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WEST VIRGINIA SECRETARY OF STATE KEN HECHLER ADMINISTRATIVE LAW DIVISION

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE 15 LRMRE
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Form #3

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

AGENCY: WV Board of Physical Therapy TITLE NUMBER: 16

CITE AUTHORITY: WV Code §30-20-1 et seq. and WV Code §30-1-1

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: Series 3

TITLE OF RULE BEING PROPOSED: Title 16, Series 3, Disciplinary and Complaint
Procedures

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.

WV Board of Physical Therapy
153 W. Main St., Suite #103
Clarksburg, WV 26301

Frankie S. Cayton
Authorized Signature
Frankie S. Cayton, Administrator



SALLY B. OXLEY
Chairman of The Board

WEST VIRGINIA
BOARD OF PHYSICAL THERAPY

FRANKIE S. CAYTON
Administrator

August 30, 2000

TO: Secretary of State's Office

FROM: Frankie S. Cayton, Board Administrator

A handwritten signature in cursive script that reads "Frankie S. Cayton".

RE: Agency Approved Proposed Rule
Title 16, Series 3, Legislative Rule, Disciplinary and Complaint Procedures

We had a thirty-day comment period that ran from July 3, 2000, until noon on August 4, 2000. A "Legal Notice" was published in five prominent and well circulated WV newspapers as well as Notice being sent to the WV Physical Therapy Professional Association. We received no oral or written comments during the aforementioned comment period.

The original wording of the Proposed Rule has been somewhat amended as per input and instructions from Staff Counsel, Rita Pauley, of the LRMRC.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 16, Series 3, Legislative Rule, Disciplinary and Complaint

Type of Rule: X ^{Procedures} Legislative Interpretive Procedural

Agency: WV Board of Physical Therapy

Address: 153 West Main Street., Suite #103

Clarksburg, WV 26301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$12,000.00		2,000	7,000+	7,000+
PERSONAL SERVICES	\$5,000.00		None	5,000	5,000+
CURRENT EXPENSE	\$2000.00		2,000	2,000+	2,000+
REPAIRS & ALTERATIONS	None		None	None	None
EQUIPMENT	None		None	None	None
OTHER	\$5,000.00		None	5,000	5,000+

2. Explanation of Above Estimates:

We have not experienced the costs associated with a complaint in regards to a hearing, Ethics Investigator, Court Reporter or Stenographer, or per diem for Board Members' time and expenses. In the above estimate, I am assuming costs per incident and allowing for that in the totals.

3. Objectives of These Rules: To comply with H.B. 4062 which passed this past Legislative Session and sent into effect on or about February 16, 2000.

Rule Title: Title 16, Series 3, Legislative Rule, Disciplinary and Complaint Procedures.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

I do not foresee that there should be any impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

I do not foresee that there should be any impact.

C. Economic Impact on Citizens/Public at Large.

I do not foresee that there should be any impact.

Date: June 29, 2000

Signature of Agency Head or Authorized Representative:

Frankie D. Payne, Admin.



SALLY B. OXLEY
Chairman of The Board

**WEST VIRGINIA
BOARD OF PHYSICAL THERAPY**

FRANKIE S. CAYTON
Administrator

August 30, 2000

TO: Secretary of State's Office

FROM: Frankie S. Cayton, Board Administrator

RE: Proposed Rule

I am hereby submitting for review and approval **Title 16, Series 3, Legislative Rule, Disciplinary and Complaint Procedures**, for and on behalf of the WV Board of Physical Therapy.

H.B. 4062 which passed this past Legislative Session and went into effect on or about February 16, 2000, mandated that the Board promulgate Rules by July 1, 2000.

The Rule that accompanies this letter is in compliance with that mandate.

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 30, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Physical Therapy
153 W. Main St., Suite #103
Clarksburg, WV 26301

LEGISLATIVE RULE TITLE: Title 16, Series 3, Disciplinary and Complaint Procedures

1. Authorizing statute(s) citation W.Va. Code §30-20-1 et seq. and W.Va. Code 30-1-1

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?

The Professional Association was notified as well as publication of a Legal Notice in five prominent WV Newspapers.

c. Date of Public Hearing(s) or Public Comment Period ended:

August 4, 2000 -Noon

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)

Sept. 1, 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)

Frankie S. Cayton, Administrator

c/o WV Board of Physical Therapy

153 W. Main St., Suite #103

Clarksburg, WV 26301

- 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)

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.

N/A

b. Date of hearing or comment period:

July 3, 2000 to August 4, 2000 (Noon)

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

FILED

TITLE 16
LEGISLATIVE RULE
BOARD OF PHYSICAL THERAPY

SEP 1 11 14 AM '00

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 16-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against Physical Therapists, Physical Therapy Aides, Physical Therapist Assistants, Permittees, and Applicants.

1.2. Authority. - W.Va. Code § 30-20-1 *et seq.* and § 30-1-1 *et seq.*

1.3. Filing Date. - June 30, 2000.

1.4. Effective Date. -

§ 16-3-2. Application.

This rule applies to all licensed Physical Therapists, Physical Therapy Aides, Physical Therapist Assistants, Permittees, and Applicants.

§ 16-3-3. 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 to practice Physical Therapy or to assist in the practice of Physical Therapy pursuant to West Virginia Code § 30-20-1 *et seq.*

3.2 "Board" means the West Virginia Board of Physical Therapy.

3.3 "License" means a license or temporary permit issued by the Board to practice Physical Therapy or to assist in the practice of Physical Therapy pursuant to W.Va. Code § 30-20-1 *et seq.*

3.4. "Physical Therapist" means a person who practices Physical Therapy. Physical Therapy Aides and Physical Therapist Assistants are persons who assist in the practice of Physical Therapy as defined in W. Va. Code § 30-20-2.

3.5 "Ethics investigator" means a person licensed to practice Physical Therapy in this State, and who is hired by the Board for the purpose of reviewing complaints against Physical Therapists, Physical Therapy Aides, Physical Therapist Assistants, Permittees and Applicants.

§ 16-3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Physical Therapists.

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 § 30-20-1 *et seq.* or Title 16, Series 1, Rules of the Board.

§ 16-3-5. 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 Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant, Permittee or Applicant with a violation of West Virginia Code § 30-20-1 *et seq.* or of Title 16, Series 1, 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 must contain the following:

5.1.1. The name and address of the Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant, Permittee or Applicant against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have treated the patient after the alleged incident;
and,

5.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a Physical Therapist, Physical Therapy Aide, Physical therapist Assistant, Permittee or Applicant 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 § 30-20-1 *et seq.* or Title 16, Series 1, 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 will maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

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

5.6. Upon receipt of a complaint, the Board will 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 will send a copy of the complaint, including any supporting documentation, by certified mail to the Licensee, Permittee or Applicant in question for his or her written comment. He or she must submit a written response to the Board within thirty (30) days of the receipt 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, Permittee or Applicant to keep the Board informed of his or her current address pursuant to W.Va. Code §30-20-5.(8).

5.9. Upon receipt of a Licensee's, Permittee's or Applicant's comments in response to a complaint, the Board will promptly send a copy of the response, 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 will conduct or authorize to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations in the complaint. The review of complaints and any investigation 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 will, within sixty (60) days, review and investigate the complaint and provide the Board with a report. The report must include 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 will, 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 will 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 will give notice of the conference. The notice will 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. Failure to attend a conference will not prejudice any party to the case.

5.14. The Board, its Chairperson, the investigating committee or Executive Secretary/Administrator 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, its Chairperson or Executive Secretary/Administrator to issue a subpoena or subpoena duces tecum. Any subpoena request must be accompanied by a brief statement explaining the need for the subpoena.

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 Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant, Permittee or Applicant may be sanctioned by the Board. In the event the review and investigation of a complaint is assigned to a 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.

§ 16.3.6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that a Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant, or Permittee's conduct, practices or acts constitute an immediate danger to the public.

§ 16.3.7. Appeals.

7.1. 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 Title 16, Series 2, 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.