

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 MAR -4 PM 1:08

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia State Board of Examiners for Licensed Practical Nurses TITLE NUMBER: 10

RULE TYPE: Legislative CITE AUTHORITY: WV Code 30-7A-6

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Policies Regulating Licensure of the Licensed Practical Nurse

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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 April 12, 2013 AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia State Board of Examiners for LPNs

101 Dee Drive, Suite 100

Charleston, WV 25311

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR
LICENSED PRACTICAL NURSES

LANETTE L. ANDERSON, MSN, JD, RN
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March 1, 2013

Ms. Judy Cooper
Administrative Law Division
Office of the Secretary of State
Building 1 Room 157-K
1900 Kanawha Boulevard, E.
Charleston, West Virginia 25311

Dear Ms. Cooper:

Enclosed please find required documentation for the filing of a Notice of a Comment Period for proposed revisions to Legislative Rules 10 C.S.R. 2, Policies Regulating Licensure of the Licensed Practical Nurse. The West Virginia State Board of Examiners for Licensed Practical Nurses has approved said Rule during its meeting on February 7, 2013.

If any problems exist with what is submitted herein, please feel free to contact me. Your assistance is greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Lanette L. Anderson".

Lanette L. Anderson, MSN, JD, RN
Executive Director

LLA/a

Enclosures:

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR
LICENSED PRACTICAL NURSES

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TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES

SERIES 2 - POLICIES REGULATING LICENSURE OF THE LICENSED PRACTICAL NURSE

SUMMARY OF PROPOSAL

Proposed changes to this Rule clarify the requirements for individuals educated in licensed practical nursing programs outside of the United States. Language is also added to clarify the Board's requirements for criminal background checks and specifically addresses individuals who have been convicted of a sexual offense. Changes also address requirements for applicants who have a substance use disorder, disciplinary action taken against any other professional license or certificate, and who are participating in an alternative to discipline program in another jurisdiction. Changes also include language from HB 4037 which passed during the 2012 Legislative Session. This language specifies the requirements for the Board regarding licensure of individuals who serve in the military and their spouses.

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR
LICENSED PRACTICAL NURSES

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TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES

SERIES 2 - POLICIES REGULATING Licensure OF THE LICENSED PRACTICAL NURSE

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

Proposed changes to this Rule cause the language to be consistent with HB 4037 which was passed during the 2012 Legislative Session as well as the Uniform Licensure Requirements and Model Rules promulgated by the National Council of State Boards of Nursing.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Policies Regulating Licensure of the Licensed Practical Nurse

Rule Title:

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

West Virginia State Board of Examiners for Licensed Practical Nurses

Address:

101 Dee Drive, Suite 100

Charleston, WV 25311

Phone Number:

304-558-3572

Email: Lanette.L.Anderson@wv.gov

Fiscal Note Summary

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

Proposed changes to this Rule will have no impact on costs and revenues of state government.

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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Policies Regulating Licensure of the Licensed Practical Nurse

Rule Title:

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The proposed change will not provide any revenue to the Board.

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.

Please see above comment.

Date: March 1, 2013

Signature of Agency Head or Authorized Representative

Janette J. Anderson

2013 MAR -4 PM 1:09

TITLE 10
LEGISLATIVE RULES
WEST VIRGINIA STATE BOARD OF
EXAMINERS FOR LICENSED PRACTICAL NURSES
SERIES 2
POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE

§10-2-1. General.

1.1. Scope. -- This legislative rule establishes the Policies Regulating Licensure of the Licensed Practical Nurse.

1.2. Authority. -- WV Code §30-7A-5

1.3. Filing Date. -- March 27, 2006

1.4. Effective Date. -- April 5, 2006

§10-2-2. Qualifications for Licensure

2.1. Any person who wishes to obtain a license to practice practical nursing shall submit to the board satisfactory evidence that he or she:

2.1.a. is of good moral character;

2.1.b. has at least a tenth grade education or its equivalent;

2.1.c. completed a course of study in an accredited program of practical nursing as defined by the board, in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, 10 CSR 1, or a board approved program from another US jurisdiction and holds a diploma from the program.

2.1.d. completed any other general education requirements prescribed by the board.

2.2. Any person who served on active duty in the medical corps of any of the Armed Forces of the United States for at least one (1) year within the three (3) year period immediately preceding the date of application, shall submit satisfactory evidence that he or she:

2.2.a. successfully completed the course of instruction required to qualify him or her for rating as a medical specialist advanced, medical service technician, advanced hospital corpsman, medical service specialist, Class "A" hospital corpsman, or other equivalent rating in his or her branch of the armed forces; and

2.2.b. received an "honorable" discharge.

2.3. Any applicant who was educated in a nursing program in a country located outside of the United States or its territories shall meet the following requirements for licensure:

2.3.a. satisfactory completion of a basic nursing education program approved by the appropriate authorities an accrediting body or other authority whose role it is to approve nursing programs in the country where the program is located.

2.3.a.1. The nursing education program must be equivalent to the minimum standards prevailing for state board approved schools of practical nursing in West Virginia at the time of graduation as evidenced by verification by a board approved credentials review agency; and,

2.3.a.2. The applicant shall successfully complete any deficiencies in the nursing program (theory and clinical practice) in a state board approved school of nursing;

~~2.3.b. satisfactory documentation of English language proficiency by one of the following methods:~~

~~2.3.b.1. submit evidence that the nursing education, text books, and majority of the clinical experience were in English;~~

~~2.3.b.2. submit an original report showing a score of at least 530 for the written exam or 200 for the computer exam on the Test of English as a Foreign Language (TOEFL) plus a score of at least 50 on the Test of Spoken English (TSE);~~

~~2.3.b.3. submit an original report showing a score of at least 700 on the Test of English for International Communication (TOEIC) plus a score of at least 50 on the Test of Spoken English (TSE); or,~~

~~2.3.b.4. provide a VisaScreen certificate; and,~~

2.3.b. verification of successful passage of an English proficiency exam that includes the components of reading, speaking, writing and listening, except for applicants from countries where English is the native language, and the nursing program where the applicant attended was taught in English and used English textbooks.

2.3.c. If duly licensed in another country, provide official verification, translated into English, from the licensing authorities in that country including licensure status and any disciplinary actions taken.

§10-2-3. Examination for Licensure

3.1. All applicants shall pass a United States national licensure examination prior to licensure.

3.2. The board shall contract with the National Council of State Boards of Nursing, Inc. for use of the national licensure examination.

3.3. The board shall use the national passing standard established by the National Council of State Boards of Nursing, Inc. as the passing score for the licensure examination.

§10-2-4. Licensure by Examination

4.1. An applicant for licensure by examination shall obtain an application for examination from the board and return it to the board office with the fee required in, West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the licensure examination.

4.1.a. A graduate of an accredited program of practical nursing shall cause the program of practical nursing from which he or she graduated to send a copy of his or her official transcript directly to the board office.

4.1.b. A veteran shall submit to the board office a photostatic copy of the certificate issued to him or her upon completion of his or her course of instruction and a copy of his or her discharge from the armed forces and shall cause the Personnel Records Division of the Armed Forces to provide copies of training and discharge records directly to the Board office.

4.1.c. A graduate of a program of practical nursing located outside the United States or its territories shall cause a complete transcript, translated into English, to be sent to the Board office directly from the nursing program.

4.2. Each applicant for licensure by examination is subject to a criminal history records check. ~~Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records shall be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the applicant's state of residence, and the United State Federal Bureau of Investigation. This records check will be conducted in accordance with the policy and procedures established by the board. The board shall~~

require a psychological evaluation for all individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. This evaluation should be performed by a qualified expert approved by the board. If the evaluation identifies sexual behaviors of a predatory nature the board shall deny licensure. An applicant is exempt from this requirement if a criminal history records check was conducted within the 24 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant. An applicant shall report to the board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement in lieu of conviction.

4.3. An applicant who has had a substance use disorder within the past five years shall submit to a substance use disorder evaluation conducted by a board approved practitioner to verify that the applicant is capable of safely practicing nursing prior to issuance of a license.

~~4.3~~ 4.4. An applicant for licensure by examination who is a graduate of an accredited program in practical nursing, may work under the direct supervision of a registered professional nurse, licensed physician, or licensed dentist and render nursing services during the period between graduation and notification of the results of the first licensing examination following graduation upon issuance of a temporary permit from the board. The board shall issue a temporary permit, valid for up to ninety (90) days from the date of graduation, to cover the period of time between graduation and notification of the results of the first licensing examination. A candidate who does not pass the licensure examination on the first attempt shall return the temporary permit to the board office within three (3) days of receipt of the notice that he or she did not pass the examination. The board may not extend the temporary permit.

§10-2-5. Notification of Examination Results

5.1. The board shall notify, in writing, each applicant who has passed the licensure examination and shall send to the applicant a certificate of original licensure and a license to practice as a licensed practical nurse in West Virginia for the current year.

5.2. The board shall notify, in writing, each applicant who does not pass the licensure examination. The applicant shall not accept employment as a licensed practical nurse, except as provided for in subsection 4.3.4. of this rule, until he or she passes the licensure examination.

5.3. If the candidate authorizes release of examination results to the program, the board shall notify the program from which the candidate

graduated that the candidate either passed or failed the licensure examination.

5.4. An applicant who does not pass the licensure examination for practical nurses and wishes to take the licensure examination for a second time shall notify the board office, in writing. The board fee for the second licensure examination is the same as for the first time applicant. The board does not charge a fee to take the examination for the third time. The board fee for successive licensure examinations is the same as for the first time applicant.

§10-2-6. Licensure by Waiver

6.1 The board shall not issue a license by waiver.

6.2. Any person who obtained a license by waiver prior to June 30, 1968, and completes extension courses equal in theory to that of a graduate of an approved practical nursing program, as determined by the Board, may take the licensure examination prescribed by the Board for graduate practical nurses and obtain a license without the designation "Waiver" on the license.

§10-2-7. Licensure by Endorsement

7.1. The board shall issue a license by endorsement to any applicant who is duly licensed or registered as a practical nurse, or who is entitled to perform similar services under the same or a different title in any other state, territory or foreign country, if the applicant meets other requirements for licensed practical nurses in this state.

7.2. Each applicant for endorsement is subject to a criminal history records check. ~~Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the applicant's state of residence, and the United States Federal Bureau of Investigation. This records check will be conducted in accordance with the policy and procedures established by the board. The board shall require a psychological evaluation for all individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. This evaluation should be performed by a qualified expert approved by the board. If the evaluation identifies sexual behaviors of a predatory nature the board shall deny licensure.~~ An applicant is exempt from this requirement if a criminal history records check was conducted within the 12 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant. An applicant shall report to the board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement in lieu of conviction.

7.3. An applicant who has had a substance use disorder within the past five years shall submit to a substance use disorder evaluation conducted by a board approved practitioner to verify that the applicant is capable of safely practicing nursing prior to issuance of a license.

7.4. An applicant who has had disciplinary action taken or initiated against a professional or occupational license, registration or certification shall provide documentation to the board from the authority which has taken or initiated such action. The board shall evaluate this information to determine the individual's ability to practice nursing safely.

7.5. An applicant who is currently participating in an alternative to discipline program in any other jurisdiction shall disclose this participation at the time of application to the board.

7.36. An applicant for endorsement shall complete an endorsement application and submit the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the board, 10 CSR 4. The applicant for endorsement shall have the board of nursing in the state of original licensure send verification of original licensure to the board office. Upon receipt of the application for endorsement, the fee, and verification of current licensure in another state, the board may issue a letter of intent to endorse. The applicant for endorsement may use the letter of intent to endorse, in conjunction with a current license from another state, for employment as a licensed practical nurse in West Virginia for a maximum of six (6) months. The board shall not renew the letter of intent to endorse.

§10-2-8. Endorsement to Another State

The board shall provide verification of original licensure and verification of current licensure to another state upon receipt of a written request from the licensee, a request from a board of nursing in another state, and payment of the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses, Fees for Services Rendered by the Board, 10 CSR 4. Should the board participate in the licensure verification system as maintained by the National Council of State Boards of Nursing, the licensee shall follow the process of endorsement to another state in accordance with the procedures set in place for that system.

§10-2-9. Annual Renewal of License

9.1. Each license issued by this board expires on June 30 of each year. In order to continue practicing a licensee shall renew his or her license annually.

9.1.a. The board shall renew the license of each licensee upon receipt of:

9.1.a.1. a completed application for renewal of the license;

9.1.a.2. a statement in each even numbered year from the renewal applicant that he or she meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.1.a.3. the fee for renewal of a license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10CSR4.

9.2. A license for which a renewal application is postmarked after June 30 is lapsed.

9.2.a. The board may reinstate a lapsed license upon receipt of:

9.2.a.1. a completed application for reinstatement of the lapsed license;

9.2.a.2. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.2.a.3. the fee for reinstatement of a lapsed license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4.

9.3. Any person practicing practical nursing without a current license, valid temporary permit or current letter of intent to endorse is considered an illegal practitioner and is subject to the penalties provided for in WV Code §30-7A-10.

9.4 During periods when a licensee is on active duty as a member of the Armed Forces of the United States, the National Guard of this state or any other state, or any other military reserve component and deployed outside of this state, and for six months after discharge from active duty, the license shall continue in good standing and shall be renewed without payment of any dues or fees for the maintenance or renewal of the license and without meeting continuing education requirements for the license when circumstances associated with military duty prevent the individual from obtaining the required continuing education.

9.4.a. The licensee shall submit a waiver request to the board in writing informing the board of circumstances which include, but are not limited to, deployment outside of the United States or in any combat area and verify that the individual functions as an LPN as part of his or her military duties as annotated in Defense Department Form 214 (DD214).

9.4.b. During periods when the licensee is accompanying his or her spouse who is on active duty as a member of the Armed Forces of the United States, the National Guard of this state or any other state or any other military reserve component and deployed outside of this state, and for six months after discharge from active duty, the license of that person shall continue in good standing and shall be renewed without payment of any dues or fees for the maintenance or renewal of the license and without meeting continuing education requirements for the license when circumstances associated with accompanying a spouse on military duty prevent the individual from obtaining the required continuing education.

9.4.c. The licensee shall submit a waiver request to the board in writing informing the board of these circumstances which include, but are not limited to, deployment outside of the United States or in any combat area.

§10-2-10. Non-Practicing Status

Any person with a current West Virginia license may request non-practicing status. While on non-practicing status, the person may not be employed as a licensed practical nurse and is not subject to the payment of licensing fees. A person requesting non-practicing status is not subject to the continuing competence requirements in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6.

10.1 The board may reinstate a license from non-practicing status upon receipt of:

10.1.a. a completed application for reinstatement of the license from non-practicing status;

10.1.b. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

10.1.c. the fee for reinstatement of a license from non-practicing status as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4.

10.2. An applicant who is currently participating in an alternative to discipline program in any other jurisdiction shall disclose this participation at the time of application to the board.

§10.2.11. Change of Name or Address, Duplicate License

11.1. A licensee shall notify the board of a change

in his or her name or address.

11.2. A licensee may request a duplicate license if he or she changes his or her name or address. The board shall issue the duplicate license providing the current license is returned to the board office with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4. A copy of a marriage certificate, divorce decree, or an order of a court of competent jurisdiction is required for a name change. There is no fee for name and address changes requested at the time a license is renewed or reinstated or if a duplicate license is not requested.

11.3. A licensee may request a duplicate license in the event of loss of the original license. The licensee shall complete an affidavit verifying loss and submit the affidavit to the Board with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the board issuing a duplicate license.

§10-2.12. Disciplinary Proceedings: Grounds for Discipline

12.1. The Board may take disciplinary action in accordance with Chapter 29A of the WV Code, upon satisfactory proof that an applicant for endorsement or examination, or a licensee:

12.1.a. is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing which includes:

12.1.a.1. falsely representing facts on an application for licensure by examination or licensure by endorsement or on an application for renewal or reinstatement of a license; or

12.1.a.2. having another person appear in his or her place or impersonating an applicant for examination, endorsement or renewal or reinstatement of a license;

12.1.b. has been convicted of a felony;

12.1.c. is habitually intemperate or is addicted to the use of habit-forming drugs;

12.1.d. is mentally incompetent;

12.1.e. is guilty of professional misconduct, which includes but is not limited to:

12.1.e.1. impersonated another licensed practitioner, or permitted another person to use his or her license for the purpose of nursing for compensation;

12.1.e.2. provided false or incorrect information to an employer regarding the status of a license;

12.1.e.3. practiced practical nursing in the State of West Virginia without a current West Virginia license, a valid temporary permit, or a letter of intent to endorse, except as provided in WV Code §30-7A-9;

12.1.e.4. failed to report through proper channels the incompetent, unethical, or illegal practice of another person who is providing health care.

12.1.e.5. practiced practical nursing with gross incompetence or gross negligence on a particular occasion, or incompetence or negligence on more than one occasion;

12.1.e.6. practiced practical nursing while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability;

12.1.e.7. was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state or territory where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct under the laws of this state;

12.1.e.8. permitted, aided or abetted an unlicensed, uncertified, or registered person to perform activities requiring a license, certificate or registration;

12.1.e.9. practiced practical nursing while his or her license was suspended;

12.1.e.10. willfully failed to register or notify the Board of any changes of name or mailing address;

12.1.e.11. was convicted of a felony or a misdemeanor with substantial relationship to the practice of practical nursing in a court of competent jurisdiction;

12.1.e.12. failed to follow established policies and procedures in the practice setting to safeguard patient care;

12.1.e.13. abandoned patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;

12.1.e.14. committed an intentional act which could adversely affect the physical or psychological welfare of a patient;

12.1.e.15. physically or verbally abused, or failed to provide adequate protection or safety for an individual in the context of a nurse/patient relationship;

12.1.e.16. used the nurse/patient relationship to exploit or influence a patient including but not limited to exploiting a patient for financial gain or engaging in a sexual or romantic relationship with a patient;

12.1.e.17. refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board;

12.1.e.18. failed to exercise technical competence in carrying out nursing care;

12.1.e.19. misappropriated medications, supplies, or personal items of a patient or the employer;

12.1.e.20. self-administered, administered to another, knowingly participated in or permitted the administration of, any prescription drug without a legal, valid prescription, or the use or administration of any illegal drug;

12.1.e.21. falsified patient records, intentionally charted incorrectly; or failed to document appropriately to maintain an accurate record for each patient;

12.1.e.22. knowingly falsified an application for employment;

12.1.e.23. failed to conform to standards of nursing practice as defined in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Legal Standards of Nursing Practice, 10 CSR 3;

12.1.e.24. knowingly provided false information regarding completion of continuing competency requirements for renewal, reinstatement or endorsement of a license;

12.1.e.25. failed to comply with terms and conditions imposed by the board based on previous disciplinary action of the board;

12.1.e.26. impeded or obstructed an investigation by the board by failing to comply or respond to requests for action or information, whether the failure is intentional or merely negligent;

12.1.e.27. violated the confidentiality of information or knowledge concerning a patient; and,

12.1.e.28. engaged in conduct that violates the security of the licensure examination or the integrity of the examination results;

12.1.e.28.9. other acts, which in the opinion of the board, constitute professional misconduct.

12.1.f. Practiced or attempted to practice without a

license or continued violation of any of the provisions of WV Code §30-7A-1 et. seq.

§10-2-13. Complaint procedures

13.1. Any individual may make a complaint to the board concerning a licensee.

13.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.

13.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:

13.3.a. the alleged violation which prompted the complaint;

13.3.b. the name and address of the individual against whom the complaint is lodged;

13.3.c. the date or dates the incident or incidents occurred; and

13.3.d. the name or names of witnesses to the incident.

13.4. All complaints shall be referred to the Executive Secretary, Assistant Executive Secretary or Counsel for the Board, who shall act as a representative for the board.

13.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint.

13.6. The representative shall conduct an investigation to determine the validity of the allegations contained in the complaint.

13.7. The board shall issue subpoenas to gather necessary facts and evidence to determine the validity of the allegations contained in the complaint.

13.8. The board shall provide copies of complaint forms and other available evidence to the licensee against whom a complaint is filed. The licensee shall respond within fourteen (14) days of receipt of the complaint, to the allegations contained in the complaint by making an appointment with the staff representative to meet in person or by preparing a written statement and returning it to the board.

13.9. The representative for the board shall evaluate the complaint, licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation.

13.10. The representative for the board may

recommend that a case be dismissed if probable cause for further action is not identified. Cases recommended for dismissal due to lack of probable cause shall be referred to the Disciplinary Review Committee of the board established by the board under West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Open Meetings and Bylaws, 10 CSR 5, for review of the complaint and investigative information. The committee may approve dismissal of the case or direct the staff representative to proceed with further investigation if the committee believes further investigation is necessary.

13.11. The representative for the board may negotiate terms of a consent agreement, set forth in section 14 of this rule, with a licensee, if probable cause for disciplinary action is established.

13.12. The Disciplinary Review Committee shall review the terms of the consent agreement and all investigative information. The committee may approve the consent agreement, request revisions to the Consent Agreement or reject the consent agreement.

13.13. If the Disciplinary Review Committee rejects the consent agreement, the staff representative shall set the case for hearing.

13.14. If the licensee contests the allegations and refuses to enter into a consent agreement the representative shall set the case for hearing. All hearings shall be in accordance with the WV Code, Chapter 29A, Administrative Procedures Act.

13.15. Members of Disciplinary Review Committee shall be disqualified from the formal hearing process if the case has been presented to the committee for consideration prior to the formal hearing.

13.16. A hearing shall be held before a hearing examiner or before members of the board.

13.17. The board shall make a determination on the matter based on the facts, evidence submitted, testimony and recommendations of the hearing examiner.

13.18. The board shall formulate and issue a final order which shall include findings of fact, conclusions of law and the decision of the board on the matter.

13.19. The licensee, his or her attorney of record, if any, and the individual who filed the complaint shall be provided with a copy of the decision and accompanying findings of fact and conclusions of law, whether it is the result of a formal hearing or the execution of a consent agreement.

13.20. The decision of the board is final unless reversed, vacated or modified upon judicial review.

§10-2-14. Investigations

14.1. Upon complaint or on its own initiative, the board or its representative may investigate conduct which is occurring or has occurred which violates West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing.

14.2. For the purpose of conducting investigations:

14.2.a. The executive secretary or chairperson of the board may subpoena documents or witnesses;

14.2.b. The board may depose witnesses, take sworn statements, and collect other evidence;

14.2.c. The board may require a criminal history records check. The licensee under investigation shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's state of residence, and the United States Federal Bureau of Investigation. This records check will be conducted in accordance with the policy and procedures established by the board. The board shall require a psychological evaluation for all individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. This evaluation should be performed by a qualified expert approved by the board. If the evaluation identifies sexual behaviors of a predatory nature the board shall deny licensure.

14.2.d. The board may institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing;

14.2.e. The board shall review medical records during the course of its investigation, and shall remove patient identifying information from records which are introduced as evidence at any disciplinary hearing;

14.2.f. The board, or its representatives within the limits of authority granted by the board, may employ investigators, consultants and other employees as necessary to assist in an investigation;

14.2.g. All powers of the board and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings; and

14.2.h. Upon a finding of probable cause that a basis for disciplinary action exists, the board may require a licensed practical nurse to submit to a physical or mental examination by a practitioner

approved by the board. Any individual who applies for or accepts the privilege of practicing as a licensed practical nurse in this state is considered to have given consent to submit to all these examinations when requested 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 grounds that the testimony or report is privileged communication. If an applicant or licensee fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, this failure is prima facie evidence of his or her inability to practice as a licensed practical nurse competently and in accordance with accepted standards of practical nursing practice. A licensed practical nurse or person applying for licensure as a licensed practical nurse who is adversely affected by this provision may request a hearing before the board within thirty days of any action taken by the board.

§10-2-15. Disciplinary Proceedings: Disciplinary Action

15.1. The board shall afford every person subject to disciplinary proceedings an opportunity for a hearing.

15.1.a. If an applicant for licensure or a 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 actions.

15.1.b. The board may impose a single penalty or a combination of penalties upon any person found guilty of any of the grounds for discipline, set forth in section 12 of this rule, in the follow manner:

15.2. For applicants for examination or endorsement:

15.2.a. The board may refuse to admit an applicant for the licensure examination; or

15.2.b. The board may deny licensure by endorsement.

15.3. For licensees:

15.3.a. The board may revoke a license;

15.3.a.1. The board may specify the minimum length of time the revocation shall remain in effect in the final order of revocation. If the board does not specify a minimum length of time for the revocation in the final order of revocation the revocation shall be effective for a minimum of five years;

15.3.a.2. An individual who has had his or her license revoked and who wishes to again become licensed as a licensed practical nurse shall apply as a new applicant for licensure and is subject to the same

rules for original licensure as other applicants not previously licensed. The board shall consider all records pertaining to the revocation of the previously held license when considering the applicant for licensure;

15.3.b. The board may suspend a license for a period of not less than thirty (30) days, nor more than five (5) years. The board shall return the license to the licensee after the period of suspension has expired, provided the licensee meets all conditions set forth by the board at the time of the suspension;

15.3.c. The board may ask a licensee to voluntarily surrender his or her license and provide to the Board a statement concerning reasons for the surrender. The person may petition for reinstatement of the license one (1) year from the date of original surrender. The person shall furnish proof at the time that the licensee requests reinstatement that the conditions leading to the voluntary surrender no longer exist.

15.3.d. The board may permit a licensee to keep his or her license under a restricted license and to work within specified guidelines. The board shall note specific restrictions regarding practice on the license;

15.3.e. The board may permit a licensee to keep his or her license and continue to work. However, the licensee shall adhere to specific probationary conditions and the board shall closely monitor the licensee during the probationary period;

15.3.f. The board may issue a reprimand in writing and retain a copy in the file of the licensee;

15.3.g. The board may negotiate a settlement with the licensee, in the form of a consent agreement, for any charges pending against a licensee. The licensee, in accepting a consent agreement waives his or her right to a formal hearing on the charges, and accepts the terms and conditions set forth in the consent agreement. Any single penalty or a combination of penalties provided in this section may be imposed through consent between the board and the licensee;

15.3.h. The board may assess fees for monitoring a licensee's compliance with terms and conditions set forth in a consent agreement or order of the board. Monitoring fees may be payable on a quarterly basis or may be assessed as a part of the annual renewal fee. A licensee who fails to pay monitoring fees levied by the board as a part of a disciplinary proceeding, within the time period contained in this rule or as otherwise agreed upon between the parties, is not eligible for renewal of the license until the fee is paid;

15.3.i. The board may order a summary suspension if the board finds that public health, safety

and welfare requires emergency action and incorporates a finding to that effect in its order, it may suspend a license, prohibiting the further practice of practical nursing, pending a hearing for revocation or other action. The board shall promptly institute and determine further disciplinary action; or

15.3.j. The board shall order a suspension without hearing when a prior hearing or plea agreement has occurred in another state or federal agency, or in a court of law. The board shall order suspension upon receipt of documentation from a court or agency, state or federal, that a person licensed by the board has had his or her license to practice as a licensed practical nurse revoked or suspended in another jurisdiction and has not had his or her license reinstated within that jurisdiction, or has been convicted, or entered a plea of guilty or nolo contendere to a felony or has been adjudged legally incompetent. The board shall notify the licensee or his or her legal guardian, trustee, committee or other representative of the suspension in writing to his or her address on record with the board. The notice shall include a copy of the order of the court or agency, certified by the Executive Secretary as the order received from the court or agency. The licensee shall not practice within this state until his or her license is reinstated by the board. A licensee whose license has been suspended as provided in this section may apply to the board for reinstatement of his or her license. The licensee is entitled to a hearing. The hearing shall be promptly instituted and determined.