14.2.b. The board may depose witnesses, take sworn statements, and collect other evidence;

14.2.c. The board may require a criminal history records check. The licensee under investigation shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's state of residence, and the United States Federal Bureau of Investigation.

14.2.d. The board may institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing;

14.2.e. The board shall review medical records during the course of its investigation, and shall remove patient identifying information from records which are introduced as evidence at any disciplinary hearing;

14.2.f. The board, or its representatives within the limits of authority granted by the board, may employ investigators, consultants and other employees as necessary to assist in an investigation;

14.2.g. All powers of the board and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings; and

14.2.h. Upon a finding of probable cause that a basis for disciplinary action exists, the board may require a licensed practical nurse to submit to a physical or mental examination by a practitioner approved by the board. Any individual who applies for or accepts the privilege of practicing as a licensed practical nurse in this state is considered to have given consent to submit to all these examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining practitioner on the grounds that the testimony or report is privileged communication. If an applicant or licensee fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, this failure is prima facie evidence of his or her inability to practice as a licensed practical nurse competently and in accordance with accepted standards of practical nursing practice. A licensed practical nurse or person applying for licensure as a licensed practical nurse who is adversely affected by this provision may request a hearing before the board within thirty days of any action taken by the board.

§10-2-15. Disciplinary Proceedings: Disciplinary Action

15.1. The board shall afford every person subject to disciplinary proceedings an opportunity for a hearing.

15.1.a. If an applicant for licensure or a licensee fails to appear at a scheduled hearing or fails to reply to the notification of hearing, the charges specified may be taken as true and the board may proceed with disciplinary actions.

15.1.b. The board may impose a single penalty or a combination of penalties upon any person found guilty of any of the grounds for discipline, set forth in section 12 of this rule, in the following manner:

15.2. For applicants for examination or endorsement:

15.2.a. The board may refuse to admit an applicant for the licensure examination; or

15.2.b. The board may deny licensure by endorsement.

15.3. For licensees:

15.3.a. The board may revoke a license;

15.3.a.1. The board may specify the minimum length of time the revocation shall remain in effect in the final order of revocation. If the board does not specify a minimum length of time for the revocation in the final order of revocation the revocation shall be effective for a minimum of five years;

15.3.a.2. An individual who has had his or her license revoked and who wishes to again become licensed as a licensed practical nurse shall apply as a new applicant for licensure and is subject to the same rules for original licensure as other applicants not previously licensed. The board shall consider all records pertaining to the revocation of the previously held license when considering the applicant for licensure;

15.3.b. The board may suspend a license for a period of not less than thirty (30) days, nor more than five (5) years. The board shall return the license to the licensee after the period of suspension has expired, provided the licensee meets all conditions set forth by the board at the time of the suspension;

15.3.c. The board may ask a licensee to voluntarily surrender his or her license and provide to the Board a statement concerning reasons for the surrender. The person may petition for ~~a formal hearing~~ for reinstatement of the license one (1) year from the date of original surrender. The person shall furnish proof ~~at the hearing at the time that the licensee requests reinstatement~~, that the conditions leading to the voluntary surrender no longer exist.

15.3.d. The board may permit a licensee to keep his or her license under a restricted license and to work within specified guidelines. The board shall note specific restrictions regarding practice on the license;

15.3.e. The board may permit a licensee to keep his or her license and continue to work. However, the licensee shall adhere to specific probationary conditions and the board shall closely monitor the licensee during the probationary period;

15.3.f. The board may issue a reprimand in writing and retain a copy in the file of the licensee;

15.3.g. The board may negotiate a settlement with the licensee, in the form of a consent agreement, for any charges pending against a licensee. The licensee, in accepting a consent agreement waives his or her right to a formal hearing on the charges, and accepts the terms and conditions set forth in the consent agreement. Any single penalty or a combination of penalties provided in this section may be imposed through consent between the board and the licensee;

15.3.h. The board may assess fees for monitoring a licensee's compliance with terms and conditions set forth in a consent agreement or order of the board. Monitoring fees may be payable on a quarterly basis or may be assessed as a part of the annual renewal fee. A licensee who fails to pay monitoring fees levied by the board as a part of a disciplinary proceeding, within the time period contained in this rule or as otherwise agreed upon between the parties, is not eligible for renewal of the license until the fee is paid;

15.3.i. The board may order a summary suspension if the board finds that public health, safety and welfare requires

emergency action and incorporates a finding to that effect in its order, it may suspend a license, prohibiting the further practice of practical nursing, pending a hearing for revocation or other action. The board shall promptly institute and determine further disciplinary action; or

15.3.j. The board shall order a suspension without hearing when a prior hearing or plea agreement has occurred in another state or federal agency, or in a court of law. The board shall order suspension upon receipt of documentation from a court or agency, state or federal, that a person licensed by the board has had his or her license to practice as a licensed practical nurse revoked or suspended in another jurisdiction and has not had his or her license reinstated within that jurisdiction, or has been convicted, or entered a plea of guilty or nolo contendere to a felony or has been adjudged legally incompetent. The board shall notify the licensee or his or her legal guardian, trustee, committee or other representative of the suspension in writing to his or her address on record with the board. The notice shall include a copy of the order of the court or agency, certified by the Executive Secretary as the order received from the court or agency. The licensee shall not practice within this state until his or her license is reinstated by the board. A licensee whose license has been suspended as provided in this section may apply to the board for reinstatement of his or her license. The licensee is entitled to a hearing. The hearing shall be promptly instituted and determined.

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To: West Virginia State Board of Examiners for Licensed Practical Nurses

From: Ryan Hines

Date: March 10, 2005

Re: Comments on Proposed Rule Changes

I feel that proposed changes are inline with current needs and continuing advances in practical nursing. The proposed change to Disciplinary Proceedings 10-2.12 reflects the new emphasis on patient confidentiality and HIPPA regulations, and will help both new nurses and those in the field realize the importance in maintaining the same.

I have questions regarding definition of the rule change regarding Licensure by Examination 10-2-4.3. How will the board define the direct supervision? My concern is related to new graduates, and their employment in long term care. Possibility exists that a GPN will be working an off shift, still in orientation, partnered with another experienced LPN, but there will not be an RN "in the house," but "on-call." I believe that depending on the definition, this rule can have a fundamental effect on how GPNs are oriented and used in long term care.

Thank you,



Ryan A. Hines, RN BSN

Coordinator

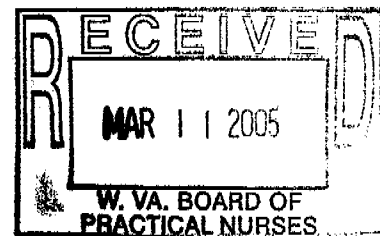
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**TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF
EXAMINERS FOR LICENSED PRACTICAL NURSES**

**SERIES 2 - POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE**

RESPONSE TO COMMENT

One (1) comment was received during the Comment Period for these proposed Rules. At its meeting held on June 15, 2005, the Board reviewed the comment, and determined that due to the fact that no comments were received from hospitals, nursing homes, or other nursing employers on this issue, the provision regarding direct supervision of graduate practical nurses as stated in the proposed revised Rules will not be modified.