



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Medical Imaging And Radiation Therapy Technology Board Of Examiners TITLE-SERIES: 18-04

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: DISCIPLINARY AND COMPLAINT PROCEDURES

CITE STATUTORY AUTHORITY: Chapter 30, Article 23

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/15/2025 11:59 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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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:

This rule specifies a procedure for the investigation and resolution of complaints against a licensee or permittee.

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

Updating existing policies and procedures to be consistent with present-day operations.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

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

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2025 Increase/Decrease (use "-")	2026 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

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

Yes

Jamie S Browning -- 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 18
PROCEDURAL RULE
WEST VIRGINIA MEDICAL IMAGING AND RADIATION
THERAPY TECHNOLOGY BOARD OF EXAMINERS

SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES

§18-4-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against a licensee or permittee.

1.2. Authority. -- W. Va. Code §§ 30-23-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§18-4-2. Application.

This rule applies to all licensees and permittees under W.Va. Code § 30-23-1 et seq.

§18-4-3. 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 an application for an original or renewal license, apprentice license, a podiatry permit or a temporary permit pursuant to W. Va. Code §30-23-1 et seq.

3.2. "Apprentice License" is a license issued to any person working towards certification in Nuclear Medicine or Magnetic Resonance Imaging.

3.3. "Board" means the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

3.4. "License" has the same meaning as W. Va. Code § 30-23-4(i).

3.5. "Licensee" has the same meaning as W. Va. Code § 30-23-4(k).

3.6. "Permittee" has the same meaning as W. Va. Code § 30-23-4(q).

3.7. "Representative" means a licensee who is the Executive Director of the Board or Counsel for the Board.

~~§18-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses or Permit.~~

~~—The Board may deny an application for license, apprentice license or permit, place a licensee or permittee on probation, limit or restrict a license, suspend a license, apprentice license or permit or revoke any license, apprentice license or permit issued by the Board, upon satisfactory proof that a licensee or permittee has been convicted of any felony or misdemeanor, if the misdemeanor conviction relates to the practice of Medical Imaging, 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. Code §30-23-1 et seq. or the rules of the Board. The above objectives may be accomplished by mediation, provided that reasonable mediation cost may be reimbursed by the licensee or permittee.~~

§8-4-4. Disposition of Complaints.

4.1. Any individual may make a complaint to the Board concerning a licensee or permittee.

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

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

4.3.1. The alleged violation which prompted the complaint.

4.3.2. The name ~~and address~~ of the individual against whom the complaint is lodged.

4.3.3. The date the incident occurred; and

4.3.4. The name or names of witnesses to the incident.

4.4. All complaints shall be referred to the Executive Director ~~or Counsel for the Board~~.

4.5. A complaint against a licensee or permit holder must claim that the individual has engaged in behavior, practices, or actions that constitute professional negligence or a deliberate deviation from recognized professional or ethical standards, in violation of W. Va. Code § 30-23-1 et seq. or the Board's Standards of Ethics pursuant to 18CSR5.

~~5.5. A complaint against a licensee or permittee shall allege that such person has been convicted of a felony or misdemeanor, if the misdemeanor conviction relates to the practice of Medical Imaging, 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 or ethical conduct in violation of W. Va. Code §30-23-1 et seq. or the rules of the Board.~~

4.6. 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.

4.7. The Board shall maintain a complaint log record which records the receipt of each complaint,

its nature and its disposition.

4.8. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

4.9. The ~~Representative~~ Executive Director shall conduct an investigation to determine the validity of the allegation contained in the complaint.

~~5.10. The Representative shall determine if 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.~~

4.10. The Executive Director shall report the complaint to the board, outlining the allegations, relevant facts, and findings.

4.11. The Board will determine whether the complaint is beyond its jurisdiction and, if so, may offer the complainant guidance on alternative means of resolution.

~~5.11. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or permittee 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.~~

4.12. The Board shall notify the individual of an alleged violation of the Board's Standards of Ethics by sending a copy of the complaint, along with any supporting documentation. The individual will be requested to submit a written response within thirty (30) days of receiving the complaint. Failure to respond within the specified timeframe may be considered an admission of the allegations.

4.13. Requests for ~~comment on~~ responses to complaints sent to licensees, permittees, or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or permittee, or applicant, to keep the Board informed of his or her current address.

4.14. Upon receipt of a licensee's, permittee's, or applicant's ~~comments in~~ response to a complaint, the Board shall promptly send a copy of the ~~same response~~, including any supporting documentation, to the complainant. If a response is not submitted to the Board, it will be considered an admission of the allegations.

~~5.14. Upon receipt of a complaint, the Representative shall, by the next scheduled Board meeting, 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 Representative's findings and recommendations.~~

~~5.15. The Representative shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.~~

4.15. To help resolve a complaint, the Executive Director may request any individual to attend an informal, investigative conference. The Executive Director will provide notice, including the issues to be discussed. The Executive Director shall report the findings to the board at its next scheduled meeting, outlining the allegations, relevant facts, and findings.

~~5.16. To facilitate the disposition of a complaint, the Representative 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 Representative 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.~~

4.16. The ~~Representative~~ Board may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. Any such request shall be accompanied by a brief statement specifying the necessity for the same. A subpoena issued hereunder may require any facility employing or licensing or practicing radiologic technology to allow inspection of the premises or other tangible things or records in the possession of or controlled by the following. Any member of the board, the Board's legal counsel, or the Executive Director may sign a subpoena or other legal document on behalf of the board.

~~5.18. 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 licensee or permittee may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is initiated by the Representative, respective findings and recommendations shall be made to the Board prior to the Board dismissing the complaint.~~

4.17. At any stage of an investigation or inquiry, the Board may conclude that there is insufficient evidence to proceed or that the complaint does not allege conduct warranting disciplinary action and dismiss the complaint.

4.18. Upon completion of the investigation, ~~and approval of the Board~~ the Representative may negotiate the terms of a consent agreement if probable cause for disciplinary action is established.

4.19. Any member of the Board, the Board's legal counsel, or the Executive Director may sign a consent decree or other legal document on behalf of the board.

~~4.20. The consent agreement may require participation in a Recovery Program.~~

~~4.20.a. The board will pay the monthly administration fee per enrolled licensee.~~

~~4.20.b. The licensee will pay for all other required costs.~~

~~4.20.c. The Recovery Program will complete an individualized evaluation for each enrolled licensee.~~

~~4.20.d. The Recovery Program will complete an individualized treatment plan for each enrolled licensee.~~

~~4.20.e. The licensee will sign a contract with the Recovery Program to complete the required treatment and evaluations.~~

~~4.20.f. The Recovery Program will complete a fit for duty evaluation for each enrolled licensee.~~

~~4.20.g. The Recovery Program will require all enrolled licensees to notify their employers and medical practitioners of their participation in this program.~~

~~4.20.h. The Recovery Program shall submit quarterly reports to the Board.~~

~~4.20.i. The Recovery Program shall submit any failure of its participants to comply with its requirements to the Board immediately.~~

4.20. The Board shall review the terms of the consent agreement and all investigative information. The Board may approve the consent agreement, request revisions to the consent agreement, or reject the consent agreement.

4.21. If the Board rejects the consent agreement, the Representative shall schedule a hearing on the complaint.

4.22. If the licensee or permittee contests the allegations and an agreement can not be reached, the Representative shall schedule a hearing on the complaint. All hearings shall be held in accordance with W. Va. Code § 29A-5-1 et seq. of the Administrative Procedures Act.

4.23. A hearing shall be held before a hearing examiner or before members of the Board, pursuant to 18CSR3.

§18-4-5. Participation in Recovery Program.

5.1. The consent agreement may require participation in a Recovery Program.

5.1.1. The board will pay the monthly administration fee per enrolled licensee.

5.1.2. The licensee will pay for all other required costs.

5.1.3. The Recovery Program will complete an individualized evaluation for each enrolled licensee.

5.1.4. The Recovery Program will complete an individualized treatment plan for each enrolled licensee.

5.1.5. The licensee will sign a contract with the Recovery Program to complete the required treatment and evaluations.

5.1.6. The Recovery Program will complete a fit-for-duty evaluation for each enrolled licensee.

5.1.7. The Recovery Program will require all enrolled licensees to notify their employers and medical practitioners of their participation in this program.

5.1.8. The Recovery Program shall submit quarterly reports to the Board.

5.1.9. The Recovery Program shall submit any failure of its participants to comply with its requirements to the Board immediately.

~~§18-4-6. Contested Case Hearings.~~

~~— 5.1. The Board may refuse to renew a license, apprentice license, or permit or suspend a license, apprentice license, or permit if it determines there is probable cause to believe that licensee's or permittee's conduct, practices, or acts constitute an immediate danger to the public.~~

§18-4-6. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses or Permit.

6.1. The Board may deny an application for license, apprentice license or permit, place a licensee or permittee on probation, limit or restrict a license, suspend a license, apprentice license or permit or revoke any license, apprentice license or permit issued by the Board, upon satisfactory proof that a licensee or permittee has engaged in behavior, practices, or actions that constitute professional negligence or a deliberate deviation from recognized professional or ethical standards, in violation of W. Va. Code § 30-23-1 et seq. or the Board's Standards of Ethics pursuant to 18CSR5.

§18-4-7. Appeals.

7.1. Any applicant who has had his or her application for a license, apprentice license, or permit 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. 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.

§18-4-8. Summary Suspension of License

8.1. The Board may suspend or deny the renewal of a license, apprentice license, or permit upon finding probable cause that the individual's conduct, practices, or actions present an immediate threat to public safety. The individual is entitled to a hearing on the summary suspension; however, such a hearing must be expressly requested. If no request is made, the matter will be addressed at the disciplinary hearing.