WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Speech Language Pathology And Audiology

RULE TYPE: Legislative

TITLE-SERIES: 29-04

RULE NAME: Disciplinary and Complaint Procedures for Speech Pathology and Audiology

CITE AUTHORITY: 30-32-1

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Pamela Coughlin -- 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 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. W.Va. Code §§30-32-1 *et seq*. and 30-1-1 *et seq*.

1.3. Filing Date. ~~May 5, 2020~~.

1.4. Effective Date. ~~July 1, 2020.~~

1.5. Sunset Provision. This rule shall terminate and have no further force or effect on July 1, ~~2030~~ 2032.

§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 W.Va. 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. 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. 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.

3.6. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been

set aside, vacated, pardoned, or expunged.

§29-4-4. Application after denial.

4.1. If an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

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

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

4.1.3. 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 on a case by case basis.

§29-4-5. Petition for licensure eligibility determination.

5.1. 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.

5.2. The petition shall be submitted on an application form prescribed by the board and 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.

5.3. The applicant may submit with the petition for licensure eligibility evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice Speech-Language Pathology and Audiology.

5.4. The board shall provide the determination within 60 days of receiving the petition and the applicable fee, as prescribed by the board, from the applicant.

§29-4-46. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Speech-Language Pathologist, Audiologist, Provisional Licensees and Assistants.

4.6.1. 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 sections 4.1.1. and 4.1.2. of this rule, 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 §30-32-1 *et seq*. or the rules of the Board.

4.6.1.1. 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 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:

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

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

4.6.1.1.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

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

4.6.1.2. 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 $100.00 to cover its costs in making a determination and upon the submission of an application for licensure, the eligibility fee shall be deducted from the applicable initial application fee. The Board shall provide its determination in writing within 60 days of receiving the petition from the individual.

§29-4-5.7. Disposition of Complaints.

5.7.1. 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 W.Va. 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:

5.7.1.1. The name and address of the speech-language pathologist, audiologist, provisional licensee or assistant against whom the complaint is lodged;

5.7.1.2. The date of care;

5.7.1.3. The name of any person who may have treated the patient after the alleged incident; and,

5.7.1.4. 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.

5.7.2. 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. Code §30-32-1 *et seq*. or the rules of the Board.

5.7.3. 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.

5.7.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

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

~~5~~.7.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

~~5~~.7.6.1. That the matter will be reviewed by the Board;

~~5~~.7.6.2. 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~~.7.6.3. That more information will be required in order to adequately review the individual complaint.

~~5~~.7.7. 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~~.7.8. 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~~.7.9. Upon receipt of a licensees' or applicants' comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

~~5~~.7.10. 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~~.7.11. 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~~.7.12. Upon receipt of a complaint the ethics investigator shall, within 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~~.7.13. 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~~.7.14. The Board members, Board president, executive director, 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~~.7.15. 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~~8. Contested Case Hearings.

~~6.~~8.1. 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~~9. Appeals.

~~7.~~9.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within 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.