

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

SEP 1 12 29 PM '99

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Board of Respiratory Care TITLE NUMBER: 30

CITE AUTHORITY Legislative 30-34

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Disciplinary Action

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Karen J. Spwart

\$5.80

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule. and if needed. Emergency and Modified Rule.)

DATE: September 8, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Respiratory Care 558-1382

106 Dee Drive, Suite 1

Charlesotn, WV 25311

LEGISLATIVE RULE TITLE: Disciplinary Action

1. Authorizing statute(s) citation 30-34

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
August 5, 1999

b. What other notice, including advertising, did you give of the hearing?
Notification of comment period with copies of proposed rule was mailed to 1,060 licsensed respiratory care practitioners of the State of West Virginia.

c. Date of Public Hearing(s) or Public Comment Period ended:
August 6, 1999 - September 7, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 8, 1999

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Karen J. Stewart, President

WV Board of Respiratory Care

106 Dee Drive, Suite 1

Fax: 558-1383

Charleston, WV 25311

Ph: 558-1382

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

August 6, 1999 - September 7, 1999

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached - N/A

**THE WEST VIRGINIA BOARD OF RESPIRATORY CARE
COMMENTS RECEIVED ON RULE # 4**

The following individuals commented on the rule:

Dave Imhoff
Jay Wildt

Summary of attached comments:

Both comments received were favorable with an additional request to add a reporting responsibility of action or activity which is in violation of the WV Respiratory Care Act.

Action taken as a result of comments:

The WV Board of Respiratory Care has added the following to the proposed rules under section 30:4:5 titled Professional Misconduct.

5.1.23; Failure to report to the Board of Respiratory Care any action or activity that is in violation of WV Code §30-34-1 et. seq., or rules governing the practice of respiratory care.

Respiratory Care Service
St. Mary's Hospital
2900 First Ave
Huntington WV 25702

RECEIVED

AUG 20 1999

W.V. BORG

State of West Virginia
Board of Respiratory Care
106 Dee Drive, Suite 1
Charleston, WV 25311


Members of the Board,

I am writing in response to the proposed changes in the WV Respiratory Care Act. I am glad to see many of the proposed changes, but I would like to see an additional change in regard to disciplinary action.

Upon reading the law, it does not specify that any person or institution is responsible for reporting questionable behavior. It appears that even though an employer may discharge a person for actions which obviously are in violation of the WV Respiratory Care Act, that employer nor co-workers who are licensed respiratory care practitioners are required to report the violation. Thus, a person who may have been found to have committed professional misconduct may, upon discharge from the first facility, be hired by a second facility without any difficulty if the first facility is not required to report the misconduct.

You may wish to ask some of the other boards, e.g. nursing, who is required to report misconduct.

Sincerely,



David R. Imhoff, RN, RRT, MBA

Subject: FW: Rules Additions

From: "Stewart, Karen" <Karen.Stewart@Camcare.com>
To: "Massey, Nancy" <massen@wvnet.edu>

RECEIVED
AUG 16 1999
W.V. BORC

A comment from our comment period
Karen J. Stewart, MS, RRT, LRTR
Director Respiratory Care and Sleep Disorders Center
e-mail karen.stewart@camcare.com
304.348.4209

> -----Original Message-----

> From: Jay Wildt [SMTP:jay.wildt@mghwv.org]

>

> To: 'Stewart, Karen'

> Subject: Rules Additions

>

> I reviewed the changes and find them to be just fine. Good job Karen.

> I

> assume the changes in the reporting times are a result of the
> difficulties

> with license renewals and CEU reporting occurring at the same time.

> Makes

> sense to me.

> Keep me posted about sponsorship of the managers reception. I

> appreciate

> The WVBORC's help. Thanks again.

> I think our JCAHO visit conflicts with the fall meeting, again. damn

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED
1999 SEP 3 4 49 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Board of Respiratory Care TITLE NUMBER: 30
RULE TYPE: Legislative; CITE AUTHORITY: 30-34
AMENDMENT TO AN EXISTING RULE: YES ___ NO X
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____
TITLE OF RULE BEING AMENDED: _____
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4
TITLE OF RULE BEING PROPOSED: Disciplinary Action

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 September 7, 1999 AT 8:00 AM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Board of Respiratory Care
106 Dee Drive, Suite 1
Charleston, WV 25311
304-558-1382

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

Karen Stewart

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

The Board of Respiratory Care establishes a comment period for rules regarding disciplinary action for those engaged or applying to engage in the practice of Respiratory Care in the State of West Virginia.

STATEMENT OF CIRCUMSTANCES FOR SERIES 4:

This rule sets forth provisions for disciplinary action.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary Action

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Respiratory Care

Address: 106 Dee Drive Suite 1

Charleston, WV 25311

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The board is self supporting and fees incurred will be the responsibility of the licensee.

3. Objectives of These Rules:

This rule establishes disciplinary guidelines for the Board of Respiratory Care.

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: 8/05/99

Signature of Agency Head or Authorized Representative:

Karen Stewart

**TITLE 30
LEGISLATIVE RULES
WV BOARD OF RESPIRATORY CARE**

**SERIES 4
DISCIPLINARY ACTION**

§ 30-34-1 General

- 1.1 Scope: This legislative rule defines the roles and authority of the Board in investigation and resolution of disciplinary matters.
- 1.2 Authority: WV Code § 30-34-5
- 1.3 Filing Date: -
- 1.4 Effective Date:

30: 4: 2 Discipline Section; the following words and phrases as used in this rule have the following meaning, unless the context otherwise requires:

- 2.1 "Board" means the WV Board of Respiratory Care.
- 2.2 "Complaint" refers to any written communication with the Board or its representative which indicates or tends to indicate that a licensee is acting in violation of the WV Code §30:34:1 et seq., or the rules governing the practice of the respiratory care licensee.
- 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.
- 2.5 "Structured Treatment Program" refers to a program for physical, psychological and social rehabilitation.
- 2.6 "Testimony" refers to evidence given by a witness under oath or affirmation, including but not limited to oral statements, affidavits, or depositions.

30: 4: 3 Investigation

- 3.1 Upon complaint or on its own initiative, the board or its employees may investigate conduct, which is occurring or has occurred that would violate WV Code §30:34:1 et seq., or rules governing the practice of Respiratory Care Licensee.
- 3.2 For the purpose of an investigation by the board;
- 3.2:1 The executive secretary may subpoena witnesses and documents and administers 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 the State of West Virginia to enforce its subpoenas for the production of witnesses and documents and its order to restrain and enjoin violation of WV Code §30:34:1 et seq., or rules governing the practice of the Respiratory Care License;

- 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 at any disciplinary hearings;
- 3.2:5 The board, or its executive secretary, within the limits of authority granted by the board, may employ investigators, consultants, and other personnel as may be deemed necessary to assist in any 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 finding of probable cause that the basis for disciplinary action exists, the board may require a respiratory care licensee, or a person applying for a respiratory care license to practice as a respiratory care provider in the State of West Virginia 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 respiratory care provider in the State of West Virginia is considered to have given consent to submit to all such examinations upon request to do so in writing by the board and to have waived all objections to the admissibility of the testimony of 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 is not beyond his or her contrail, such failure is prima facie evidence of his or her inability to practice as a licensed

respiratory care provider completely and in accordance with acceptable standard of professional practice. A licensed respiratory therapist or a person applying for a license as a respiratory therapist may request a hearing within thirty (30) days of any action taken by the board.

30: 4: 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 has violated provisions set forth in WV Code §30:34:1 et seq.;
- 4.1:1 The board shall afford every person subjected to disciplinary proceedings an opportunity for a hearing as set forth in the WV Code §30:34:14 et seq.;
- 4.1:2 If an applicant for licensure or 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;
- 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 the 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 respiratory therapist, or probation of a respiratory therapist with terms to be met for continued practice, or the assessment of additional renewal, reinstatement, or monitoring fees and costs against a licensee, or 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 the time frame determined by the board. A licensee who fails to pay a fee assessed by the board as part of disciplinary proceeding within the time period contained in this rule or as otherwise agreed upon between the parties will not be eligible for renewal of the license until the fee is paid.

30: 4: 5 Professional Misconduct

5.1 Pursuant to WV Code §30:34:13, the board is authorized to take disciplinary action against an applicant or licensee upon proof that the individual is guilty of dishonest or unethical conduct as determined by the board. The board determines that the following conduct, if proven by a preponderance of evidence, constitutes professional misconduct subject to disciplinary action pursuant to WV Code §30:34:13 et seq.;

5: 1: 1 Failure to adhere to common and current standards for respiratory

therapist's practice, including but not limited to standards established by a national respiratory care organization, respiratory care research, respiratory care 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 and knowingly an act which could adversely affect the physical or psychological welfare of a patient;
- 5.1:4 Abandoning patients by terminating responsibility for respiratory care, intervention, or observation, without properly notifying appropriate personnel and ensuring the safety of the patients;
- 5.1:5 Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the respiratory therapist 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 the licensee's license for any purpose;
- 5.1:8 Permitting, aiding, or abetting an unlicensed person to perform activities requiring a license;
- 5.1:9 Practicing as a respiratory therapist when the license is suspended, lapsed, or inactive;
- 5.1:10 Delegating professional responsibilities to a person the respiratory therapists such responsibilities known or has reason to know the person is not qualified by training, experience, demonstrated competency, or

licensed to perform;

- 5.1:11 Failing to comply with terms and conditions as imposed by the board, based upon disciplinary action;
- 5.1:12 Practicing as a respiratory therapist while the ability to safely and effectively practice, is compromised by alcohol and drugs;
- 5.1:13 Practicing as a respiratory therapist while the ability to safely and effectively practice, is compromised by physical and mental disability;
- 5.1:14 Refusing or failing to report for a physical or mental examination included but not limited to laboratory or other tests as required 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 falsify an application for employment;
- 5.1:17 Knowingly provide false information regarding completion of educational programs;
- 5.1:18 Falsifying patient records or intentionally charting incorrectly;
- 5.1:19 Falsifying credentials;
- 5.1:20 Improperly, incompletely, or illegibly documenting the delivery of patient care, including but not limited to treatment or medicine;
- 5.1:21 Knowingly making or filing a false report;
- 5.1:22 Willfully impeding or obstructing the filing of a report required by state or federal law;

5.1.23 Failure to report to the Board of Respiratory Care any action or activity that is in violation of WV Code §30-34-1 et. seq., or rules governing the practice of respiratory care.