

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

Form #3

Do Not Mark In This Box

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2013 JUL 25 PM 2:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Speech-Language Pathology & Audiology, WV Board of Examiners for TITLE NUMBER: 29

CITE AUTHORITY: 30-32-7

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 4

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

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.



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: 07/26/2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Speech-Language Pathology & Audiology, WV Bd of
Examiners for
99 Edmiston Way - Box 11, Suite 214
Buckhannon, WV 26201
304-473-4289

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

1. Authorizing statute(s) citation 30-32-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 21, 2013

b. What other notice, including advertising, did you give of the hearing?
Legal advertisements re: public comment were posted on June 18 and/or June 19 in the following publications:
Charleston Gazette - Charleston, Greenbrier Valley Ranger - Lewisburg, Bluefield Daily - Bluefield, Dominion Post - Morgantown, Intelligencer - Wheeling, News & Sentinel - Parkersburg, Martinsburg Journal - Martinsburg, Exponent Telegram - Clarksburg

c. Date of Public Hearing(s) *or* Public Comment Period ended:
June 18, 2013

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

Attached _____ No comments received 0

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

07/26/2013

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

Patricia Nesbitt

Administrative Services Manager

WVBESLPA

99 Edmiston Way

Box 11 - Suite 214

Buckhannon, WV 26201

304-473-4289 - 304-473-4291 (fax)

wvbeslpa@wv.gov

- 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)

N/A

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 J. Zagarella, AuD., President
Vickie Pullins, M.A., CCC-SLP, Secretary
Joe E. Richards, M.A., Citizen Member

SUMMARY OF PROPOSED CHANGES CSR29 – SERIES 4 DISCIPLINARY AND COMPLAINT PROCEDURES FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

WV Code §30-32 was amended and reenacted on April 13, 2013 by the WV Legislature and signed by the Governor on May 3, 2013. The proposed changes to WV Code Rule §29-4 are required to comply with the amended WV Code. The changes include:

- Revised References to WV Code Sections
- §29-4-2., §29-4-3. & §29-4-5. – Minor wording changes and spelling corrections were made in each section.

99 Edmiston Way, Box 11 – Suite 214, Buckhannon, WV 26201

Email: wvbeslpa@wv.gov

Web Site: www.wvspecchandaudiology.com

Phone: 304-473-4289 Fax: 304-473-4291 In-state toll free number: 877-462-5460

~Patricia Nesbitt – Administrative Services Manager~

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

Board Members

Michael J. Zagarella, AuD., President
Vickie Pullins, M.A., CCC-SLP, Secretary
Joe E. Richards, M.A., Citizen Member

**STATEMENT OF CIRCUMSTANCES
CSR29 – SERIES 4
WEST VIRGINIA BOARD OF EXAMINERS FOR
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

DISCIPLINARY AND COMPLAINT PROCEDURES
FOR SPEECH-PATHOLOGY AND AUDIOLOGY**

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~Patricia Nesbitt – Administrative Services Manager~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology
29CSR - Series 4

Type of Rule: Legislative Interpretive Procedural

Agency: Speech-Language Pathology & Audiology, WV Board of Examiners for

Address: 99 Edmiston Way
Box 11 - Suite 214
Buckhannon, WV 26201

Phone Number: 304-473-4289 Email: wvbeslpa@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.

There should be no financial impact, cost or revenue, with the revision of this Rule.

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

Rule Title: Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology
29CSR4

Rule Title: _____

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

N/A

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.

The proposed changes to 29CSR2 are required to comply with the amended and reenacted WV Code 30-32. The items added/revised are:
WV Code references
Minor wording changes and spelling corrections were made in section 29-4-2. & 29-4.3. and 29-4-5.

Date: 07/24/2013

Signature of Agency Head or Authorized Representative
Patricia Nesbitt

2013 JUL 25 PM 2:47

TITLE 29
PROCEDURAL RULE
BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY WEST VIRGINIA
SECRETARY OF STATE
SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

§29-4-1. General.

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

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

1.3. Filing Date. -- ~~January 19, 2001.~~

1.4. Effective Date. -- ~~March 1, 2001.~~

§29-4-2. Application.

This rule applies to all licensed speech-language pathologists, audiologists, provisional licensees and speech-language pathology and audiology 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 anas-assistant pursuant to ~~W. Va.~~ WV Code §30-32-1 et seq.

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

3.3. "License" means a license or provisional license issued by the Board pursuant to ~~W. Va.~~ WV 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.~~ WV Code §30-32-24.

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 pathologists, audiologists, 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.~~ WV 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~~ provisional licensee or assistant with a violation of ~~W. Va.~~ WV 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.~~ WV 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 ~~members, its Board president, the Executive Secretary, 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~~ be issued by the Board. 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.~~ WV 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.