

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JAN 29 3 07 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV BD. OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES TITLE NUMBER: 19CSR
RULE TYPE: LEGISLATIVE RULE; CITE AUTHORITY §30-1, §30-7, §30-15, & §30-24.

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 NEW RULE BEING PROPOSED: 19CSR9

TITLE OF RULE BEING PROPOSED: DISCIPLINARY ACTION

DATE OF PUBLIC HEARING: JULY 30, 1993 TIME: 9:30-11:30 AM

LOCATION OF PUBLIC HEARING: CONFERENCE ROOM ADJACENT TO OFFICES OF:
WV BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 DEE DRIVE
CHARLESTON WV 25311-1620

COMMENTS LIMITED TO: ORAL ☐, WRITTEN ☐, BOTH ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV BOARD OF EXAMINERS FOR
REGISTERED PROFESSIONAL NURSES
101 DEE DRIVE
CHARLESTON WV 25311-1620

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Janet H. Mitchell

4.80

WEST VIRGINIA BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES

RE: BRIEF SUMMARY

Proposed Rule: §19CSR9

Title: Disciplinary Action

BRIEF SUMMARY

This rule defines the role and authority of the Board in investigation and resolution of disciplinary matters. Furthermore, the rule describes through detailed listing those practices which constitute professional misconduct for a registered professional nurse.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: DISCIPLINARY ACTION

Type of Rule: * Legislative Interpretive Procedural

Agency WV BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES

Address 101 DEE DRIVE
CHARLESTON WV 25311-1620

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR 1994				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ N/A	\$	\$	\$	\$
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERNATIONS	N/A				
EQUIPMENT	N/A				
OTHER	N/A				

2. **Explanation of above estimates:** Implementation of this rule does not directly increase or decrease the operating budget of this agency. It is anticipated that the number of disciplinary cases being reported to the Board will increase, and thus will increase the workload of the agency. This was previously provided for through a licensure fee increase implemented in 1991 and through the addition of clerical staff (1) in 1992 as well as sufficient legal counsel from the Attorney General's office.

3. Objectives of these rules:

To more clearly delineate disciplinary action authority of the Board as well as to delineate professional misconduct practices.

Rule Title: DISCIPLINARY ACTION

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE: As the Board is a Special revenue agency, by law, it may not receive funds from general revenue, nor may the Board's funds be diverted to the general fund.

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

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 29, 1993

Signature of Agency Head or Authorized Representative

Janet H. Fairchild

WEST VIRGINIA BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES

RE: BRIEF SUMMARY

Proposed Rule: §19CSR9

Title: Disciplinary Action

BRIEF SUMMARY

This rule defines the role and authority of the Board in investigation and resolution of disciplinary matters. Furthermore, the rule describes through detailed listing those practices which constitute professional misconduct for a registered professional nurse.

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

SERIES 9

DISCIPLINARY ACTION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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, §30-7, §30-15, and §30-24.

1.3 Filing Date.-

1.4 Effective Date.-

§19-9-2 Definitions.

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

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

2.2 "Complaint" shall refer to any written, verbal, or other communication with the board or its representatives which indicates or tends to indicate that a licensee is about to act, 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.

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

2.4 "Proof" shall refer 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.

2.5 "Structured treatment program" shall refer to a program for physical, psychological, social and/or spiritual rehabilitation, if such program has been expressly approved by the board.

2.6 "Testimony" shall refer to evidence given by a witness under oath or affirmation, including but not limited to oral statements, affidavits, or depositions.

§19-9-3 Investigation.

3.1 Upon complaint or on its own initiative, the board or its employees or designees may investigate conduct which is about to occur, 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.

3.2 For the purposes of an investigation by the Board:

3.2.1 The executive secretary or assistant executive secretary may subpoena witnesses and documents and administer oaths;

3.2.2 Witnesses may be deposed, sworn statements taken, and other evidence collected;

3.2.3 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;

3.2.4 Notwithstanding any other provision of law related to the confidentiality of medical records, such records shall not be excluded from the board's review during the course of an investigation;

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

3.2.6 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;

3.2.7 The board may refer any complaints coming to its attention to an advisory committee of professionals for investigation and report. Any such report shall contain recommendations for disciplinary measures and shall be filed with the board within ninety (90) days of any such referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board shall take whatever action it deems appropriate, as provided herein;

3.2.8 The board may require a registered professional nurse or person applying for licensure to practice as a registered professional nurse in this state to submit to a physical or mental 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 deemed 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 such 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.

§19-9-4 Disciplinary Action

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

4.1.1 The board shall afford every person subject to disciplinary proceedings an opportunity for a hearing;

4.1.2 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 disciplinary action(s);

4.1.3 The Board will issue its decision on any disciplinary matter which is set for by hearing before the Board or a hearing examiner;

4.1.4 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.

4.1.5 The Board or its authorized committee may take disciplinary action which includes, but is not limited to, denial, suspension, or revocation of licensure 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 fines against a licensee, or a combination of these or other actions.

4.1.6 If the board finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect into its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

§19-9-5 Professional Misconduct

5.1 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 hereby declares that the following conduct, if proven by a preponderance of evidence, constitutes professional misconduct subject to disciplinary action pursuant to West Virginia Code § 30-7-11(f):

5.1.1 failing to adhere to common and current standards for professional nursing practice;

5.1.2 failing to adhere to established standards in the practice setting to safeguard patient care;

5.1.3 committing an intentional act which could adversely affect the physical or psychological welfare of a patient;

5.1.4 failing to exercise competence in carrying out professional nursing responsibilities;

5.1.5 abandoning patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;

5.1.6 practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the nurse knows or has reason to know that he or she is not licensed, qualified, or competent to perform;

5.1.7 impersonating another licensed practitioner;

5.1.8 permitting another person to use his or her license for any purpose;

5.1.9 permitting, aiding, or abetting an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate, or registration;

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

5.1.11 practicing registered professional nursing while the license is suspended, lapsed, or inactive;

5.1.12 failing to comply with terms and conditions as may be imposed by the board based upon previous disciplinary action of the board;

5.1.13 practicing professional nursing while the ability to practice is impaired by alcohol, drugs, physical disability or mental disability;

5.1.14 refusing or failing to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the Board;

5.1.15 providing false or incorrect information to an employer regarding the status of a license, or failing to inform an employer of a change in the status of a license;

5.1.16 knowingly falsifying an application for employment;

5.1.17 knowingly providing false information regarding completion of secondary or continuing education;

5.1.18 falsifying patient records or intentionally charting incorrectly;

5.1.19 improperly, incompletely, or illegibly dosumenting the delivery of nursing care, including but not limited to treatment or medication;

5.1.20 knowingly making or filing a false report;

5.1.21 intentionally or negligently failing to file a report or record required by state or federal law;

5.1.22 willfully impeding or obstructing the filing of a report or record required by state or federal law;

5.1.23 inducing another person to file a false report, fail to file a report required by state or federal law, or obstruct the filing of a report required by state or federal law;

5.1.24 failing to report to the board the incompetent, unethical, or illegal practice of a registered professional nurse;

5.1.25 failing to report through proper channels the incompetent, unethical, or illegal practice of another person who is providing health care;

5.1.26 impeding or obstructing an investigation by the board by failing to comply or respond to requests for action or information, whether such failure is intentional or merely negligent;

5.1.27 violating 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 failing to comply with a subpoena or subpoena duces tecum issued by the board;

5.1.28 failing to register or notify the Board of any changes of name or mailing address;

5.1.29 failing to disclose a criminal conviction in any jurisdiction to the board;

5.1.30 failing to disclose treatment or counseling for substance abuse, or participation in any professional peer assistance program;

5.1.31 providing 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 or privileges;

5.1.32 misappropriating medications, supplies, or personal items of a patient or employer;

5.1.33 self-administering or otherwise taking into the body any prescription drug in any way not in accordance with a legal, valid prescription or the use of any illicit drug;

5.1.34 prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted practice standards and in the course of professional nursing practice, or in accordance with 19 CSR 8;

5.1.35 physically or verbally abusing, or failing to provide adequate protection or safety for an incapacitated individual in the context of a nurse-patient/client relationship;

5.1.36 using the nurse-patient/client relationship to exploit a patient or client;

5.1.37 exercising influence or advantage within a nurse-patient/client relationship for the purpose of engaging a patient or client in sexual activity.

5.2 A finding of guilt 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.

§19-9-6 Impaired Nurse Treatment Program

6.1 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. Other forms of discipline may include, but are not limited to, directing the licensee to participate in a structured treatment program.

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

6.1.2 An applicant or licensee that remains in compliance with the terms of an approved treatment program, to the satisfaction of the Board's designee(s), may be permitted to not appear before the Board or hearing examiner to respond further to charges of misconduct;

6.1.3 An applicant or licensee that fails to comply with the terms of an approved treatment program, to the satisfaction of the Board's designee(s), may be subject to further disciplinary action to the fullest extent of the Board's authority;

6.2 Establishment and function of an impaired nurse treatment program or programs will be determined by the board.