



FILED

Dec 13 2 19 PM '99

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

*State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919*

email: tanders@mail.wvnet.edu

*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

December 12, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Frankie S. Cayton
Board of Physical Therapy
153 West Main Street
Clarksburg, WV 26301
FROM: Legislative Rule-Making Review Committee
Proposed Rule: **General Provisions, 16CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Dec 6 10 00 AM '99

Staff Counsel: Rita A. Pauley
Date: December 2, 1999
Agency: West Virginia Board of Physical Therapy
Subject: General Provisions, 16 CSR 1

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

PERTINENT DATES

Filed for public comment: June 24, 1999
Public comment period ended: July 26, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency: N/A

Fiscal Impact: The Board anticipates an increase of \$5,512 in expenditures. The fees contained in the rule should offset the increase.

ABSTRACT

This proposed rule repeals and replaces an existing rule. The rule establishes licensure requirements for physical therapists and physical therapist assistants; establishes the nature of work that may be performed by physical therapist assistants and sets forth fees for services of the Board.

The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section, a large portion contains the supervision of a physical therapist assistant which should be moved to its own section of the rule. The definition of "Practice of Physical Therapy" expands upon the statutory definition of "Physical therapy" without including its limitations.

Section 3 sets forth the Board's fee schedule and is found on pages 4 and 5 of the rule. A fee for lapsed license is listed, however, there is no discussion of lapsed licenses in the rule. A \$20.00 fee is listed for providing a copy of the "Statutory & Regulatory Law", however, only the Secretary of State may charge

for copies of rules. (W.Va. Code §29A-2-8) Finally, a late fee not to exceed 25% of the original fee is to be assessed.

Section 4 sets forth the licensure requirements for physical therapists who were educated outside the United States. The foreign educated applicant must be certified by a pre-screening certification agency; have at least an equivalent of a B.S. degree in physical therapy and be proficient in English.

Section 5 states that applicants must take an unidentified examination and obtain a score that the Board determines to be passing.

Section 6 is entitled "Issuance, Renewal or Reinstatement of License" However, it merely states that the Board has the right to evaluate applicants according to the testing, licensure and procedural requirements of the agency responsible for the examination. The board needs to develop procedures for issuing and renewing licenses as well under what conditions a license may be revoked, when and how it may be reinstated.

Section 7 authorizes the issuance of temporary permits to physical therapists for 90 days to new graduates and persons who have valid a license in another state.

Section 8 authorizes the issuance of temporary permits to physical therapy assistants for 90 days to new graduates and persons who have valid a license in another state.

Section 9 sets forth application requirements. Applicants must complete the application form and supply information about themselves such as education, work experience, criminal record and child support obligations.

AUTHORITY

Statutory authority: W.Va. Code, §30-20-5, which provides, in part, as follows:

(a) The board shall: (4) Propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code implementing the provisions of this article and the powers and duties conferred upon the board hereby, including, but not limited to:

(A) Reasonable rules establishing standards to ensure that the activities of a licensed physical therapy assistant are performed in accordance with the definitional requirements of a physical therapy assistant as specified in subsection (i), section two of this article, which reasonable rules shall require that there be no more than two physical therapy assistants licensed to practice in this state for every physical therapist so licensed and shall require that no more than two physical therapy assistants be performing under the supervision of a licensed physical therapist at any one time;

(B) Reasonable rules establishing standards to ensure that those activities of a physical therapy aide are performed in accordance with the definitional requirements specified in subsection (h), section two of this article; and

(C) Rules establishing reasonable licensing and examination fees as provided in this article and in accordance with section six, article one, chapter thirty of this code;

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?

No.

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

Yes.

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

No.

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

Yes.

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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.