

Arch A. Moore, Jr.
Governor



David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

A

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Hospital Licensure (Amendment); West Virginia Department of Health Legislative Rule, Series 12, 1986. The attached legislative rule amendment constitutes the official rule amendment approved by the Board of Health on the 21st day of November, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

David K. Heydinger, M.D.

David K. Heydinger, M.D.
Director of Health

RECEIVED
DEPARTMENT OF HEALTH
1986 DEC -9 AM 10:51
FILED

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Hospital Licensure

1983 OCT 17 PM 2:44

Type of Rule: Legislative Interpretive Procedural

Agency Department of Health Address 1800 Washington Street, East

Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The proposed amendment will create no additional cost.

3. Objectives of these rules:

To allow hospitals the flexibility of appointing dentists and other licensed health care professionals to their medical staffs in accordance with federal regulations (42 CFR Part 405) and with the standards of the Joint Commission on Accreditation of Hospitals.

25 OCT 1983 6-350
FILED

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

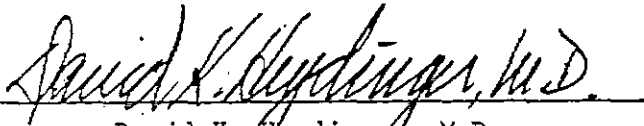
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date August 11, 1986

Signature of Agency Head or Authorized Representative


David K. Heydinger, M.D.
Director of Health

DATE: November 21, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Health

LEGISLATIVE RULE TITLE: Hospital Licensure Rule (Amendment -
Dentists on Hospital Medical Staffs)

1. Authorizing statute(s) citation Chapter 16, Article 5B,
Section 1, et. seq.

2. a. Date filed in State Register with Notice of Hearing:
October 17, 1986

b. What other notice, including advertising, did you
give of the hearing?
Notice of the hearing and copies of the proposed amendment were
sent to the West Virginia Dental Association, West Virginia
Hospital Association, West Virginia Medical Association, licensed
hospitals and other interested agencies.

c. Date of hearing (s): November 17, 1986

d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

f. Name and phone number of agency person to contact
for additional information:

Joan Rutledge

Regulatory Services Division

348-3223

21412 10 10/11/86
10/11/86 10:11 AM
1986 DEC -9 AM 10:52

FILED

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

PROPOSED RULE ABSTRACT
WEST VIRGINIA BOARD OF HEALTH

FILED

1993 OCT 17 PM 2:44

SECRET

TITLE: Hospital Licensure

TYPE: Legislative Rule

NUMBER: Series 12

AUTHORIZING CODE: Chapter 16, Article 5B, Section 1, et seq.

ABSTRACT: This proposed amendment would allow hospitals to appoint dentists and other licensed health care professionals to their medical staffs. This amendment is consistent with federal regulations (42 CFR Part 405) and with the standards of the Joint Commission on Accreditation of Hospitals.

CONTACT PERSON: Joan Rutledge, Research Analyst
Regulatory Services Division, 348-3223

RESPONSIBLE DIVISION: John J. Jarrell, Director
Health Facilities Evaluation Division, 348-0050

SECRET
1993 DEC -9 AM 10:52

FILED

(PROPOSED)

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Hospital Licensure Amendment
(Dentists on Hospital Medical Staffs)

Series 12

For Submission to Legislative Rule-Making Review Committee
November 21, 1986

SECRET
1986 DEC -9 AM 10 52
FILED

TITLE 64

PROPOSED AMENDMENT OF
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Series 12

Title: Hospital Licensure

Note: The proposed amendment applies only to Section 14 of the present rule and only that Section is presented herein.

Section 14. Professional Standards

14.1. Medical Staff

14.1.1. Medical Staff - ~~Physicians and surgeons privileged to practice in the hospital shall be organized as a definite group or staff.~~ Each hospital shall have an organized medical staff which includes fully licensed physicians and may include other licensed health care professionals who are privileged by law and by agreement with the hospital to attend patients, as defined in the hospital's governing and medical staff bylaws. The medical staff shall advise and be accountable to the hospital's governing body for quality of medical care provided to hospital patients and for the ethical and professional conduct of its members while functioning in the hospital.

a. All hospitals which admit two or more physicians to practice in the institution shall have an organized medical staff responsible to the governing authority for the fitness, adequacy and quality of medical care provided to patients in the hospital. Satisfactory evidence shall be maintained by the hospital of such organization.

b. The term "staff" is defined here as the group of ~~doctors~~ physicians and other licensed health care professionals who are members in accordance with Section 14.1.1 and practice in the hospital inclusive of all groups, such as the active medical staff, the associate medical staff and the courtesy medical staff.

c. Membership - The ~~medical staff shall be restricted to physicians and surgeons who are:~~

(1) ~~Licensed to practice in West Virginia or approved in accordance with the rules and regulations of the West Virginia medical licensing board;~~

(2) ~~Competent in their respective fields;~~

(3) ~~Worthy in character and in matters of professional ethics. In this latter connection, the practice of the division of fees, under any guise whatever, is prohibited. The medical staff shall be appointed by the governing body of the hospital in accordance with its bylaws, rules and regulations.~~

1. Each member of the medical staff shall be qualified for membership and the exercise of clinical privileges granted to him or her as evidenced by a current license to practice his or her profession in the State of West Virginia.

2. Clinical privileges of each medical staff member shall be delineated in writing.

3. Members of the medical staff must be legally, professionally and ethically qualified.

d. Rules and Regulations - The medical staff shall initiate and, with the approval of the governing board of the hospital, adopt rules, bylaws and regulations governing the its professional organization and functional work of the ~~medical staff~~. All medical staff members shall ~~read and sign the rules and regulations upon election to the staff~~ sign a document which specifies that the bylaws, rules and regulations have been read. These rules and regulations, and policies shall specifically provide:

(1) That staff meetings be held at least once each month unless the hospital medical staff has monthly meetings in each department. In the latter case, only quarterly meetings of the full medical staff are required.

(2) That the staff review and analyze at the monthly staff meeting their clinical experiences in the various departments of the hospital such as medicine, surgery, obstetrics and the other specialities. The clinical records of patients shall be the basis of such review and analysis.

(3) The medical staff shall provide in its bylaws, rules and regulations for the ~~satisfactory~~ performance of committee functions ~~to be performed by~~ in at least the following ~~committees~~ areas: credentials, medical records, tissue case and utilization review, medical review quality assurance, hospital infections, casualties, pharmacy and therapeutic practices and ~~casualties~~, and such other committees as ~~might be~~ the hospital board may deem necessary.

(4) There shall be a chief of staff with direct responsibility for the organization and administration of the medical staff in accordance with the terms of the medical staff constitution, bylaws, rules and regulations.

Proposed Rules
Public Comments Received
Discussion and Response

Title, Type and Number: Hospital Licensure (Amendments), West Virginia
Department of Health Legislative Rules, Series 12, 1986

A public hearing regarding this rule was held on November 17, 1986, and was attended by the Executive Director of the West Virginia Dental Association. Written comments were submitted by St. Mary's Hospital; Chairman of the Committee on Hospital Dentistry of the West Virginia Dental Association; W. Dean Russell, Jr., D.D.S.; the West Virginia Dental Association and the Veterans Administration Medical Center of Martinsburg. All comments were in support of this amendment with two suggestions being offered by the Administrator of St. Mary's Hospital.

1. Comment (St. Mary's Hospital) 14.1.1.(d) - If the sentence "all medical staff members shall read and sign the rules and regulations upon election to the staff" is taken literally, the hospitals would have a room full of rules and regulations signed by staff members. The administrator of St. Mary's Hospital suggests the following wording: All medical staff members shall sign a document that the bylaws, rules and regulations have been read.

Response: We agree that this section should be modified as proposed by the commentor.

Proposed: 14.1.1.(d). Rules and Regulations - The medical staff shall initiate and, with the approval of the governing board of the hospital, adopt rules, bylaws and regulations governing its professional organization and functional work. All medical staff members shall read and sign the rules and regulations upon election to the staff sign a document which specifies that the bylaws, rules and regulations have been read.

2. Comment (St. Mary's Hospital) 14.1.1(d)(3) - The administrator of St. Mary's Hospital questioned whether "medical review" means "quality assurance" and also points out that "tissue review" is now called "surgical case review." The administrator suggests that if "casualties" means disaster committee then it should be separated from pharmacy and therapeutic practices.

Response: Although the intent is the same, we agree that this section should be rewritten for the sake of clarity.

Proposed: 14.1.1.(d)(3). The medical staff shall provide in its bylaws, rules and regulations for the ~~satisfactory~~ performance of committee functions to be performed by in at least the following committees areas: credentials, medical records, tissue case and utilization review, medical review quality assurance, hospital infections, casualties, pharmacy and therapeutic practices and easualties- and such other committees as might be the hospital board may deem necessary.

Written Comments Received for
Public Hearing and Comment
November 17, 1986

1. St. Mary's Hospital
2900 First Avenue
Huntington, West Virginia 25701
2. J. B. Poindexter, Jr., D.D.S., Chairman
Committee on Hospital Dentistry
West Virginia Dental Association
2828 First Avenue, Suite 104
Huntington, West Virginia 25702
3. W. Dean Russell, Jr., D.D.S.
2007 Professional Court
Martinsburg, West Virginia 25401
4. West Virginia Dental Association
Suite 4, 4004 MacCorkle Avenue, SE
Charleston, West Virginia 25304
5. Veterans Administration
Medical Center
Martinsburg, West Virginia 25401



St. Mary's Hospital

2400 First Avenue / Huntington, West Virginia 25701 / (304) 526-1234

October 30, 1986

David K. Heydinger, M.D.,
Director of Health,
State Department of Health,
1800 Washington St. East,
Charleston, WV 25305

Dear Dr. Heydinger:

I would like to make the following comments on the proposed hospital licensure amendment which will be up for a public hearing on November 17, 1986:

Page 2, item 3d. Sentence " All medical staff members shall read and sign the rules and regulations upon election to the staff". If this is taken literally, the hospitals would have a room full of rules and regulations signed by staff members. It might be better to restate it to read something like: " All medical staff members shall sign a document that the bylaws, rules and regulations have been read". We happen to have a statement on our application as the key points of the bylaws go to the applicant.

Page 3, (3) Does "medical review" mean "Quality Assurance"? The JCAH now calls "tissue" "surgical case review". If "casualties" means disaster committee then it should be separated from pharmacy and therapeutic practices.

Sincerely yours,


Steve J. Soltis,
Executive Director.

SJS:apb

West Virginia Dental Association

223 High Street, Suite 101 HUNTINGTON, W. VA. 25701



November 11, 1986

Dr. David Heydinger, Director
Department of Health
Charleston, WV

Dear Dr. Heydinger:

As chairman of the West Virginia Dental Association Committee on Hospital Dentistry, I want to totally endorse the proposed changes in the rules regarding hospital licensure that are being submitted to the West Virginia Legislature for their consideration. The provision of providing medical staff membership to dentists who practice in the hospital environment is very important for the health care of the people of the state of West Virginia. In practicality, dentists have participated in the hospital environment for many years as medical staff members. However, the state code has been restrictive in this language.

Thank you very much for the effort that you have put forth in bringing about these very important changes. I understand the public hearing is Monday, 11-17-86. A representative from the West Virginia Dental Society will be present to answer any questions regarding the Dental Association's position on these proposed changes.

Thank you very much again for your attention in this matter.

Sincerely,

J. B. Poindexter
J. B. Poindexter, Dr., D.D.S., Chairman
Committee on Hospital Dentistry
West Virginia Dental Association

JBP/lam

W. DEAN RUSSELL, JR., D.D.S., P.C.
LIMITED TO ORAL AND MAXILLOFACIAL SURGERY
2007 PROFESSIONAL COURT
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE (304) 263-0991

November 11, 1986

Dr. David Heydinger
Director of Health
State of West Virginia
1800 Washington Street, East
Charleston, WV 25305

Dear Dr. Heydinger:


This letter is being written in support of the proposed rule change regarding the composition of the Medical Staff of hospitals by including other licensed health care professionals. The present wording of these rules does not accurately reflect the composition of the Medical Staffs of the hospitals in the State of West Virginia.

I am an Oral and Maxillofacial Surgeon actively practicing in the State of West Virginia. I am presently on the staff of four hospitals in our area. As a member of these Medical Staffs, I am accorded all the rights and privileges of my colleagues who are physicians.

As you stated in your Notice of Public Hearing on the Proposed Rule, this amendment would allow hospitals to appoint dentists and other licensed health care professionals to their Medical Staffs. This amendment is consistent with federal regulations, Medicare and Medicaid Programs, Conditions of Participation for Hospitals, and with standards set forth by the Joint Commission on Accreditation of Hospitals.

I feel this proposed rule change would ensure the continued representation on Medical Staffs of dentists and other licensed health care professionals. I also feel this will help ensure that the people of West Virginia continue to receive the optimum in health care.

Sincerely,


W. Dean Russell, Jr., D.D.S.

WDR/lrs

West Virginia Dental Association

Donald E. Patihoff, D.D.S.
President
300 Foxcroft, Suite 302
Martinsburg, W. Va. 25401

Frank H. Stevens, D.D.S.
President Elect
WVU School of Dentistry
Morgantown, W. Va. 26506

H. Richard Marshall, D.D.S.
Vice President
120 Maplewood Avenue
Roncoverts, W. Va. 24970

Mr. Richard D. Stevens
Executive Director
Suite 4 at 4004 MacCorkle Ave., S.E.
Charleston, W. Va. 25304
TELEPHONE (304) 825-7201



Joseph V. Rice, D.D.S.
Secretary
1321 Quarrier Street
Charleston, W. Va. 25301

Jay M. Dyer, D.D.S.
Treasurer
701 Hawley Building
Wheeling, W. Va. 26003

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
712 Stockton Street
Charleston, W. Va. 25312

November 17, 1986

David K. Heydinger, M.D.
Director of Health
State of West Virginia
c/o Regulatory Services Division
West Virginia Department of Health
1800 Washington Street, East
Charleston, WV 25305

Dear Doctor Heydinger:

This letter is in support on the proposed amendment to West Virginia's Hospital Licensure which would allow hospitals to appoint dentists to their medical staff.

This amendment has been sought by this Association for some time in keeping with standards set forth by the Joint Commission on Accreditation of Hospitals. This amendment is also consistent with federal regulations relating to Medicare and Medicaid Programs' Conditions of Participation for Hospitals.

Enactment of this amendment will be beneficial to the public. It will permit the incorporation of dental consultation and management of patients in the hospital which will result in improved patient health outcome, reduction of costs to patients, increased interdisciplinary consultation between dentists and physicians, and intergrate the dental department with other hospital medical departments.

Your Department's attention to enactment of this proposed amendment is respectfully requested.

Very truly yours,

Richard D. Stevens
Executive Director

RDS:msf



Veterans
Administration

November 12, 1986

In Reply Refer To: 613/160

David K. Heydinger, M.D.
Director of Health, State of WV
Regulatory Services Division
WV Department of Health
1800 Washington Street, East
Charleston, WV 25305

Dear Doctor Heydinger:

This letter is in support of the proposed rule change in the composition of the "Medical Staff" of hospitals by including dentists and other licensed health care professionals, Title 64 WV Legislative Rules Dept. of Health, Hospital Licensure Amendment (Dentists on Hospital Medical Staffs) Series 12.

As a member of the WVDA Hospital Dental Service Committee, I am pleased that this proposed amendment would allow hospitals to appoint dentists and other licensed health care professionals to their medical staff.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Myles I. Cogan'.

MYLES I. COGAN, D.D.S.
Chief, Dental Service

RECEIVED

NOV 17 1986

ADMINISTRATION

Arch A. Moore, Jr.
Governor



David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

NOTICE OF AGENCY APPROVAL

A

LEGISLATIVE RULE: Hospital Licensure

The attached legislative rule constitutes the official rule approved by the Board of Health on 18th day of April, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

David K. Heydinger, M.D.
Director of Health

FILED
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APR 18 PM 1986
APR 18 PM 4:37

SECRETARY OF STATE
1986 APR 18 PM 4:37
FILED

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Hospital Licensure

Type of Rule: Legislative Interpretive Procedural

Agency Health Department Address 1800 Washington Street, East
Charleston, WY 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.
 The proposed amendments will create no additional cost.

3. Objectives of these rules:
 To comply with Chapter 16, Article 5B, Section 6a of the West Virginia Code.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

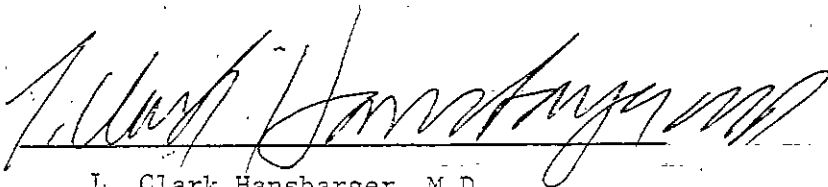
NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date December 6, 1984

Signature of Agency Head or Authorized Representative



L. Clark Hansbarger, M.D.,
Director of Health

PROPOSED RULE ABSTRACT
WEST VIRGINIA BOARD OF HEALTH

TITLE: Hospital Licensure

TYPE: Legislative Rule

NUMBER: Chapter 16-5B, Series I, 1986

AUTHORITY: Chapter 16, Article 5B, Section 8

RELATED: Chapter 16, Article 5B, Section 6a

ABSTRACT: This proposed amendment is related to Chapter 16, Article 5B, Section 6a of the West Virginia Code, established by the 1983 Legislature, requiring that forty percent of the boards of directors of non-profit hospitals and those operated by political subdivisions of this State be composed of an equal portion of consumer representatives from four categories - small business, organized labor, elderly persons and persons whose income is less than the national median income. This proposed amendment defines the above categories and establishes procedures for maintaining a documentation file for inspection to verify the hospital's designation of its consumer representatives.

CONTACT PERSON: Kay Howard, Regulatory Services Division, 348-3223

RESPONSIBLE DIVISION: Health Facilities Evaluation Division, 348-0050
John J. Jarrell, Director

WEST VIRGINIA CODE

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§ 16-5B-6a. Consumer majorities on hospital boards of directors.

(a) The legislature declares that a crisis in health care costs exists, that one important approach to deal with this crisis is to have widespread citizen participation in hospital decision making and that many hospitals in West Virginia exclude from their boards important categories of consumers, including small businesses, organized labor, elderly persons and lower-income consumers. The legislature further declares that nonprofit hospitals receive such major revenue from public sources and are so crucial in health planning and development that it is necessary to require consumer representatives on their boards of directors. Therefore, the legislature determines that nonprofit hospitals and hospitals owned by local governments should have boards of directors representative of the communities they serve.

(b) As used in this section, "applicable hospitals" means all nonprofit hospitals and all hospitals owned by a county, city or other political subdivision of the State of West Virginia.

(c) At least forty percent of the boards of directors of applicable hospitals shall, on or before the first day of July, one thousand nine hundred eighty-four, be composed of an equal portion of consumer representatives from each of the following four categories: Small businesses, organized labor, elderly persons and persons whose income is less than the national median income. Special consideration shall be made to select women, racial minorities and handicapped persons.

(d) The provisions of this section may be enforced by the director of health, or by any citizen of the county wherein any offending hospital is located, by the filing of an action at law in the circuit court of such county. (1983, c. 99.)

PROPOSED AMENDMENT OF
WEST VIRGINIA LEGISLATIVE RULES

BOARD OF HEALTH

Chapter 16-5B
Series I
1986

Subject: Hospital Licensure

Note: The amendment applies only to Section 7 of the present rule and only that Section is presented herein. Subsections 7.2.2 through 7.2.9 are to be added to the current rule; strikethrough/underlining is not used.

Section 7. Administration of the Hospital

7.1. Scope - The governing body, owner or board of trustees is the highest authority responsible for the management and control of the entire institution including employment of a hospital administrator and appointment of medical staff. The administrator is responsible for the direction and control of the hospital operation in accordance with policies established by the governing authority. The medical staff is responsible for the quality of medical care provided and for submitting reports on the quality of this care to the governing board of the hospital at frequent intervals.

7.2. Governing Authority

7.2.1. There shall be a governing authority legally and morally responsible for the management and control of the hospital. In the discharge of its duties, the governing authority places responsibility for the care of patients upon the medical staff. It is responsible for the establishment of policies.

a. The governing authority shall adopt and amend bylaws which shall require that body to:

- (1) Appoint members to the medical staff;
- (2) Approve the bylaws and regulations of the medical staff;
- (3) Define the committees of the governing authority and the functions and responsibilities thereof;
- (4) Develop and maintain suitable formal liaison with the medical staff by means of a joint conference committee;
- (5) Appoint a full time qualified administrator and delegate to him executive authority and responsibility; and
- (6) Provide for the proper control of all assets and funds, including annual audits thereof.

b. Minutes of all meetings of the governing authority and of its committees, including a record of attendance, shall be recorded, signed and retained in the hospital as a permanent record.

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CLERK OF COURTS
SHELBY COUNTY, TENN.

c. The governing authority shall be responsible for providing a safe physical plant equipped and staffed to maintain adequate facilities and services for hospital patients.

7.2.2. Applicable hospitals shall have boards of directors representative of the communities they serve. The boards of directors of applicable hospitals shall designate at least forty percent of their voting members as consumer representatives with an equal portion of such representatives in the four consumer categories of small business representatives, organized labor members, elderly persons and persons whose income is less than the national median income, except if when 0.40 is multiplied by the number of the voting members, the product, when rounded to the next higher whole number, is not a multiple of four, then the number of representatives in the consumer categories may be unequal, provided that the number of representatives in any consumer category is only one consumer in excess of the number of consumers in any other consumer category.

As used in subsections 7.2.2. through 7.2.9.:

a. "Applicable hospitals" means all nonprofit hospitals, whether governed by an in-state or out-of-state board of directors, and all hospitals owned by a county, city or other political subdivision of the State of West Virginia except for psychiatric hospitals operated by comprehensive community mental health centers and mental retardation facilities which are otherwise subject to a governing board composition criterion of the department of health.

b. "Board of directors" or "board" means the voting members of the governing authority of an applicable hospital, or if a religious organization holds a hospital license, means the hospital board established by the religious organization.

c. "Communities" means the four population groupings which are composed of all members of the general public who meet the definitions of small business representatives, organized labor members, elderly persons, or persons whose income is less than the national median income, irrespective of place of residence within or without the State.

d. "Consumer representative" means a member of an applicable hospital's board of directors who has been designated as such by the board by virtue of qualifying as a person from one of the four consumer categories, and such person is not a member of management of the applicable hospital nor a member of management of one of its related organizations.

e. "Elderly persons" means persons who are sixty years of age or older.

f. "Family" means a group of two or more persons related by blood, marriage or adoption who reside together.

g. "Member of management" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or

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responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

h. "Organized labor members" means members of organized labor unions covered by the National Labor Relations Act, the Railroad Labor Act or other federal labor acts.

i. "Persons whose income is less than the national median income" means (1) individuals whose gross family income is less than the national median family income, or (2) individuals whose gross personal income is less than the national median income of unrelated individuals. The director of health shall establish and periodically revise national median family income figures for families and unrelated individuals after consideration of Bureau of Census Current Population Reports, Consumer Income, Series P-60.

j. "Principal stockholder" means any person who beneficially owns, holds or has the power to vote ten percent or more of any class of securities issued by a corporation.

k. "Small business representatives" means officers, directors, general partners, sole owner or principal stockholders of any activity subject to business taxation, which activity employs fewer than one-hundred full-time employees or which had gross annual receipts of less than four million dollars, based on 1984 dollars, in its last fiscal year.

l. "Unrelated individuals" means persons fifteen years old and over (other than inmates of institutions) who are not living with any person related to them by blood, marriage or adoption.

7.2.3. After the effective date of this rule, all applicable hospitals shall include in their next application for hospital licensure a list of the voting members of its board of directors who have been designated as: (1) consumer representatives; and (2) such members who are women, members of racial minorities, or who are handicapped. No member of the board of directors shall be designated by the hospital in more than one consumer representative classification. Within ninety days of the effective date of these rules, all applicable hospitals shall either be in compliance with Section 7.2 or shall have on file with the department of health an accepted plan of correction for coming into compliance with Section 7.2. Thereafter, 1) such information shall be provided annually to the department in the applicable hospital's license application, and 2) a license shall not be issued unless the composition of an applicable hospital's board of directors is in conformance with Section 7.2 or a plan of correction has been accepted; except, a license shall not be withheld for noncompliance with this regulation in the case of the corporation defined in West Virginia Code Chapter 18, Article 11-C, Section 1, Subdivision (d) or in the case of Cabell County General Hospital as its board of directors exists under the authority of Chapter 157 of the Acts of the Legislature, regular session, 1945 and Chapter 166 of the Acts of the Legislature, regular session, 1947.

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Series I

7.2.4. An applicable hospital may change the designation of its consumer representatives from one category to another by filing with the department of health.

7.2.5. If a person designated as a consumer representative on an applicable hospital's board of directors ceases to meet the definition of a consumer representative, then the person may retain his or her designation until the end of his or her term or until the next license application is submitted for the applicable hospital, whichever occurs first.

7.2.6 a. Each applicable hospital shall maintain a file containing affidavits by its consumer representatives as to their consumer category. The affidavits shall be in a form approved by the department of health.

b. If a hospital's designation of a consumer representative is selected for verification or is the subject of a complaint received by the department of health, upon request from the department of health, the consumer representative will be required to provide the department with copies of the following which are applicable to document his or her consumer designation:

(1) Small business representatives - The business financial statement, workers' compensation filing or other evidence of business size acceptable to the department of health.

(2) Organized labor members - Written verification of membership from the union.

(3) Elderly persons - Birth certificate, driver's license or other evidence of age acceptable to the department.

(4) Persons whose income is less than the national median income - Copy of the signature pages of federal income tax returns or an affidavit that the filing of such returns with the federal government was not required.

c. If the consumer representative designation of a board member of an applicable hospital is selected for verification or if the consumer representative designation of a board member of an applicable hospital is the subject of a complaint and if, upon request by the department of health, the consumer representative does not provide adequate documentation to justify such designation, and if the board member has not been replaced before the then current license for the hospital is no longer in effect, the department may deem the hospital out of compliance with Section 7.2.2.

7.2.7. Each applicable hospital shall also maintain a file which shall contain the procedure established by the board of directors to assure the consideration of women, racial minorities and the handicapped in the selection of consumer representative board members and documentation that such procedure has been followed, except no such file is required to be maintained by the corporation defined in West Virginia Code Chapter eighteen, Article eleven-C, Section one, Subdivision (d) or by Cabell County General Hospital as its board of directors exists under the authority of Chapter 157 of the Acts

PROPOSED

Board of Health
Leg. Rule, 16-5B
Series I

of the Legislature, regular session, 1945 and Chapter 166 of the Acts of the Legislature, regular session, 1947.

7.2.8. In no event shall a board of directors of an applicable hospital be required to be composed of more consumer representatives than are necessary to achieve forty percent of the voting members of the board, regardless of the number of hospitals for which the board is the governing authority.

7.2.9. To the extent that any provisions of the charter or by-laws of an applicable hospital regarding board member qualifications are in conflict with the requirements of these regulations, such provisions are null and void for purposes of complying with these regulations.

7.3. Hospital Administrator - A hospital administrator qualified by education and experience shall be responsible at all times for directing, coordinating and supervising the administration of the hospital and for carrying out the policies of the governing authority and the rules and regulations of the medical staff. The administrator shall serve in an administrative liaison capacity between the medical staff and the governing authority.

PUBLIC HEARING

Hospital Dismissive (Consumers)
October 7, 1985

DO YOU WISH TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

G.F. DeLaura MHA, J.D.	3422 Penna Ave	W Va Hosp Assoc	No
Walt Auvil	Attorney Generals Office	Attorney Generals Office	No
David T. Exler	300 First Fed Plaza, Lexington, Ky	ARH	Yes

REPORT OF PUBLIC HEARING AND
DESCRIPTION OF PROPOSED CHANGES TO DRAFT REGULATION

Title, Type and Number: Hospital Licensure, West Virginia Board of Health Legislative Rules, Chapter 16-5B, Series 1, 1983 (amendments for consumers on non-profit hospital boards).

Date and Location: Monday, October 7, 1985
Motor Vehicles Building, Room 522
1800 Washington Street, East
Charleston, West Virginia 25305

The following is an explanation of changes proposed by the Department of Health to the above referenced draft regulations as the result of the above referenced public hearing and attached written comments.

Attendees at the public hearing included:

G. F. DeLaura, M.H.A., J.D., West Virginia Hospital Association
David T. Enlow, Esq. representing Appalachian Regional Hospitals, Inc.
Walt Auvil, Assistant Attorney General

Written comments were received from the attendees plus Donald H. Hutton, President of Cabell Huntington Hospital, and Ken Rutledge, President of the West Virginia Hospital Association.

Sections 7.2.2 through 7.2.9 of the attached draft regulations are the regulations proposed to be added to the hospital licensure regulations. Double underlining in the draft regulation indicates text to be added to the rule as it was proposed at the May 24, 1985 Board of Health meeting, and strike-throughs indicate text to be stricken from the rule as it was proposed at such meeting.

1. Comment: §7.2.2.(b). The West Virginia Hospital Association (WVHA) suggested that the definition of "board of directors" allow religious organizations and out-of-state corporations that operate hospitals in West Virginia to have local boards subject to the regulation instead of the organizational or corporate board.

Response: A requirement specifying the board composition of a religious organization because it operates a hospital might be an infringement of freedom of religion. Therefore a clause has been proposed to be added to the definition to allow religious organizations to create boards for the administration of their hospitals. Non-religious corporations do not have such constitutional protection, and thus no change is proposed for them.

2. Comment: §7.2.2.(d). The WVHA suggested changes to clarify and shorten the definition of "consumer representative". WVHA proposed deleting the provision that would exclude anyone associated with a "bigger" business from serving as a consumer representative. The WVHA also expressed the Catholic hospitals' desire to allow hospital managers who are members of Catholic orders to serve as consumer board members.

Response: The WVHA changes are proposed to be adopted, except for the suggestion that Catholic hospitals be exempted from the prohibition against hospital managers serving as consumer board members. Freedom of religion is not infringed by such a prohibition since a hospital manager will not be prohibited from serving on the board of the religious organization (primarily promotion of religion). The manager will only be prohibited from serving as a consumer representative on the board that manages the hospital (primarily promotion of health).

3. A. Comment: §§7.2.3 and 7.2.7. The WVHA suggested that the period for initial compliance be extended from 30 to 90 days.

Response: Such change is proposed.

B. Comment: The WVHA and Appalachian Regional Hospitals, Inc. (ARH) argued that a license may not be withheld for failure to comply since the legislation provides an action at law as the exclusive remedy.

Response: Although the section of the law requiring consumers on non-profit hospital boards does provide for an action at law to enforce the section, there is no indication that it was meant as an exclusive remedy. The fact that the section of legislation was inserted into the West Virginia Code article on hospital licensure suggests that an action at law was not meant as the exclusive remedy. The hospital licensure article (of which the section on consumers is now a part) provides that the Director of Health may suspend or revoke a license for "violation of any of the provisions of this article or the rules and regulations issued pursuant thereto." W.Va. Code §16-5B-6. Thus the requirement of compliance with the consumer regulation is proposed to be handled as any other licensure requirement. In that regard, some rewording of §7.2.3 is proposed to allow a deficient hospital to obtain a license if it has proposed a plan of correction that is accepted. For example, a consumer board member might resign immediately before the licensure date; the proposed language would allow issuance of the license if the hospital specified an acceptable time within which the board member would be replaced.

C. Comment: West Virginia University Hospitals, Inc. (WVUH) had suggested that it be exempted from the provision withholding a license from hospitals not in compliance. Exemption was requested because WVUH does not have control over selection of its board members; they are appointed by the Governor with the advice and consent of the Senate. Cabell County General Hospital, doing business as Cabell Huntington Hospital, has requested to be similarly exempted because it does not have control over the selection of its board members. Cabell Huntington Hospital was created by act of the Legislature which prescribed that certain community organizations may individually select members of their organizations to be hospital board members. A letter from the Office of the Attorney General has suggested that neither exemption should be given because: In the case of Cabell Huntington Hospital there is nothing to prevent community organizations from selecting hospital board members so that the board will be in compliance with the law; in the case of WVUH, the Department of Health should enforce the law against WVUH since the law authorizing the creation of WVUH provides that the Governor's appointments to the hospital's board shall be selected in conformance with the provisions of the law requiring consumers on non-profit hospital boards.

Response: It is proposed that the exemptions be included for both WVUH and Cabell Huntington Hospital. In the case of WVUH, since the WVUH board members are appointed by the chief executive of the State and since the Department of Health is part of the executive branch of government, it is unnecessary to provide for enforcement by the Department, especially since one of the houses of the Legislature that passed the legislation will approve or deny the chief executive's appointments. In the case of Cabell Huntington Hospital, it is true that if the community organizations coordinated their selections of hospital board members they could select a board of directors that would comply with the law; however, the law does not require any community organization to coordinate its selection of a board member with the selection of any other board member. If a community organization desired to select a certain person as a board member, it could do so and possibly thereby put the hospital out of compliance with the consumer law. The hospital would be left without a means to compel a change to the composition of its board, and the enforcement of the consumer law is against the hospital, not the community organizations. Therefore an exemption is also proposed for Cabell Huntington Hospital.

4. A. Comment: §7.2.6.b. and c. The WVHA suggested that evidence to document a consumer's designation only be required in the case where the Department of Health has received a complaint against the hospital. The Office of the Attorney General maintains that to adopt such a position would appear to eliminate the Department's authorization to initiate an investigation without a complaint.

Response: The general language offered by the Office of the Attorney General is proposed. It would allow an investigation to be initiated by the Department with or without a complaint as is the case with all other licensure provisions.

B. Comment: The WVHA suggests that complaints be in writing and be made available to the affected hospital.

Response: As a general policy all licensing complaints are received in any form, and the identity of the complainant is confidential. This is necessary to encourage citizens to come forward with information without the fear of reprisal. If a complaint is found to be valid, the hospital's accuser is then the Department of Health. Thus no change is proposed.

C. Comment: The WVHA and ARH maintain that if an investigation were initiated to verify the income of board members designated as persons whose income is less than the national median income it would be an intrusion of privacy to require the production of tax returns. The WVHA and ARH also consider it too intrusive even if only the signature pages of tax returns are required.

Response: It is proposed to limit the required documentation to the signature page of the federal income tax return to verify a designation of a person whose income is less than the national median income. Although federal income tax returns are confidential, their confidentiality may be waived, and no alternative for verifying income has been proposed. The Department of Health does not require anyone to serve on a hospital board, and therefore would not be requiring anyone to disclose their tax return who does not choose

to do so.

D. Comment: The WVHA suggested that the evidence acceptable to verify the designation of elderly persons in 7.2.6.b.(3) include drivers' licenses.

Response: Drivers' licenses are proposed to be included as acceptable verification.

E. Comment: The WVHA suggests that a "just cause" provision be included in 7.2.6.c to excuse a hospital from jeopardy should one of its designated consumer board members not provide adequate documentation when the member is the subject of an investigation.

Response: The law makes non-profit hospitals responsible for having their boards of directors in compliance with the consumer requirements. However, a change is proposed to the regulation to allow the hospital to avoid jeopardy if the noncomplying board member is replaced.

5. §7.2.7. See §7.2.3.

6. §7.2.8. A language clarification is proposed to make §7.2.8 and 7.2.2 consistent.

7. Affidavit. Changes are proposed in the affidavit consistent with the changes proposed in the regulations. In addition, 1984 income figures released in August 1985 are included (\$26,433 median family annual income and \$11,204 annual income for a person who does not reside with a family member).



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

RECEIVED

001 - 1 1985
REGULATORY SERVICES
DIVISION

CHARLIE BROWN
ATTORNEY GENERAL

October 3, 1985

Kay Howard, Director
Regulatory Services Division
Office of Health Planning and Evaluation
1800 Washington Street, East
Charleston, West Virginia 25305

Re: Regulations Implementing
W. Va. Code § 16-5B-6a

Dear Director Howard:

Please consider this letter as the comment by the Office of the Attorney General on the unofficial redraft of regulations implementing W. Va. Code § 16-5B-6a, forwarded under cover of your memorandum dated September 23, 1985. Generally, the regulations appear to be appropriate to effectuate the provisions of the statute. There are, however, two areas in the amendments to the proposed regulations which pose potential problems.

First, the amendments appear to remove from the department the power to investigate the compliance by hospitals with the provisions of Code 16-5B-6a. This shift is embodied in Sections 7.2.6.b and 7.2.6.c, which have been changed in the redraft of the proposed regulations to eliminate the phrase "selected for verification" and replace it with the phrase "the subject of a complaint." The effect of the change in language would appear to be to eliminate the department's authorization to go beyond the face of an application and investigate compliance with Code 16-5B-6a. This change is not in keeping with the responsibility of the department for assuring compliance with the regulatory and statutory provisions at issue. An alternative would be to include both enforcement options in the regulations at Sections 7.2.6.b and 7.2.6.c. Section 7.2.6.b would read, in pertinent part:

"If a hospital's designation of a consumer representative is selected for verification by the subject of a complaint filed with the department of health, upon request from the department of health, the consumer representative will be

required to provide the department with copies of the following which are applicable to document his or her consumer designation."

Section 7.2.6.c would read as follows:

"If the consumer representative designation of a board member of an applicable hospital is selected for verification or if the consumer representative designation of a board member of an applicable hospital is the subject of a complaint and if the consumer representative does not provide adequate documentation to justify such designation upon request by the department, the department may deem the hospital out of compliance with West Virginia Code, Chapter sixteen, Article five-B, Section six-a, and take enforcement action as prescribed in Chapter sixteen of the Code."

The proposed language set forth above would preserve maximum flexibility in enforcing the requirements of Code 16-5B-6a. No regulations which restricted the alternatives available for ensuring compliance with the statute would be appropriate.

The second area of concern with regard to the redraft of the proposed regulations is the exemption afforded institutions whose boards of directors' composition is "specified by state legislation" other than W. Va. Code 16-5B-6a. Initially there would seem to be some sense in such an exemption. Obviously it would be unwise to require institutions to comply with contradictory legal requirements with regard to the composition of their boards of directors. No such dilemma is presented at present, however, and no exemption from the requirements of Code 16-5B-6a should be inferred in the absence of a clear and unavoidable conflict with another statute.

The only hospital which will be affected by these provisions, to our knowledge, is Cabell-Huntington Hospital. Chapter 166, Section 3, Acts of the Legislature, Regular Session, 1947, specifies the composition of the board of Cabell-Huntington Hospital. The categories which are required to be present on the board of the hospital created by the 1947 act include physicians from the Cabell County Medical Association, as well as members of the Cabell County Bar Association, Huntington Ministerial Association, and other professional, social, and commercial associations and groups. There is no reason that Cabell-Huntington Hospital could not have a board in compliance with both Chapter 166,

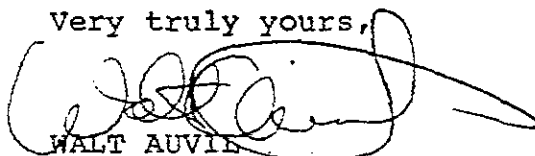
October 3, 1985
SHEET NO 3

Section 3, Acts of the Legislature, Regular Session, 1947 and W. Va. Code § 16-5B-6a. In fact, the categories set forth in the local act creating the Cabell County General Hospital are consonant with the consumer categories specified in Code 16-5A-6a. Concern could arise from the fact that the various organizations whose members are to compose the board of Cabell-Huntington Hospital are to select from their membership an appointee for the board. There is no reason to believe that these organizations could not or would not appoint members whose composition would be in compliance with the categories set forth in W. Va. Code 16-5B-6a were they given the opportunity so to do.

Finally, as regards the hospital at West Virginia University, Chapter 18, Article 11C, of the West Virginia Code, (1984), regulates the creation, operation, and governance of said institution, including the composition of its board of directors. Code 18-11C-3(a) provides that the seven directors appointed by the Governor "shall be selected in conformance with the provisions" of Code 16-5B-6a. No justification is apparent for the provision in Section 7.2.3 of the redraft of the proposed regulations which would exempt the hospital at West Virginia University from the requirements of Code 16-5B-6a providing the Senate of the State Legislature has confirmed its board members. Rather, it would appear that Code 18-11C-3(a) calls upon the department to ensure compliance with Code 16-5B-6a with regard to the seven gubernatorial appointees to the board of the hospital at West Virginia University.

Thank you for providing us the opportunity to comment on the redraft of the proposed regulations to implement Code 16-5B-6a. We applaud again the department's efforts to effectuate the beneficent purposes of this legislation.

Very truly yours,



WALT AUVIE
ASSISTANT ATTORNEY GENERAL

WA/mlk

cc: David Lambert, Esquire
Larry Arnold, Esquire

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September 25, 1985

SEP 27 1985
REGULATORY SERVICES
DIVISION

West Virginia Department of Health
Regulatory Services Program
1800 Washington Street, East
Charleston, West Virginia 25311

RE: Comments of Appalachian
Regional Hospitals, Inc., to
Proposed West Virginia Board
of Health Legislative Rules,
Ch. 16-5B, Series 1, 1983

Gentlemen:

Pursuant to the Notice of Public Hearing, and on behalf of Appalachian Regional Hospitals, Inc. (hereinafter referred to as ARH), the following is provided as comment upon the proposed above regulations.

ARH wishes to affirm and repeat the comments made by it by letter dated January 21, 1985, to Ms. Kay Howard and the letter from Robert L. Johnson, President of ARH to David K. Heydinger, M.D., dated April 29, 1985, copies of which are attached hereto.

At the last public hearing, the undersigned emphasized two areas where the regulations were particularly oppressive. Those areas are the unreasonable intrusive nature of the financial disclosure requirements and the use of licensure to enforce the law when the statute (W.VA. Code Ch. 16, Art. 5B, 6a) does not provide for such enforcement. These will be discussed in the above order.

THE INTRUSIVE NATURE OF THE FINANCIAL DISCLOSURE
MAKES THE REGULATION'S VALIDITY QUESTIONABLE.

16-5B-6a(c) provides one portion of the consumer representatives shall be "persons whose income is less than the national median income". The proposed rule 7.2.6.b in regard to this section provides that if a hospital is selected for verification by the Department of Health, the consumer representative will be required to document his or her consumer categorization by a copy of his federal income tax return or an affidavit that the filing of such a return was not required. A proposed affidavit to comply with 7.2.6.a is attached to the proposed regulations.

West Virginia Department of Health
Regulatory Services Program
September 25, 1985
Page 2

The above regulation disregards the provisions of 26 USC 6103 that makes federal income tax returns and return information confidential. Further, no officer or employee of any state who has access to returns or return information may disclose any return or return information. Any non-profit hospital director, by complying with the proposed regulation, is compelled to disclose whether their income is more or less than the national median income, and if the hospital is selected for verification, the director must give to a state agency what he is not compelled to disclose to any one else. What assurance does the taxpayer have, by virtue of the West Virginia Freedom of Information Act, found in §29B of the West Virginia Code, that this information will not be further disclosed?

The question arises as to whether the police power of the state extends to the point of compelling disclosure of very personal information as is found in a federal income tax return made confidential by Act of Congress. Whether these two competing-rights can be harmonized obviously will be determined by the Courts if the proposed regulation is adopted.

THE STATUTE ITSELF IN SUBSECTION (D) PROVIDES
CLEARLY THE MECHANISM OF ENFORCEMENT.

The statute provides as follows:

The provisions of this section may be enforced by the Director of Health, or by any citizen of the county wherein any offending hospital is located, by the filing of an action at law in the Circuit Court of such county.

The exclusive remedy under the statute is clear. No remedy, such as that proposed by the regulations, that licensure should be affected appears in the statute. There being a sufficient and exclusive remedy in place there is no need to have compliance enforced through licensure.

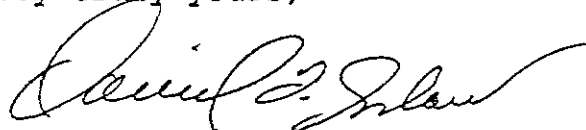
It does not appear that either of the above two points are subject to the existing litigation over the constitutionality of the statute pending now before the Court of Appeals. For that matter the attempt to reach beyond the boundaries and affect the Board Composition of a Corporation which has hospitals in states other than West Virginia is also a fertile field for potential litigation.

For all of the above reasons, and for the reasons set out in the attached letters it is urged the regulations, as proposed,

West Virginia Department of Health
Regulatory Services Program
September 25, 1985
Page 3

especially those onerous regulations specifically mentioned, be rejected.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David T. Enlow".

David T. Enlow

DTE:psw

cc: Robert L. Johnson

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P. WINN TURNER
DAVID A. FRANKLIN

January 21, 1985

Ms. Kay Howard
West Virginia Board of Health
1800 Washington Street, East
Charleston, West Virginia 25305

Re: Comment by Appalachian Regional Hospitals, Inc.,
to proposed Legislative Rules, Ch. 16-5B,
Series I (1985)

Dear Ms. Howard:

The adoption by the West Virginia Legislature of Ch. 16-5B-6a dealing with consumer representatives on hospital boards of directors, is of great concern to Appalachian Regional Hospitals, Inc., (hereinafter referred to as ARH).

It is the belief of ARH that it holds its hospitals in trust for the citizens of Appalachia. As such, each member of the ARH Board of Trustees must have first in his or her mind the effect of his or her actions on the beneficiaries, i.e., the people of Appalachia. Any self interest, or group self interest the Trustee has, should be set aside in carrying out this commitment and fiduciary duty as Trustee. The Statute in question places a higher priority, i.e. commitment to the special interest group he or she represents.

ARH subscribes to the guidelines promulgated by the American Hospital Association which provides, in part, that members of the governing board "should be selected on the basis of ability to serve the institution and community effectively, not to represent particular interests or groups". And while the American Hospital Association believes a blend of members is desirable, the Association further recommends in its guidelines the absolute contrary to the West Virginia Statute. AHA specifically recommends that "board members should not be selected as representatives of special interest groups." A member of the governing board, whether a member of one of the preferred groups or not, should first measure up to standards of character, commitment, intelligence, experience integrity, courage, capacity for growth and experience in organizational and community activities. These should be the standards used for selection. These standards better assure a board member will serve the interests of the institution and not the special interests he represents.

ARH is aware of the law suit filed by the American Hospital Association, West Virginia Hospital Association, the Catholic Health Association of the United States and three (3) West Virginia Non-Profit Hospitals. ARH is in sympathy with the legal positions taken in that law suit that the Statute is in violation of both the United States and West Virginia Constitutions. In particular, ARH does not agree with the premise which appears to be the basis of the Statute that consumer representatives will serve to reduce health care costs.

It appears then that the statutory provision bears no real or substantial relationship to hospital cost containment. Testimony before the Federal Judge indicates that seventy (70%) percent to eighty (80%) percent of a hospitals' operational costs are determined by physicians, who order tests and treatments. Obviously the Board of Trustees have no control of these costs. It should also be clear that rates for hospital stays in West Virginia are set either by the Federal Government or by the State of West Virginia, not by the hospital governing boards.

Significantly, the statute does not apply to the for-profit hospitals doing business in West Virginia.

While some of the information contained herein may not specifically apply to the proposed regulations, the Department of Health should be made aware of the severe implication the statute can have upon a system of hospitals like ARH.

The ARH system arose to benefit Appalachia, a region with demonstrated lack of good quality medical care. As a result of a 1947 study for the United States Department of Interior, which confirmed a need for a health care delivery system, the idea for ARH began.

Although the first attempt at operating a system of hospitals in Central Appalachia failed when the United Mine Workers could no longer sustain the losses necessary to provide the appropriate access to health care to the medically poor population of the region, ARH, in 1963, attempted to and did commence operating the ten (10) hospitals as a viable system. As assistance to ARH, the United States Government provided loans and grants to allow the purchase of the hospitals. These funds were made available after the Federal Government was assured the hospitals would be operated and administered as a system with one governing body.

Since 1963, a Board of Trustees, presently consisting of thirty-three (33) dedicated citizens, has supervised the Management of ARH as the governing body. During this period ARH has provided seventy-four million and No/100 (\$74,000,000.00) dollars of uncompensated care to the people in its service area. Twenty-One Million and No/100 (\$21,000,000.00) dollars of this sum represents uncompensated care to West Virginians.

ARH provides this care at a cost per case which is less than the average cost per case in the three (3) states in which it operates, having hospitals at Beckley and Man, West Virginia, six (6) hospitals in Kentucky and one (1) in Virginia.

All of this serves to confirm the advisability of a system approach and a unified governing authority, free of outside constraints and made up of citizens that serve no special interest but whose primary interest is that of providing quality care for a medically poor region. The ARH experience strongly suggests the composition of a governing board need not be legally defined or ordered by outside forces or law.

s. Kay Howard
West Virginia Board of Health
January 21, 1985
Page 3

In addition, ARH does not believe that it should be forced to select its Board of Trustees on any basis other than what is in the best interests of the hospital and in furtherance of its goals, to wit: providing quality health care to the people of Appalachia. ARH does not believe this can be accomplished by designated special interest groups but by commitment to carry out fiduciary responsibility consistent with ARH's mission.

ARH is also concerned about the placement of members of organized labor on its board inasmuch as it has collective bargaining agreements in force in all of the hospitals that it owns.

The Statute further has the effect of having the state of West Virginia, where ARH has less than one-fourth ($\frac{1}{4}$) of its beds, dictate the board composition of hospitals it owns and operates in Kentucky and Virginia.

As Attorney for ARH, on October 11, 1984, I wrote, Dr. Hansbarger, Director, West Virginia Department of Health, advising him that for ARH to comply literally with the law it would have to appoint eighty (80%) percent of the members of its board from West Virginia because of ownership of its hospitals in Beckley and Man. This would mean twenty-six (26) of its thirty-three (33) member board must come from the communities these two (2) hospitals serve. The letter further pointed out that although the Man hospital has but seven (7%) percent of the total number of ARH beds it would be entitled to forty (40%) percent of the board composition. It appears attempts have been made in drafting the proposed regulations to cure this by including Reg. 7.2.8 which provides as follows:

7.2.8 In no event shall a board of directors of an applicable hospital be required to be composed of consumer representatives in excess of forty (40) percent of the voting members of the board, regardless of the number of hospitals for which the board is the governing authority.

It would seem that it would clarify matters if "communities", as it appears in the statute, be defined in the Regulations so that this section of the Regulations would be clear that it is intended to mean the hospital service area of a hospital and where the board is the governing authority for more than one (1) hospital, the service area of all hospitals whether within or without the state of West Virginia.

Section 7.2.6 of the proposed regulations call for a verification file that provides as follows:

7.2.6 Each applicable hospital shall maintain in a verification file for inspection documentation to verify the hospital's designation of its consumer representatives. The documentation for consumer representatives shall be the following:

(a) Small business representative - The business financial statement or workers' compensation filing for the most recent reporting period before the hospital's designation of a consumer representative's classification.

(b) Organized labor members - Union member list dated within one year before the hospital's designation of a consumer representative's classification.

(c) Elderly persons - Birth certificate or other evidence of age acceptable to the department.

(d) Persons whose income is less than the national median income - Copy of federal income tax returns for the year before the hospital's designation of a consumer representative's classification.

The above requirements are intrusive into the personal lives of Board members and asks for information otherwise confidential in nature e.g. a business financial statement, birth certificate and tax return. In addition, a hospital may not be able to obtain a union member list. The intrusive nature of these requirements are both potentially embarrassing and may have to be performed in such a manner as to be discriminatory by requiring the information from some but not all board members. Should Board member "A" be asked to present an income tax return, made confidential by law when all others are not similarly requested? If all are asked, it further demonstrates how intrusive the proposed regulation is into the personal lives of board members.

It is the hope of ARH that the Statute will ultimately be held to be unconstitutional either by appeal or by further court action in which ARH would gladly participate. The Statute places ARH in a most difficult position in the system wide operation of its ten (10) hospitals in having a West Virginia Statute dictate the composition of its Board of Trustees which governs all of its hospitals. Serious decisions by ARH must now be made unless the statute is either repealed or held unconstitutional. Some of these decisions include the potential divestment of its West Virginia Hospitals which, in light of ARH's history, performance, mission, and commitment would be a major loss to Appalachia and more particularly to West Virginians.

Very truly yours,



David T. Enlow

DTE/rf

cc: Robert L. Johnson
William B. Williamson



APPALACHIAN · REGIONAL · HOSPITALS

BOARD OF TRUSTEES

April 29, 1985

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Cecil H. Underwood

David K. Heydinger, M.D.
Director - Department of Health
State of West Virginia
1800 Washington Street, East
Charleston, West Virginia 25305

Dear Dr. Heydinger:

This is to acknowledge receipt of Dr. Hansbarger's memorandum, dated April 12 but not seen in this office until April 17, concerning W. Va. Code §16-5B-6a. I hasten to reply.

It was not until this memorandum was received that any clarification was provided concerning how the "40% consumer representatives" formula was to be determined. In view of that fact, I respectfully suggest that ".....five weeks formal notice to bring their board composition into conformance....." is an unreasonably short time, assuming May 24 adoption. In our case, Appalachian Regional Hospitals, Inc. will not be electing a new class of Trustees until October 25, 1985.

Appalachian Regional Hospitals has made its opposition to this legislation known in a previous letter from Mr. David Enlow to Dr. Hansbarger. Our view that this is unfortunate legislation which will do nothing to control health care costs has not changed. Accordingly, we will have representation at the May 24 hearing to speak to the calendar requirements, the affidavit, and the income levels.

Actually, I believe ARH to be in substantial compliance with W. Va. Code §16-5B-6a at the present time. ARH has a highly disparate group of Trustees, and it seeks these Trustees from diverse backgrounds, education, occupations, and geographic location, and

David K. Heydinger, M.D.
April 29, 1985
Page Two

in recent years it has emphasized selection of Trustees from communities where ARH facilities and programs operate. Furthermore, ARH Trustees have been conscious of affirmative action objectives when selecting new Trustees.

Of course, one option ARH has is to sell its hospitals in Beckley and Man, West Virginia. I will be examining that option very closely in the next few weeks. It would be ironic, indeed, if this "cost-of-care crisis" legislation resulted in the sale of two not-for-profit hospitals which provided West Virginians with a documented \$1,499,693 of indigent care (not bad debts) in fiscal 1983-84, and another \$1,132,418 of indigent care thus far this year.

Sincerely yours,


Robert L. Johnson
President

RLJ/cs



CABELL HUNTINGTON HOSPITAL

September 17, 1985

RECEIVED

SEP 17 1985
REGULATORY SERVICES
DIVISION

Regulatory Service Division
West Virginia Department of Health
1800 Washington Street
Charleston, WV 25305

Re: Regulations to Implement WV Code §16-5B-6a

Gentlemen:

In anticipation of the public hearing regarding WV Code §16-5B-6a, Cabell Huntington Hospital would like to draw to your attention a letter forwarded to the Office of the Director on April 22, 1985 (a copy of letter attached).

Comments reflected in the letter of April 22nd are still applicable, and we would ask that they be taken into consideration during these public hearings. If we may be of any further assistance, please do not hesitate to contact us.

Yours very truly,


Donald H. Hutton
President

DHH/nb

Enclosure

April 22, 1985

Office of the Director
West Virginia Department of Health
1800 Washington Street
Charleston, WV 25305

Re: Regulations to Implement WV Code §16-5B-6a

Dear Sirs:

In response to a memorandum distributed on April 12, 1985 by L. Clark Hansbarger, M.D., the following comments are submitted to the Board of Health in regard to the proposed regulations to implement WV Code 16-5B-6a.

Page 8 of the Summary of Comments Received at the Public Hearing, which was attached to Dr. Hansbarger's memorandum, indicated that West Virginia University Hospitals, Inc. had indicated to the Board of Health that West Virginia University Hospital had no way to assure compliance with the board composition legislation or regulations, because its board composition is specified by legislation and its members are appointed by the Governor and confirmed by the Senate. Therefore, Regulation Sections 7.2.3 and 7.2.7 are proposed to be amended to exclude the board of West Virginia University Hospitals, Inc., as created by WV Code §18-11C-1(d).

Cabell County General Hospital, doing business as Cabell Huntington Hospital, is also a creature of legislation, for its board was created and exists under the authority of Chapter 157 of the Acts of the Legislature, Regular Session, 1945, and Chapter 166 of the Acts of the Legislature, Regular Session, 1947, as amended. Section 3 of Chapter 166 states in relevant part:

The said [county commission] and city, or said [county commission] alone, as the case may be, shall appoint a board of trustees, consisting of fourteen persons, of whom two shall be licensed physicians who are members in good standing of the Cabell County Medical Society, and one each shall be a member of the following organizations, viz: Huntington Ministerial Association, Cabell County Bar Association, the Chamber of Commerce of Huntington, the Junior Chamber of Commerce of Huntington, Council of Social Agencies and Community Chest, East Huntington Civic Club, West Huntington Commercial Club, Cabell County Farm Bureau, Cabell County Farm Women's Council, Woman's Club of Huntington, American Federation of Labor and the Congress of Industrial Organizations.

The president of the Cabell County [commission], and the mayor of the city of Huntington, if said city shall elect to participate in the construction, acquisition, equipment, operation and maintenance of said hospital, shall be ex officio members of said board of trustees."

Section 5 of Chapter 166 states, in relevant part:

"Each of the organizations mentioned in section three shall, on or before thirty days from the first day of March in each year, certify the name of one of its members as its choice for appointment as a member of said board of trustees and the person whose name is so certified shall be appointed by the said [county commission] and city, or said [county commission] alone, as the case may be, as a member of the board of trustees."

The legislative sections specified above clearly indicate that Cabell Huntington Hospital, like West Virginia University Hospitals, Inc., is unable to assure compliance with the consumer representative board composition legislation or regulations as they are currently written. The selection of Cabell Huntington Hospital board members is delegated to specified community organizations, and the actual appointment of board members is delegated to the Cabell County Commission and Huntington City Council; there is no power or discretion in regard to membership selection placed in the hands of the Cabell Huntington Hospital Board of Trustees.

Although it is unknown to me, there may be other West Virginia non-profit hospitals in addition to Cabell Huntington Hospital and West Virginia University Hospitals, Inc. whose board composition is mandated by state legislation. Therefore, I would recommend that you add on to the final sentence of Sections 7.2.3 and 7.2.7 the following language:

§7.2.3 - ". . . nor shall a license be withheld from any applicable hospital whose board composition is specified by state legislation."

§7.2.7 - ". . . nor shall such a file be required to be maintained by any applicable hospital whose board composition is specified by state legislation."

I trust these comments are useful to you. If you have any questions in this regard, please call me at 526-2058.

Very truly yours,

Glen D. Moffett
Vice President, Legal Services
and Risk Management

GDM/nb



WEST VIRGINIA HOSPITAL ASSOCIATION

Ms. Kay Howard, Director
Regulatory Services Division
State Department of Health
Capitol Complex
Charleston, West Virginia 25305

The West Virginia Hospital Association is pleased to respond to the opportunity to comment on potential additional revisions to the proposed amendments to the Hospital Licensure Rules, Chapter 16-5B-1 et seq.

- The language contained in Section 7.2.2 (d) of redraft number one pertaining to the definition of consumer representative continues to remain a potential problem. The provision recites in part (lines 4 and 5) that a consumer "is not a member of management of the applicable hospital or one of its related organizations." If a member of a Catholic Order is not a member of hospital management, that person would still be a member of its related organization. Although that same person frequently will not be a member of management of the related organization, that person would, under the current drafted regulations be precluded from meeting the requirements of a consumer representative. This provision as written would unduly prohibit any member of a Catholic order not situated in a management position of the hospital and the related organization from participation on the hospital board. Such exclusion of the non management member may in fact deny the hospital board of one potential source of meaningful consumer representation.

It is recommended that Section 7.2.2 (d) be revised in the following manner, e.g., that "such person is not a member of management of the applicable hospital or a member of management of one of its related organizations."

Section 7.2.3 of the redraft contains two provisions which should be modified, the first of which is the 30 day time compliance period. We believe that a 30 day time limit is unrealistic, and suggest that hospitals should have 90 days after the effective date of the regulations to comply. This additional time period would allow individual acute care health facilities time in which to modify corporate by-laws and to devote careful consideration to the mandated representation scheme.

A second and more disturbing provision of Section 7.2.3 is the unnecessary action of denial of licensure to any hospital not in compliance with mandated board composition. Nothing in the statute passed by the legislature (§16-5B-6a) mandated compliance through the licensure process. Because the legislature indicated an exclusive enforcement remedy at §16-5B-6a (d) by the Director of Health or any appropriate citizen "filing an action at law" (emphasis supplied), the licensure compliance process is viewed as an unauthorized remedy which is on a collision course with the clear intent of the West Virginia Legislature. Serious consideration should therefore be given to removing annual licensure as a compliance modality. Removing this provision from the redraft regulations insures all parties that the state agency has not improperly exceeded its authority while preserving the enforcement power of the Director of

Health and/or any appropriate citizen through an action filed in a county circuit court.

Consideration should also be given to modification of Section 7.2.6 (b) and (c). A copy of the signature pages of Federal income tax returns as a method of proof of consumer status unduly intrudes into the privacy of the consumer. The practical effect of this provision, albiet a potential requirement, may be to discourage rather than encourage consumer representation for those individuals whose income is less than the national median income [7.2.6.b. (4)].

A "just cause" provision should be included in Section 7.2.6.c. It is possible that a hospital, in good faith attempting to comply with mandated consumer representation and/or a consumer likewise motivated in good faith may, either at time of initial designation or due to future events be improperly classified. To afford for these circumstances it is recommended that the language of this section be changed to read in part: "the department may, for just cause shown, deem the hospital out of compliance

Finally, some comment concerning complaints received by the Department of Health as contained in 7.2.6 (b) and (c) invites our attention. Basic fairness indicates that any complaint upon which an action is taken by the Department relative to these sections should be in writing and be made available to the affected hospital.

Ms. Kay Howard
Page four

May I again state that this Association is pleased to be afforded an opportunity to comment upon these proposed regulations by the Regulatory Services Division.

Sincerely,



G. F. DeLaura
Director of Legal and Regulatory Affairs

GFD/elm

October 7, 1985