



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

9/17/2019 10:30:52 AM

Office of West Virginia
Secretary Of State

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

AGENCY: SpeechLanguage Pathology And Audiology TITLE-SERIES: 29-04
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 29-04 Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 30-32-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

29-4 was inadvertently changed from a procedural rule to a legislative rule during the filing process in 2013. The rule was originally promulgated and final filed as a procedural rule, as required in 29A-3-3, on March 1, 2001. The modification effective July 1, 2014 was mistakenly filed as a legislative rule and was not changed to a procedural filing at that time. 29-4 rule, based on WV Code noted above, should be a procedural rule.

Rule 29-4 explains the procedure for investigation and resolution of complaints received against licensees and registered assistants.

29-4.4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Speech-Language Pathologist, Audiologist, Provisional Licensee and Assistants. - Explains reasons the Board may deny an applicant a license, suspend, revoke or place a license on probation in violation of 30-32-1 et seq or the Rules of the Board.

29-4-5. Disposition of Complaints - Specifies who may make a complaint to the Board, how the complaint is to be filed and the information the complaint should contain. The Boards' responsibilities/requirements after receiving a complaint are explicit and detailed.

29-4-6. Contested Case Hearing - The Board may refuse to renew a license or may suspend a license if the Board determines there is probable cause to believe a licensee's conduct, practices or acts constitute an immediate danger to the public.

29-4-7. The appeals process for any applicant who has had a license denied by the Board.
The above Rule is mandated in 29A-3-3. Rules of procedure required.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 8/8/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 9/13/2019

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Legal Ads in Dominion Post - Morgantown, Parkersburg News and Sentinel - Parkersburg, Bluefield Daily Telegraph - Bluefield, The Intelligencer - Wheeling, The Inter-Mountain - Elkins, Exponent Telegram - Clarksburg. The Legal Ad was also sent to the Herald Dispatch in Huntington and the Charleston Gazette with no response. The proposed rule change was posted on the homepage of the Board's website for comments and a bulk email was sent to all licensees for comments.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule is required to include HB 118, passed during a 2019 special session and signed by the Governor. The change adds required considerations to be given to an applicant who has a prior criminal conviction.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB 118

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Minimal or no economic impact on revenues of state government

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

Minimal or no economic impact

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			.00
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			.00

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

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

Yes

Patty Nesbitt -- 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.

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

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. -- WV Code §§30-32-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. -- ~~April 22, 2014.~~

1.4. Effective Date. -- ~~July 1, 2014.~~

1.5. Sunset Provision. This rule shall terminate and have no further force or effect on July 1, 2029.

§29-4-2. Application.

This rule applies to all licensed speech-language pathologists, audiologists, provisional licensees and speech-language pathology and audiology assistants.

§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 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 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 WV Code §30-32-4.

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.

4.1. 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 but with considerations, as stated in §29-4-4.1.1 & §29-4-4.1.2., 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 WV Code §30-32-1 et seq. or the rules of the Board.

4.1.1. The Board may not disqualify an applicant from initial licensure because of a prior criminal conviction unless that conviction bears a rational nexus to the speech-language pathology or audiology professions. In determining whether a criminal conviction bears a rational nexus to the speech-language pathology or audiology professions, the Board shall consider, at a minimum:

4.1.1.a. The nature and seriousness of the crime;

4.1.1.b. The passage of time since the commission of the crime;

4.1.1.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the speech-language pathology and audiology professions; and

4.1.1.d. Any evidence of rehabilitation or treatment undertaken by the applicant.

4.1.2. An individual with one or more prior criminal convictions who has not previously applied for licensure may file a petition with the Board at any time for a determination of whether the individual's criminal record will disqualify him or her from obtaining a license. The petition shall include sufficient details about the individual's prior criminal convictions to enable the Board to identify the jurisdiction where the conviction(s) occurred, the date(s) of the conviction(s), and the specific nature of the conviction(s). The petition shall also include a payment to the Board of \$150.00 to cover its costs in making a determination. The Board shall provide its determination in writing within sixty (60) days of receiving the petition from the individual.

§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, provisional licensee or assistant with a violation of 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,

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engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of 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, Board president, Administrative Services Manager, 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 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 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.