

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 JUN 23 P 12:02

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Exam. for Reg. Prof. Nurses TITLE NUMBER: 19

RULE TYPE: Procedural CITE AUTHORITY: §30-1-8(i)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Disciplinary Action

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 August 2, 2004 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Examiners for
Registered Professional Nurses

101 Dee Drive, Suite 102

Charleston, WV 25311-1620

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Laura S. Rhodes, M.S.N., R.N.
Executive Director

email:westvirginiarn@ncsbn.org
web address:www.state.wv.us/nurses/rn



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STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive, Suite 102
Charleston, WV 25311-1620

June 22, 2004

The Honorable Joe Manchin III
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

Dear Secretary Manchin:

The West Virginia Board of Examiners for Registered Professional Nurses in session June 15-16, 2004 approved for filing the proposed legislative rule CSR 19-9 titled Disciplinary Action.

A brief summary of the rule follows:

This legislative rule outlines the complaint process followed by the Board.

A statement of circumstances requiring the rule follows:

Pursuant to WV Code §30-1-8(i) the Board was mandated to provide a legislative rule on the complaint process followed by the Board. The rule initially included both legislative and procedural components. The legislative portion of the rule has been changed and moved to the Board's rule related to licensure. This rule removes the legislative language of the original Discipline Rule and provides the procedural language for the discipline process. The rule was previously adopted, however not final filed pending the adoption of the legislative rule which included the Board's disciplinary action language.

Should you have any questions or require further information, do not hesitate to contact me.

For the Board,

A handwritten signature in cursive script that reads "Pamela Alderman".

Pamela Alderman, MSN, RN
Board President

Enclosures

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary Action

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Exam. for Reg. Prof. Nurses

Address: 101 Dee Drive, Suite 102
Charleston, WV 25311

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PERSONAL SERVICES	No change				
CURRENT EXPENSE	No change				
REPAIRS & ALTERATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of Above Estimates:

The amendments to this rule will not change the current level of expenditures for implementation of disciplinary action.

3. Objectives of These Rules:

The objectives of this rule is to outline the complaint procedure followed by the West Virginia Board of Examiners for Registered Professional Nurses.

Rule Title: Disciplinary Action

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 22, 2004

Signature of Agency Head or Authorized Representative:

Pamela L. Alderman

**TITLE 19
PROCEDURAL RULES
WEST VIRGINIA BOARD OF EXAMINERS FOR
REGISTERED PROFESSIONAL NURSES**

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WEST VIRGINIA
SECRETARY OF STATE

SERIES 9

DISCIPLINARY ACTION

§19-9-1. General.

1.1. Scope.- This rule defines the role and authority of the board in investigation and resolution of disciplinary matters.

1.2. Authority.-W.VA. CODE §30-1-4 and §30-7-4.

1.3. Filing Date.-

1.4. Effective Date.-

§19-9-2 Definitions.

2.1. The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

2.a. "Board" means the West Virginia Board of Examiners for Registered Professional Nurses.

2.b. "Complaint" means to any written, verbal, or other communication with the board or its representatives which indicates or tends to indicate that a licensee is acting or has acted in violation of West Virginia Code §30-7-1 et seq. or §30-15-1 et seq., or rules governing the practice of registered professional nursing.

2.c. ~~"Impaired" means to the condition of a licensee whose performance or behavior is altered through the use of alcohol, drugs, or other means.~~

2.d.c. "Proof" means to all types of evidence except testimony, including but not limited to records, documents, exhibits, concrete objects, laboratory or other tests, and the reports of results of examinations or laboratory or other tests.

~~2.e. "Structured treatment program" means to a program for physical, psychological, social and/or spiritual rehabilitation, if the program has been expressly approved by the board.~~

2.f.d. "Testimony" means to evidence given by a witness under oath or affirmation, including but not limited to oral statements, affidavits, or depositions.

~~2.g. "Good Professional Character" means the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and generally accepted standards of nursing practice including; but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability and integrity.~~

§19-9-3 Complaint Procedures

3.1. The Board will accept a complaint from any individual against one or more licensees.

3.2. The complaint may be written or verbal. The Board may accept anonymous complaints if the complaint provides enough information to begin an investigation. The Board may provide a form for the purpose of completing a complaint. Complaints shall include the following:

3.2.a. name and address of the licensee against whom the complaint is being filed;

3.2.b. the alleged violation which prompted the complaint;

3.2.c. the date or dates of the incident prompting the complaint;

3.2.d. any supporting documents related to the alleged violation; and

3.2.e. the name, address and telephone numbers of any and all witnesses to the incident.

3.3. The Board shall maintain a log of all complaints, indicating date of receipt, license number of nurse against whom the complaint is filed and the name of the individual filing the complaint.

3.4. A registered professional nurse required to file a complaint with the Board in accordance with this rule or any other applicable state law or rule shall do so within thirty (30) days after their knowledge of the alleged violation.

3.5. 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.

3.6. The Board or its representatives shall gather information necessary to determine the validity of the complaint. All necessary investigative techniques, including but not limited to, subpoenas and interviewing potential witnesses, may be utilized.

3.7. The complainant shall be sent an acknowledgment stating one or more of the following:

3.7.a. The allegations are being reviewed by the Board; or

3.7.b. The allegations are beyond the jurisdiction of the Board; or

3.7.c. More information is required in order to fully investigate the complaint.

3.8. The licensee shall be sent a Notice of Complaint containing the allegations. The licensee has fourteen (14) days to respond to the allegations. The licensee shall also be sent a copy of the complaint filed against his/her license and any supporting documents filed with the complaint.

3.9. Board staff shall review all information received, including subpoenaed information, and determine if further investigation is necessary, if disciplinary action is warranted or if the case needs to be referred to the Disciplinary Review Committee (DRC) for review and/or dismissal.

3.9.a. The DRC may dismiss a case, direct staff to further investigate the allegations or determine the disciplinary action that should be taken against the license.

3.10. Board staff may negotiate terms of consent agreements if probable cause for disciplinary action is warranted.

3.10.a. The DRC shall review all consent agreements for approval and signature; it can reject the consent agreement or request modifications to the consent agreement.

3.11. If the DRC rejects the consent agreement and the licensee rejects the DRC's modifications, if any, staff shall set the case for hearing.

3.12. If the licensee contests the allegations and refuses to enter into a consent agreement, Board staff shall set the case for hearing.

3.13. A licensee may request complaints that are dismissed by the DRC to be expunged

from the licensee's file after three (3) years, if no other complaint is received against the same licensee with the three (3) year period.

§19-9-4 Investigation.

4.1 Upon complaint or on its own initiative, the Board or its employees or designees may investigate conduct which is occurring or has occurred which would violate West Virginia Code §30-7-1 et seq., §30-15-1 et seq., or rules governing the practice of registered professional nursing.

4.2 For the purposes of an investigation by the Board:

4.2.a. The executive secretary or assistant executive secretary may subpoena witnesses and documents and administer oaths;

4.2.b. The Board or its authorized agents may depose witnesses, take sworn statements and collect other evidence;

~~4.2.c. Based on the nature of the complaint, the Board may require a criminal history records check to be paid for by the licensee. The licensee under investigation shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's state of residence, and the United States Federal Bureau of Investigation. Disciplinary action may be taken against the licensee for refusing to submit to the criminal history records check.~~

4.2.d The Board may institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and

enjoin violations of West Virginia Code §30-7-1 et seq., §30-15-1 et seq., or rules governing the practice of registered professional nursing;

4.2.e. The Board may review pertinent medical records during the course of its investigation, and shall remove patient identifying information from records which are introduced as evidence at any disciplinary hearing;

4.2.f. The Board, or its employees or designees within the limits of authority granted by the Board, may employ investigators, consultants and other employees as may be necessary to assist in an investigation;

4.2.g. All powers of the Board and its employees or designees may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings;

~~4.2.h. Upon a finding of probable cause that a basis for disciplinary action exists, the Board may require a registered professional nurse or a person applying for licensure to practice as a registered professional nurse in this state to submit to a physical or psychological examination by a practitioner approved by the Board. Any individual who applies for or accepts the privilege of practicing as a registered professional nurse in this state is considered to have given consent to submit to all such examinations when requested to do so in writing by the Board and to have waived all objections to the admissibility of the testimony or examination report of any examining practitioner on the ground that the testimony or report is privileged communication. If an applicant or licensee fails or refuses to submit to any examination under circumstances which the Board finds are not beyond his or her control, such failure is prima facie evidence of his or her inability to practice as a registered~~

~~professional nurse competently and in accordance with accepted standards for professional practice. A registered professional nurse or person applying for licensure as a registered professional nurse who is adversely affected by this provision may request a hearing within thirty days of any action taken by the Board.~~

§19-9-5 Disciplinary Action

5.1. The Board has the authority to deny, revoke, suspend, or otherwise discipline a licensee or applicant for licensure upon proof that the licensee or applicant for licensure has violated the provisions of West Virginia Code § 30-7-1 et seq.

5.1.a. The Board shall afford every person subject to disciplinary proceedings an opportunity for a hearing, as set forth in the Board's rule regarding Contested Case Hearing Procedure, 19 CSR 5;

5.1.b. If an applicant for licensure or a licensee fails to appear at a scheduled hearing or fails to reply to the notification of hearing, the charges specified may be taken as true and the Board may proceed with the disciplinary action;

5.1.c. Following a hearing before the Board or its hearing examiner, the Board will issue its decision on any disciplinary matter;

5.1.d. The Board may establish a committee that has the authority to resolve disciplinary matters through a formal consent agreement with a licensee, permitting the licensee to voluntarily agree to disciplinary action in lieu of a formal evidentiary hearing.

5.1.e. The Board or its authorized committee may take disciplinary action which includes, but is not limited to, the denial, suspension, or revocation of a license to

practice as a registered professional nurse, or probation of a registered professional nursing license with terms to be met for continued practice, or the assessment of additional renewal, reinstatement, or administrative costs or fines against a licensee, or a combination of these or other actions. A licensee who fails to pay a fine or administrative cost assessed as part of disciplinary action or non-disciplinary action within the time period agreed upon between the parties, may be disciplined or may remain under the disciplinary terms until the fine and administrative costs are paid in full.

~~5.1.f — If the Board finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect into its order, the Board shall order summary suspension of a license pending proceedings for revocation or other action. The Board shall promptly institute and determine further disciplinary action.~~

~~§19-9-6 Professional Misconduct~~

~~6.1. Pursuant to West Virginia Code § 30-7-11(f), the Board is authorized to take disciplinary action against an applicant or licensee upon proof that the individual "[i]s guilty of conduct derogatory to the morals or standing of the profession of registered nursing." The Board determines that conduct, including, but not limited to the following, if proven by a preponderance of evidence, constitutes professional misconduct subject to disciplinary action pursuant to West Virginia Code § 30-7-11(f):~~

~~6.1.a. — failed to adhere to common and current standards for professional nursing practice, including but not limited to standards established by a national professional nursing organization, nursing research, nursing education, or the Board;~~

~~6.1.b. failed to adhere to established standards in the practice setting to safeguard patient care;~~

~~6.1.c. committed knowingly an act which could adversely affect the physical or psychological welfare of a patient;~~

~~6.1.d. abandoned patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;~~

~~6.1.e. practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities that the nurse knows or has reason to know that he or she is not licensed, qualified, or competent to perform;~~

~~6.1.f. impersonated another licensed practitioner;~~

~~6.1.g. permitted another person to use the licensee's license for any purpose;~~

~~6.1.h. permitted, aided, or abetted an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate, or registration;~~

~~6.1.i. delegated professional responsibilities to a person when the registered professional nurse delegating such responsibilities knows or has reason to know that person is not qualified by training, experience or licensure to perform them;~~

~~6.1.j. practiced registered professional nursing while the license is suspended, lapsed, or inactive;~~

~~6.1.k. failed to comply with terms and conditions as may be imposed by the Board based upon previous disciplinary action of the Board;~~

~~6.1.l. practiced professional nursing while the ability to safely and effectively practice is compromised by alcohol or drugs;~~

~~6.1.m. became addicted to a controlled substance;~~

~~6.1.n. became a chronic or persistent alcoholic;~~

~~6.1.o. engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof; thus, not exercising good professional character;~~

~~6.1.p. practiced professional nursing while the ability to safely and effectively practice is compromised by physical or mental disability;~~

~~6.1.q. refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the Board;~~

~~6.1.r. provided false or incorrect information to an employer or potential employer regarding the status of a license, or failed to inform an employer or potential employer of a change in the status of a license;~~

~~6.1.s. knowingly falsified an application for employment;~~

~~6.1.t. knowingly provided false information regarding completion of educational programs;~~

~~6.1.u. falsified patient records or intentionally charted incorrectly;~~

~~6.1.v. improperly, incompletely, or illegibly documented the delivery of nursing care, including but not limited to treatment or medication;~~

~~6.1.w. knowingly made or filed a false report;~~

~~6.1.x. knowingly or negligently failed to file a report or record required by state or federal law;~~

~~6.1.y. willfully impeded or obstructed the filing of a report or record required by state or federal law;~~

~~6.1.z. induced another person to file a false report, failed to file a report required by state or federal law, or obstructed the filing of a report required by state or federal law;~~

~~6.1.aa. failed to report to the Board within thirty (30) days of having knowledge of a violation by a registered professional nurse of W. Va. Code §§ 30-7-1 et seq., 30-15-1 et seq., this rule, any other applicable state law or rule or any applicable federal law or regulation;~~

~~6.1.bb. failed to report through proper channels a violation of any applicable state law or rule, any applicable federal law or regulation or the incompetent, unethical, illegal, or impaired practice of another person who provided health care;~~

~~6.1.cc. impeded or obstructed an investigation by the Board by failure to comply or respond to requests for action or information, whether such failure was known or negligent;~~

~~6.1.dd. violated any provision of West Virginia Code §30-7-1 et seq., or rules governing the practice of registered professional nursing, or a rule or order of the Board, or failed to comply with a subpoena or subpoena duces tecum issued by the Board;~~

~~6.1.ee. failed to register or notify the Board of any changes of name or mailing address;~~

~~6.1.ff. failed to accept certified mail from the Board, when mailed to the licensee's last address on record in the Board's office;~~

~~6.1.gg. failed to disclose to the Board a criminal conviction in any jurisdiction;~~

~~6.1.hh. convicted of a misdemeanor with substantial relationship to the practice of registered professional nursing, in a court of competent jurisdiction.~~

~~6.1.ii. failed to disclose to the Board treatment or counseling for substance abuse, or participation in any professional peer assistance program;~~

~~6.1.jj. provided false information on an application for licensure by examination or endorsement, or an application for renewal, or any other document submitted to the Board for the purpose of licensure, advanced practice recognition, or prescriptive authority;~~

~~6.1.kk. misappropriated medications, supplies, or personal items of a patient or employer;~~

~~6.1.ll. self-administered or otherwise took into the body any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;~~

~~6.1.mm. prescribed, dispensed, administered, mixed or otherwise prepared a prescription drug, including any controlled substance under state or federal law, not in accordance with accepted nursing practice standards or not in accordance with the Board's rule governing prescriptive authority, 19-CSR-8;~~

~~6.1.nn. physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual in the context of a nurse-patient/client relationship;~~

~~6.1.oo. used the nurse-patient/client relationship to exploit a patient or client;~~

~~6.1.pp. engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;~~

~~6.1.qq. failed to maintain appropriate professional boundaries in the nurse-patient/client relationship;~~

~~6.1.rr. failed to report that his or her license to practice registered professional nursing in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing authority thereof, or has been denied licensure in any other state, territory, jurisdiction, or foreign nation;~~

~~6.1.ss. practiced registered professional nursing by way of telecommunications or otherwise, in any other state, territory, jurisdiction, or foreign nation, without a license to do so and not in accordance with the law of that state, territory jurisdiction, or foreign nation.~~

~~6.1.2. Found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or Board in this or another state or territory, where the conduct upon which the finding was based would,~~

~~if committed in this state, constitute professional misconduct under the laws of this state, may serve as a basis for disciplinary action by this Board.~~

~~§19-9-7 Impaired Nurse Treatment Program~~

~~7.1. Pursuant to West Virginia Code § 30-7-11, the Board has the authority to deny, revoke, suspend, or otherwise discipline an applicant or licensee upon proof of prohibited conduct. Pursuant to that authority, the Board may permit the licensee or applicant for licensure to participate in a structured treatment program and meet other terms and conditions for continued licensure, in lieu of disciplinary action.~~

~~7.1.a. Participation in an approved treatment program may be monitored by a designee of the Board;~~

~~7.1.b. The Board may allow an applicant or licensee that remains in compliance with the terms of an approved treatment program, to the satisfaction of the Board's designee, to not appear before the Board or hearing examiner to respond further to charges of misconduct;~~

~~7.1.c. An applicant or licensee that failed to comply with the terms of an approved treatment program, to the satisfaction of the Board's designee, may be subject to further disciplinary action to the fullest extent of the Board's authority;~~

~~7.2. The Board may establish or approve impaired nurse treatment programs:~~

~~§19-9-8 Expungement of Records:~~

~~8.1 All complaints that are dismissed by the DRC shall be expunged upon request by the licensee from the licensee's file after three (3) years, if no other complaint is received against the same licensee within the three (3) year period.~~