

Form #2

~~CONFIDENTIAL~~
SECRETARY OF STATE

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WV Board of Social Work (Name Changed by 2011 WV Code §30-30)
State Capitol Complex-Main Building-West Basement Room WB9
304-558-8816 or 304-558-2988 Contact: Judith Williams

Brief Summary of Revision

**Rule Title: CONTESTED CASE HEARINGS AND DISCIPLINARY
PROCEDURES Title 25 Series 6**

*To reduce Series 1 into separate Series titles, per Legislative Rule Making Review
Counsel and as granted under the WV Code §30-30-6 effective March 18, 2011.*

The Contested Case Hearing section originally cited in Series 1 §25-1-6 and Disciplinary Procedures section originally cited in Series 1 §25-1-10, has been removed from initial filing and is now by itself as Series 6. This change was made per Legislative Rule Making Review Counsel.

End of Summary

WV BOARD OF SOCIAL WORK
Contact: Judy Williams
Phone: 304-558-2988
Email: jwilliams@wvsocialworkboard.org

Legislative Rule Revision: Title 25 Series 6 “Contested Case Hearings and Disciplinary Procedures.”

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THIS RULE

To include and revise provisions set forth in the newer edition of the WV Code §30-30 that require detail and authority to be included in legislative Rules.

These actions follow several years of communication and meetings with representatives of major West Virginia employers, of social service workers, members of the Board and social work educators from WV social work departments.

End of Circumstance Statement

FILED

TITLE 25
LEGISLATIVE RULE
BOARD OF SOCIAL WORK EXAMINERS 2012 DEC 21 PM 2:47

SERIES 6
CONTESTED CASE HEARINGS AND DISCIPLINARY PROCEDURES

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-11-2011 BY 60324 GNA
SECRETARY OF STATE

§25-6-1. General.

1.1. Scope. -- This rule specifies the qualifications regarding contested case hearings and disciplinary procedures.

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

1.3. Filing Date. -- ~~June 24, 2002~~

1.4. Effective Date. -- ~~July 1, 2002~~

§25-6-2. Definitions.

2.1. "Complainant" means the person or agency who has filed a complaint.

2.2. "Professional misconduct" or "unprofessional conduct" means any conduct by a licensed social worker not in compliance with the Code of Ethics.

2.3. "Respondent" means the person against whom a complaint is made.

§25-6-3. Contested Case Hearing Procedures.

3.1. All procedures for contested cases are governed by W. Va. Code §29A-5-(1), et seq.

§25-6-4. Disciplinary Proceedings.

4.1. Professional misconduct by a license holder is defined by W.Va. Code § 30-30-26(g)(1-7) that includes, but is not limited to:

4.1.1. Failure to comply with the Code of Ethics of the National Association of Social Workers.

4.2. An individual may file a complaint by contacting the Board in writing. The Board shall provide a complaint form or additional information about filing a complaint upon request.

4.3. Upon receipt of a written complaint, the Board shall acknowledge the complaint within thirty (30) days by registered or certified mail, return receipt requested.

4.3.1. The Board shall mail a copy of a complaint to a respondent by registered or certified mail, return receipt requested, with a request of a detailed reply to the complaint allegations within 30 days.

4.3.2. Should the Board not receive a written response to the allegations within this period, the matter will proceed to investigation and hearing thereafter.

4.3.3. A licensee who reports or provides evidence to the Board of the negligence, impairment, or incompetence of another licensee is immune from civil or criminal liability which may result by reason of that action or actions if made without actual malice and in the reasonable belief that the action is warranted by the facts known to him or her at the time.

4.4. The Board is not required to await a reply prior to applying to a circuit court for an injunction or restraining order to enjoin the respondent from engaging in an act which constitutes or will constitute an immediate danger to the public.

4.4.1. The Board chair may appoint a member or committee of the Board, or a special investigator, to investigate the allegations of the complaint and make recommendations to the Board.

4.4.2. After considering the recommendation of the Investigator, the Board shall determine if probable exists that the licensee or permittee has violated subsection §30-30-26 or any rules promulgated pursuant to this article.

4.4.3. The Board shall notify a the respondent by registered or certified mail, return receipt requested, when probable cause has been determined to exist. The Board may at this time offer a consent agreement.

4.4.4. A notice forwarded to the respondent shall include the following information:

- (a). That the respondent has the right to a hearing;
- (b). That the respondent has the right to subpoena and present witnesses and documents on his or her behalf;
- (c). That the respondent has the right to be represented by a lawyer at his or her expense and to cross-examine witnesses; and,
- (d). That the complaint will not result in an administrative hearing if the respondent and Board mutually agree upon the findings of fact, conclusions of law and imposed sanctions contained in a consent agreement and order offered to the respondent and subsequently entered into by the respondent and the Board.

4.5. The Board may impose any of the following sanctions, singly or in combination, after finding that a license holder has violated a Board regulation and/or statute:

- 4.5.1. Refuse to renew a license;
- 4.5.2. Suspend an existing license for a set period of time and/or impose requirements for reinstatement or renewal of a license;
- 4.5.3. Revoke an existing license;
- 4.5.4. Issue a public reprimand;
- 4.5.5. Impose a period of probation and requirements for the lifting of probation, including meeting continuing education requirements, mandatory supervision by a licensed social

worker, peer or professional counseling, a medical, psychological or clinical social work evaluation, or other reasonable requirement, singly or in combination, that the Board considers sufficient to protect the public;

4.5.6. Levy fines not to exceed one thousand dollars (\$1,000) per day per offense; and,

4.5.7. Assess fees to recover administrative costs incurred by the Board for disciplinary actions taken.

4.6. The Board may issue a notice to the licensee or permittee to cease and desist.

4.7. Prior to a hearing, the Board shall send the licensee a notice of a hearing, to take place within thirty (30) days, by registered or certified mail, return receipt requested.

4.8. A person representing herself or himself as a social worker who does not have a license, or a person engages in the private, independent practice of social work without an appropriate license, is guilty of a misdemeanor and is subject to penalties of law and/or disciplinary action for professional misconduct.

4.9. After finding that a social worker has violated regulations and/or statute processes and disciplinary action is proposed the Board shall report its findings to the Disciplinary Action Reporting System (DARS) who in turn is the agent for West Virginia in reporting matters to the Health Integrity Practitioner's Data Bank (HIPDB) as set forth by Federal Law; or other recognized national and state disciplinary action reporting organization, licensing agency, professional association or society, community organization, employers of social workers, the public, or other agencies, institutions, and organizations.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Contested Case Hearings and Disciplinary Procedures – Title 25 Series 6

Rule Title:

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

WV Board of Social Work

Address:

Physical: 1900 Kanawha Blvd. East-Building 1-Room WB-9

Public Mailing Address: P.O. Box 5459 Charleston, WV 25361

Contact Person: Judith K. Williams, Executive Director

Phone Number:

(304) 558-8816

Email: jwilliams@wvsocialworkboard.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule in itself is not expected to have impact on revenue.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets			
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

DISCIPLINARY PROCEDURES

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

No fee increase/decrease expected.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule defines the WV Board of Social Work procedures on contested case hearings and the disciplinary proceedings.

Date: December 20, 2012

Signature of Agency Head or Authorized Representative

