

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #3 []

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

AGENCY: WV Radiologic Technology Board of Examiners TITLE NUMBER: 18

CITE AUTHORITY: WV Code § 30-1-1 et seq. and § 30-23-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

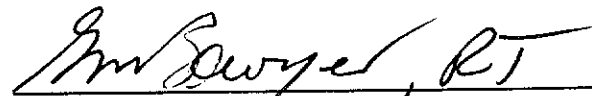
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint Procedures for Radiologic Technologists

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

Summary of the Rule

Series 4 - Disciplinary and Complaint Procedures for Radiologic Technologists

This rule establishes the procedure to be used for the investigation and resolution of complaints against licensees. This rule defines the causes for denial, probation, limitation, discipline, suspension or revocation of licenses, disposition of complaints, and the appeal process. This rule allows the Radiologic Technology Board of Examiners to meet the provisions of House Bill 4062.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Radiologic Technologists

Type of Rule: Legislative Interpretive Procedural

Agency: WV Radiologic Technology Board of Examiners

Address: P.O. Box 638

Cool Ridge, WV 25825

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 1,750.00		\$ 800.00	\$ 950.00	\$ 1,500.00
PERSONAL SERVICES	\$ 1,000.00		\$ 300.00	\$ 700.00	\$ 1,000.00
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT	\$ 250.00		\$ 250.00		\$ 0.00
OTHER	\$ 500.00		\$ 250.00	\$ 250.00	\$ 500.00

2. Explanation of Above Estimates:

Cost of hiring ethics investigator, postage, travel, documentation material

3. Objectives of These Rules:

Establish Disciplinary and Complaint Procedures as required under House Bill 4062.

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: June 30, 2000

Signature of Agency Head or Authorized Representative:

Jim Sawyer, RT

THIS SERIES IS BEING SUBMITTED TO ENABLE THE WV RADIOLOGIC
TECHNOLOGY BOARD OF EXAMINERS TO COMPLY WITH THE REQUIREMENTS
OF HOUSE BILL 4062.

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: August 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Radiologic Technology Board of Examiners
P.O. Box 638
Cool Ridge, WV 25825
Telephone (304) 787-4398

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedures for Radiologic
Technologists

1. Authorizing statute(s) citation WV Code 30-1-1 et seq. and 30-23-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 30, 2000

b. What other notice, including advertising, did you give of the hearing?
Notice mailed to all active technologist in WV (over 2,000) and posted on the
Board's Web Site

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 1, 2000

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

Attached _____ No comments received X

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

August 2, 2000

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

Mary Casto, Administrative Secretary

WV Radiologic Technology Board of Examiners

P.O. Box 638

Cool Ridge, WV 25825

Telephone (304) 787-4398 Fax (304) 787-3030

E-mail rtboe@wvnm.wvnet.edu

- 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)

Grady M. Bowyer, R.T.

1939 Wilson Avenue

St. Albans, WV 25177

Telephone (304) 558-2981 - Day (304) 727-8946 - evenings

Email bowyeg@wvnm.wvnet.edu

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.

NA

b. Date of hearing or comment period:

NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA

TITLE 18
LEGISLATIVE RULE
RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR
RADIOLOGIC TECHNOLOGISTS

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 18-4-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against licensee.

1.2. Authority. -- W.Va. Code § 30-23-1 *et seq.* and § 30-1-1 *et seq.*

1.3. Filing Date. -- July 3, 2000

1.4. Effective Date. --

§ 18-4-2. Application.

This rule applies to all licensees under W.Va. Code § 30-23-1 *et seq.*

§ 18-4-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1 "Applicant" means any person making application for an original or renewal license or a temporary permit pursuant to West Virginia Code § 30-23-1 *et seq.*

3.2 "Board" means the West Virginia Radiologic Technology Board of Examiners.

3.3 "License" has the same meaning as W.Va. Code § 30-23-2(d).

3.4 "Ethics investigator" means a licensee who is hired by the Board for the purpose of reviewing complaints against their licensees.

§ 18-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of West Virginia Code § 30-23-1 *et seq.* or the rules of the Board.

§ 18-4-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a licensee or applicant with a violation of West Virginia Code § 30-23-1 *et seq.* or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the licensee against whom the complaint is lodged;

5.1.2. The date(s) of the violation(s);

5.1.3. A description of the incident(s); and,

5.1.4. The name of any health care institution in which the alleged incident occurred.

5.2. A complaint against a licensee shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of West Virginia Code § 30-23-1 *et seq.* or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or permittee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees, permittees or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or permittee or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of sub-division 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent

hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum . Any such request shall be accompanied by a brief statement specifying the necessity for the same. A subpoena issued hereunder may require any facility employing or licensing or practicing radiologic technology to allow inspection of the premises or other tangible things or records in the possession of or controlled by the following.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a licensee or permittee may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§ 18-4-5.1. Contested Case Hearings.

5.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that licensee's conduct, practices or acts constitute an immediate danger to the public.

§ 18-4-6. Appeals.

6.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in West Virginia Code § 29A-6-1 *et seq.* and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Radiologic Technology Board of Examiners
Subject: Disciplinary and Complaint Procedures for Radiologic Technologists, 18CSR4
Counsel: Rita A. Pauley
Date: September 28, 2000

PERTINENT DATES

Filed for public comment: June 30, 2000
Public comment period ended: August 1, 2000
Filed following public comment period: August 2, 2000
Filed LRMRC: August 2, 2000
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE CLERK
SECRETARY OF STATE

OCT 6 4 00 PM '00

FILED

ABSTRACT

This rule was filed in response to the requirements of HB 4062 passed during the 2000 Legislative Session. The bill required all licensing boards authorized by West Virginia Code §30-1-1 et seq. to propose, for legislative approval, a rule or rules specifying the procedures for the investigation and resolution of all complaints against licensees. This mandate led to boards filing rules as legislative that were by statutory definition procedural.

As currently written, this proposed rule contains material that explains the types of conduct that may be grounds for discipline as well as the procedure for filing a complaint and conducting a hearing. Counsel has suggested that the procedural material be removed from the rule and refilled as a procedural rule. Once the procedural information is removed, there is no real need for the remainder of the rule. Therefore, no analysis is necessary.

AUTHORITY

Statutory authority: W.Va. Code, §30-1-8, which provides, in part, as follows:

... (h) On or before the first day of July, two thousand, every board referred to in this chapter shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes, West Virginia Code §29A-1-2(d) and (g) define "Legislative" and "Procedural" rules. A Legislative Rule is one which "... supplies a basis for the imposition of civil or criminal liability or grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule.

A procedural rule "fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency. . . .

Inherent statutory and regulatory conflicts are created by including material which is clearly procedural in an legislative rule.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

No

VIII. OTHER

Counsel has suggested technical modifications.