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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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February 11, 2001

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Laura Skidmore Rhodes  
Registered Professional Nurses, Board of Examiners for  
101 Dee Drive  
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Disciplinary Action, 19CSR9**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

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Staff Counsel: Rita A. Pauley  
Date: February 3, 2001  
Agency: W. Va. Board of Examiners for  
Professional Nurses  
Subject: Disciplinary Action, 19 CSR 9

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
Registered

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PERTINENT DATES

Filed for public comment: June 22, 2000  
Public comment period ended: July 24, 2000  
Filed following public comment period: August 3, 2000  
Filed LRMRC: August 3, 2000  
Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

The proposed legislative rule modifies a current rule dealing with disciplinary procedures for registered nurses. This rule was amended to comply with the requirements of HB 4062 passed during the 2000 Regular Session. That bill required all boards regulated under Chapter 30 to file legislative rules on hearings and disciplinary complaint procedures. During the 2<sup>nd</sup> Extraordinary Session in November, 2000, House Bill No. 207 corrected the rule making provisions of House Bill 4062 and all rules previously ordered to be filed as legislative rules to be refiled as procedural rules.

The majority of this rule should be a procedural rule. However, there are three sections of the rule that should be in the Board's licensure rule. Rather than lose the substantive portions of the rule the Board and counsel agreed to present the rule to the LRMRC for consideration. With leave of the Committee, if the rule is authorized during the legislative session the Board will remove the substantive sections and file the rule as a procedural rule after the session. The Board will then modify the

licensure rule to include the substantive sections from this rule and bring it back to LRMRC next year.

This rule outlines the complaint process, explains professional misconduct and what disciplinary action might be taken as a result of misconduct. The rule provides for an impaired nurse treatment program and for expungement of complaint records.

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

Section 3 sets forth the complaint procedure. Complaints will be accepted either orally or in writing from anyone. The complaint must contain sufficient information to begin an investigation. The Board will maintain a log of all complaints. The Board will gather all information necessary to determine the validity of the complaint.

The licensee will be sent a Notice of Complaint containing the allegations and supporting documents. The licensee has 14 days to respond to the complaint.

The Board will review the information on the complaint and determine whether or not to proceed with further investigation, take disciplinary action, enter into a consent agreement or refer the case to the Disciplinary Review Committee (DRC). The DRC may direct further investigation, determine disciplinary action should be taken, accept, reject or modify a consent agreement. If the licensee disagrees with the decision of the DRC or contests the allegations and refuses to enter into an agreement the case will be set for a hearing.

Section 4 sets forth the procedures for conducting an investigation. This includes requiring a criminal background check.

Section 5 contains the procedural requirements for disciplinary action.

Section 6 contains the substantiative explanation of professional misconduct. There are 45 behaviors or actions that are considered misconduct. The list includes such things as failing to adhere to established standards of patient care or nursing practice; knowingly committing an act which would adversely affect a patient; being addicted to drugs or alcohol; making or causing to be made false reports or records; failing to notify the Board of a change of address; failing to disclose a criminal conviction; becoming romantically involved with a patient or client while responsible for that person's care and practicing as an RN by way of telecommunications without a license to do so. This section should be part the Board's licensure rule.

Section 7 authorizes the Board to establish or approve impaired nurse treatment programs. This section should be part the Board's licensure rule.

Section 8 provides for expungement of complaints that have been dismissed by the DRC after 3 years if no other complaints are received within the 3 year period. This section should be part the Board's licensure rule.

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#### AUTHORITY

Statutory authority: W.Va. Code, §30-1-4, which provides, in part, as follows:

Every such board shall adopt an official seal which shall be affixed to all licenses or certificates of registration issued by it, and shall make such rules and regulations, not inconsistent with law, as are necessary to regulate its proceedings and to carry out the purposes and enforce the provisions of this chapter applicable to such board.

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?

Yes.

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

No.

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, at the time it was promulgated.

VIII. OTHER.

Counsel has suggested technical modifications.