



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 18, 1999

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Oct 18 8 37 AM '99
OFFICE OF THE CLERK
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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Karen J. Stewart
WV Board of Respiratory Care
106 Dec Drive
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Disciplinary Action, 30CSR4**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Respiratory Care

Subject: Disciplinary Action, 30CSR4

PERTINENT DATES

Filed for public comment: June 24, 1999
Public comment period ended: July 30, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency:

Fiscal Impact: None

OFFICE OF LEGISLATIVE SERVICES
WEST VIRGINIA

SEP 21 4 09 PM '99

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 defines terms.

Section 3 provides that the Board may, upon complaint or on its own initiative, investigate conduct violating the Respiratory Care Statute or rules. It provides those powers which the Board has in an investigation, such as the authority to subpoena witnesses. It allows the Board, upon a finding of probable cause, to require a licensee to submit to a physical or psychological examination and provides that the failure of an applicant to submit to an examination is prima facie evidence of the licensee's inability to practice.

Section 4 relates to disciplinary action. It provides that the Board may deny, revoke or suspend a license or otherwise discipline a licensee or applicant for licensure. It requires that persons subjected to disciplinary proceedings be afforded due process. This section also allows the Board to establish a committee with the authority to resolve disciplinary matters

through a formal consent agreement with the licensee in lieu of a formal evidentiary hearing. It also allows the Board or its Committee to assess a monitoring fee.

Section 5 relates to professional misconduct. It provides that the Board may take disciplinary action against an applicant or licensee upon proof that the individual is guilty of dishonest or unethical conduct. It sets forth specific types of conduct which the Board considers professional misconduct.

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...

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.

VIII. OTHER.

Counsel has technical modifications to suggest.