



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Registered Professional Nurses TITLE-SERIES: 19-09
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: DISCIPLINARY ACTION

CITE STATUTORY AUTHORITY: W. Va. Code §§30-1-4 and 30-7-4.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/20/2018 4:30 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Dr. Sue A. Painter
ADDRESS: 90 MacCorkle Avenue, SW
Suite 203
EMAIL: sue.a.painter@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Outlines the complaint process.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Changes name to indicate is about the complaint process.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Zero

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

Zero

C. FISCAL NOTE DETAIL:

| Effect of Proposal | Fiscal Year | | |
|------------------------------------|---|---|--|
| | 2018 Increase/Decrease (use "-") | 2019 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | 0 | 0 | 0 |
| Personal Services | 0 | 0 | 0 |
| Current Expenses | 0 | 0 | 0 |
| Repairs and Alterations | 0 | 0 | 0 |
| Assets | 0 | 0 | 0 |
| Other | 0 | 0 | 0 |
| 2. Estimated Total Revenues | 0 | 0 | 0 |

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Alice R Faucett -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 19
PROCEDURAL RULE
WEST VIRGINIA BOARD OF EXAMINERS FOR
REGISTERED PROFESSIONAL NURSES

SERIES 9
DISCIPLINARY ACTION COMPLAINT PROCEDURE

§19-9-1. General.

1.1. Scope. -- This rule defines the role and authority of the board in investigation and resolution of disciplinary matters.

1.2. Authority. -- W. Va. Code §§30-1-4 and 30-7-4.

1.3. Filing Date. -- ~~August 17, 2004.~~

1.4. Effective Date. - ~~September 18, 2004.~~

§19-9-2. Definitions.

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

2.1.a. "Board" means the West Virginia Board of Examiners for Registered Professional Nurses.

2.1.b. "Complaint" means any written, verbal, or other communication with the board or its representatives which indicates or tends to indicate that a licensee is acting or has acted in violation of W. Va. Code §§30-7-1 et seq. or 30-15-1 et seq., or rules governing the practice of registered professional nursing.

2.1.c. "Proof" means all types of evidence except testimony, including but not limited to records, documents, exhibits, concrete objects, laboratory or other tests, and the reports of results of examinations or laboratory or other tests.

2.1.d. "Testimony" means evidence given by a witness under oath or affirmation, including but not limited to oral statements, affidavits, or depositions.

§19-9-3. Complaint Procedures.

3.1. The Board will accept a complaint from any individual against one or more licensees.

3.2. The complaint may be written or verbal. The Board may accept anonymous complaints if the complaint provides enough information to begin an investigation. The Board may provide a form for the purpose of completing a complaint. Complaints shall include the following:

3.2.a. name and address of the licensee against whom the complaint is being filed;

3.2.b. the alleged violation which prompted the complaint;

3.2.c. the date or dates of the incident prompting the complaint;

3.2.d. any supporting documents related to the alleged violation; and

3.2.e. the name, address and telephone numbers of any and all witnesses to the incident.

3.3. The Board shall maintain a log of all complaints, indicating date of receipt, license number of nurse against whom the complaint is filed and the name of the individual filing the complaint.

3.4. A registered professional nurse required to file a complaint with the Board in accordance with this rule or any other applicable state law or rule shall do so within thirty (30) days after their knowledge of the alleged violation.

3.5. 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.

3.6. The Board or its representatives shall gather information necessary to determine the validity of the complaint. All necessary investigative techniques, including but not limited to, subpoenas and interviewing potential witnesses, may be utilized.

3.7. The complainant shall be sent an acknowledgment stating one or more of the following:

3.7.a. The allegations are being reviewed by the Board; or

3.7.b. The allegations are beyond the jurisdiction of the Board; or

3.7.c. More information is required in order to fully investigate the complaint.

3.8. The licensee shall be sent a Notice of Complaint containing the allegations. The licensee has fourteen (14) days to respond to the allegations. The licensee shall also be sent a copy of the complaint filed against his/her license and any supporting documents filed with the complaint.

3.9. Board staff shall review all information received, including subpoenaed information, and determine if further investigation is necessary, if disciplinary action is warranted or if the case needs to be referred to the Disciplinary Review Committee (DRC) for review and/or dismissal.

3.9.a. The DRC may dismiss a case, direct staff to further investigate the allegations or determine the disciplinary action that should be taken against the license.

3.10. Board staff may negotiate terms of consent agreements if probable cause for disciplinary action is warranted.

3.10.a. The DRC shall review all consent agreements for approval and signature; it can reject the consent agreement or request modifications to the consent agreement.

3.11. If the DRC rejects the consent agreement and the licensee rejects the DRC's modifications, if any, staff shall set the case for hearing.

3.12. If the licensee contests the allegations and refuses to enter into a consent agreement, Board staff shall set the case for hearing.

3.13. A licensee may request complaints that are dismissed by the DRC to be expunged from the licensee's file after three (3) years if no other complaint is received against the same licensee

within the three (3) year period.

§19-9-4. Investigation.

4.1. Upon complaint or on its own initiative, the Board or its employees or designees may investigate conduct which is occurring or has occurred which would violate W. Va. Code §§30-7-1 et seq., 30-15-1 et seq., or rules governing the practice of registered professional nursing.

4.2. For the purposes of an investigation by the Board:

4.2.a. The executive secretary or assistant executive secretary may subpoena witnesses and documents and administer oaths;

4.2.b. The Board or its authorized agents may depose witnesses, take sworn statements and collect other evidence;

4.2.c. The Board may institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of W. Va. Code §§30-7-1 et seq., 30-15-1 et seq., or rules governing the practice of registered professional nursing;

4.2.d. The Board may review pertinent 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;

4.2.e. The Board, or its employees or designees within the limits of authority granted by the Board, may employ investigators, consultants and other employees as may be necessary to assist in an investigation;

4.2.f. 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.

§19-9-5. Disciplinary Action.

5.1. The Board has the authority to deny, revoke, suspend, or otherwise discipline a licensee or applicant for licensure upon proof that the licensee or applicant for licensure has violated the provisions of W. Va. Code §§30-7-1 et seq.

5.1.a. The Board shall afford every person subject to disciplinary proceedings an opportunity for a hearing, as set forth in the Board's rule regarding Contested Case Hearing Procedure, 19 CSR 5;

5.1.b. 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 the disciplinary action;

5.1.c. Following a hearing before the Board or its hearing examiner, the Board will issue its decision on any disciplinary matter;

5.1.d. The Board may establish a committee that has the authority to resolve disciplinary matters through a formal consent agreement with a licensee, permitting the licensee to voluntarily agree to disciplinary action in lieu of a formal evidentiary hearing.

5.1.e. 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 registered professional nurse, or probation of a registered professional nursing license with terms to be met for continued practice, or the assessment of additional renewal, reinstatement, or administrative costs or fines against a licensee, or a combination of these or other actions. A licensee who fails to pay a fine or administrative cost assessed as part of disciplinary action or non-disciplinary action within the time period agreed upon between the parties, may be disciplined or may remain under the disciplinary terms until the fine and administrative costs are paid in full.