



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Registered Nurses WV Board of TITLE-SERIES: 19-03
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: REQUIREMENTS FOR REGISTRATION AND
LICENSURE AND CONDUCT CONSTITUTING
PROFESSIONAL MISCONDUCT

CITE STATUTORY AUTHORITY: 30-7-4

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 361

Section 64-9-15(a) Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 24, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2033

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

Yes

Sue Ann Painter -- 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
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF REGISTERED NURSES

SERIES 3
REQUIREMENTS FOR REGISTRATION AND LICENSURE AND CONDUCT
CONSTITUTING PROFESSIONAL MISCONDUCT

§19-3-1.General.

1.1. Scope. -- This rule establishes the requirements for registration and licensure of a registered professional nurse and describes behavior which constitutes professional misconduct subject to disciplinary action.

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

1.3. Filing Date. -- April 19, 2023.

1.4. Effective Date. -- April 24, 2023.

1.5. Sunset date. -- This rule will terminate and have no further force or effect on August 1, 2033.

§19-3-2. Definitions.

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

2.1. "Direct supervision" means the activity of a registered professional nurse with an unencumbered license in West Virginia being present at all times in the same assigned physical work area as the person being supervised.

2.2. "Impaired" means the condition of a licensee whose performance or behavior is altered through the use of alcohol, drugs, or other means.

2.3. "National Council Licensure Examination" (NCLEX-RN) means the licensure examination for registered nurses which is owned and controlled by the National Council of State Boards of Nursing.

2.4. "Structured treatment program" means a program for physical, psychological, social and/or spiritual rehabilitation, if the program has been expressly approved by the board.

2.5. "Temporary permit" means a permit authorizing the individual to practice registered professional nursing in this state until the permit is no longer effective or the individual is granted a license by the board. An individual with a temporary permit is subject to all provisions of W. Va. Code §30-7-1 et seq., and all other relevant sections of the West Virginia Code and rules promulgated by the board.

2.6. "License requirements to practice registered professional nursing" means an individual who is at least 18 years of age; has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; has completed a nursing education program; has passed an examination approved by the board; has paid the application fee specified by rule; has completed a criminal background check, as required by §30-1D-1 et seq. of this code; is not an

alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code, unless an applicant in an active recovery process, which may be evidenced by participation in a Nurse Health Program, structured aftercare, or a 12-step program or other similar group or process, may be considered.

§19-3-3. Application for Licensure by Examination as a Registered Nurse.

3.1. An applicant for licensure by exam as a Registered Nurse shall:

3.1.a. Applicants educated in the United States or United States Territory shall:

3.1.a.1. have completed an approved four-year high school course of study or an equivalent thereof, as determined by the appropriate educational agency;

3.1.a.2. be at least 18 years of age;

3.1.a.3. have completed a prelicensure nursing education program approved by the board, or a program that meets criteria comparable to those established by the West Virginia Board of Registered Nurses in 19CSR01. An official transcript showing the type of degree and date conferred shall be sent directly to the office of the board from a board approved nursing education program with an affidavit of graduation from the nursing education program as proof of education. The board will not consider an application for approval until the final, official transcript is received in the board office; and,

3.1.a.4. The applicant shall submit state and federal criminal history records information using fingerprints or other biometric data from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

3.1.a.5. Report any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other pleas arrangements in lieu of conviction.

3.1.a.6. Report any condition or impairment (including but not limited to substance abuse, or a mental emotional or nervous disorder or condition) which in any way currently affects or limits your ability to practice safely and in a competent and professional manner.

3.1.a.7. Report any actions taken or initiated against any professional or occupational license, registration or certification.

3.1.a.8. Identify any state, territory or country in which the applicant holds a professional license or credential, if applicable. Provide the number and status of the license or credential as well as the original state or country of licensure or credentialing.

3.1.a.9. Provide employment information including current employer if employed in health care, including address, telephone number, position and dates of employment and previous employer in health care if any, if current employment is less than 12 months.

3.1.a.10. Provide information regarding whether the applicant previously applied for a license in another jurisdiction and either was denied a license, or withdrew the application or allowed the application to expire, if applicable.

3.1.a.11. Provide detailed explanation and supporting documentation for each affirmative answer to questions, as applicable, regarding the applicant's background.

3.1.a.12. Submit a completed board application and pay the required fee for licensure by

examination set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board for Registered Nurses. Application fees are not refundable, nor applicable to other test dates.

3.1.a.13 An approved applicant for licensure by examination shall submit an application directly to the contracted test service for the National Council Licensure Examination (NCLEX-RN) with the application fee prior to the date the applicant wishes to take the examination. The authorization to test for any one application is valid for ninety (90) days, and may not be extended.

3.1.b. Applicants seeking licensure as veterans in lieu of the educational qualifications specified in subdivision 3.1.c. of this rule, and qualifying under W. Va. Code §30-24-1 et seq. an applicant who is a veteran shall:

3.1.b.1. have completed an approved four-year high school course of study or an equivalent thereof, as determined by the appropriate educational agency;

3.1.b.2. be at least 18 years of age;

3.1.b.3. have served on active duty in the medical corps of any of the armed forces of the United States and have successfully completed the course of instruction required to qualify her or him for the level of academic training as determined by the National Council of State Boards of Nursing that is equal to that received by a student studying and training for a similar health occupation in civilian life;

3.1.b.4. be honorably discharged from military service; and,

3.1.b.5. The applicant shall submit to a state and federal criminal background checks.

3.1.b.6. Report any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other pleas arrangements in lieu of conviction.

3.1.b.7. Report any condition or impairment (including but not limited to substance abuse, or a mental emotional or nervous disorder or condition) which in any way currently affects or limits your ability to practice safely and in a competent and professional manner.

3.1.b.8. Report any actions taken or initiated against any professional or occupational license, registration or certification.

3.1.b.9. Identify any state, territory or country in which the applicant holds a professional license or credential, if applicable. Provide the number and status of the license or credential as well as the original state or country of licensure or credentialing.

3.1.b.10. Provide employment information including current employer if employed in health care, including address, telephone number, position and dates of employment and previous employer in health care if any, if current employment is less than 12 months.

3.1.b.11. Provide information regarding whether the application previously applied for a license in another jurisdiction and either was denied a license, or withdrew the application or allowed the application to expire, if applicable.

3.1.b.12. Provide detailed explanation and supporting documentation for each affirmative answer to questions, as applicable, regarding the applicant's background.

3.1.b.13. Submit a completed board application and pay the required fee for licensure by examination set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board of Examiners for Registered Professional Nurses. Application fees are not refundable, nor applicable to other test dates.

3.1.b.14. An approved applicant for licensure by examination shall submit an application directly to the contracted test service for the National Council Licensure Examination (NCLEX-RN) with the application fee prior to the date the applicant wishes to take the examination. The authorization to test for any one application is valid for ninety (90) days, and may not be extended.

3.1.c. Applicants educated outside the United States or United States Territory shall:

3.1.c.1. have completed an approved four-year high school course of study or an equivalent thereof, as determined by the appropriate educational agency;

3.1.c.2. be at least 18 years of age;

3.1.c.3. submit the Credentials Evaluation Service (CES) Professional Report certificate (CES) and English Language Proficiency (ELP) Exam issued by the commission on graduates of foreign nursing schools (CGFNS);

3.1.c.4. The applicant shall submit to a state and a federal criminal background checks.

3.1.c.5. Report any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other pleas arrangements in lieu of conviction.

3.1.c.6. Report any condition or impairment (including but not limited to substance abuse, or a mental emotional or nervous disorder or condition) which in any way currently affects or limits your ability to practice safely and in a competent and professional manner.

3.1.c.7. Report any actions taken or initiated against any professional or occupational license, registration or certification.

3.1.c.8. Identify any state, territory or country in which the applicant holds a professional license or credential, if applicable. Provide the number and status of the license or credential as well as the original state or country of licensure or credentialing.

3.1.c.9. Provide employment information including current employer if employed in health care, including address, telephone number, position and dates of employment and previous employer in health care if any, if current employment is less than 12 months.

3.1.c.10. Provide information regarding whether the applicant previously applied for a license in another jurisdiction and either was denied a license, or withdrew the application or allowed the application to expire, if applicable.

3.1.c.11. Provide detailed explanation and supporting documentation for each affirmative answer to questions, as applicable, regarding the applicant's background.

3.1.c.12. Submit a completed board application and pay the required fee for licensure by examination set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board of Examiners for Registered Professional Nurses. Application fees are not

refundable, nor applicable to other test dates.

3.1.c.13. An approved applicant for licensure by examination shall submit an application directly to the contracted test service for the National Council Licensure Examination (NCLEX-RN) with the application fee prior to the date the applicant wishes to take the examination. The authorization to test for any one application is valid for ninety (90) days, and may not be extended. If the applicant has taken and passed the NCLEX-RN previously, have the scores transferred to the West Virginia Board of Registered Nurses by Pearson VUE.

3.2. Temporary Permit for Exam Applicant.

3.2.a. A temporary permit may be issued to an applicant awaiting initial examination for licensure as a registered professional nurse. The temporary permit expires one hundred eighty (180) days following graduation, or until the date the applicant's licensing examination results are released to the office of the board by the National Council Licensure Examination (NCLEX-RN), whichever comes first. A temporary permit is not renewable.

3.2.b. The board shall not issue a temporary permit which permits the individual to practice registered professional nursing while awaiting initial examination for licensure and the reporting of the results of the examination until it has received and approved an application for licensure by examination.

3.2.c. The individual with a temporary permit is subject to all provisions of West Virginia Code § 30-7-1 et seq. and all other relevant provisions of the West Virginia Code and rules promulgated by the board.

3.2.d. The individual with a temporary permit shall work under the direct supervision of a registered professional nurse with an unencumbered license, until the applicant has successfully passed the NCLEX-RN and a license is issued.

§19-3-4. Licensure Examination.

4.1. The licensure examination is the national council licensure examination for registered nurses (NCLEX-RN) which is owned and controlled by the National Council of State Boards of Nursing, Inc.

4.2. The board shall determine the availability of the examination dates, times, and places of administration.

§19-3-5. Failure to Pass Licensure Examination.

5.1. An applicant for licensure by examination who fails to attain a passing score on the examination will have his or her temporary permit to practice registered professional nursing placed in an inactive status by the office of the board.

5.2. In considering an application for licensure by examination, the number of times the applicant has taken the licensing examination shall include each time that the applicant has taken an examination for licensure as a registered professional nurse in any jurisdiction.

5.3. In the event an applicant fails the licensure examination two times, he or she may petition the board for permission to repeat the licensure examination. The board may deny approval for an applicant to repeat an examination after two failures if more than two years has lapsed since the applicant graduated from a nursing education program. In addition, the board may deny approval to repeat the examination

after two failures if the applicant cannot show in the petition to repeat the examination more than two times that any further education has been taken by the applicant to correct deficiencies in his or her nursing knowledge.

5.4. An examination applicant may not repeat the licensure examination more than four times per year, nor more often than every forty-five (45) days.

5.5. A repeat examination applicant shall complete the application for examination as specified in subsection 3.2. of this rule and be subject to other requirements as established by the board.

§19-3-6. Licensure by Endorsement.

6.1. An applicant for permanent licensure by endorsement shall:

6.1.a. be currently licensed in another state and shall have passed the licensure examination that was used in the state of West Virginia at the time of his or her graduation from a professional nursing education program.

6.1.b. complete and submit to the board an accurately completed application for licensure by endorsement;

6.1.c. submit the non-refundable fee set forth in the board's rule, Fees, 19 CSR 12.

6.1.d. have submitted a verification of licensure from the state in which he or she was originally licensed and the state in which he or she is currently employed if it is different than the original state of licensure. If these boards participate in the licensure verification system maintained by the National Council of State Boards of Nursing, the applicant shall follow the process of verification to another state in accordance with the procedures set in place for that system.

6.1.e. The applicant shall submit to a state and federal criminal background check.

6.2. Temporary permit for endorsement applicant.

A temporary permit may be issued to an applicant awaiting endorsement for licensure as a registered professional nurse. The temporary permit expires one hundred eighty (180) days following issue, or until the date the applicant's endorsement is completed whichever comes first. The holder of a temporary permit is subject to all provisions of W. Va. Code §30-7-1 et. seq. and all other relevant sections of the West Virginia Code and rules promulgated by the board.

6.2.a. A complete endorsement application shall be on file in the board office prior to the issuance of a temporary permit including the endorsement application fee.

6.2.b. The board shall not issue a temporary permit until a complete board application for a temporary permit for an endorsement applicant is on file in the board office including the form and the fee set forth in the board's rule, Fees, 19 CSR 12.

6.2.c. The temporary permit expires one hundred eighty (180) days from the date of issuance and the expiration date shall be displayed on the on its website at wvm.boardsnursing.org/licenselookup.

6.2.d. An individual with a temporary permit who fails to complete the endorsement application for full licensure is not entitled to an extension of the temporary permit. An applicant must provide a satisfactory explanation to the board prior to any subsequent request for endorsement by the applicant if

the one hundred (180) day period expires prior to the completion of the required procedure for licensure by endorsement by an applicant licensed as a registered professional nurse in another state, territory, or foreign country. The applicant shall repeat the process for endorsement in its entirety if the explanation is considered acceptable by the board.

6.2.e. A temporary permit is not renewable, and the board shall not extend the initial one hundred eighty (180) days.

6.2.f. The individual with a temporary permit to practice registered professional nursing shall furnish the board with his or her address and telephone number, and the name, address, and telephone number of his or her employer at all times while the permit is effective.

6.2.g. The board shall not issue a temporary permit if it determines upon satisfactory proof that the applicant has in any way falsified his or her qualifications for the temporary permit.

6.2.h. The board shall not issue the temporary permit if it is presented with satisfactory proof that the applicant has any action pending against his or her license to practice registered professional nursing in another state, territory, or foreign country, or if the license is encumbered in any way.

6.2.i. A temporary permit becomes void during the one hundred eighty (180) days if the board determines, upon satisfactory proof, that it will deny the applicant full licensure for any of the causes set forth in West Virginia Code §30-7-6. The board may also revoke the temporary permit at any time if the board has sufficient information indicating the temporary permit was issued in error or if the board receives information establishing probable cause that the applicant violated the board's laws or rules while practicing under the temporary permit.

§19-3-7. Change of Name and/or Address.

7.1. If a licensee legally changes his or her name through marriage, divorce court order or other means, he or she shall send this information to the office of the board. The information shall include both the full prior name and the new name, in a properly executed affidavit or a certified copy of the marriage certificate or divorce decree. The licensee shall submit an application and these documents to the nurse portal on its website at wvrn.boardsofnursing.org

7.2. A licensee shall notify the board of any change in residence or mailing address within thirty (30) days of the change. This notification shall be submitted in writing to the via the nurse portal.

§19-3-8. Renewal of License.

8.1. Each license issued by the board expires on October 31 of each even numbered year. In order to continue practicing a licensee shall renew his or her license biennially. The deadline for receipt of the renewal application and fee is is October 31 of each even numbered year. A license for which a renewal application is received after October 31 is lapsed. The board shall consider the application for renewal of the license of each licensee upon receipt of:

8.1.a. an accurately completed application for renewal of the license;

8.1.b. submission of additional documents as determined by the board;

8.1.c. attestation that he or she meets the continuing competence requirements specified in the board's rule, Continuing Education, 19CSR11;

8.1.d. all additional requirements set forth by the board; and,

8.1.e. the fee for renewal set forth in the board's rule, Fees, 19 CSR 12.

8.2. Request for inactive status.

A licensee who is not practicing, and who has no disciplinary action pending against his or her license, may request his or her name be entered on the inactive list by completing an inactive application furnished by the board and indicating his or her desire to be placed on inactive status. The board shall then designate the licensee's records "inactive". No fee is required for inactive status and no license is issued. The board may provide the inactive licensee, upon application, payment of the current fee, and completion of required continuing education, an active license to practice registered professional nursing in West Virginia. The board may inquire into activities and events during the term of the inactive license period.

8.3. Request for retired status.

A licensee who has retired from the practice of nursing in all states may upon request be placed in a retired status. The retired status registered professional nurse may not practice as a registered professional nurse in any state and may not in any way indicate to any persons that he or she is licensed to practice as a registered professional nurse. If the individual in a retired status does practice in any form, voluntarily or for pay, as a registered professional nurse, he or she is guilty of practicing nursing without a license and shall be subject to the appropriate penalties contained in law and rule. If at any time the individual in the retired status desires to return to the practice of nursing, he or she shall submit the reinstatement application along with the current fee and shall meet all reinstatement requirements.

§19-3-9. Reinstatement of Lapsed License.

9.1. Non-renewal of license. If a licensee fails to renew his or her license before the current license expires, the license shall lapse.

9.2. The fee to reinstate a lapsed license is set forth in the board's rule, Fees, 19 CSR 12.

9.3. Any person practicing registered professional nursing during the time his or her license has lapsed is considered an illegal practitioner and is subject to the penalties provided for violation of W.Va. Code §30-7-1 et seq.

§19-3-10. Verification of Licensure to Another State Board of Nursing.

10.1. The board shall provide a verification of West Virginia licensure upon submission of a written request by the licensee for the verification and payment of a fee set forth in the board's rule, §19 CSR 12, Fees. 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. If the licensee is a graduate of a school which has closed and his or her records are on file in the board office, the board shall provide a copy of school records upon written request and payment of the fees set forth in the board's rule, Fees, 19 CSR 12.

§19-3-11. Penalty for Presentation of Non-negotiable Check.

11.1. The board shall assess the fee set forth in the board's rule, Fees, 19 CSR 12 to any individual who presents a check payable to the board that is later returned by the bank as non-negotiable. The

presenter of the non-negotiable check shall redeem the non-negotiable check within fourteen (14) days of notification by certified mail. This fee is in addition to any reinstatement or other fee which may additionally become due because the applicant or licensee submits an application or registration form after a board deadline. The applicant, licensee, or other person who presents a non-negotiable check shall redeem it with cash, a money order, or a cashier's check.

11.2. The board shall designate the license or temporary permit of a registered professional nurse as invalid if fees are not paid within 14 days for a non-negotiable check submitted with an application for renewal or reinstatement or any other application form.

§19-3-12. Professional Misconduct

12.1. Conduct, including, but not limited to the following, if proven by a preponderance of evidence, constitutes professional misconduct subject to disciplinary action pursuant to W. Va. Code § 30-7-11(a)(6). The applicant or licensee:

12.1.a. failed to adhere to common and current standards for professional nursing practice, including but not limited to standards established by a national professional nursing organization, nursing research, nursing education, or the board;

12.1.b. failed to adhere to established standards in the practice setting to safeguard patient care;

12.1.c. knowingly committed an act which could adversely affect the physical or psychological welfare of a patient;

12.1.d. 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. practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities that the licensee knows or has reason to know that he or she is not licensed, qualified, or competent to perform;

12.1.f. impersonated another licensed practitioner;

12.1.g. permitted another person to use the licensee's license for any purpose;

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

12.1.i. delegated professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that person is not qualified by training, experience or licensure to perform them;

12.1.j. practiced registered professional nursing while his or her license is suspended, lapsed, or inactive;

12.1.k. failed to comply with terms and conditions as may be imposed by the board based upon previous disciplinary action of the board;

12.1. practiced professional nursing while the ability to safely and effectively practice is compromised by alcohol or drugs;

12.m. is addicted to a controlled substance;

12.1.n. is a chronic or persistent alcoholic;

12.1.o. engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member of the public; thus, not exercising good professional character;

12.1.p. practiced professional nursing while the ability to safely and effectively practice was compromised by physical or mental disability;

12.1.q. 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.r. provided false or incorrect information to an employer or potential employer regarding the status of a license, or failed to inform an employer or potential employer of a change in the status of a license;

12.1.s. knowingly falsified an application for employment;

12.1.t. knowingly provided false information regarding completion of educational programs;

12.1.u. falsified patient records, intentionally charted incorrectly;

12.1.v. improperly, incompletely, or illegibly documented the delivery of nursing care, including but not limited to treatment or medication;

12.1.w. knowingly made or filed a false report;

12.1.x. knowingly or negligently failed to file a report or record required by state or federal law;

12.1.y. willfully impeded or obstructed the filing of a report or record required by state or federal law;

12.1.z. induced another person to file a false report or obstructed the filing of a report required by state or federal law;

12.1.aa. failed to report to the board within thirty (30) days, knowledge of a violation by a registered professional nurse of W. Va. Code §§ 30-7-1 et seq., 30-15-1 et seq., this rule, any other applicable state law or rule or any applicable federal law or regulation;

12.1.bb. failed to report through proper channels a violation of any applicable state law or rule, any applicable federal law or regulation or the incompetent, unethical, illegal, or impaired practice of another person who provided health care

12.1.cc. impeded or obstructed an investigation by the board by failing to comply or respond to requests for action or information, whether the failure was known or negligent;

12.1.dd. violated any provision of W. Va. Code §30-7-1 et seq., or rules governing the practice of registered professional nursing, or a rule or order of the board, or failed to comply with a subpoena or subpoena duces tecum issued by the board;

- 12.1.ee. failed to register or notify the board of any changes of name or mailing address;
- 12.1.ff. failed to accept certified mail from the board, when mailed to the licensee's last address on record in the board's office;
- 12.1.gg. failed to disclose to the board a criminal conviction in any jurisdiction;
- 12.1.hh. was convicted of a misdemeanor with substantial relationship to the practice of registered professional nursing, in a court of competent jurisdiction.
- 12.1.ii. failed to disclose information when required by the board concerning treatment or counseling for substance abuse, or participation in any professional peer assistance program;
- 12.1.jj. provided false information on any application, or any other document submitted to the board for the purpose of licensure, advance practice recognition, or prescriptive authority;
- 12.1.kk. misappropriated medications, supplies, or personal items of a patient or employer;
- 12.1.ll. self-administered or otherwise took into his or her body any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;
- 12.1.mm. prescribed, dispensed, administered, mixed or otherwise prepared a prescription drug, including any controlled substance under state or federal law, not in accordance with accepted nursing practice standards or not in accordance with the board's rule Limited Prescriptive Authority For Nurses in Advanced Practice, §19 CSR 8;
- 12.1.nn. physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual in the context of a nurse-patient/client relationship;
- 12.1.oo. used the nurse-patient/client relationship to exploit a patient or client;
- 12.1.pp. engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;
- 12.1.qq. failed to maintain appropriate professional boundaries in the nurse-patient/client relationship;
- 12.1.rr. failed to report that his or her license to practice registered professional nursing in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited, or otherwise acted against, that he or she was subjected to any other disciplinary action by the licensing authority, or that he or she was denied licensure in any other state, territory, jurisdiction, or foreign nation;
- 12.1.ss. violated the confidentiality of information or knowledge concerning a patient;
- 12.1.tt. practiced registered professional nursing by way of telecommunications or otherwise, in any other state, territory, jurisdiction, or foreign nation, without a license to do so and not in accordance with the law of that state, territory jurisdiction, or foreign nation; or
- 12.1.uu. was found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or board in this or 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, may serve as a basis for disciplinary action by this board.

12.2. Upon a finding of probable cause that a basis for disciplinary action exists, the board may require a licensee or a person applying for licensure to practice as a registered professional nurse in this state to submit to a physical or psychological examination by a practitioner approved by the board. Any individual who applies for or accepts the privilege of practicing as a registered professional nurse in this state is considered to have given consent to submit to all such 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 ground that the testimony or report is a privileged communication. If an applicant or licensee fails or refuses to submit to any examination under circumstances which the board finds are not beyond his or her control, that failure is prima facie evidence of his or her inability to practice as a registered professional nurse competently and in accordance with accepted standards for professional practice. A licensee or person applying for licensure as a registered professional nurse who is adversely affected by this provision may request a hearing within thirty days of any action taken by the board.

12.3. Based on the nature of the complaint filed against the licensee, technician, or of the information received about an applicant, the board may require the technician or applicant to request and submit to the board the results of a state and a national electronic criminal history records check by the State Police.

12.3.a. The licensee, technician, or applicant under investigation shall furnish to the State Police a full set of fingerprints and any additional information required to complete the criminal history records check.

12.3.b. The licensee, technician, or applicant under investigation is responsible for any fees required by the State Police in order to complete the criminal history records check.

12.3.c. The board may require the licensee, technician, or applicant to obtain an electronic criminal history records from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

12.3.d. Instead of requiring the licensee, technician, or applicant under investigation to apply directly to the State Police for the criminal history records checks, the board may contract with a private vendor to provide the services required in this subsection.

12.3.e. The board may deny licensure or certification or take disciplinary action against any licensee, technician, or applicant who fails or refuses to submit the criminal history records checks required by this subsection.;

12.4. If the board finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect into its order, the board shall order summary suspension of a license pending proceedings for revocation of the license or other action. The board shall promptly institute and determine further disciplinary action. A licensee whose license has been summarily suspended is entitled to a hearing not less than twenty (20) days after the license was summarily suspended. The licensee may waive his or her right to a hearing on the summary suspension within the twenty (20) day period.

§19-3-13. Impaired Nurse Treatment Program

13.1. The board may permit a licensee or applicant for licensure who has been found guilty of prohibited conduct, to participate in a structured treatment program and meet other terms and conditions for continued licensure, in lieu of disciplinary action.

13.1.a. The board may appoint a designee to monitor participation in a approved treatment program;

13.1.b. The board may excuse an applicant or licensee that remains in compliance with the terms of an approved treatment program, to the satisfaction of the board's designee, from appearing before the board or hearing examiner to respond further to charges of misconduct;

13.1.c. An applicant or licensee that fails to comply with the terms of an approved treatment program, to the satisfaction of the board's designee, may be subject to further disciplinary action to the fullest extent of the board's authority;

13.2. The board may establish or approve impaired nurse treatment programs.

§19-3-14. Expungement of Records.

The Disciplinary Review Committee shall expunge all complaints that it dismisses, upon request by the licensee, 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.

§19-3-15. Use of criminal records as disqualification from authorization to practice.

15.1. The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the nursing profession. In determining whether a criminal conviction bears a rational nexus to the nursing profession the board shall consider at a minimum:

15.1. a. The nature and seriousness of the crime for which the individual was convicted;

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

15.1.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the registered nurse; and

15.1.d. Any evidence of rehabilitation or treatment undertaken by the individual.

15.2. Because the term "moral turpitude" is vague and subject to inconsistent applications, the board may not rely upon the description of a crime for which an applicant has been convicted as one of "moral turpitude" as a basis for denying licensure: Provided, That if the prior conviction for the underlying crime bears a rational nexus to the profession or occupation requiring licensure, the board may consider the conviction according to the requirements of subdivision (1) of this subsection.

15.3. Notwithstanding any other provision of this chapter to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

15.3.a. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

15.3.b. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

15.3.c. The conviction was not for an offense of a violent or sexual nature: Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the board.

15.4. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The board shall provide the determination within 60 days of receiving the petition from the applicant. The board may charge a fee to recoup its costs for each petition. The requirements of this section do not apply to the criteria that the board may consider when making determinations regarding relicensure or discipline of licensees.