

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

Form #4

Do Not Mark In this Box

**FILED**

Oct 29 3 03 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: The WV Board of Respiratory Care TITLE NUMBER: 30

CITE AUTHORITY 30-34

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: 1

TITLE OF RULE BEING PROPOSED: Procedure for Licensure Application

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 30  
Legislative Rules  
The West Virginia Board of Respiratory Care  
Series #1  
Procedure for Licensure Application

FILED

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30-1-1. General

1.1. Scope. -- This legislative rule establishes the application process for licensure by the West Virginia Board of Respiratory Care. OFFICE OF WEST VIRGINIA SECRETARY OF STATE

1.2. Authority. -- W. Va. Code 30-34-6

1.3. Filing Date. --

1.4. Effective Date --

30-1-2. Application for License

2.1. An applicant for licensure shall file with the West Virginia Board of Respiratory Care a signed application form and shall pay an initial application fee of two hundred dollars (\$200.00).

2.2. The applicant for a license shall indicate the level of license requested, Licensed Respiratory Care Technician or Licensed Respiratory Therapist. The applicant shall also submit a notarized copy of the "National Board of Respiratory Care, Inc." certificate designating the applicant's registry or certification status.

30-1-3. Temporary Permits

3.1. The board may issue a temporary permit to practice respiratory care for a period of six months to an individual who is currently practicing in another state, territory or country, and is completing requirements for licensure in this state. The applicant applying for a permit under this provision must submit a completed application form, a letter of good standing from the board of the state where they hold a license and must submit the application fee of two hundred dollars (\$200.00).

3.2. The board may issue a temporary permit to practice respiratory care for a period of six months to a graduate of a board approved educational program who is scheduled to take the next available entry level examination or is waiting for the results of that examination. An applicant for a temporary permit shall include a notarized copy of a certificate of completion from a respiratory care program accredited by the "Joint Review Committee for Respiratory Therapy Education" or its board approved successor and shall pay an initial application fee of two hundred dollars (\$200.00).

3.2.a. An applicant who has not yet graduated may apply for a temporary permit no earlier than 30 days prior to graduation. The applicant shall file a certificate of completion with the board no later than 30 days after graduation. The board shall revoke the temporary permit of an applicant who does not file the certificate of completion within 30 days of graduation.

3.2.b. The board may issue a applicant under a temporary permit shall file an application to take the next available entry level examination offered by the "National Board of Respiratory Care, Inc.". The applicant must submit a score release form to the "National Board of Respiratory Care, Inc.". The results of the examination shall be recorded by the board as reported by the "National Board of Respiratory Care, Inc." or its testing service.

3.2.c. The applicant under a temporary permit shall provide a letter of intent to graduate with the application. The letter must be signed by the program director, and a principal administrative officer of the institution where the program is completed.

3.2.d. Upon notification of passage of the examination by the NBRC the board shall issue a license as a Licensed Respiratory Care Technician to the applicant. A notarized copy of the NBRC certificate must be submitted with the next renewal.

3.2.e. Upon notification that the applicant under a temporary permit failed the examination the board shall revoke the temporary permit and refund the application fee less a processing fee of thirty dollars (\$30.00).

30-1-4 Grandfather Applicants

4.1. An applicant who has not pass the board approved entry level examination may apply for a temporary license whose term expires June 1, 1997.

4.2. The applicant must submit a letter from an employer verifying that he or she has been employed as a respiratory care provider for a minimum of two years. The two year employment period shall have begun on or before June 15, 1994. The applicant shall have worked a minimum of one thousand (1000) hours each year. The letter shall be signed by a principle administrative officer of the institution where the applicant is employed, and the applicant's direct supervisor. The applicant must submit an application, pay an application fee of two hundred dollars (\$200.00) and shall submit the employment verification letter.

4.3. Those individuals currently licensed by appropriate agencies or boards of the State of West Virginia may not apply for a license under this section.

4.4. Upon review the board shall issue an appropriate license. An applicant who is granted a license under this provision shall hold a temporary license as a Licensed Respiratory Care Assistant (RCA), and must work under the supervision of a Licensed Respiratory Care Technician, Licensed Respiratory Therapist or other qualified health care professional as designated by the board. The board shall revoke the license of a licensee who fails to pass the licensing examination on or before June 1, 1997.

30-1-5 Restricted Titles

5.1. The following titles are prohibited from use by persons who are not licensed under this provision; respiratory care professional; respiratory care educator; respiratory care practitioner; respiratory therapist; respiratory technologist; respiratory technician; inhalation therapist; cardiopulmonary technician; respiratory care associate, cardiopulmonary associate; or any similar title.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Respiratory Care

Subject: Procedures for Licensure Application Process

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PERTINENT DATES

Filed for public comment: May 23, 1996  
Public comment period ended: June 25, 1996  
Filed following public comment period: July 25, 1996  
Filed LRMRC: July 25, 1996  
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. 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 requires an applicant for licensure to file an application specifying the license being applied for along with a \$200 application fee and a notarized certificate from the National Board of Respiratory Care designating the applicant's registry or certification status.

Section 3 requires applicants for a temporary license to submit a \$200 application fee and requires certain other documentation.

Section 4 requires applicants under the grandfather provisions under the statute to submit an application along with a \$200 application fee. It requires that the applicant have a minimum of 1,000 hours of practice each of the immediately preceding two years. The Board is required to revoke the temporary license of a licensee who fails to pass the licensing examination by June 1, 1997.

This section also prohibits individuals licensed by other agencies or boards from applying for a license under the grandfather provisions of the Code.

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AUTHORITY

Statutory authority: W.Va. Code, §30-34-6, which provides, in part, as follows:

(a) The board may:

(1) Adopt rules pursuant to article three, chapter twenty-nine-a of this code, as may be necessary to enable it to effect the provisions of this article;...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. The statute provides that persons who have been respiratory therapists for two years, but have not passed the exam are eligible for a temporary license. The proposed rule prohibits individuals currently licensed by another State Board or agency from taking advantage of the grandfather clause. The statute does not provide for any exceptions, therefore under the statute those types of individuals would be eligible for the temporary license.

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. However, the proposed rule does not go far enough. There are no provisions regarding licensure renewal, lapsed licenses or continuing education as envisioned by the statute.

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?

Yes. The proposed rule needs to be reorganized in a more logical manner.

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?

No. The proposed rule did not contain a summary of the proposed rule or a statement of the circumstances requiring the proposed rule. Also the fiscal note should indicate the amount of anticipated revenue from the fees, as the statute merely set a maximum range thus allowing the Board to set the actual fees.

VIII. OTHER.

Counsel has technical modifications to suggest.



**West Virginia Legislature**  
**Legislative Rule-Making Review Committee**

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair

October 15, 1996

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Adm. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Ms. Anna Parkman  
WV Board of Respiratory Care  
P. O. Box 3709  
Charleston, WV 25337  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Procedures for Licensure Application Process

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.

Senate Bill No. 222

(By Senator(s) Ross, Anderson, Macnaughtan,  
Boley and Buckalew)

[Introduced March 3, 1997; referred to the  
Committee on Health and Human Resources; and  
then to the Committee on the Judiciary.]

10 A BILL to amend article nine, chapter sixty-four of the  
11 code of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section eight, relating to  
14 authorizing the board of respiratory care to  
15 promulgate a legislative rule relating to procedures  
16 for the licensure application process.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article nine, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section eight, to read as follows:

22 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND  
23 BOARDS TO PROMULGATE LEGISLATIVE RULES.

1 §64-9-8. Board of respiratory care.

2 The legislative rule filed in the state register on  
3 the twenty-fifth day of July, one thousand nine hundred  
4 ninety-six, under the authority of section six, article  
5 thirty-four, chapter thirty, of this code, modified by the  
6 board of respiratory care to meet the objections of the  
7 legislative rule-making review committee and refiled in the  
8 state register on the twenty-ninth day of October, one  
9 thousand nine hundred ninety-six, relating to the board of  
10 respiratory care (procedures for licensure application  
11 process, 30 CSR 1), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the  
14 Board of Respiratory Care to promulgate a legislative rule  
15 relating to Procedures for the Licensure Application  
16 Process.

17

18 This section is new; therefore, strike-throughs and  
19 underscoring have been omitted.

OLET

H. B. 2370

1 Bill-Respiratory, Licensure (By Delegate(s) Douglas, Hunt, Compton,  
2 Faircloth, Linch and Riggs)

3  
4 [Introduced March 3, 1997; referred to the  
5 Committee on Government Organization then the  
6 Judiciary.]

7  
8  
9  
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7 legislative rule-making review committee and refiled in the  
8 state register on the twenty-ninth day of October, one  
9 thousand nine hundred ninety-six, relating to the board of  
10 respiratory care (procedures for licensure application  
11 process, 30 CSR 17), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the  
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15 relating to Procedures for the Licensure Application  
16 Process.

17

18 This section is new; therefore, strike-throughs and  
19 underscoring have been omitted.