

NOTICE OF PUBLIC HEARING TO RECEIVE COMMENTS
OF PROPOSED RULES AND REGULATIONS OF THE
WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY

Please take notice that on Monday, August 6, 1979, in Building 213-A of the Marshall University School of Medicine located at 1801 Sixth Avenue, Huntington, West Virginia, from 1:00 to 4:00 p.m., the West Virginia Board of Occupational Therapy will hold a public hearing to receive comments concerning its proposed rules and regulations.

Written comments and requests to participate in the hearing should be submitted to Ms. Jane Kelley, No. 1 Maple Avenue, Morgantown, West Virginia 26505, no later than Friday, August 3, 1979.

Dated: July 6, 1979

WEST VIRGINIA BOARD OF
OCCUPATIONAL THERAPY

By Woodrow H. Berry

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RULES AND REGULATIONS OF THE
WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY

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Charleston, West Virginia

INDEX

Page No.

| | |
|---|-----|
| Occupational Therapy Board Members | ii |
| Procedural History | iii |
| Notice of Public Hearing | iv |
| Purpose | 1 |
| Authority | 1 |
| Scope | 1 |
| Effective Date | 2 |
| Definitions | 7 |
| Board Functions | 8 |
| Duties of the Chairmen | 8 |
| Duties of the Secretary/Treasurer | 10 |
| Executive Director | 11 |
| Licenses and Temporary Permits | 12 |
| Examination Process | 13 |
| Issuance of Licenses and Limited Permits | 15 |
| Reciprocity | 17 |
| Exemptions | 18 |
| Renewal | 18 |
| Responsibilities of the Licensee | 19 |
| Display of License or Temporary Permit | 20 |
| Duplicate License | 21 |
| Notice of Change of Address, Change of Name | 21 |
| Fees | 22 |
| Suspension, Revocation, etc. | 23 |
| Hearing Procedures | |

OCCUPATIONAL THERAPY BOARD MEMBERS

1. Linda C. Johnston, O.T.R.
410-1/2 A Ford Street
South Charleston, West Virginia 25309
2. Jane Kelley, O.T.R.
1 Maple Avenue
Morgantown, West Virginia 26505
3. Elizabeth B. Devereaux, M.S.W., O.T.R., F.A.O.T.A.
18 Pembroke Lane
Huntington, West Virginia 25705
4. Thomas Strow, C.O.T.A.
1005 Reynolds Avenue
Princeton, West Virginia 24740
5. Monica Williamson
2 Lenox Avenue
Wheeling, West Virginia 26003

PROCEDURAL HISTORY

| | |
|---|------|
| Rules and Regulations Proposed | 1979 |
| Rules and Regulations Reviewed | 1979 |
| Rules and Regulations Filed with the Secretary of State | 1979 |
| Public Hearing Held | 1979 |
| Rules and Regulations Promulgated | 1979 |
| Rules and Regulations Officially Revised by Legislative Rule-Making Committee | 1979 |

RULES AND REGULATIONS OF THE
WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY

CHAPTER I

PART I

1.01 PURPOSE

1.01.1 These regulations establish the general rules for licensure of occupational therapist and occupational therapy assistant in West Virginia.

1.02 AUTHORITY

1.02.1 These regulations are issued under the authority of Chapter 30, Article 28, Sections 1 et seq. of the West Virginia Code of 1931, as amended.

1.03 SCOPE

1.03.1 Except as otherwise specifically provided, these regulations apply to all persons in West Virginia who present themselves or hold themselves out as an occupational therapist or occupational therapy assistant.

1.04 EFFECTIVE DATE

1.04.1 This regulation was promulgated on _____, 1979, and will become effective on _____, 1979.

1.06 DEFINITIONS

As used in these regulations:

(1) "Association" means the West Virginia Occupational Therapy Association.

(2) "Board" means the West Virginia Board of Occupational Therapy.

(3) "License" means a valid and current certificate of registration issued by the West Virginia Board of Occupational Therapy.

(4) "Occupational Therapy" means the evaluation, treatment, and aid in diagnosis of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability or the aging process in order to achieve optimum functioning and for prevention and health maintenance. Specific occupational therapy services include, but are not limited to: activities of daily living (ADL); the design, fabrication and application of splints; sensory motor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational and social systems and for the maintenance of health through these systems.

(5) "Occupational Therapist" means a person licensed to practice occupational therapy and whose license is in good standing.

(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist and whose license is in good standing.

(7) "Occupational therapy aide" means a person who assists in the practice of occupational therapy, who works under the direct supervision of a licensed occupational therapist or licensed occupational therapy assistant and whose activities require an understanding of occupational therapy, but do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy.

(8) "General supervision" means initial direction, periodic inspection, periodic meetings to review, personal and direct involvement of the supervisor in the supervisee's professional experience which includes evaluation of his/her performance. The supervising occupational therapist need not be physically present or on the premises at all times where the C.O.T.A. is performing the professional services.

(9) "Direct supervision" means the actual physical presence of a licensed occupational therapist or licensed occupational therapy assistant and the specific delineation

of tasks and responsibilities by a licensed occupational therapist and shall include the responsibility for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the supervisee. It is the responsibility of the licensed occupational therapist to ensure that the aide does not perform duties for which he is not trained. The supervising licensed occupational therapist or licensed occupational assistant must be physically present when the aide and/or limited permit holder is performing the patient/consumer service.

(10) "Active practice" means engaging in occupational therapy.

(11) "Educator" means a person engaged in the teaching of occupational therapy within an accredited and/or approved educational program of occupational therapy.

(12) "Clinician" means a person who actively practices occupational therapy within a clinical setting.

(13) "Consultant" means a person who conducts periodic meetings to review and to provide recommendations and resource information regarding methods of implementation of occupational therapy programs, evaluation of a program in its performance of occupational therapy services and recommendations for improved service.

(14) "Limited permit" means a time limited permit issued to a person upon determination by the Board that all

requirements for licensure have been met except for the examination.

(15) "In collaboration with" means a formal working relationship in which there is regular consultation.

(16) "Referral" means prior to initiating occupational therapy treatment a written referral must be given by a licensed physician or surgeon, psychologist or psychiatrist, dentist, osteopathic physician or surgeon or chiropractor or podiatrist.

(17) "Proof of current licensure" means current certification number as assigned by the American Occupational Therapy Association, license number from another state, territory of the United States or the District of Columbia and three notarized references from individuals who have knowledge of the therapist's professional training or experience during the last five years.

(18) "Periodic meetings to review" means meetings determined by type of setting and supervisee competency. Such meeting shall mean no less than monthly in the case of a licensed occupational therapist supervising a licensed occupational therapy assistant.

(19) "Continuing professional competence" means a growth in continuing professional competency and educational knowledge of current developments in the practice of occupational therapy and research.

(20) "Informed consumer" means any person upon whom occupational therapy services are performed must be informed

as to the professional competence of the individual performing said services, i.e., a licensed occupational therapist, licensed occupational therapy assistant, occupational therapy aide, occupational therapy student or intern. Upon the consumer's request the license must be shown.

(21) "Unprofessional conduct" means, but shall not be limited to:

(a) Engaging in the practice of occupational therapy while in an intoxicated condition or under the influence of narcotics or any other drugs which impair consciousness, judgment or behavior; or

(b) Immoral conduct while engaged in the practice of occupational therapy. The conduct rising to the level of immoral would be such conduct that would lead, upon trial in any criminal court, state or federal, to the conviction of the accused; or

(c) Willful falsification, destruction or theft of property or records relating to the practice of occupational therapy or health of the patient;

(d) Failure to exercise due regard for the safety of life or health of the patient; or

(e) Unauthorized disclosure of information relating to a patient or his records;

(f) Discrimination in the practice of occupational therapy against any person for reason of race, religion, creed, color, or national origin.

2.01 BOARD FUNCTIONS -- POWERS AND DUTIES OF THE BOARD

2.01.1 The Board shall meet a minimum, of at least two times a year with the first meeting occurring during the month of January in order to elect a chairperson and secretary.

2.01.2 In order for the business of the Board of Occupational Therapy to be legally conducted a quorum of a majority of the Board members must participate in the deliberations. Participation can occur via telephone communications, or other two-way communications medium, as well as members meeting in the physical presence of one another.

2.01.3 The Board may reimburse its Board membership for all reasonable and necessary expenses actually incurred in the performance of their duties.

2.01.4 The Board may also pay its Board membership reasonable compensation not to exceed fifty dollars per day for days spent in performing Board duties.

2.01.5 Where a vacancy in the Board membership occurs, the remaining Board members shall appoint new members consistent with the eligibility requirements as set forth in West Virginia Code of 1931, as amended, Chapter 30, Article 28, Sections 1 et seq.

2.01.6 The Board shall administer, coordinate and enforce the provisions of these rules and regulations.

2.02 DUTIES OF THE CHAIRMAN

(1) The position of Chairman shall be filled by election from within the membership of the Board.

(2) The Chairman shall designate the time and place of meetings on his own authority or at the direction of at least three Board members.

(3) The Chairman shall preside at all meetings or, in the case of his inability to attend any meeting, the Secretary/Treasurer shall serve for the meeting.

(4) The Chairman shall exercise general supervision of the affairs of the Board and shall have the usual powers of such office and such other powers and duties as the Board shall direct.

(5) The Chairman shall prepare an agenda for each meeting.

2.03 DUTIES OF THE SECRETARY/TREASURER

(1) The position of Secretary/Treasurer will be filled by election from within the membership of the Board.

(2) The Secretary/Treasurer shall assist the Chairman at his request and shall preside over all meetings in the absence of the Chairman and shall assume the responsibilities of the Chairman in cases of extended illness or long absences from Board meetings. In the event the Secretary/Treasurer assumes the functions of the Chairman, another member of the Board will assume temporarily the responsibilities of the Secretary/Treasurer.

(3) The Secretary/Treasurer shall keep the minutes of the proceedings of the Board meetings and the records of the Board.

(4) The Secretary/Treasurer shall be bonded and have custody of all fees received by the Board and shall be responsible for the transfer of such funds to the State Treasurer. Said moneys received will be deposited and credited.

(5) The Secretary/Treasurer, with the advice and consent of the Board, or pursuant to ratification by the Board, shall be authorized to spend moneys for the necessary expenses of the Board.

(6) The Secretary/Treasurer shall receive, accept responsibility for, issue (with Board approval) an account to the Auditor of the State of West Virginia all licenses and temporary permits, and keep duplicates of certificates handled by the Board.

(7) The Secretary/Treasurer shall be responsible (with the approval of the Board) for the preparation and submission of the annual budget to the Board.

(8) The Secretary/Treasurer shall maintain an accurate list of licensees with current names and addresses.

(9) The Secretary/Treasurer shall maintain a list of accredited and approved occupational therapy educational programs and shall make this list available upon request.

(10) The Secretary/Treasurer shall notify the members of the Board in writing two weeks prior to a regular meeting regarding the time and place. Notification of special or emergency meetings will be made by telephone and by the Secretary of State in the West Virginia Register.

2.04 EXECUTIVE DIRECTOR

In an effort to assist the Board of Occupational Therapists with the day-to-day functions and operations, the Board may select a person to fill the position of Executive Director.

PART II

LICENSES AND TEMPORARY PERMITS

3.01 APPLICATION FOR LICENSES AND TEMPORARY PERMITS

3.01.1 Any person requesting in writing an application for a license or temporary permit shall be furnished the necessary forms, a copy of the regulations pertaining to the licensing of occupational therapists and such other information or questionnaires as the Board may deem desirable.

3.01.2 The application forms shall be completed to provide the information necessary to satisfy the Board that all requirements pertaining to the West Virginia law are being fulfilled. The failure to provide all relevant information with regard to completing the application may be just cause for rejection of the application by the Board and cause the application to be returned to the applicant.

3.01.3 All applications shall be signed by the applicant and by his supervising practitioner. In the event the applicant is not employed, the application shall be signed by the applicant and sworn by him before a notary public.

3.01.4 The application shall be accompanied by a money order or certified check.

3.01.5 Any person knowingly furnishing false information in such application shall be denied a license or

if the applicant has already been licensed before the falsification of such information has been made known to the Board, such license or temporary permit shall be subject to suspension or revocation. In addition, the penalties pursuant to West Virginia Code of 1931, as amended, Chapter 30, Article 28, Section 17, may attach to one who knowingly gives false information in making application for an Occupational Therapy License or temporary permit.

3.01.6 Each applicant for licensure shall be tested by the Board by a written examination unless eligible for an exemption as provided for in West Virginia Code Chapter 30, Article 28, Section 10 of 1931, as amended.

3.01.7 Persons planning to sit for examination shall make application to the Board of Examiners at least thirty (30) days prior to the date of examination on forms provided by the Board. However, for prompt notification by the Board regarding whether an applicant is eligible to take the examination, the application should be submitted at least seventy (70) days prior to the examination date.

3.02 EXAMINATION PROCESS

3.02.1 Examination will be conducted twice yearly at a time and place determined by the Board.

3.02.2 The Board shall give public notice of the examination at least ninety (90) days prior to the date of said examination.

3.02.3 The Board shall determine the cost of administering the examination and notify the examinee upon his/her application for examination. Such fee is nonrefundable.

3.02.4 The Board approved examination is the certification examination of the American Occupational Therapy Association.

3.02.5 The Board shall determine the passing grade of the examination.

3.02.6 The examinee will be notified regarding the minimal score for passing prior to taking the examination.

3.02.7 Following the testing of the examinee the Board shall accept the examination results as provided by the American Occupational Therapy Association and determine which examinees successfully passed the examination.

3.02.8 The Board will direct to the examinee his/her results by certified mail, return receipt requested.

3.02.9 The examinee, upon written request, will have the opportunity to review his examination paper with a member of the Board of Occupational Therapists.

3.03 ISSUANCE OF LICENSES AND LIMITED PERMITS

3.03.1 The Board will strive to issue to each applicant a license within thirty (30) days of receipt of a properly completed application and payment of the appropriate fee if the applicant:

(a) Is of good moral character;

(b) Has completed four years of high school education or its equivalent;

(c) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the Board as described by Chapter 30, Article 28, Section 8 of the West Virginia Code of 1931, as amended;

(d) Has successfully completed a period of supervised field work experience at a recognized educational institution where he/she met the academic requirements as described by the West Virginia Code of 1931, as amended;

(e) Has practiced as an occupational therapy assistant for four years and has successfully completed the supervised field work experience of subsection (d) and has passed the examination to be licensed as an occupational therapist; and

(f) Has passed an examination conducted by the Board as provided in Chapter 30, Article 28, Section 6 of the West Virginia Code of 1931, as amended.

3.03.2 The limited permit shall be issued to persons within the following eligibility classifications:

(1) To those persons who are occupational therapy assistants or who are graduates of occupational therapy programs recognized by the Board which are located within the United States of America excluding those schools or programs offered within any of the several territories or possessions of the United States.

(a) Said limit permit for this category will be valid until the date on which the results of the next qualifying examination have been made public.

(2) To those persons who are graduates of academic programs recognized by the Board which are located within either the territories and possessions of the United States or persons who graduated as occupational therapists or occupational therapy assistants from an occupational therapy curriculum of a foreign country.

(a) A limited permit under this classification shall be valid for one year at which time the holder shall apply to the Board for licensure.

(b) A limited permit within this category shall become null and void if the holder fails to pass the certification examination.

3.03.3 The person issued a limited permit must practice under the direct supervision of a licensed occupational therapist.

3.03.4 A limited permit shall be valid for one year or until the date on which the results of the next qualifying examination have been made public. (At which time the holder shall apply to the Board for licensure.)

3.04 RECIPROCITY

3.04.1 Reciprocity will be considered with other states on an individual basis.

3.04.2 A license issued to an individual by another state will be honored in lieu of a license issued by the West Virginia Board of Occupational Therapy if the person so licensed has passed an examination in another state, territory of the United States or District of Columbia which is acceptable to the Board and equivalent to the requirements of this State.

3.04.3 The Board may waive the examination and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia or territory of the United States or proof of current certification number as assigned by the American Occupational Therapy Association.

3.04.4 A current photograph of the person seeking licensure by reciprocity will accompany the application.

3.04.5 Application forms for licensure by way of reciprocity shall include references from three persons, two of which will be from certified or licensed occupational therapists who have knowledge of the applicant's professional training or experience during the last five years.

3.04.6 All forms providing reference information supporting licensure by reciprocity shall be notarized and mailed to the Board by certified mail, return receipt requested.

3.05 EXEMPTIONS

3.05.1 All persons certified prior to the effective date of these rules and regulations as an occupational therapist or as a certified occupational therapy assistant by the American Occupational Therapy Association. The Board shall waive the examination and grant a license to any person so certified after the effective date of these rules and regulations, if the Board considers the requirements for such certification to be equivalent to the requirements for licensure in these rules and regulations.

3.05.2 The following persons are not required to obtain a license in accordance with the provisions of these regulations:

(a) Any person performing occupational therapy services in this State not licensed under this article, if such services are performed for no more than ninety (90) consecutive days a calendar year in association with an occupational therapist licensed under Chapter 30, Article 28, Section 1 et seq., of the West Virginia Code of 1931, as amended, if such person meets the qualification of licensure under Chapter 30, Article 28, Section 7, of the West Virginia Code of 1931, as amended, except for the qualifying examination; or

(b) Any person performing occupational therapy services in this State not licensed in West Virginia, but who performs such occupational therapy services for not more

than one hundred eighty (180) consecutive days in a calendar year, if such person is licensed to practice occupational therapy under the law of another state which has licensure requirements equivalent to West Virginia or if such person meets the requirements for certification as an occupational therapist (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) established by the American Occupational Therapy Association.

3.06 RENEWAL

3.06.1 An application for renewal of the license shall be received by the Board by December 31 of the current calendar year on forms provided by the Board.

3.06.2 Applications for late renewal of a license shall be accompanied by the late renewal fee and must be received by the Board before July 1 of the current licensing year.

3.06.3 The license renewal sent to the license holder will be accompanied by two wallet-sized cards, one of which is to be placed in the lower left hand corner with his license.

3.07 RESPONSIBILITIES OF THE LICENSEE

3.07.1 It shall be the responsibility of each person engaged in occupational therapy to be familiar with the requirements of the law regulating such activities in West Virginia and with the regulations of this Board.

3.07.2 It shall be the responsibility of each person engaged in occupational therapy to make timely application for licensure or renewal of license, to complete such forms properly and to pay the fees required, and to hold himself available for examination at the times and places designated by the Board. Any information or reminders which the Board may issue shall be regarded as courtesies and shall not diminish the responsibilities of the person engaged in occupational therapy.

3.07.3 Any person licensed under the terms of this article may use the words "occupational therapist registered," "licensed occupational therapist," or occupational therapist" or he/she may use the letters "O.T.R.," "L.O.T." or "O.T." or "L/OTR" in connection with his/her name or place of business.

3.07.4 Any person licensed under the requirements of these rules and regulations shall use the words "occupational therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant" or shall use the letters "O.T.A.," "L.O.T.A.," or "C.O.T.A." or "L/OTA" in connection with his/her name or place of business.

3.08 DISPLAY OF LICENSE OR TEMPORARY PERMIT

3.08.1 Each person entitled to engage in the practice of occupational therapy in this State shall prominently

display at his principal place of employment his license or temporary permit to practice occupational therapy and have in his possession his wallet-sized card.

3.08.2 The current licensure and/or renewal registration card shall be exhibited when requested by and of the following:

(a) A Board member; or

(b) An employee of the West Virginia Department of Health; or

(c) Any person upon whom the licensee performs occupational therapy; or

(d) An employer in whose employ the licensee practices or intends to practice occupational therapy.

3.08.3 An employer, Board member or employee of the Occupational Therapy Program shall not accept a photocopy or other facsimile of a license or wallet-sized registration card as adequate evidence that a person is licensed to practice occupational therapy. Where, for convenience or security, a photocopy or facsimile is displayed, the original document shall be readily available for review.

3.09 DUPLICATE LICENSE

3.09.1 In requesting a name or address change, the current license must be returned to the Board with the required fee prior to issuance of a corrected license.

3.09.2 In requesting a duplicate license due to loss of license, a notarized statement substantiating the loss must be completed and submitted to the Board with the required fee prior to issuance of a duplicate license.

3.10 NOTICE OF CHANGE OF ADDRESS, CHANGE OF NAME

3.10.1 On forms provided by the Board a licensee or holder of a limited permit shall notify the Board of any change of name, or change of mailing address within thirty (30) days of the changed name or address.

3.11 SCHEDULE OF FEES FOR SERVICES RENDERED BY THE WEST VIRGINIA OCCUPATIONAL THERAPY BOARD OF EXAMINERS

| | | |
|--------|--|---------------|
| 3.11.1 | License Fee | |
| | O.T.R. | \$75.00 |
| | C.O.T.A. | 50.00 |
| 3.11.2 | License Renewal Fee | |
| | O.T.R. | 25.00 |
| | C.O.T.A. | 15.00 |
| 3.11.3 | Temporary Permit Fee | |
| | O.T.R. | 50.00 |
| | C.O.T.A. | 50.00 |
| 3.11.4 | Late Renewal Fee | |
| | O.T.R. | 35.00 |
| | C.O.T.A. | 25.00 |
| 3.11.5 | Reciprocity Fee | 75.00 |
| 3.11.6 | Duplicate License (Card) | 5.00 |
| 3.11.7 | Examination Fee | 50.00 |
| 3.11.8 | Change of Name or Address (Card) | 15.00 5.00 |
| 3.11.9 | Rules and Regulations | |

All of the above fees are nonrefundable.

4.01 SUSPENSION, REVOCATION AND REFUSAL TO RENEW LICENSE

4.01.1 After providing adequate notice and an opportunity for a hearing, the Board is empowered to deny, suspend, revoke or refuse to renew, or impose probationary conditions upon any licensee who has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public.

4.01.2 Such unprofessional conduct includes:

(1) Obtaining a license by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Violating any lawful order, rule or regulation rendered or adopted by the Board; or

(4) Violating any provision of this article;

(5) Such denial, refusal to renew, suspension, revocation or imposition of probationary condition upon a licensee may be ordered by the Board in a decision made after a hearing in the manner provided by the rules adopted by the Board. One year from the date of the revocation of a license, application may be made to the Board for reinstatement.

ADMINISTRATIVE HEARING PROCEDURES FOR
THE BOARD OF OCCUPATIONAL THERAPISTS

5.01 HEARING PROCEDURES

5.01.1 Hearings on any suspension, revocation, or denial of an application for a license that is ordered by the Board and that is contested by the applicant shall be conducted according to Code _____.

5.01.2 The applicant may be represented by counsel at the hearing; the Board shall be represented by the Attorney General or his assistants. Special counsel may be appointed to aid the Board in its ruling on the admission of evidence.

5.01.3 The technical rules of evidence may be dispensed with with respect to hearings conducted by the Board; however, each party shall have the right to cross-examine any or all witnesses.

5.01.4 Any concurring or dissenting opinions of the Board members shall be in writing and accompany the Board's final order as outlined in Code _____.

5.02 PROCEDURES FOR JUDICIAL REVIEW

5.02.1 Any person adversely affected by a decision of the Board rendered after a hearing shall have the right to pursue judicial review as provided by Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

The Board shall conduct hearings, shall employ a certified stenographer to record testimony of the hearings and shall keep the transcribed copy of the hearings in the permanent record.

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GOVERNMENT