

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

2000 FEB 17 11 59
OFFICE SECRETARY

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: 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: 4

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.

Karen J. Stewart



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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Delegate Mark Hunt, Co-Chairman
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October 18, 1999

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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

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

**SERIES 4
DISCIPLINARY ACTION**

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§ 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 Definitions

- 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, and 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 License.
- 3.2 For the purpose of an investigation by the board,
- 3.2.1 The 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 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 considered 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; and

- 3.2.7 Upon finding of probable cause that the basis for disciplinary action exists, the Board may require a Respiratory Therapist Licensee, or a person applying for a license to practice as a Respiratory Therapist 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 Therapist 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 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 is not beyond his or her control, the failure is prima facie evidence of his or her inability to practice as a licensed Respiratory Therapist 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 may deny, revoke, or suspend a license or otherwise discipline a licensee or applicant has violated provision set forth in WV Code §30-34-1 et seq.
- 4.2 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.

- 4.3 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.
- 4.4 Following a hearing before the Board or its hearing examiner, the Board shall issue its decision on any disciplinary matter.
- 4.5 The Board may establish a committee that has the authority to resolve disciplinary matter through a formal consent agreement with the licensee, permitting the licensee to voluntarily agree to disciplinary action in lieu of a formal evidentiary hearing.
- 4.6 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 monitoring 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 monitoring fee imposed in conjunction with penalties other than the suspension of the licensee is due and payable within the time frame determined by the Board. A licensee who fails to pay a monitoring fee assessed by the Board as part of the disciplinary proceeding within the time period contained in this rule or as otherwise agreed upon between the parties is not eligible for renewal of his or her license until the fee is paid.

§30-4-5 Professional Misconduct

- 5.1 Pursuant to WV Code §30-34-13, the Board may 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 Failing to adhere to common and current standards for a 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 Knowingly committing an act which could adversely affect the knowing 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 Falsifying a 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 that person's license is suspended, lapsed, or inactive;
- 5.1.10 Delegating professional responsibilities to a person the Respiratory Therapist knows or has reason to know that 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 including, 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 falsifying 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; or

5.1.23 Failing 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.