



WEST VIRGINIA  
STATE BOARD OF EXAMINERS  
FOR LICENSED PRACTICAL NURSES

NANCY R. WILSON, R.N.  
EXECUTIVE SECRETARY

LANETTE L. ANDERSON, J.D., R.N.  
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101 DEE DRIVE  
CHARLESTON, WEST VIRGINIA 25311-1688

May 6, 1994

Ms. Judy Cooper, Director  
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 in the initiation of the process of Legislative Rule-Making.

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

Very truly yours,

*Lanette L. Anderson JDRN*  
Lanette L. Anderson, J.D., R.N.  
Assistant Executive Secretary

LLA/a

Enclosures:

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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May 6, 1994

Honorable Ken Hechler  
Secretary of State  
Building 1 Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0770

Dear Sir:

Pursuant to direction from the West Virginia State Board of Examiners for Licensed Practical Nurses, I hereby enclose for filing the required documentation and text of proposed amendments to Legislative Rules, 10 C.S.R. 2, Policies Regulating Licensure of the Licensed Practical Nurse. Said Rules were approved by the members of the Board during its last scheduled meeting on February 15, 1994.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Nancy R. Wilson".

Nancy R. Wilson, R.N.  
Executive Secretary

NRW/11a

Enclosures:

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

Changes reflect editorial revision. In addition, changes to language regarding temporary permits in light of the new computerized licensure examination have been made. Grounds for discipline defined as professional misconduct were also expanded. Additions to grounds for discipline include physically or verbally abusing or failing to provide adequate protection to patients, using the nurse patient relationship to exploit or influence a patient, and impeding or obstructing an investigation by the board by failing to comply or respond to requests for action or information, whether such failure is intentional or merely negligent.

Further, statements regarding investigations conducted by the board have been added. During the course of such investigations involving alleged violations of W. Va. Code §30-7A-1 et seq., statements have been added which permit the board to subpoena documents or witnesses, depose witnesses, and review medical records with patient identification removed from any such records introduced as evidence at a hearing. Language has also been added which would permit the board to require a physical or mental examination of a licensed practical nurse upon a finding of probable cause that a basis for disciplinary action exists.

Penalties which may be imposed by the board have been revised to include the assessment of fees for monitoring a licensee's compliance with terms and conditions set forth in a disciplinary action by the board, as well as a summary suspension in the event that public health, safety and welfare requires emergency action.

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

SERIES 2 - POLICIES REGULATING LICENSURE OF THE  
LICENSED PRACTICAL NURSE

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

Changes in the licensure examination, specifically the advent of computerized testing, have necessitated that changes be made in other areas, such as temporary permits for graduate nurses.

In addition, a substantial increase in the amount and severity of disciplinary matters submitted to the Board require additions to the definition of professional misconduct and the grounds for disciplinary action. More detailed statements regarding the Board's authority with regards to investigations in disciplinary matters are also needed, and have been addressed in proposed Rules.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Policies Regulating Licensure of Licensed Practical Nurses

**Type of Rule:** XX Legislative         Interpretive         Procedural

**Agency** West Virginia State Board of Examiners for L.P.N.s

**Address** 101 Dee Drive

Charleston, WV 25311

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ NONE	\$ NONE	\$ NONE	\$ NONE	\$ NONE
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

**2. Explanation of above estimates:**

**3. Objectives of these rules:**

Make editorial changes and expand grounds for disciplinary action and board sanctions.

Rule Title: Policies Regulating Licensure of Licensed Practical Nurses

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date:

5/5/94

Signature of Agency Head or Authorized Representative

J. Nancy R. Wilson, R.N., Director

FILED

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

MAY 9 10 14 AM '94

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

1.1. Scope. -- These legislative rules establish the Administrative Rules and regulations for Policies Regulating Licensure of the Licensed Practical Nurse.

1.2. Authority. -- W.V. Code §30-7A-5 & §64-9-17(e)

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:

- (a) is of good moral character;
- (b) has acquired at least a tenth grade education or it's equivalent;
- (c) has completed a course of study in an accredited school of practical nursing as defined by the Board, in 10 CSR 1, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, and holds a diploma therefrom; and
- (d) has completed such other general education requirements as may be prescribed by the Board.

2.2. Any person who has 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:

- (a) has 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,
- (b) has received an "honorable" discharge.

**§10-2-3. Examination for Licensure**

3.1. All applicants for licensure shall pass a an written examination.

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 10 CSR 4, Fees for Services Rendered by the Board, no-less than forty-five-(45)-days prior to the date of the licensure examination.

4.1.1. 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.

4.1.2. 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.

4.2. An applicant for licensure by examination who is a graduate of an accredited program in practical nursing, may work under qualified supervision and render nursing services during the period between completion of his or her education program and notification of the results of the first licensing examination following graduation. The board shall issue a temporary permit, valid for up to ninety (90) days from the date of graduation, to cover this 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/she did not pass the examination. The board shall not extend the temporary permit. ~~The board may extend this permit upon petition by the applicant, showing good cause.~~

#### §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 has not passed the licensure examination. Such applicant shall not accept employment in the practice of practical nursing, except as provided for in subsection 3.2 of this rule, until he or she passes the licensure examination.

5.3. An applicant who has not passed the licensure examination for practical nurses and wishes to take the licensure examination for a second time shall notify the board office, in writing, at least ~~forty-five (45)~~ ten (10) days in advance of the licensure examination date. The fee for the second licensure examination will be the same as for the first time applicant. There is no fee to take the examination for the third time. The fee for successive licensure examinations is the same as for the first time applicant (§30-1-6).

#### §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 has completed extension courses equal in theory to ~~that of a graduate of an approved practical nursing program~~ these for the graduate practical nurse, as determined by the Board, may at any time, after completion of the courses, take the licensure examination prescribed by the Board for graduate practical nurses and obtain a license without the designation "Waiver" thereon.

#### §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, including those continuing competence requirements contained in 10 CSR 6, Continuing Competence.

7.2. An applicant for endorsement shall complete an endorsement application and submit the fee required in 10 CSR 4, Fees for Services of the Board. 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.

#### §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 10 CSR 4, Fees for Services Rendered by the Board, and .

#### §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 must renew his or her license annually.

9.1.1. The Board shall renew the license of each licensee upon receipt of:

9.1.1.1. a completed application for renewal of the license,

9.1.1.2. a statement from the renewal applicant that he or she ~~has met~~ meets the continuing competence requirements specified in 10 CSR 6, Continuing Competence; and

9.1.1.3. the fee for renewal of a license as provided in 10 CSR 4, Fees for Services Rendered by the Board.

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

9.2.1. The board may reinstate a license which has lapsed upon receipt of:

9.2.1.1. a completed application for reinstatement of the license which has lapsed,

9.2.1.2. ~~a statement from the~~ verification that the reinstatement applicant ~~that he or she~~ meets the continuing competence requirements specified in 10 CSR 6, Continuing Competence, and

9.2.1.3. the fee for reinstatement of a license which has lapsed as provided in 10 CSR 4, Fees for Services Rendered by the Board.

9.3. Any person practicing practical nursing who does not hold 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 who holds a current West Virginia license may request to be placed on the non-practicing list with the Board. While on the non-practicing list, 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 10 CSR 6, Continuing Competence.

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

10.1.1. a completed application for reinstatement of the license from non-practicing status,

10.1.2. ~~a statement from~~ verification that the reinstatement applicant ~~that he or she has met~~ meets the continuing competence requirements specified in 10 CSR 6, Continuing Competence, and

10.1.3. the fee for reinstatement of a license from non-practicing status as provided in 10 CSR 4, Fees for Services Rendered by the Board.

**§10.2.11. Duplicate License**

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

11.1. A licensee may request a duplicate license if he or she has a change in 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 10 CSR 4, Fees for Services Rendered by the Board. There is no fee for name or address changes requested at the time a license is renewed or reinstated.

11.2. A licensee may request a duplicate license in the event of loss of the original license. The licensee must complete an affidavit verifying loss and submit the affidavit to the Board with the current fee required in 10 CSR 4, Fees for Services Rendered by the Board, 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 WV Code, upon satisfactory proof that an applicant for endorsement or examination, or a licensee:

12.1.1. Is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing which includes;

12.1.1.1. 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

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

12.1.2. has been convicted of a felony;

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

12.1.4. is mentally incompetent;

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

- 12.1.5.1. impersonating another licensed practitioner, permitting another person to use his or her license for the purpose of nursing for compensation,
- 12.1.5.2. providing false or incorrect information to an employer regarding the status of a license,
- 12.1.5.3. practicing 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.
- 12.1.5.4. failing to report through proper channels the incompetent, unethical, or illegal practice of another person who is providing health care,
- 12.1.5.5. practicing practical nursing with gross incompetence or gross negligence on a particular occasion, or incompetence or negligence on more than one occasion,
- 12.1.5.6. practicing practical nursing while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability,
- 12.1.5.7. a finding of guilt for 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,
- 12.1.5.8. permitting, aiding, or abetting an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate or registration,
- 12.1.5.9. practicing practical nursing while the license is suspended,
- 12.1.5.10. willfully failing to register or notify the Board of any changes of name or mailing address,
- 12.1.5.11. conviction of a felony or a misdemeanor with substantial relationship to the practice of practical nursing in a court of competent jurisdiction.
- 12.1.5.12. failing to follow established policies and procedures in the practice setting to safeguard patient care,
- 12.1.5.13. abandoning patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients,
- 12.1.5.14. committing an intentional act which could adversely affect the physical or psychological welfare of a patient,
- 12.1.5.15. physically or verbally abusing, or failing to provide adequate protection or safety for an individual in the context of a nurse/patient relationship;
- 12.1.5.16. using the nurse/patient relationship to exploit or influence a patient.
- 12.1.5.17. refusing or failing to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board.
- 12.1.5.18. failing to exercise technical competence in carrying out nursing care,
- 12.1.5.19. misappropriating medications, supplies, or personal items of a patient or the employer,
- 12.1.5.20. self-administering, administering to another, knowingly participating in or permitting the administration of, any prescription drug without a legal, valid prescription, or the use or administration of any illegal drug;
- 12.1.5.21. falsifying patient records or intentionally charting incorrectly,
- 12.1.5.22. knowingly falsifying an application for employment,
- 12.1.5.23. failing to conform to standards of nursing practice as defined in 10 CSR 3, Standards of Nursing Practice for the Licensed Practical Nurse.
- 12.1.5.24. knowingly providing false information regarding completion of continuing competency requirements for renewal, reinstatement or endorsement of a license,
- 12.1.5.25. failing to comply with terms and conditions as may be imposed by the board based on previous disciplinary action of the Board.

12.1.5.26. impeding or obstructing an investigation by the board by failing to comply or respond to requests for action or information, whether such failure is intentional or merely negligent;

12.1.5.27. other acts, which in the opinion of the Board, constitute professional misconduct.

12.1.6. Is practicing or attempting to practice without a license or continuing to violate any of the provisions of WV Code §30-7A-1 et seq.

#### §10-2-13. Investigations

13.1. Upon complaint or on its own initiative, the board or its employees or designees 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.

13.2. For the purpose of conducting investigations

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

13.2.2. Witnesses may be deposed, sworn statements taken, and other evidence collected;

13.2.3. 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;

13.1.4. 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.

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

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

13.1.7. 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 deemed to have given consent to submit to all such 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 any such examination under circumstances which the board finds are not beyond his or her control, such 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 within thirty days of any action taken by the board.

#### §10-2-14. Disciplinary Proceedings: Disciplinary Action

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

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.

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 subsection 12 of this rule, in the follow manner:

14.1. For applicants for examination or endorsement

14.1.1. The board may refuse to admit an applicant for the licensure examination, or

14.1.2. The board may deny licensure by endorsement.

14.2. For licensees

14.2.1. The board may revoke a license.

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

An individual who has had his or her license revoked and 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 who have not been previously licensed. The Board shall consider all records pertaining to the revocation of the previously held license when considering the applicant for licensure.

14.2.2. The board may suspend a license

The board may suspend a license for a period of not less than thirty (30) days, nor more than ~~two (2)-years~~ five (5) years. The board shall return the license to the licensee after the period of suspension has expired, provided that the licensee has met all conditions set forth by the Board at the time of the suspension.

14.2.3. The board may request voluntary surrender of a license.

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 ~~after six (6)-months~~ one (1) year from the date of original surrender. The person must furnish proof, at the hearing, that conditions leading to the voluntary surrender no longer exist.

14.2.4. The board may issue a limited restricted license.

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

14.2.5. The board may place a licensee on probation.

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.

14.2.6. The board may issue a reprimand.

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

14.2.7. The board may informally dispose of charges against a licensee by Consent Agreement.

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.

14.2.8. 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 these rules or as otherwise agreed upon between the parties, shall not be eligible for renewal of the license until such fee is paid.

14.2.9. 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, summary suspension of a license may be ordered, 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.

14.2.10. The Board may order a suspension without hearing when prior hearing or plea agreement has occurred in another state or federal agency, or in a court of law.

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 immediately suspend, without a hearing, the license of any person so disciplined, convicted or adjudged. The Board shall notify such person or his legal guardian, trustee, committee or other representative of the suspension in writing to his or her address on record with the Board. Such notice shall include a copy of the order of such court or agency, certified by the Executive Secretary as the order received from such court or agency. Such licensee shall not have the right to practice within this state until his or her license has been reinstated by the Board.

Any person whose license has been suspended as provided in this section may apply to the board for reinstatement of his or her license. Such person shall be entitled to a hearing. Such hearing shall be promptly instituted and determined.