

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

Form #3

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AUG 10 10 19 AM '00

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Bd. of Exam. for Speech-Language Pathology & Audiology TITLE NUMBER: Title 29

CITE AUTHORITY: WV Code 30-32-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Disciplinary + Complaint Procedures For
Speech-Language Pathology + Audiology

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

TITLE OF RULE BEING PROPOSED: _____

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.

Vicki Matheson

Authorized Signature

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: August 8, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) W.V. Board of Examiners for Speech-Language Pathology and Audiology

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology

1. Authorizing statute(s) citation WV Code 30-32-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 27, 2000

b. What other notice, including advertising, did you give of the hearing?
A letter was sent to all licensees with a summary of each rule being changed.

c. Date of Public Hearing(s) or Public Comment Period ended:
July 27, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

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

August 12 2000

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

Vicki Mathess, Administrative Services Manager

HC 78, Box 9-A

Troy, WV 26443-9707

Ph: 304-462-5460

Fax: 304-462-5482

e-mail: wvbeslpa@mail.wvnet.edu

- 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)

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:

N/A

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

West Virginia Board of Examiners
For
Speech-Language Pathology and Audiology

Board Members

Michael Zagarella, Chairman
Gary Vandevander, Audiologist
Cinda Shaver, Speech Pathologist
Vickie Pullins, Speech Pathologist
Thelma J. Gibson, Lay person

Vicki Mathews, Administrative Services Manager

June 14, 2000

Ken Hechler, Secretary of State
State of West Virginia
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, WV 25305-0771

RE: Title 29-4-Disciplinary and Complaint Procedures
Speech-Language Pathology and Audiology

Dear Sir:

House Bill 4062, passed February 15, 2000, provides that the West Virginia Board of Speech-Language Pathology and Audiology propose legislative rules for the implementation of the provision of the new law.

Therefore, new rules are required to implement adjudication of disciplinary and complaint procedures before the Board.

As president of the Board, I approve the filing of this rule.

Sincerely,


Michael Zagarella
President

HC 78, Box 9-A, WV 26443
State Toll Free 1-877-462-5460

Phone: 304-462-5460

Fax: 304-462-5482

E-Mail: WVBESLPA@MAIL.WVNET.EDU

VISIT OUR NEWLY CONSTRUCTED WEB SITE: www.state.wv.us/wvbeshpa

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 29-4 Disciplinary and Complaint Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Examiners for Speech-Language Pathology and Audiology

Address: HC 78, Box 9A
Troy, WV 26443

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	None				
PERSONAL SERVICES	None				
CURRENT EXPENSE	None				
REPAIRS & ALTERATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of Above Estimates:

3. Objectives of These Rules:

To have a concise discipline, complaint, and contested case hearing procedure as mandated by the provisions of H.B. 4062.

Rule Title: 29-4 Disciplinary and Complaint Procedures

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: June 25, 2000

Signature of Agency Head or Authorized Representative:

Michael J. Pappalardo

Circumstances Requiring Rule 29-4

HB 4062, passed, February 15, 2000; effective, 90 days from passage; mandates the West Virginia Board of Speech-Language Pathology and Audiology propose legislative rules for the implementation of disciplinary and complaint procedures before the Board.

Summary of Proposed Rule, 29-4

Legislative Rule 29-4 provides the West Virginia Board of Speech-Language Pathology and Audiology the necessary procedures for the adjudication of disciplinary and complaint procedures before the Board as provided by HB 4062.

**TITLE 29
LEGISLATIVE RULE
BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

**SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY**

FILED
JUL 10 10 19 AM '00

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

§29-4-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against speech-language pathologist, audiologist, provisional licensees and assistants.

1.2. Authority. -- W. Va. Code §§30-32-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§29-4-2. Application.

This rule applies to all licensed speech-language pathologist, audiologist, assistants and provisionally licensed.

§29-4-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1 "Applicant" means any person making application for an original or renewal license, a provisional license or registering as an assistant pursuant to W. Va. Code §30-32-1 et seq.

3.2. "Board" means the West Virginia Board of Speech-Language Pathology and Audiology.

3.3. "License" means a license or provisional license issued by the Board pursuant to W. Va. Code §30-32-1 et seq.

3.4. "Speech-language pathologist and audiologist" means a person who practices speech-language pathology or audiology. Speech-language pathologist, audiologist, provisional licensee and assistant are defined in W. Va. Code §30-32-2.

3.5. "Ethics investigator" means a person licensed to practice speech-language pathology or audiology in this state, and who is hired by the Board for

the purpose of reviewing complaints against speech-language pathologist, audiologist, provisional licensees or assistants.

§29-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Speech-Language Pathologist, Audiologist, Provisional licensees and assistants.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-32-1 et seq. or the rules of the Board.

§ 29-4-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a speech-language pathologist, audiologist, assistant, or provisional licensee with a violation of W. Va. Code §30-32-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the speech-language pathologist, audiologist, provisional licensee or assistant against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health care institution or health care provider in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a speech-language pathologist, audiologist, provisional licensee or assistant shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-32-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee, assistant or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees, assistants or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee, assistant or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, assistant or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum . Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a speech pathologist, audiologist, provisional licensee or assistant may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§29-4-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license, or may suspend a license if it determines there is probable cause to believe that the speech-language pathologist, audiologist, provisional licensee or assistant conduct, practices or acts constitute an immediate danger to the public.

§29-4-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Examiners for Speech-Language Pathology and Audiology

Subject: Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology, 29CSR4

Counsel: Rita A. Pauley

Date: September 28, 2000

PERTINENT DATES

Filed for public comment: June 27, 2000

Public comment period ended: July 27, 2000

Filed following public comment period: August 10, 2000

Filed LRMRC: August 10, 2000

Filed as emergency:

Fiscal Impact: None

OFFICE OF THE CLERK
SECRETARY OF STATE

OCT 5 4 00 PM '00

FILED

ABSTRACT

This rule was filed in response to the requirements of HB 4062 passed during the 2000 Legislative Session. The bill required all licensing boards authorized by West Virginia Code §30-1-1 et seq. to propose, for legislative approval, a rule or rules specifying the procedures for the investigation and resolution of all complaints against licensees. This mandate led to boards filing rules as legislative that were by statutory definition procedural.

As currently written, this proposed rule contains material that explains the types of conduct that may be grounds for discipline as well as the procedure for filing a complaint and conducting a hearing. Counsel has suggested that the procedural material be removed from the rule and refilled as a procedural rule. Once the procedural information is removed, there is no real need for the remainder of the rule. Therefore, no analysis is necessary.

AUTHORITY

Statutory authority: W.Va. Code, §30-1-8, which provides, in part, as follows:

...Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice...

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?

Yes, West Virginia Code §29A-1-2(d) and (g) define "Legislative" and "Procedural" rules. A Legislative Rule is one which "... supplies a basis for the imposition of civil or criminal liability or grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule.

A procedural rule "fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency. . . .

Inherent statutory and regulatory conflicts are created by including material which is clearly procedural in an legislative rule.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No

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 PROVISIONS OF THE CODE?

No

VIII. OTHER

Counsel has suggested technical modifications.