

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

Form #2

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**FILED**

2005 MAR -2 P 1:41

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

West Virginia State Board of Examiners  
for Licensed Practical Nurses

AGENCY: \_\_\_\_\_ TITLE NUMBER: 10

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code 30-7A-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Open Meetings and Bylaws

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON April 13, 2005 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia LPN Board  
101 Dee Drive, Suite 100  
Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#4.60

WEST VIRGINIA  
STATE BOARD OF EXAMINERS  
FOR LICENSED PRACTICAL NURSES

LANETTE L. ANDERSON, R.N., B.S.N., J.D.  
EXECUTIVE DIRECTOR  
E-MAIL: [landerson@state.wv.us](mailto:landerson@state.wv.us)

TAMMY L. CROOKSHANKS, R.N., B.S.N.  
ASSOCIATE EXECUTIVE DIRECTOR  
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101 DEE DRIVE, SUITE 100  
CHARLESTON, WEST VIRGINIA 25311-1688

TELEPHONE  
(304) 558-3572

FAX  
(304) 558-4367

TOLL FREE  
1-877-558-LPNS

CHARLESTON AREA  
558-LPNS

March 2, 2005

Ms. Judy Cooper, Team Leader  
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 a Comment Period on a Proposed Rule pursuant to the process of Procedural Rule-Making. The West Virginia State Board of Examiners for Licensed Practical Nurses approved said Rules during its regularly scheduled meeting on February 17, 2005.

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

Very truly yours,

A handwritten signature in cursive script that reads "Lanette L. Anderson".

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

LLA/a

Enclosures:

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

SERIES 5 - OPEN MEETINGS AND BYLAWS

SUMMARY OF PROPOSAL

Proposed changes are primarily editorial in nature, and reflect operation of the Board, specifically with regards to meetings of the disciplinary review committee of the Board.

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

SERIES 5 - OPEN MEETINGS AND BYLAWS

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

Proposed changes to the Rule are primarily editorial in nature. Clarification of open meetings with regards to the disciplinary review committee of the Board is proposed.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Open Meetings and Bylaws

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

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	NONE	NONE	NONE
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>	NONE	NONE	NONE

Rule Title: Open Meetings and Bylaws

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.

Procedural rules only affecting open meetings and bylaws of the Board.

Date: 3/2/05

Signature of Agency Head or Authorized Representative

Janette L. Anderson

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: March 2, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV State Board of Examiners for LPNs

101 Dee Drive, Suite 100 Charleston, WV 25311

304-558-3572

PROCEDURAL ~~LEGISLATIVE~~ RULE TITLE: Open Meetings and Bylaws

1. Authorizing statute(s) citation W.Va. Code 30-7A-1 et.seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
March 2, 2005

b. What other notice, including advertising, did you give of the hearing? Comment Period  
Notices sent via first class mail to all WV LPN schools, hospitals,  
nursing homes, professional associations, and other interested parties

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Will end on April 13, 2005 at 4:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received \_\_\_\_\_

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

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- 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 LPN Board

101 Dee Drive, Suite 100 Charleston, WV 25311

304-558-3572 Fax 304-558-4367 email landerson@state.wv.us

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- 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)

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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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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**PROCEDURAL RULE  
WEST VIRGINIA STATE BOARD OF EXAMINERS  
FOR LICENSED PRACTICAL NURSES  
SERIES 5  
OPEN MEETINGS AND BYLAWS**

2005 MAR -2 P 1:42

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§10-5-1. General**

1.1. Scope - This procedural rule sets forth the means by which the time, place, and purpose of all regular and special meetings are made available in advance to the public and the news media, except in the event of an emergency requiring immediate official action and also sets forth certain bylaws of the board.

1.2. Authority - WV Code §6-9A and §30-1-5

1.3. Filing Date -

1.4. Effective Date -

**§10-5-2. Application And Enforcement**

This procedural rule applies to the board and any and all individuals desiring to attend or to address the West Virginia State Board of Examiners for Licensed Practical Nurses.

**§10-5-3. Definitions**

3.1. Board - The West Virginia State Board of Examiners for Licensed Practical Nurses.

3.2. Meeting - The convening of a governing body of a public body for which a quorum is required.

3.3. Quorum - A simple majority of the constituted members of the board.

**§10-5-4. Regular Meetings**

4.1. The board meets in regular session during the months of February, June and October. The length of each meeting is determined by the amount of business to be addressed by the board. A majority of the board members shall agree upon specific meeting dates. Meeting dates are determined for one (1) year in advance beginning July 1, and ending June 30. The first regular meeting after January 1 shall include as an agenda item dates for meetings for the next fiscal year.

4.2. The Executive Secretary shall provide notice of the date, time, location and purpose of each regular meeting to the Secretary of State, Capitol News Service, all programs of practical nursing, appropriate professional associations and state agencies, as well as persons and organizations who request information, at least fifteen (15) business days in advance of a regularly scheduled meeting.

4.3. The board shall convene all regular meetings at ten o'clock a.m. unless otherwise changed by a majority vote of those board members present and voting.

4.4. The board shall convene all regular meetings at the board office unless otherwise changed by a majority vote of those board members present and voting.

4.5. The board may move the location of the meeting without

notice in the event the meeting is held in a public place and members of the public who wish to attend.

4.6. All regular meetings are general meetings for the consideration of any and all matters which may properly come before the board.

4.7. The Executive Secretary shall send a topical agenda to each board member at least fifteen (15) business days prior to each regularly scheduled meeting. The Executive Secretary shall send an annotated agenda to each board member at least one (1) week prior to each regularly scheduled meeting.

4.8. Board members may submit agenda items at any time prior to mailing of the annotated agenda.

4.9. Individuals may submit items for board consideration. The items should be submitted not less than thirty (30) days prior to the date of a regularly scheduled meeting. The chairperson makes the final determination on whether an item submitted less than thirty (30) days in advance shall be considered.

4.10. The chairperson may cancel a meeting if a quorum cannot be convened or if there are no items of business to be conducted by the board.

4.11. Individuals who desire to address the board during a regularly scheduled meeting may do so by making their wish known to the chairperson at any time prior to the call to order.

**§10-5-5. Special Meetings**

5.1. The chairperson, the secretary or any two (2) members of the board may call a special meeting.

5.2. The executive secretary shall send a written notice setting forth the time, place and matters to be considered to each member of the board at least ten (10) business days in advance of a special meeting.

5.3. The executive secretary shall file a written notice containing the time, place, and matters to be considered at least ten (10) business days in advance of any special meeting, to the Secretary of State, Capitol News Service, all programs of practical nursing, appropriate professional associations and state agencies, as well as persons and organizations who request the information.

**§10-5-6. Emergency Meetings**

6.1. The chairperson may call a meeting in the event of an emergency requiring immediate official action by the board.

6.2. The executive secretary shall notify members by telephone or other expedient method.

6.3. The executive secretary shall file a written notice containing time, place, purpose of the meeting and facts and circumstances of the emergency prior to the meeting, with the Secretary of State and Capitol News Service.

### **§10-5-7. Executive Sessions**

7.1. The board may hold executive sessions, as provided in West Virginia Code, §6-9A-4., for the purpose of discussing employment promotion, resignation, discipline, discharge, or compensation of any public officer or employee unless the public officer or employee requests an open meeting; or to discuss issues effecting denial, suspension or revocation of a license unless the licensee requests an open meeting; or to discuss material the disclosure of which would constitute an unwarranted invasion of an individual's privacy; or to discuss an official investigation relating to law enforcement; or to discuss matters relating to development, administration or security of a licensure examination; or to discuss logistical or procedural methods to schedule and regulate a meeting.

7.2. The chairperson shall convene an executive session by identifying and announcing to the members of the board and public in attendance the authorization under §6-9A-4 for holding the executive session. A majority affirmative vote of the members present is required to hold the executive session. All decisions resulting from discussions during the executive session shall be made during an open meeting.

### **§10-5-8. Minutes**

8.1. The board shall prepare written minutes of all meetings. Minutes are available to the public within a reasonable time after the meeting and include:

8.1.a. the date, time and place of the meeting,

8.1.b. the name of each board member present or absent,

8.1.c. the name of each staff member and guest present,

8.1.d. all motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same, and their disposition, and,

8.1.e. the results of all votes and, upon request of a member, the vote of each member by name.

8.2. Minutes of executive sessions may be limited to material which is not inconsistent with the provisions of West Virginia Code, §6-9A.

8.3. A board member may request that a minority report be included in the minutes.

### **§10-5-9. Quorum**

9.1. A quorum for conducting business at a regular or special meeting of the board shall be a simple majority of the constituted members.

9.2. Each member has one vote on all matters of business.

9.3. The vote of a majority of all members present at any meeting of the board shall be necessary to take any action.

9.4. The board may hold regular or special meetings with one or more members participating by telephone conference call, video conference or other interactive means of conducting conference communications. Minutes shall reflect the names of participating members and a report of a roll call on each vote.

9.5. Proxy voting is prohibited.

9.6. The board may authorize a mail vote providing the issue to be voted on has been presented in a regular meeting of the board. Matters for vote by mail are limited to acceptance of editorial revisions or those matters where more detail is requested prior to final approval. All issues voted on by mail shall be discussed and the vote ratified at the next regular meeting of the board following the vote.

### **§10-5-10. Records of the Board**

All records and proceedings of the board are public records and shall be available to the public during the usual and customary business hours of the board, except as provided by West Virginia Code, §29B-1-4.

### **§10-5-11. Election of Officers**

11.1. The board shall elect officers during the ~~last~~ first regular meeting in each calendar year.

11.2. The elected officers shall be chairperson, vice-chairperson and secretary. The Executive Secretary shall act as treasurer while employed by the board and is not subject to election procedures.

11.3. The Executive Secretary shall be an ex-officio member of the board and has no voting privileges.

11.4. Officers serve for one (1) year.

11.5. Officers may be re-elected to serve one (1) additional term, but in no instance shall an officer serve more than two (2) successive terms.

11.6. Newly elected officers assume the duties of office fifteen (15) calendar days following the date of the regular meeting during which they are elected.

### **§10-5-12. Duties of Officers**

12.1. Chairperson. Presides at all meetings of the board, appoints all committees of the board, serves as or designates the chairperson for all committees and performs other duties incidental to the office.

12.2. Vice-Chairperson. Presides over meetings of the board in the absence of the chairperson and performs other duties requested by the chairperson.

12.3. Secretary. Records minutes of the board meetings, authorizes distribution of minutes following meetings, and performs other duties as requested by the chairperson.

12.4. Treasurer. The Executive Secretary, as the appointed employee of the board, keeps an accounting of all monies received and spent on behalf of the board and provides a report of receipts and expenditures at each regular meeting of the board.

### **§10-5-13. Vacancies in Elected Offices**

13.1. Chairperson. In the event that the chairperson is unable to complete his or her term of office, the vice-chairperson shall become chairperson for the remainder of the unexpired term.

13.2. Vice-Chairperson. In the event the vice-chairperson is unable to complete his or her term of office a new vice-chairperson shall be elected to serve the unexpired term.

13.3. Secretary. In the event that the secretary is unable to complete his or her term of office, a new secretary shall be elected to serve the unexpired term.

13.4. Treasurer. In the event of a vacancy in the position of Executive Secretary the Chairperson shall appoint a member of the board or staff to fulfill the duties until a new Executive Secretary is employed.

#### **§10-5-14. Resignation of Members**

A member who wishes to resign should send a letter of resignation to the Governor with a copy to his or her respective association and a copy to the chairperson of the board.

#### **§10-5-15. Committees**

##### **15.1. Disciplinary Review Committee**

15.1.a. Composition. The committee shall be comprised of the chairperson and two (2) additional members of the board who shall be appointed by the chairperson.

15.1.b. Terms. The term of service is one (1) year beginning with the adjournment of the regular meeting during which elections are held.

15.1.c. Duties. The committee shall approve for dismissal all complaints if probable cause is not established. The committee may issue reprimands, accept voluntary surrender of a license and enter into consent agreements as appropriate for individuals found in violation of West Virginia Code §30-7A-1 et. seq., or rules and regulations of the board.

15.1.d. Meetings. The committee shall meet immediately prior to each regularly scheduled meeting of the board. The chairperson may call additional meetings as needed to complete the duties of the committee. At the discretion of the chairperson, the committee may transact business by electronic communication or by mail, providing that a report of each action is made available to each committee member at the next meeting of the committee. All meetings of the committee shall be closed to the public. All final actions of the committee shall be public.

15.1.e. Reports. The committee shall report all actions at the next regularly scheduled meeting of the board. The board shall ratify all actions taken by the committee.

#### **§10-5-16. Joint Nursing Regulatory Committee**

16.1. Composition. The committee shall be comprised of three (3) members of the board who shall be appointed by the chairperson.

16.2. Terms. The term of service is one (1) year beginning with the adjournment of the regular meeting during which elections are held.

16.3. Duties. The committee shall meet with the appointed representatives to the committee from the West Virginia Board of Examiners for Registered Professional Nurses and shall consider issues referred to them by either board of nursing or other issues of common interest to both boards of nursing.

16.4. Frequency of Meetings. The committee shall meet as needed to address issues before the committee.

16.5. Reports. The committee shall report final action on

activities delegated to it by the board and on other activities of the committee at the next regularly scheduled meeting of the board.

#### **§10-5-17. Ad Hoc Committees**

The chairperson of the board shall appoint ad hoc committees as needed to accomplish the objectives established by the board. Appointment to committees is not limited to members and may include any individual who will best serve a particular committee.

#### **§10-5-18. Committee Meetings**

18.1. Meetings of committees of the board, with the exception of the disciplinary review committee, are open to the public, except as provided in West Virginia Code, §6-9A-4.

18.2. Committees may conduct meetings with one or more members participating by telephone conference call, video conference or other interactive means of conducting conference communications. Minutes shall reflect the names of participating members, names of members not participating and a report of a roll call on each vote. The public may attend meetings held by means of telecommunications devices. The location for public attendance shall be the board office unless otherwise announced.

18.3. The Executive Secretary shall send a written notice containing the time, place, and matters to be considered at least ten (10) business days in advance of any meeting of a committee of the board, to the Secretary of State, Capitol News Service, all programs of practical nursing, appropriate professional associations and state agencies, as well as persons and organizations who request information.

18.4. Each committee shall present a report of activities and any recommendations for action to the board at a regularly scheduled meeting as directed by the board.

#### **§10-5-19. Contested Case Hearings**

19.1. Contested case hearings shall be held before a quorum of the board or before an independent hearing examiner.

19.2. All contested case hearings are open to the public.

19.3. Contested case hearings shall be held as provided in West Virginia Code §29A-5-1. et. seq., and §30-1-1. et. seq.

19.4. The board shall consider evidence gathered in a contested case hearing and shall determine denial, suspension, revocation or other disciplinary action in executive session.

19.5. All final decisions by the board to deny, suspend, revoke or otherwise discipline a license are public.

**§10-5-20. Roberts' Rules of Order Newly Revised shall govern the meetings of the board in applicable situations not addressed in these rules.**

**§10-5-21. Amendments to this Open Meetings and Bylaws rule shall be made in accordance with established procedures for promulgating procedural rules, pursuant to Secretary of State's rule 153 CSR 6.**

## MAILING LIST FOR INTERESTED PERSONS

Administrative Law Division  
Secretary of State's Office  
Attn: Judy Cooper, Director  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

WV LPN SCHOOLS

HOSPITALS (With Notice to Post)

NURSING HOMES (With Notice to Post)

HOME HEALTH AGENCIES (With Notice to Post)

WV Division of Health  
Building 3 Room 206  
State Capitol Complex  
Charleston, West Virginia 25305

Honorable Joe Manchin, III  
Governor, State of West Virginia  
Office of the Governor  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

WVLPN Association  
Cathy Vance, President

Capitol News Service  
State Capitol Complex  
Charleston, West Virginia 25305

ADDNE  
Dr. E. Jane Martin, President  
WVU School of Nursing

WV Nurses Association  
Post Office Box 1946  
Charleston, West Virginia 25327

WV Council of Home Health Agencies, Inc.  
PO Box 1096  
Fairmont, West Virginia 26554

West Virginia Medical Association  
Post Office Box 4106  
Charleston, West Virginia 25364

WV Hospital Association  
100 Association Drive  
Charleston, West Virginia 25311

WV LPN BOARD - MAILING LIST FOR INTERESTED PERSONS - PAGE 2

WV Health Care Association  
#8 Capitol Street  
Charleston, West Virginia 25301

WV Board of Examiners for Registered Professional Nurses  
101 Dee Drive, Suite 102  
Charleston, West Virginia 25311

FANEL  
Twyla Wallace  
Post Office Box 1233  
Lewisburg, West Virginia 24901

Theresa Cox, Reporter  
Charleston Daily Mail  
1001 Virginia Street, East  
Charleston, West Virginia 25301