

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2010 JUN 29 AM 11:20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV BOARD OF PHYSICAL THERAPY TITLE NUMBER: TITLE 16

RULE TYPE: PROCEDURAL CITE AUTHORITY: 30-20A-4

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 8

TITLE OF RULE BEING PROPOSED: DISCIPLINARY AND COMPLAINT PROCEDURES FOR ATHLETIC  
TRAINERS

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 29, 2010 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV BOARD OF PHYSICAL THERAPY

101 DEE DRIVE  
CHARLESTON, WV 25311

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

*Yes Deyle Spence*  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

DISCIPLINARY AND COMPLAINT PROCEDURES FOR ATHLETIC TRAINERS

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV BOARD OF PHYSICAL THERAPY

Address: 101 DEE DRIVE  
CHARLESTON, WV 25311

Phone Number: 304-558-0367 Email: WVBOPT@WV.GOV

**Fiscal Note Summary**

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

THIS RULE WILL HAVE NO IMPACT ON COSTS OR REVENUES OF STATE GOVERNMENT; OR THE AGENCY ITSELF.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: DISCIPLINARY AND COMPLAINT PROCEDURES FOR ATHLETIC TRAINERS

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

N/A

### 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.

THE CHANGES IN THIS RULE WILL NOT INCUR ANY COSTS ASSOCIATED WITH ATHLETIC TRAINERS REGISTRATION.

Date: June 29, 2010

Signature of Agency Head or Authorized Representative

Joseph Sprague

**TITLE 16  
PROCEDURAL RULE  
WV BOARD OF PHYSICAL THERAPY**

**SERIES 8  
DISCIPLINARY AND COMPLAINT PROCEDURES  
FOR ATHLETIC TRAINERS**

**SUMMARY OF PROPOSED RULE**

The WV Board of Physical Therapy's statute §30-20A (All related to Athletic Trainers) was added through the legislative process and H.B. 3152 passed March 13, 2010. Rules and fees need to be proposed for legislative approval in accordance with the provisions of the statute §30-20A.

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2010 JUN 29 AM 11:20

TITLE 16  
PROCEDURAL RULE  
BOARD OF PHYSICAL THERAPY

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 8  
DISCIPLINARY AND COMPLAINT PROCEDURES  
FOR ATHLETIC TRAINERS

**§16-8-1. General.**

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

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

1.3. Filing Date. --

1.4. Effective Date. --

**§16-8-2. Application.**

2.1 This rule applies to all registered Athletic Trainers.

**§16-8-3. Definitions.**

The following words and phrases as used in these rules shall have the following meanings, unless the context otherwise requires:

3.1 "Applicant" means any person making application for an original or renewal registration to act as an athletic trainer under the provisions of this article.

3.2 "Board" means the West Virginia Board of Physical Therapy established under article twenty of this chapter.

3.3 "Registrant" means a person registered as an athletic trainer under the provisions of this article.

3.4 "Registration" means a registration issued by the board to practice athletic training.

**§16-8-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Registration of Athletic Trainers.**

The Board may deny an application for registration, place a Registrant on probation, limit or restrict a Registrant, suspend a Registrant or revoke any registration issued by the Board, upon satisfactory proof that a Registrant 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 W. Va. Code §30-20A-1 et seq.

**§16-8-5. 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 Registrant or Applicant with a violation of W. Va. Code §30-20A-1 et seq. 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 Registrant 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 Registrant 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 W. Va. Code § 30-20A-1 et seq.

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 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;

5.6.3. That additional information is 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 Registrant 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 Registrant shall be considered properly served when sent to their last known address. It is the responsibility of the Registrant or Applicant to keep the Board informed of his or her current address.

5.9. Upon receipt of Registrant 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 Registrant 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 Registrant 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.

#### **§16-8-6. Contested Case Hearings.**

6.1. The Board may refuse to renew a registration or suspend a registration if it determines there is probable cause to believe that a Registrant conduct, practices or acts constitute an immediate danger to the public.

#### **§16-8-7. Appeals.**

7.1. Any applicant who has had his or her application for a registration denied, a registration suspended, or a registration revoked 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 W. Va. Code §29A-6-1 et seq. 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.