

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

WV BOARD OF EXAMINERS FOR REGISTERED  
AGENCY: PROFESSIONAL NURSES TITLE NUMBER: 19CSR

CITE AUTHORITY §30-1, §30-7, §30-15, & §30-24

AMENDMENT TO AN EXISTING RULE: YES  NO \*

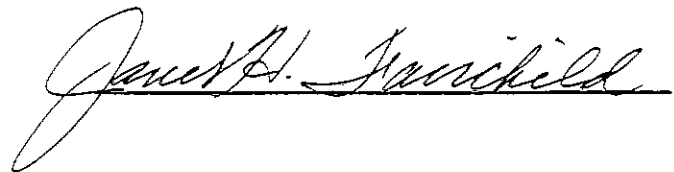
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 19CSR9

TITLE OF RULE BEING PROPOSED: DISCIPLINARY ACTION

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



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

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.

1.3 Filing Date.-

1.4 Effective Date.-

**§19-9-2 Definitions.**

The following words and phrases as used in this rule 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" refers 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.

2.3 "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" refers 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" refers to a program for physical, psychological, social and/or spiritual rehabilitation, if the program has been expressly approved by the board.

2.6 "Testimony" refers 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 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 The board or its authorized agents may depose witnesses, take sworn statements and collect other evidence;

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 The board shall 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;

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 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 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.

#### **§19-9-4 Disciplinary Action**

4.1 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.

4.1.1 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;

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 the disciplinary action;

4.1.3 Following a hearing before the board or its hearing examiner, the board will issue its decision on any disciplinary matter;

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, 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 monitoring fees or costs against a licensee, or a combination of these or other actions. A fee assessed at the time of suspension or revocation of a license is due at the time the licensee

requests reinstatement of the license. A fee imposed in conjunction with penalties other than the suspension of the license is due and payable within six (6) months of the date of the order assessing the fee. A licensee who fails to pay a fee assessed by the board as a part of a disciplinary proceeding within the time period contained in this rule or as otherwise agreed upon between the parties is not eligible for renewal of the license until the fee is paid.

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, 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.

#### **§19-9-5 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 determines 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, including but not limited to standards established by a national professional nursing organization, nursing research, nursing education, or the board;

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

5.1.3 committing knowingly an act which could adversely affect the physical

or psychological welfare of a patient;

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

5.1.5 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;

5.1.6 impersonating another licensed practitioner;

5.1.7 permitting another person to use the licensee's license for any purpose;

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

5.1.9 delegating 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;

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

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

5.1.12 practicing professional nursing while the ability to safely and effectively practice is compromised by alcohol or drugs;

5.1.13 practicing professional nursing while the ability to safely and effectively practice is compromised by physical 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 educational programs;

5.1.18 falsifying patient records or intentionally charting incorrectly;

5.1.19 improperly, incompletely, or illegibly documenting 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 knowingly 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, illegal, or impaired practice of a registered professional nurse;

5.1.25 failing to report through proper channels the incompetent, unethical, illegal, or impaired 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 knowing or 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 to the board a criminal conviction in any jurisdiction;

5.1.30 conviction of a misdemeanor with substantial relationship to the practice of registered professional nursing, in a court of competent jurisdiction.

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

5.1.32 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, advanced practice recognition, or prescriptive authority;

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

5.1.34 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;

5.1.35 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 nursing practice standards

and in the course of professional nursing practice, or in accordance with the board's rule governing prescriptive authority, 19 CSR 8;

5.1.36 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;

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

5.1.38 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. 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.

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

6.1.2 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;

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, may be subject to further disciplinary action to the fullest extent of the board's authority;

6.2 The board may establish or approve impaired nurse treatment programs.



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JAN 14 1 04 PM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

January 9, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Ms. Janet H. Fairchild, Executive Secretary, WV Board of Examiners for Registered Professional Nurses, 101 Dee Drive, Charleston, WV 25311-1620
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Disciplinary Action

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 [X]
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 rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Twyla Wallace, RN, Pres.
Concerned Nurses of WV