

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

Form #2

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2005 JUN 23 P 12:50

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Radiologic Technology Board of Examiners TITLE NUMBER: 18

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code § 30-23-1& § 30-1-1

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Standard of Ethics

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 July 25, 2005 AT 9:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV RT Board of Examiners
PO Box 638
1715 Flat Top Road
Cool Ridge, WV 25825-0638

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF THE RULE

THE BOARD'S SERIES 5 RULE WAS ADOPTED AS A PROCEDURAL RULE IN 2003. THIS RULE GOVERNS THE TECHNOLOGIST ACTIONS IN THE PERFORMANCE OF THEIR JOB DUTIES AND WAS MODIFIED TO CONFORM TO WEST VIRGINIA FROM THE AMERICAN REGISTRY OF RADIOLOGIC TECHNOLOGIST'S (ARRT) CODE OF ETHICS.

FACTS AND CIRCUMSTANCES

WHEREAS THIS RULE IS NOW IN EXISTENCE AS A PROCEDURAL RULE, THE BOARD FELT THAT IT NEEDS TO BE ENACTED AS A LEGISLATIVE RULE SO THAT IT WILL HAVE THE EFFECT OF LAW. THIS RULE GOVERNS THE TECHNOLOGIST IN THEIR EVERYDAY PERFORMANCE OF THEIR JOB FUNCTIONS. THE MAJOR CONTENT OF THIS RULE WAS ADOPTED FROM THE CODE OF ETHICS FROM THE AMERICAN REGISTRY OF RADIOLOGIC TECHNOLOGIST (ARRT) BUT MODIFIED TO CONFORM TO WEST VIRGINIA AND OUR LAW.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standard of Ethics

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Radiologic Technology Board of Examiners

Address: PO Box 638
1715 Flat Top Road
Cool Ridge, WV 25825-0638

Phone Number: 304-787-4398 Email: wvrtboe@charter.net

Fiscal Note Summary

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

THERE WILL NOT BE ANY COST ASSOCIATED WITH THIS RULE.

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
Personal Services		0.00	0.00
Current Expenses		0.00	0.00
Repairs & Alterations		0.00	0.00
Assets		0.00	0.00
Equipment		0.00	0.00
Other		0.00	0.00
2. Estimated Total Revenues		0.00	0.00

Rule Title: Standard of Ethics

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

THIS RULE IS IN PLACE AS A PROCEDURAL RULE AND THE BOARD DESIRES TO HAVE IT IMPLEMENTED AS A LEGISLATIVE RULE SO THAT IT WILL HAVE THE EFFECT OF LAW. THERE ARE NOT ANY COST TO IMPLEMENT THIS RULE AS A LEGISLATIVE RULE.

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.

THIS RULE IS ALREADY IN EFFECT AS A PROCEDURAL RULE. THE BOARD DESIRES TO HAVE THIS RULE PASSED SO THAT IT WILL HAVE THE EFFECT OF LAW.

Date: JUNE 23, 2005

Signature of Agency Head or Authorized Representative

Erin Dwyer, RT

TITLE 18
LEGISLATIVE RULE
WEST VIRGINIA RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS
SERIES 5
STANDARD OF ETHICS

2005 JUN 23 P 12: 51
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 18-5-1. General.

1.1. Scope. -- The Standards of Ethics of the West Virginia Radiologic Technology Board of Examiners shall apply solely to persons holding a License/Permit issued by the Board and to persons applying for examination and Licensure in order to become a West Virginia Licensed Technologist. The Standards of Ethics are intended to be consistent with the Legislative Intent. This Standard of Ethics consist of the Standard of Practice and the Code of Ethics.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 18-5-2. Application.

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

§ 18-5-3. 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 examination and/or a license to become a Licensed Radiologic Technologist.

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(c).

3.4 "Licensee" has the same meaning as W. Va. Code § 30-23-2(e).

3.5 "Permittee" has the same meaning as W. Va. Code § 30-23-2(f).

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3.6 "The individual" means any person holding a license or permit issued by the Board.

§ 18-5-4. Standard of Practice

The Standard of Practice forms the first part of the Standard of Ethics. The Standard of Practice shall serve as a guide by which the individual may evaluate their professional conduct as it relates to patients, health care consumers, employers, colleagues and other members of the health care team. The Standard of Practice is intended to assist the individuals and Applicants in maintaining a high level of ethical conduct and in providing for the protection, safety and comfort of patients.

4.1 The individual conducts herself or himself in a professional manner, responds to patient needs and supports colleagues and associates in providing quality patient care.

4.2 The individual acts to advance the principle objective of the profession to provide services to humanity with full respect for the dignity of mankind.

4.3 The individual delivers patient care and service unrestricted by the concerns of personal attributes or the nature of the disease or illness, and without discrimination on the basis of sex, race, creed, religion or socioeconomic status.

4.4 The individual practices technology founded upon theoretical knowledge and concepts, uses equipment and accessories consistent with the purposes for which they were designed, and employs procedures and techniques appropriately.

4.5 The individual assesses situations; exercises care, discretion and judgment; assumes responsibility for professional decisions; and acts in the best interest of the patient.

4.6 The individual acts as an agent through observation and communication to obtain pertinent information for the physician to aid in the diagnosis and treatment of the patient and recognizes that interpretation and diagnosis are outside the scope of practice for the profession.

4.7 The individual uses equipment and accessories, employs techniques and procedures, performs services in accordance with an accepted standard of practice, and demonstrates expertise in minimizing radiation exposure to the patient, self and other members of the health care team.

4.8 The individual practices ethical conduct appropriate to the profession and protects the patient's right to quality radiologic technology care.

4.9 The individual respects confidences entrusted in the course of professional practice, respects the patient's right to privacy, conforming to the Health Information Portability & Accountability Act of 1996 (HIPAA) and requirements

of protected health information (PHI) and reveals confidential information only as required by law or to protect the welfare of the individual or the community.

4.10 The individual continually strives to improve knowledge and skills by participating in continuing education and professional activities, sharing knowledge with colleagues and investigating new aspects of professional practice.

§ 18-5-5. Code of Ethics

The Code of Ethics forms the second part of the Standards of Ethics. They are directive-specific standards of minimally acceptable professional conduct for all present Licensed Technologists, Permittee's and Applicants. Licensure/Permit is a method of assuring the medical community and the public that an individual is qualified to practice within the profession. Because the public relies on the Board to issue licenses/permits, it is essential that these individuals and applicants act consistently with these Code of Ethics. The Code of Ethics are intended to promote the protection, safety and comfort of patients. The individuals and applicants engaging in any of the following conduct or activities, or who permit the occurrence of the following conduct or activities with respect to them, have violated the Code of Ethics and could be subject to sanctions.

5.1 Employing fraud or deceit in procuring or attempting to procure, maintain, renew or obtain reinstatement of a license/permit issued by the Board; employment in radiologic technology. This includes altering in any respect any document issued by the Board or any state or federal agency, or by indicating in writing certification or registration with the Board when that is not the case.

5.2 Subverting or attempting to subvert the Board's examination process. Conduct that subverts or attempts to subvert the Board's examination process includes, but is not limited to:

5.2.1 conduct that violates the security of Board examination materials, such as removing or attempting to remove examination materials from an examination room, or having unauthorized possession of any portion of or information concerning a future, current or previously administered examination of the Board; or disclosing information concerning any portion of a future, current or previously administered examination of the Board; or disclosing what purports to be, or under all circumstances is likely to be understood by the recipient as, any portion of or "inside" information concerning any portion of a future, current or previously administered examination of the Board;

- 5.2.2 **conduct that in any way compromises ordinary standards of test administration, such as communicating with another applicant during administration of the examination, copying another applicant's answers, permitting another applicant to copy one's answers, or possessing unauthorized materials; or**
- 5.2.3 **impersonating a applicant or permitting an impersonator to take the examination on one's own behalf.**

5.3 Convictions, criminal proceedings or military court-martials as described below:

- 5.3.1 **Conviction of a crime (felony) and all substance abuse related violations must be reported.**
- 5.3.2 **Criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered, or a criminal proceeding where the individual enters a plea of guilty or nolo contendere.**
- 5.3.3 **Military court-martials that involve substance abuse, any sex-related infractions, or patient-related infractions.**

5.4 Failure to report to the Board that:

- 5.4.1 **charges regarding the person's permit or license to practice radiologic technology or any other medical or allied health profession are pending or have been resolved adversely to the individual in any state, territory or country, (including but not limited to, imposed conditions, probation, suspension or revocation); or**
- 5.4.2 **that the individual has been refused a permit, license or registration certificate to practice radiologic technology or any other medical or allied health profession by another state, territory or country.**

5.5 Failure or inability to perform radiologic technology with reasonable skill and safety.

5.6 Engaging in unprofessional conduct, including, but not limited to:

- 5.6.1 **a departure from or failure to conform to applicable federal, state or local governmental rules regarding radiologic technology practice; or, if no such rule exists, to the minimal standards of acceptable and prevailing radiologic technology practice;**

5.6.2 any radiologic technology practice that may create unnecessary danger to a patient's life, health or safety; or

5.6.3 any practice that is contrary to the ethical conduct appropriate to the profession that results in the termination from employment.

Actual injury to a patient or the public need not be established under this clause.

5.7 Delegating or accepting the delegation of a radiologic technology function or any other prescribed health care function when the delegation or acceptance could reasonably be expected to create an unnecessary danger to a patient's life, health or safety. Actual injury to a patient need not be established under this clause.

5.8 Actual or potential inability to practice radiologic technology with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals or any other material; or as a result of any mental or physical condition.

5.9 Adjudication as mentally incompetent, mentally ill, a chemically dependent person, or a person dangerous to the public, by a court of competent jurisdiction.

5.10 Engaging in any unethical conduct, including, but not limited to, conduct likely to deceive, defraud or harm the public; or demonstrating a willful or careless disregard for the health, welfare or safety of a patient. Actual injury need not be established under this clause.

5.11 Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient; or engaging in sexual exploitation of a patient or former patient. This also applies to any unwanted sexual behavior, verbal or otherwise, that results in the termination of employment. This rule does not apply to pre-existing consensual relationships.

5.12 Revealing a privileged communication from or relating to a former or current patient, except when otherwise required or permitted by law.

5.13 Knowingly engaging or assisting any person to engage in, or otherwise participating in, abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state medical assistance laws.

5.14 Improper management of patient records, including failure to maintain adequate patient records or to furnish a patient record or report required by law; or making, causing or permitting anyone to make false, deceptive or misleading entry in any patient record.

5.15 Knowingly aiding, assisting, advising or allowing a person without a current and appropriate state permit, or license to engage in the practice of radiologic technology, in a jurisdiction which requires a person to have such a current and appropriate state permit or license in order to practice radiologic technology in such jurisdiction.

5.16 Violating a rule adopted by any state board with competent jurisdiction, an order of such board, or state or federal law relating to the practice of radiologic technology, or any other medical or allied health professions, or a state or federal narcotics or controlled substance law.

5.17 Knowingly providing false or misleading information that is directly related to the care of a former or current patient.

5.18 Practicing outside the scope of practice authorized by the individual's current state permit or license.

5.19 Making a false statement or knowingly providing false information to the Board, American Registry of Radiologic Technologists (ARRT), or American Society of Podiatric Medicine Association (ASPMA) or failing to cooperate with any investigation of the Board's Ethics Committee.

5.20 Engaging in false, fraudulent, deceptive or misleading communications to any person regarding the individual's education, training, credentials, experience or qualifications, or the status of the individual's state permit or license.

5.21 Knowing of a violation or a probable violation of any Standard of Ethics by any individual or by a applicant and failing to promptly report in writing the same to the Board.