

CRITERIA FOR DETERMINING
SCOPE OF PRACTICE FOR LICENSED NURSES
AND
GUIDELINES FOR DETERMINING ACTS
THAT MAY BE DELEGATED OR ASSIGNED
BY LICENSED NURSES

Revised by:
The West Virginia Board of Examiners
for Registered Professional Nurses
and
The West Virginia State Board of Examiners
for Licensed Practical Nurses
2019

INTRODUCTION

The intent of this document is to present a process to determine acts appropriate to nursing at various levels, and acts appropriate for delegation to the licensed practical nurse, as well as to those acts appropriate for assignment to unlicensed assistive personnel. Individuals must consult the law, applicable rules, position statements or guidelines in making a practice decision. Related law, rules, guidelines and statements are included in the Appendix of this document. Additional law, rules, guidelines or statements may be developed after the publication of this document. The nurse must assure that current publications are referenced when using the models in this publication.

Changes in health care delivery are occurring in health care organizations throughout West Virginia and the nation. These changes could lead to role confusion. In view of the mandates of the West Virginia Board of Examiners for Registered Professional Nurses and the West Virginia State Board of Examiners for Licensed Practical Nurses to act in the best interest of public safety and health, the respective boards support professional collaboration to deliver competent care and treatment of the client in a safe, professional and cost effective manner.

The guidelines contained in this document provide comprehensive criteria and examples for use in the decision-making process required to determine acts that are appropriate to nursing at various levels and acts, appropriate for delegation to the licensed practical nurse as well as to those acts appropriate for assignment to unlicensed assistive personnel. The guidelines, however, do not have the force and effect of law except as provided through the Legal Standards of Practice (West Virginia Code of Legislative Rules Title 19-10 and 10-3).

Many nurses would like a yes or no answer to questions about the delegation of nursing practice, however, in most cases it is not that simple. The answer to most questions is it depends. It depends upon the complexity of the task to be delegated. It depends upon the care needs of the client, as assessed by the advanced practice registered nurse or registered professional nurse. It depends upon the educational preparation, skills, and ability of the licensed practical nurse or unlicensed person to whom the task is to be delegated/assigned. And, it depends upon the availability and accessibility of essential resources including supervision, while the task is being performed. Nursing judgment is the

essential element in every delegation or assignment decision (ANA Scope and Standards of Practice, 2015; NCSBN, 2016).

Licensees are expected to read this entire document then refer back to the portions that will assist in making a final decision. Thus, this document is best used when an individual has the time to review all related information so the foundation for decision-making is present when a quick decision is required.

DEFINITIONS

Accountability Being responsible or answerable for actions or inactions of self or others during delegation or assignment (ANA Scope and Standards of Practice, 2015; ANA Code of Ethics, 2015).

Advanced Practice Registered Nurse “Advanced practice registered nurse” is “a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse mid-wife, certified registered nurse anesthetist, or a clinical nurse specialist, who has completed a board approved graduate-level education program and who has passed a board-approved national certification examination.” (West Virginia Code §30-7-1).

A. §30-7-2b. License required to practice. To practice as an advanced practice registered nurse in this state, a person must have a valid advanced practice registered nurse license issued by the board. It is unlawful for any person to practice or offer to practice or offer to practice as an advanced practice registered nurse, to use any title, sign, card or device to indicate or give impression that such person is an advanced practice registered nurse or to practice as, perform the role of, or use any title, sign, card or device to indicate that the person is a certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist or certified nurse practitioner, unless that person is currently licensed by the board as an advanced practice registered nurse (West Virginia Code §30-7; West Virginia Code of Legislative Rule Title 19-07).

Assignment Designating nursing activities to be performed by another nurse or nursing assistive personnel that are consistent with his/her scope of practice (licensed person) or role description (unlicensed person), (ANA Scope and Standards of Practice, 2015; NCSBN, 2016).

Competence Possessing verifiable knowledge and skill to perform an activity or task safely and effectively (ANA Scope and Standards of Practice, 2015; NCSBN, 2016).

Delegation Transferring to a competent individual the authority to perform a selected nursing task in a selected situation (ANA Scope and Standards of Practice, 2015; NCSBN, 2016).

Licensed Practical Nurse Practical Nursing means “the performance for compensation of selected nursing acts in the care of the ill, injured or infirm under the direction of a registered professional nurse or licensed physician or licensed dentist, and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing”. (West Virginia Code §30-7A-1).

- A. §30-7A-2. Use of titles.** (a) Any person licensed pursuant to this article may use the title “licensed practical nurse,” “practical nurse” and the abbreviation “L.P.N” or the term “nurse”. Except as otherwise provided in article seven-a of this chapter, no other person may assume such title, or use such abbreviation, or any other words, letters, figures, signs, or devices to indicate that the person using the same is a licensed practical nurse or a practical nurse (West Virginia Code §30-7A; West Virginia Code of Legislative Rule Title 10-02).

Registered Professional Nursing Registered professional nursing shall mean “the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, a licensed dentist, or a licensed advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others”. (West Virginia Code §30-7-1).

- A. §30-7-2. License required to practice.** It is unlawful for any person not licensed under the provisions of this article to practice or to offer to practice registered professional nursing in this state, or to use any title, sign, card or device to indicate that such person is a registered professional nurse. (West Virginia Code §30-7; West Virginia Code of Legislative Rule Title 19-03).

Responsible Liable to legal review or in the case of fault to penalties; able to answer for one’s conduct or obligation; able to choose for one’s self, right from wrong (Merriam-Webster, 2019).

Unlicensed Assistive Personnel (UAP) Any unlicensed person, regardless of title, to

whom nursing tasks are delegated or assigned (NCSBN, 2016).

AGENCY REFERENCES

There are a variety of agencies that have laws, standards and guidelines that may directly affect the practice of nursing and health care, or guidelines to assist in decision-making. Some of the most commonly referenced agencies are provided herein.

ANA American Nurses Association is the national professional organization for nurses. This association has developed many standards of practice for nursing including the Code of Ethics. Web site: www.nursingworld.org

BOM Board of Medicine regulates the practice of medical doctors, podiatrists and physician assistants. Web site: www.wvdhhr.org/wvbom/
Phone: 304-558-2921

BOO Board of Osteopathy regulates the practice of osteopathic physicians, surgeons and osteopathic physician assistants. Web site: www.wvbodosteo.org/ Phone: 304-723-4638

BOP Board of Pharmacy regulates the practice of pharmacists, pharmacy technicians and pharmaceutical services Web site: www.wvbop. Phone: 304-558-0558

NCSBN National Council for State Boards of Nursing is the national association providing assistance to nursing regulatory boards. This association authors many regulatory related documents and research. This association has also developed a paper on Delegation. Web site: www.ncsbn.org
Phone: 312-525-3600

Nurse Aide Registry The state agency responsible for the regulation of certified nurse aides and the abuse registry. Web site: <http://www.wvdhhr.org/ohflac/NurseAide/>
Phone: 304-558-0688

OEMS Office of Emergency Medical Services; a division of the West Virginia Department of Health and Human Resources

responsible for regulating emergency medical services.

Web site: www.wvoems.org Phone: 304-558-3956

OHFLAC Office of Health Facility Licensure and Certification; a division of the West Virginia Department of Health and Human Resources responsible for regulating various types of health care facilities including but not limited to hospitals, dialysis facilities and nursing homes.

Web site: www.wvdhhr.org/ohflac/ Phone: 304-558-0050

WVNA West Virginia Nurses Association (WVNA) is the West Virginia chapter of the American Nurses Association (ANA).

Web site: www.wvnurses.org

Phone: 1-866-986-9773

CRITERIA FOR DETERMINING SCOPE OF PRACTICE FOR THE LICENSED NURSE

You may use the process explained below to determine, on an individual basis, if a specific activity or task is within the scope of practice for an advanced registered practice nurse (APRN), registered professional nurse (RN) or a licensed practical nurse (LPN).

I. DEFINE THE ISSUE

Clearly define the activity or task to be performed. Steps essential in this process Include:

- A. **CLARIFICATION OF THE ISSUE:** What is the issue or problem? Gather facts that may influence the decision. Are there written policies and procedures available that relate to this act? Is this a new expectation or just new to you? What is the decision to be made and where, (in what setting or organization), will it take place? Has the issue been discussed previously?

- B. **ASSESSMENT OF SKILLS AND KNOWLEDGE:** What skills and knowledge are required? Do you possess those skills? Is your competence documented? Who is available to assist you who has that skill and knowledge? Is that person accessible to you?

- C. **IDENTIFICATION OF OPTIONS:** What are possible solutions? What are the risks? What are the implications of your decision? How serious are the consequences? Should you choose to perform an act, you are responsible for performing it accurately and safely.

II. REVIEW EXISTING LAWS, POLICIES, AND STANDARDS OF NURSING PRACTICE

The APRN, RN and LPN are responsible for implementing the nursing process in the delivery of nursing care. The Boards receive many questions about the LPN's role in the assessment component of the nursing process. While the law does not specifically address the issue of the LPN's role in the assessment process, the rule clearly places the responsibility for the analysis of the data on the RN (West Virginia Code §30-7, West Virginia Code §30-7A; West Virginia Code of Legislative Rule Title 19-10 and West Virginia Code of Legislative Rule Title 10-03). It is the responsibility of the LPN to contribute to that data analysis by collecting

objective and subjective data at the direction of the APRN or RN and by reporting and documenting the information collected (West Virginia Code of Legislative Rule Title 19-10; West Virginia Code of Legislative Rule Title 10-3).

The legislative rules provide the legal standards of practice for APRN's, RN's and LPN's in West Virginia and are included in this document as appendix C and D. Based on the definitions of practice in the Code (West Virginia Code §30-7, West Virginia Code §30-7A), the APRN and RN can independently engage in activities including assessing the health status of an individual, teaching, delegating, supervising, diagnosing, intervening and evaluating. The LPN has a dependent role and provides care only at the direction of the APRN, RN, physician or dentist (West Virginia Code §30-7; West Virginia Code §30-7A, West Virginia Code of Legislative Rule Title 19-10; West Virginia Code of Legislative Rule Title 10-3; Appendix C and D).

Once the problem has been clearly defined, review existing laws, policies, and standards of nursing practice:

- A. Definitions of practice for the registered professional nurse (West Virginia Code §30-7-1)* or advanced practice registered nurse (West Virginia Code §30-7-1; West Virginia Code of Legislative Rule Title 19-07)* and the Legal Standards of Practice for the Registered Professional Nurse (West Virginia Code §30-7; West Virginia Code of Legislative Rule Title 19-10; Appendix C).
- B. Definition of practice for the licensed practical nurse (West Virginia Code §30-7A-1.a.)* and Legal Standards of Practice for the Licensed Practical Nurse (West Virginia Code §30-7A, West Virginia Code of Legislative Rule Title 10-3).

*The Boards receive questions from licensees who hold an active APRN or RN license and an active LPN license. There is nothing that prohibits having all of these licenses, however, the Boards caution the licensee regarding role confusion related to differences in scope of practice based on the role in which they are employed. The Boards hold the licensee to their highest level of education.

- C. Medication Administration by Unlicensed Personnel (West Virginia Code §16-5 O; Code of Legislative Rule Title 64-60; Appendix E)

- D. School Nurse Law and Rules (West Virginia Code §18-5-22; Code of Legislative Rule Title 126-25A)
- E. Dialysis Technician Law and Rules (West Virginia Code §30-7C, Code of Legislative Rule Title 19-13)
- F. Office of Emergency Medical Services Personnel Law and Rules regarding paramedics in the emergency department setting (West Virginia Code §16-4C; Code of Legislative Rule 64-48)
- G. Agency Accreditation Standards
- H. National Council of State Boards of Nursing (NCSBN)
- I. Office of Health Facility Licensure and Certification (OHFLAC)
- J. Standards of practice of a national nursing specialty organization.
- K. Positive and conclusive data in nursing literature and supported by nursing research
- L. Established policy and procedure of employing facility or agency, as long as the policy and procedures are not in conflict with the law or rules.

Following a review of these items ask yourself the following questions:

- A. Is the act expressly addressed in existing law or rules and regulations for your licensure category? Is the activity or task consistent with the scope of practice for an advanced practice registered nurse, registered professional nurse or a licensed practical nurse?
- B. Is the activity or task within the accepted standards of care? Would a reasonable and prudent nurse with similar training and experience perform the activity under similar circumstances?

III. MAKING THE DECISION

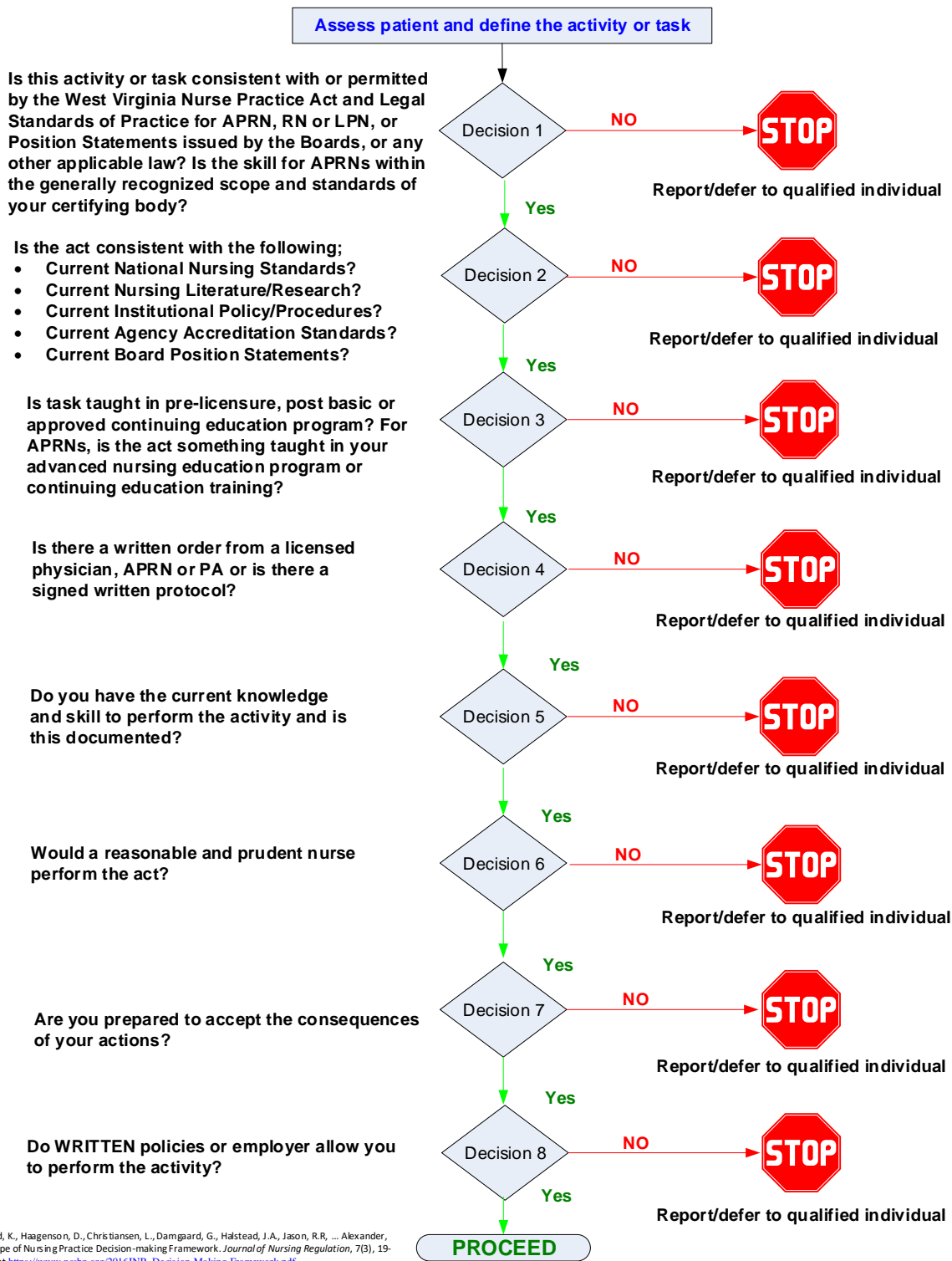
After defining the issue and reviewing significant materials, a decision must be made. To facilitate this process, ask yourself the following questions:

- A. What is the best decision? When should it be done? By whom? What are the implications of your decision? How will you evaluate your decision? Is the act within the scope of practice for a registered professional nurse, or is it an advanced practitioner role? Should it be performed by the licensed practical nurse or can it be performed by an unlicensed individual?
- B. Do you personally possess the depth and breadth of knowledge to perform the activity or task safely and effectively as demonstrated by knowledge acquired in a pre-licensure, post-basic or continuing education program?
- C. Do you personally possess current clinical competence to perform the activity or task safely? Is this competence documented?
- D. Are you physically and mentally capable of performing the activity safely?
- E. Are you prepared to accept the consequences of your actions and assume accountability for provision of safe care?

If you answered in the affirmative to all of the questions above, you may perform the activity or task.

NOTE: The Scope of Practice Decision-making Model for the APRN, RN and LPN is located on Page 12.

SCOPE OF PRACTICE DECISION MODEL FOR THE APRN, RN AND LPN



Source: Ballard, K., Haegenson, D., Christiansen, L., Damgaard, G., Halstead, J.A., Jason, R.R., ... Alexander, M. (2016). Scope of Nursing Practice Decision-making Framework. *Journal of Nursing Regulation*, 7(3), 19-21. Retrieved at https://www.ncsbn.org/2016/NR_Decision-Making-Framework.pdf

REGISTERED PROFESSIONAL NURSE RESPONSIBILITY AS A SUPERVISOR OF DELEGATED OR ASSIGNED ACTIVITIES

The focus of advanced practice registered nursing or registered professional nursing is on the application of substantial specialized knowledge, judgment and nursing skill in the assessment, analysis, planning, implementation and evaluation of nursing care. The advanced practice registered nurse or registered professional nurse is responsible and accountable for:

- A. Clinical decision-making regarding nursing care
- B. Assuring that care is provided in a safe and competent manner
- C. Determining which nursing acts in the implementation of care can be delegated or assigned and to whom
- D. Providing direction and assistance, periodic observation and evaluation of effectiveness of acts performed by those under supervision

Only those nursing activities commensurate with the educational preparation and demonstrated ability of the person who will perform the act may be delegated or assigned. Entry level nurses and those re-entering nursing will need continued education and support as they gain skills as supervisors of delegated skills and tasks.

“Direct supervision” means “the activity of a registered professional nurse with an unencumbered license in West Virginia being present at all times in the same assigned physical work area as the person being supervised” (West Virginia Code of Legislative Rule Title 19-03).

An applicant for licensure by examination who is a graduate of an accredited nursing education program, may work under the direct supervision of an advanced practice registered nurse, registered professional nurse, licensed physician, or licensed dentist and render nursing services during the period between graduation and notification of the results of the first licensing examination following graduation upon issuance of a temporary permit from the board. The board shall issue a temporary permit, valid for up to ninety (90) days from the date of graduation, to cover the time between graduation and notification of the results of the first

licensing examination. The holder of a temporary permit shall work under the direct supervision of a licensee, until the applicant has successfully passed a national council licensure examination (NCLEX-RN for registered nurses or NCLEX-PN for licensed practical nurses) and a license is issued (West Virginia Code of Legislative Rule Title 19-03; West Virginia Code of Legislative Rule Title 10-02; Appendix B and E).

FIVE RIGHTS OF DELEGATION/ASSIGNMENT

1. **RIGHT TASK**
Right person is delegating or assigning the right task to the right person to be performed on the right person.
2. **RIGHT PERSON**
Right person is delegating or assigning the right task to the right person to be performed on the right person.
3. **RIGHT DIRECTION/COMMUNICATION**
Clear, concise description of the task, including its objective, limits and expectations.
4. **RIGHT SUPERVISION**
Appropriate monitoring, evaluation, intervention, as needed and feedback.
5. **RIGHT CIRCUMSTANCES**
Appropriate patient setting, available resources, patient stability, etc.

Source: (NCSBN, 2016).

GUIDELINES FOR DELEGATION OF NURSING ACTS TO THE LICENSED PRACTICAL NURSE

The decision to delegate should be consistent with the time-honored and well-established nursing process, i.e., assessment, diagnosis, identification of outcomes, planning, implementation, and evaluation (American Nurses Association Scope and Standards of Practice, 2015), by the nurse delegator. This necessarily precludes a complete listing of tasks that can be routinely and uniformly delegated for all patients in all situations. Rather, the nursing process and decision to delegate must be based on careful analysis of the patient and

circumstances. The authority and qualifications of the proposed nurse delegator are critical to delegation decisions. The Five Rights of Delegation may facilitate appropriate delegation decisions. Consequences of error and patient health and safety must be evaluated with each decision.

1. Delegation of acts beyond those taught in the basic educational program for the LPN should be based on a conscious decision of the registered nurse.
 - Practice beyond entry level for the LPN should not be automatic nor should it be based solely on length of experience.
2. Practice beyond entry level **must** be competency based.
 - Competency based practice is defined by structured educational activities which include assessment of learning and demonstration of skills.
3. Records of educational activities designed to enhance entry level knowledge, skill and ability **must** be maintained and available to the APRN or RN making the decision.
 - The employer and the employee must maintain records which include an outline of the educational content and an evaluation of achievement of educational objectives and demonstrated skills.
4. Competency based enhancement of practice must be reviewed periodically by the advanced practice registered nurse or registered nurse.
 - Practice beyond the entry level should be more closely supervised.
5. Practice is limited to those activities addressed in the written policies and procedures of the employing agency, as long as those policies are not in conflict with West Virginia Law or rules.
 - Job descriptions and employing agency policies should specifically address functions that the LPN will be expected to perform as part of basic, as well as enhanced practice. Policies should also address the conditions under which the procedures and services are to be performed.

ACTIVITIES THAT MAY BE DELEGATED TO THE LPN

Activities appropriate for delegation to the LPN should be those that, after careful evaluation by the supervising APRN or RN, are expected to contain **only one option**. That is, the LPN is expected to be able to proceed through the established steps or an activity without encountering an unexpected response or reaction, and competence in performance of the activity has been demonstrated.

ACTIVITIES THAT SHOULD *NOT* BE DELEGATED TO THE LPN

Activities that are **NOT** appropriate for delegation to an LPN are those that are likely to present decision-making options, requiring in-depth assessment and professional judgment in determining the next step to take as the provider proceeds through the steps of the activity.

GUIDELINES FOR ASSIGNING TASKS TO UNLICENSED PERSONNEL

There is a need and a place for competent, appropriately supervised, unlicensed assistive personnel in the delivery of affordable, quality health care. However, it must be remembered that unlicensed assistive personnel are to **assist - not replace - the nurse**. This, unlicensed assistive personnel should be assigned to the nurse to assist with patient care rather than be independently assigned to the patients.

ACTIVITIES THAT MAY BE ASSIGNED TO AN UNLICENSED PERSON

Nursing practice assigned to unlicensed assistive personnel is limited to performance of the basic nursing care services, such as taking vital signs, providing personal hygiene, comfort, nutrition, ambulation and environmental safety and protection. Unlicensed workers are **PROHIBITED** from performing any licensed nursing function that is specifically defined for licensed nurses in the nursing practice acts or rules of the Boards of Nursing, *except* as specifically provided in West Virginia Code and Rules for AMAPs, School Nurses, Dialysis techs, EMS, etc., (West Virginia Code 16-4C, 16-5O, 18-5-22,30-7, and 30-7A; Code of Legislative Rules 10-02, 10-03, 19-03, 19-07, 19-10, 19-13, 64-68, 64-60 and 126-25A).

The APRN or RN remains the manager of care even for the assignment of tasks to an unlicensed person under a life-threatening emergency. Nurses have always been accountable or responsible for their assignment decisions. Responsibility or answerability when delegating or assigning cannot be avoided.

ACTIVITIES THAT SHOULD NOT BE ASSIGNED TO AN UNLICENSED PERSON

Activities that are not appropriate for assignment to an unlicensed person are those that require nursing judgment and skill and have substantial potential to jeopardize client safety and welfare. Except as specifically provided in law. (West Virginia Code 16-5O., and other laws and rules). The Boards receive questions about delegation to medical assistants. Medical assistants are unlicensed personnel and have no defined scope of practice, have no laws or rules governing practice and may not be delegated activities by the nurse that require professional licensure (i.e. intravenous medication administration).

CLIENT SELF-CARE

The performance of nursing acts by the client for self-care or by the client's family members does not constitute delegation or assignment of nursing acts to unlicensed personnel for compensation.

Client and family education is a part of nursing practice. Nurses may teach and supervise the performance of activities by clients and family members who have demonstrated willingness and an ability to perform the activity.

THE DIFFERENCE BETWEEN ASSIGNMENT AND DELEGATION

Understanding the difference between delegation and assignment can be a challenge. In an effort to help nurses better understand the concepts as they apply to this document and practice in West Virginia, the following paragraphs are provided:

Delegation is always downward. That is, delegation occurs when one individual has the authority to perform the task or activity and transfers that authority to another competent individual. The APRN or RN delegating the task retains the responsibility for the decision to delegate. The person performing the task is responsible and accountable for that task and related activities.

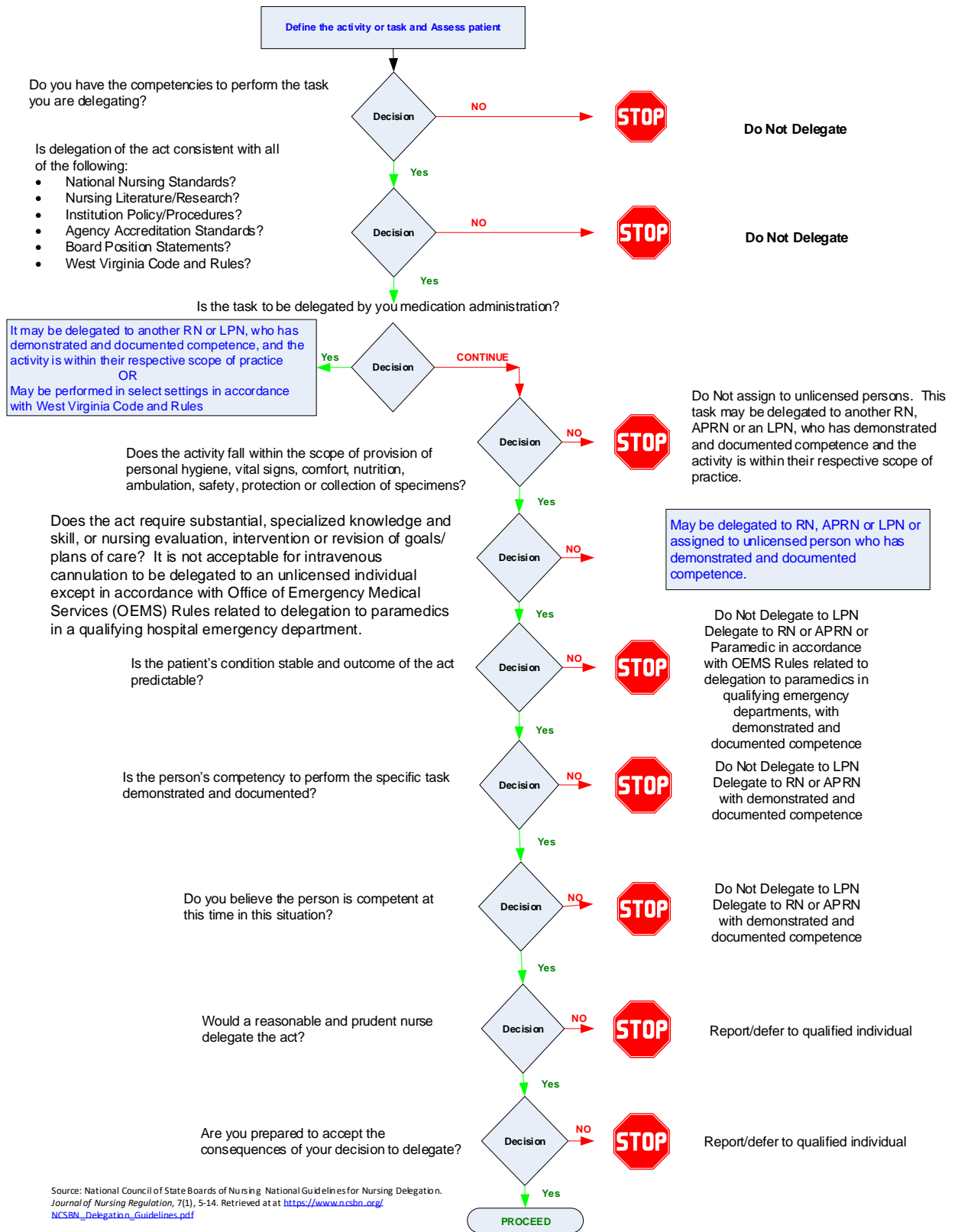
Assignment means that a nurse designates another competent nurse or unlicensed person to be responsible for specific patients or selected nursing functions for specifically identified patients. Assignment occurs when the authority to do a task already exists. Both registered nurses and licensed practical nurses have a defined scope of practice established in law; therefore, APRN to APRN, APRN to RN, RN to RN, and (when the activity is within the LPN's scope of practice) RN to LPN, or LPN to LPN is an assignment. The APRN, RN or LPN making the assignment retains the responsibility for the task being completed by a competent person.

An element of assignment exists in all delegation; however, assignment, which is horizontal in nature, does not require delegation. Both assignment and delegation decisions must be made by a licensed nurse based on the skill levels of the care givers, patient or client care needs, and other considerations. Nurses have always been accountable or responsible for their assignment decisions. Responsibility or answerability when delegating or assigning cannot be avoided.

NOTE: The Delegation/Assignment Decision Model is located on page 19.

Delegation/Assignment Decision Model

Before this model can be appropriately used the Scope of Practice Model must be applied to available staff



APPENDIX
APPENDIX A
WEST VIRGINIA STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES
101 Dee Drive, Suite 100
Charleston, West Virginia 25311-1688

The following are statements originally issued by the West Virginia State Board of Examiners for Licensed Practical Nurses in June, 1977, in response to frequent requests.

Administration of Intravenous Fluids

The law in West Virginia is not specific in that no duties are spelled out as being duties of a licensed practical nurse. The West Virginia State Board of Examiners for Licensed Practical Nurses can only recommend that licensed practical nurses perform duties and procedures for which training has been provided during the 12 month training program. The administration of I.V. fluids is not a part of the standard curriculum for accredited schools of practical nursing in West Virginia. However, if written hospital policy permits, additional training has been received and can be verified, providing there is adequate supervision and the licensed practical nurse is willing to accept responsibility, it is not illegal for a licensed practical nurse to perform more difficult procedures, such as administration of I.V. fluids.

Verbal and Telephone Orders

The West Virginia State Board of Examiners for Licensed Practical Nurses does not have a specific policy or rule in reference to this procedure. The following rules, however, apply in specific practice settings:

General Hospitals: 64 CSR 12, West Virginia Legislative Rules, Department of Health and Human Resources, Hospital Licensure, 2006, section 7.2.q states in part "The hospital shall ensure that verbal and telephone orders shall be given to registered professional nurses and other licensed or registered health care professionals, in their area of training and professional expertise, when authorized by the medical staff policies: Provided, that any verbal or telephone order received by a licensed or registered health care professional shall also be communicated to the registered professional nurse responsible for the overall care of that patient." . .

Nursing Homes: Historically the Legislative Rules, West Virginia Department of Health and Human Resources, Nursing Home Licensure, have permitted both R.N.s and L.P.N.s to take

verbal or telephone orders in a nursing home. While currently 64 CSR 13, Nursing Home Licensure Rules, 2007, do not specifically address verbal or telephone orders, section 8.14.d. states that AA nursing home shall have a registered nurse on duty in the facility for at least eight (8) consecutive hours, seven (7) days a week. It is therefore a common practice for licensed practical nurses, functioning without a registered nurse on the premises, to take verbal and telephone orders from the physician.

Other Work Settings: Consult policies of the employer and rules of appropriate accrediting or certifying agencies to determine whether the L.P.N. may take verbal or telephone orders.

(IVTHERAP): Approved: 6/77. Revised and Reaffirmed: 2/89, 2/90, 6/93, 6/94, 10/98, 8/05.

APPENDIX B

**TITLE 19
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF EXAMINERS FOR
REGISTERED PROFESSIONAL NURSES**

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

§19-3-1. General.

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

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

1.3. Filing Date. -- April 10, 2019.

1.4. Effective Date. -- April 10, 2019

1.5. Sunset date. -- This rule will terminate and have no further force or effect upon April 10, 2029.

§19-3-2. Definitions.

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

2.1. "Certificate of registration" means a document issued by the board upon original licensure by examination in West Virginia;

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

2.3. "Good professional character" means the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the board, indicates that an individual is able to consistently conform his or her conduct to the requirements of W.Va. Code § 30-7-1 et seq., the board's

rules and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability and integrity.

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

2.5. "Licensure card" means the wallet-sized document issued to indicate registration or re-registration.

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

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

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

§19-3-3. Application for Examination.

3.1. Qualifications for application

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

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

3.1.a.2. be of good moral character;

3.1.a.3. have completed the basic curriculum in a program in nursing education approved by the board, or in a school accredited or approved by a comparable board or other recognized authority in another jurisdiction. He or she must hold a diploma from that school and be recommended to the board by the faculty of the school of nursing; and,

3.1.a.4. The applicant shall submit to a state and a national electronic criminal history records check for the purpose of determining whether the applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a license.

3.1.a.4.A. The criminal history records checks shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

3.1.a.4.B. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

3.1.a.4.B.1. Submitting fingerprints for the purposes set forth in this subsection; and,

3.1.a.4.B.2. Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

3.1.a.B.3. Paying for actual costs of the fingerprinting and criminal history record check.

3.1.a.4.C. The criminal history records required by this paragraph must have been completed within the twelve (12) months immediately before the application is filed with the board.

3.1.a.4.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

3.1.a.4.E. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. To be qualified for licensure, the results of the criminal history records checks must be verified by a source acceptable to the board other than the applicant.

3.1.a.4. F. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.

3.1.a.4.G. The results of the state and national criminal history record check may not be released to or by a private entity except:

3.1.a.4.G.1. To the individual who is the subject of the criminal history record check;

3.1.a.4.G.2. With the written authorization of the individual who is the subject of the criminal history record check; or

3.1.a.4.G.3. Pursuant to a court order.

3.1.a.4.H. The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

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

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

3.1.b.2. be of good moral character;

3.1.b.3. have served on active duty in the medical corps of any of the armed forces of the United States for at least one (1) year within the three (3) year period immediately preceding the date of application and have successfully completed the course of instruction required to qualify her or him for rating as a medical specialist advanced, medical service technician or advanced hospital corpsman technician, or other equivalent rating in her or his particular branch of the armed forces;

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

3.1.b.5. The applicant shall submit to a state and a national electronic criminal history records check for the purpose of determining whether the applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a license.

3.1.b.5.A. The criminal history records checks shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

3.1.b.5.B. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

3.1.b.5.B.1. Submitting fingerprints for the purposes set forth in this subsection; and,

3.1.b.5.B.2. Authorizing the board, the West Virginia State Police and the Federal

Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

3.1.b.5.B.3. Paying for actual costs of the fingerprinting and criminal history record check.

3.1.b.5.C. The criminal history records required by this paragraph must have been completed within the twelve (12) months immediately before the application is filed with the board.

3.1.b.5.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

3.1.b.5.E. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. To be qualified for licensure, the results of the criminal history records checks must be verified by a source acceptable to the board other than the applicant.

3.1.b.5.F. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.

3.1.b.5.G. The results of the state and national criminal history record check may not be released to or by a private entity except:

3.1.b.5.G.1. To the individual who is the subject of the criminal history record check;

3.1.b.5.G.2. With the written authorization of the individual who is the subject of the criminal history record check; or

3.1.b.5.G.3. Pursuant to a court order.

3.1.b.5.H. The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

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

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

3.1.c.2. be of good moral character;

3.1.c.3. submit a copy of the certificate issued by the commission on graduates of foreign nursing schools (CGFNS);

3.1.c.4. submit a copy of the transcript from a professional nursing education program, translated in the English language;

3.1.c.5. submit satisfactory documentation of the English language proficiency by one of the following methods:

3.1.c.5.A. submit evidence that the nursing education, text books, and majority of the clinical experiences were in English;

3.1.c.5.B. submit an original report showing a score of at least 530 for the written exam or 200 for the computer exam on the Test of English as a Foreign Language (TOEFL) plus a score of at least 50 on the Test of Spoken English (TSE);

3.1.c.5.C. submit an original report showing a score of at least 700 on the Test of English for International Communication (TOEIC) plus a score of at least 50 on the Test of Spoken English (TSE); or,

3.1.c.5.D. provide a VisaScreen certificate; and,

3.1.c.6. The applicant shall submit to a state and a national electronic criminal history records check for the purpose of determining whether the applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a license.

3.1.c.6.A. The criminal history records checks shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

3.1.c.6.B. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

3.1.c.6.B.1. Submitting fingerprints for the purposes set forth in this subsection; and,

3.1.c.6.B.2. Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the

applicant for a license.

3.1.c.6.3. Paying for actual costs of the fingerprinting and criminal history record check.

3.1.c.6.C. The criminal history records required by this paragraph must have been completed within the twelve (12) months immediately before the application is filed with the board.

3.1.c.6.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

3.1.c.6.E. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. To be qualified for licensure, the results of the criminal history records checks must be verified by a source acceptable to the board other than the applicant.

3.1.c.6.F. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.

3.1.c.6.G. The results of the state and national criminal history record check may not be released to or by a private entity except:

3.1.c.6.G.1. To the individual who is the subject of the criminal history record check;

3.1.c.6.G.2. With the written authorization of the individual who is the subject of the criminal history record check; or

3.1.c.6.G.3. Pursuant to a court order.

3.1.c.6.H. The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

3.2. Filing of Application.

3.2.a. Applicants educated in the United States.

3.2.a.1. An applicant for licensure by examination shall meet the requirements set forth in subdivision 3.1.a. of this section and submit the following to the board office:

3.2.a.1.A. A completed board application forty-five (45) days prior to the date the applicant wishes to take the examination;

3.2.a.1.B. The required fee for licensure by examination set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board of Examiners for Registered Professional Nurses. Application fees are not refundable, nor applicable to other test dates;

3.2.a.1. C. A final official transcript showing the type of degree and date conferred shall be sent directly to the office of the board from a board approved nursing education program. The final official transcript may be submitted after the forty-five (45) day filing deadline, but shall be submitted prior to the examination date. The board will not consider an application for approval until the final, official transcript is received in the board office.

3.2.a.2. An applicant for licensure by examination shall submit an application directly to the contracted test service for the National Council Licensure Examination (NCLEX-RN) with the application fee forty-five (45) days prior to the date the applicant wishes to take the examination.

3.2.a.3. The authorization to test for any one application is valid for ninety (90) days, and may not be extended.

3.2.b. Applicants educated outside the United States or United States Territory.

3.2.b.1. An applicant who was educated outside the United States or United States Territories and who seeks licensure by examination shall submit the following:

3.2.b.1.A. A completed board application forty-five (45) days prior to the date the applicant wishes to sit for the examination; and,

3.2.b.1.B. The required fee for licensure by examination set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board of Examiners for Registered Professional Nurses. Application fees are not refundable, nor applicable to other test dates.

3.2.b.2. An applicant for licensure by examination shall submit directly to the current test service under contract with national council, a completed National Council Licensure Examination (NCLEX-RN) application with the application fee forty-five (45) days prior to the date the applicant wishes to take the examination.

3.2.b.3. The authorization to test for any one application is valid for ninety (90) days, and may not be extended.

3.2.c. Veteran applicants pursuant to W. Va. Code §30-24-1 et seq..

3.2.c.1. An applicant for licensure by examination who qualifies under W. Va. Code §30-24-1 et. seq. (veterans) shall submit the following information to the board office:

3.2.c.1.A. A completed board application forty-five (45) days prior to the date the applicant wishes to take the examination;

3.2.c.1.B. The required fee for licensure by examination as set forth in the board's rule, Fees, 19 CSR 12. Payment shall be in the form established by the West Virginia Board of Examiners for Registered Professional Nurses. Application fees are not refundable, nor applicable to other test dates;

3.2.c.1.C. An official copy of military form DD214 directly from the national personnel records center; and

3.2.c.1.D. Any additional information requested by the board including but not be limited to:

3.2.c.1.D.1. Copies of certificates of completion for military education including course and occupation credit recommendations; and,

3.2.c.1.D.2. Course outlines for military education documenting nursing science content in the training program.

3.2.c.2. An applicant for licensure by examination who qualifies under West Virginia Code §30-24-1 et. seq. shall submit directly to the current test service under contract with national council a completed National Council Licensure Examination (NCLEX-RN) application with the application fee forty-five (45) days prior to the date the applicant wishes to take the examination.

3.2.c.3. The authorization to test for any one application is valid for ninety (90) days, and may not be extended.

§19-3-4. Temporary Permit to Practice as a Registered Professional Nurse.

4.1. A temporary permit issued to an applicant awaiting initial examination for licensure as a registered professional nurse is valid until three (3) days from the date the applicant's licensing examination results are mailed from the office of the board.

4.2. The board may issue a temporary permit to an applicant for examination following graduation from a state approved nursing education program. The temporary permit expires ninety (90) days following graduation, or at the time licensure examination results are announced, whichever comes first. A temporary permit is not renewable.

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

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

4.5. The holder of a temporary permit shall work under the direct supervision of a licensee, until the applicant has successfully passed the NCLEX-RN and a license is issued.

§19-3-5. Licensure Examination.

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

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

§19-3-6. Failure to Pass Licensure Examination.

6.1. An applicant for licensure by examination who fails to attain a passing score on the examination shall, upon notification of examination results, immediately return any temporary permit to practice registered professional nursing to the office of the board.

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

6.3. In the event an applicant fails the licensure examination two times, he or she may petition the board for permission to repeat the licensure examination. The board may deny approval for an applicant to repeat an examination after two failures if more than two years has lapsed since the applicant graduated from a nursing education program. In addition, the board may deny approval to repeat the examination after two failures if the applicant cannot show in the petition to repeat the examination more than two times that any further education has been taken by the applicant to correct deficiencies in his or her

nursing knowledge.

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

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

§19-3-7. Licensure by Endorsement.

7.1. An applicant for permanent licensure by endorsement shall:

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

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

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

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

7.1.e The applicant shall submit to a state and a national electronic criminal history records check for the purpose of determining whether the applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a license.

7.1.e.1. The criminal history records checks shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

7.1.e.2. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

7.1.e.2.A. Submitting fingerprints for the purposes set forth in this subsection; and,

7.1.e.2.B. Authorizing the board, the West Virginia State Police and the Federal

Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

7.1.e.2.C. Paying for actual costs of the fingerprinting and criminal history record check.

7.1.e.3. The criminal history records required by this paragraph must have been completed within the twelve (12) months immediately before the application is filed with the board.

7.1.e.4. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

7.1.e.5. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. To be qualified for licensure, the results of the criminal history records checks must be verified by a source acceptable to the board other than the applicant.

7.1.e.6. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.

7.1.e.7. The results of the state and national criminal history record check may not be released to or by a private entity except:

7.1.e.7.A. To the individual who is the subject of the criminal history record check;

7.1.e.7.B. With the written authorization of the individual who is the subject of the criminal history record check; or

7.1.e.7.C. Pursuant to a court order.

7.1.e.8. The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

7.2. Temporary permit for endorsement applicant.

The holder of a temporary permit is subject to all provisions of W. Va. Code §30-7-1 et. seq. and all other relevant sections of the West Virginia Code and rules promulgated by the board.

7.2.a. A complete endorsement application shall be on file in the board office prior to the

issuance of a temporary permit including the endorsement application fee.

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

7.2.c. The temporary permit expires ninety (90) days from the date of issuance and the expiration date shall be printed on the temporary permit.

7.2.d. The holder of the temporary permit shall immediately return the temporary permit upon request of the board. A temporary permit holder who fails to complete the endorsement application for full licensure is not entitled to an extension of the temporary permit. An applicant must provide a satisfactory explanation to the board prior to any subsequent request for endorsement by the applicant if the ninety (90) day period expires prior to the completion of the required procedure for licensure by endorsement by an applicant licensed as a registered professional nurse in another state, territory, or foreign country. The applicant shall repeat the process for endorsement in its entirety if the explanation is considered acceptable by the board.

7.2.e. A temporary permit is not renewable, and the board shall not extend the initial ninety (90) days.

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

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

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

7.2.i. A temporary permit becomes void during the ninety (90) days if the board determines, upon satisfactory proof, that it will deny the applicant full licensure for any of the causes set forth in West Virginia Code §30-7-6. The board may also revoke the temporary permit at any time if the board has sufficient information indicating the temporary permit was issued in error or if the board receives information establishing probable cause that the applicant violated the board's laws or rules while practicing under the temporary permit.

§19-3-8. Change of Name and/or Address.

8.1. If a licensee legally changes his or her name through marriage, divorce court order or other means, he or she shall send this information to the office of the board. The information shall include both the full prior name and the new name, in a properly executed affidavit or a certified copy of the marriage certificate or divorce decree. The licensee shall submit these documents along with the fee set forth in the board's rule, Fees, 19 CSR 12.

8.2. A licensee shall notify the board of any change in residence or mailing address within thirty (30) days of the change. This notification shall be submitted in writing to the board office by facsimile, electronic communication or postal service.

§19-3-9. Renewal of License.

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

- 9.1.a. an accurately completed application for renewal of the license;
- 9.1.b. submission of additional documents as determined by the board;
- 9.1.c. verification that he or she meets the continuing competence requirements specified in the board's rule, Continuing Education, 19CSR11;
- 9.1.d. all additional requirements set forth by the board; and,
- 9.1.e. the fee for renewal set forth in the board's rule, Fees, 19 CSR 12.

9.2. Request for inactive status.

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

activities and events during the term of the inactive license period.

9.3. Request for permanently retired status.

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

§19-3-10. Reinstatement of Lapsed License.

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

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

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

§19-3-11. Verification of Licensure to Another State Board of Nursing.

11.1. The board shall provide a verification of West Virginia licensure upon submission of a written request by the licensee for the verification and payment of a fee set forth in the board’s rule, §19 CSR 12, Fees. Should the board participate in the licensure verification system as maintained by the National Council of State Boards of Nursing, the licensee shall follow the process of endorsement to another state in accordance with the procedures set in place for that system. If the licensee is a graduate of a school which has closed and his or her records are on file in the board office, the board shall provide a copy of school records upon written request and payment of the fees set forth in the board’s rule, Fees, 19 CSR 12.

§19-3-12. Loss of Certificate of Registration or Current Licensure Card.

12.1. To replace a lost or destroyed certificate of registration the licensee shall send an affidavit

certifying the loss or destruction of the certificate of registration and the fee set forth in the board's rule, Fees, 19 CSR 12.

12.2. To replace a lost or destroyed current licensure card, the licensee shall send an affidavit certifying the loss and the fee set forth in the board's rule, Fees, 19 CSR 12.

12.3. The board may publish notice of the issuance of a duplicate certificate of registration or current licensure card at the board's discretion.

§19-3-13. Penalty for Presentation of Non-negotiable Check.

13.1. The board shall assess the fee set forth in the board's rule, Fees, 19 CSR 12 to any individual who presents a check payable to the board that is later returned by the bank as non-negotiable. The presenter of the non-negotiable check shall redeem the non-negotiable check within fourteen (14) days of notification by certified mail. This fee is in addition to any reinstatement or other fee which may additionally become due because the applicant or licensee submits an application or registration form after a board deadline. The applicant, licensee, or other person who presents a non-negotiable check shall redeem it with cash, a money order, or a cashier's check.

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

§19-3-14. Professional Misconduct

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

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

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

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

14.1.d. abandoned patients by terminating responsibility for nursing care, intervention, or

observation without properly notifying appropriate personnel and ensuring the safety of patients;

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

14.1.f. impersonated another licensed practitioner;

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

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

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

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

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

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

14.1.m. is addicted to a controlled substance;

14.1.n. is a chronic or persistent alcoholic;

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

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

14.1.q. refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board;

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

14.1.s. knowingly falsified an application for employment;

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

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

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

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

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

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

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

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

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

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

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

14.1.ee. failed to register or notify the board of any changes of name or mailing address;

14.1.ff. failed to accept certified mail from the board, when mailed to the licensee's last address on record in the board's office;

14.1.gg. failed to disclose to the board a criminal conviction in any jurisdiction;

14.1.hh. was convicted of a misdemeanor with substantial relationship to the practice of registered professional nursing, in a court of competent jurisdiction.

14.1.ii. failed to disclose information when required by the board concerning treatment or counseling for substance abuse, or participation in any professional peer assistance program;

14.1.jj. provided false information on any application, or any other document submitted to the board for the purpose of licensure, advance practice recognition, or prescriptive authority;

14.1.kk. misappropriated medications, supplies, or personal items of a patient or employer;

14.1.ll. self-administered or otherwise took into his or her body any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;

14.1.mm. prescribed, dispensed, administered, mixed or otherwise prepared a prescription drug, including any controlled substance under state or federal law, not in accordance with accepted nursing practice standards or not in accordance with the board's rule Limited Prescriptive Authority For Nurses in Advanced Practice, §19 CSR 8;

14.1.nn. physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual in the context of a nurse-patient/client relationship;

14.1.oo. used the nurse-patient/client relationship to exploit a patient or client;

14.1.pp. engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;

14.1.qq. failed to maintain appropriate professional boundaries in the nurse-patient/client relationship;

14.1.rr. failed to report that his or her license to practice registered professional nursing in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited, or otherwise acted against, that he or she was subjected to any other disciplinary action by the licensing authority, or that he or she was denied licensure in any other state, territory, jurisdiction, or foreign nation;

14.1.ss. violated the confidentiality of information or knowledge concerning a patient;

14.1.tt. practiced registered professional nursing by way of telecommunications or otherwise, in any other state, territory, jurisdiction, or foreign nation, without a license to do so and not in accordance with the law of that state, territory jurisdiction, or foreign nation; or

14.1.uu. was found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or board in this or another state or territory, where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct under the laws of this state, may serve as a basis for disciplinary action by this board.

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

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

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

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

14.3.c. The board may require the licensee, technician, or applicant to obtain an electronic

criminal history records from a similar agency in the state of the technician or applicant's residence, if outside of West Virginia.

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

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

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

§19-3-15. Impaired Nurse Treatment Program

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

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

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

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

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

§19-3-16. Expungement of Records.

The Disciplinary Review Committee shall expunge all complaints that it dismisses, upon request

by the licensee, from the licensee's file after three (3) years, if no other complaint is received against the same licensee within the three (3) year period.

APPENDIX C

**TITLE 19
LEGISLATIVE RULE
BOARD OF EXAMINERS FOR REGISTERED
PROFESSIONAL NURSES**

**SERIES 10
SCOPE OF PROFESSIONAL NURSING PRACTICE**

19-10-1. General.

1.1. Scope. -- This rule establishes standards of safe practice for the registered professional nurse, and serves as a guide for the board in evaluating nursing care to determine if it is safe and effective.

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

1.3. Filing Date. -- April 10, 2019.

1.4. Effective Date. – April 10, 2019.

1.5. Sunset Date. B This rule will terminate and have no further force or effect upon April 10, 2029.

19-10-2. Standards Related to the Registered Professional Nurse's Scope of Practice.

2.1. Standards related to Professional Accountability:

2.1.1. Practices within the legal boundaries for nursing through the scope of practice in W. Va. Code ' 30-7-1 et seq. and rules governing nursing.

2.1.2. Demonstrates honesty and integrity in nursing practice.

2.1.3. Bases nursing decision on nursing knowledge and skills, the needs of patients and registered professional nursing standards.

2.1.4. Accepts responsibility for judgements, individual nursing actions, competence, decisions and behavior in the course of nursing practice.

2.1.5. Maintains competence through ongoing learning and application of knowledge in registered professional nursing practice.

2.1.6. Reports violations of the acts or rules by self or other licensees.

2.2. Standards related to Scope of Practice.

2.2.1. Conducts a comprehensive nursing assessment.

2.2.2. Applies nursing knowledge based upon the biological, psychological and social aspects of the patient=s condition.

2.2.3. Detects faulty or missing patient information.

2.2.4. Plans nursing care and nursing interventions consistent with the patient=s overall health care plan.

2.2.5. Utilizes decision-making, critical thinking and clinical judgement to make independent decision and nursing diagnoses.

2.2.6. Seeks clarification of orders when needed.

2.2.7. Implements treatment and therapy, including medication administration and delegated medical and independent nursing functions.

2.2.8. Obtains orientation/training for competence when encountering new equipment and technology or unfamiliar care situations.

2.2.9. Demonstrates attentiveness and provides patient surveillance and monitoring.

2.2.10. Identifies changes in patient=s health status and comprehends clinical implications of patient=s signs, symptoms and changes as part of expected and unexpected patient course or emergent situation.

2.2.11. Evaluates the patient=s response to nursing care and other therapy, including patient=s response to interventions, need for alternative interventions, need to communicate and consult with other health team members and need to revise the plan of care.

2.2.1. Communicates and consults with other health team members including patient concerns and special needs, patient status and progress, patient response or lack of response to interventions and significant changes in patient condition.

2.2.13. Documents nursing care.

2.2.14. Revises care plan as needed.

2.2.15. Takes preventive measures to protect patient, others and self.

2.2.16. Provides comprehensive nursing and health care education in which the RPN assesses and analyzes educational needs of the learners, plans educational programs based on learning needs and teaching-learning principles, ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons and evaluates the education to meet the identified goals.

2.3. Standards for Patient Advocacy.

2.3.1. Respects the patient=s rights, concerns, decisions and dignity.

2.3.2. Identifies patient needs.

2.3.3. Attends to patient concerns or requests.

2.3.4. Promotes safe patient environment.

2.3.5. Communicates patient choices, concerns and special needs with other health team members regarding patient status and progress, response or lack of response to therapies, significant changes in patient condition.

2.3.6. Maintains appropriate professional boundaries.

2.3.7. Assumes responsibility for nurse=s own decision and actions.

2.4. Standards to Organize, Manage and Supervise the Practice of Nursing.

2.4.1. Assigns to another only those nursing measures that fall within that nurse=s scope of practice, education, experience and competence or unlicensed person=s role description including assigning care within the RN scope of practice to other RNs, LPN within the LPN scope of practice based on the RN=s assessment of the patient and LPN=s ability and supervising , monitoring and evaluating the care assigned to an LPN.

2.4.2. Delegates to another only those nursing measures for which that person has the necessary skills and competence to accomplish safely. In maintaining accountability for the delegation, an RN shall ensure the:

2.4.2.1. Unlicensed assistive personnel (UAP) has the education, legal authority, and demonstrated competency to perform the delegated task.

2.4.2.2. Tasks delegated are consistent with the UAP=s job description and can be safely performed according to clear, exact and unchanging directions.

2.4.2.3. Results of the task are reasonably predictable.

2.4.2.4. Task does not require assessment, interpretation or independent decision making during its performance or at completion.

2.4.2.5. Selected patient and circumstances of the delegation are such that delegation of the task poses minimal risk to the patient and the consequences of performing the task improperly are not life-threatening.

2.4.2.6. Provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable patients, verifies that the UAP follow each written facility policy or procedure when performing the delegated task.

2.4.2.7. Provides supervision and feedback to the UAP.

2.4.2.8. Observes and communicates the outcome of the delegated task.

2.4.3. Matches patient needs with personnel qualification, available resources and appropriate supervision.

2.4.4. Communicates directions and expectation for completion of the delegated task.

2.4.5. Supervises others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcomes; assures documentation of the activity.

2.4.6. Provides follow-up on problems and intervenes when needed.

2.4.7. Evaluates the effectiveness of the delegation or assignment.

2.4.8. Intervenes when problems are identified, and revises plan of care as needed.

2.4.9. Retains professional accountability for nursing care provided.

2.4.10. Promotes a safe and therapeutic environment by providing appropriate monitoring and surveillance of the care environment, identifying unsafe care situation and correcting problems or referring problems to appropriate management level when needed.

2.4.11. Teaches and counsels patient and families regarding their health care regimen, which may include, but not limited to, general information about health and medical condition, specific procedures and wellness and prevention.

APPENDIX D

**TITLE 10
LEGISLATIVE RULE
STATE BOARD OF EXAMINERS
FOR LICENSED PRACTICAL NURSES**

**SERIES 3
LEGAL STANDARDS OF NURSING PRACTICE**

10-3-1. General.

1.1. Scope. -- This legislative rule establishes minimum standards of safe practice for the Licensed Practical Nurse.

1.2. Authority. -- W. Va. Code §30-7A-5.

1.3. Filing Date. -- April 24, 2001.

1.4. Effective Date. -- May 24, 2001.

10-3-2. Purpose of Standards.

The purpose of this rule is:

2.1. to establish minimum acceptable levels of nursing practice for the licensed practical nurse; and

2.2. to serve as a guide for the board to evaluate the practice of the licensed practical nurse to determine if the practice is safe and effective.

10-3-3. Standards Related to the Licensed Practical Nurses' Contribution to, and Responsibility for, the Nursing Process.

The licensed practical nurse practicing under the direction of a registered professional nurse, licensed physician or licensed dentist shall:

3.1. contribute to the nursing assessment by collecting, reporting and recording objective and subjective data in an accurate and timely manner. Data collection includes, but is not limited to observations of:

3.1.a. the condition or change in the condition of a client; and

3.1.b. signs and symptoms of deviation from normal health status;

3.2. participate in the development of the strategy of care in consultation with other nursing personnel. Participation in the development of a strategy of care includes:

3.2.a. contributing to the identification of priorities;

3.2.b. contributing to setting realistic and measurable goals; and

3.2.c. contributing to the selection of nursing interventions which include measures to maintain comfort, support human functions and responses, maintain an environment conducive to well-being, and provide health teaching and counseling;

3.3. provide nursing care under the direction of a registered professional nurse by:

3.3.a. caring for clients whose conditions are stabilized or predictable;

3.3.b. assisting with clients whose conditions are critical and/or fluctuating under the direct supervision of the registered professional nurse;

3.3.c. implementing nursing care according to the priority of needs and established practices;

3.3.d. providing an environment conducive to safety and health;

3.3.e. documenting nursing interventions and responses to care; and

3.3.f. communicating nursing interventions and responses to care to appropriate members of the health team.

3.4. Assign components of nursing care to other qualified persons; and

3.5. Contribute to the evaluation of the responses of individuals and groups to nursing interventions by:

3.5.a. monitoring the responses to nursing interventions;

3.5.b. documenting and communicating assessment data to appropriate members of the health care team; and

3.5.c. contributing to the modification of the strategy of care on the basis of the assessment data.

10-3-4. Standards Relating to the Licensed Practical Nurse's Responsibilities as a Member of the Health Care Team.

The Licensed Practical Nurse shall:

4.1. be familiar with the statutes and rules governing nursing;

4.2. clearly display on his or her name tag or other identification badge their licensing credential (LPN);

4.3. function within the legal boundaries of practical nursing practice;

4.4. accept responsibility for individual nursing actions, competencies and behavior;

4.5. function under the direction of a registered professional nurse, licensed physician or licensed dentist;

4.6. consult with the registered professional nurse to seek guidance in delivery of nursing care as necessary;

4.7. obtain instruction and supervision as necessary from the registered professional nurse when implementing nursing techniques or practices;

4.8. retain accountability for the timely and accurate completion of tasks assigned to other qualified persons;

4.9. function as a member of the health team;

4.10. contribute to the formulation, interpretation, implementation and evaluation of the objectives and policies related to practical nursing practice within the employment setting;

4.11. participate in the evaluation of nursing through peer review;

4.12. report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities;

4.13. conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin or handicap;

4.14. respect the dignity and rights of clients regardless of social or economic status, personal attributes or the nature of the health problem;

4.15. respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose the information;

4.16. respect the property of employers, clients and their families; and

4.17. participate in relevant continuing competence activities to maintain current knowledge and skill levels in practical nursing as required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6.

APPENDIX E

TITLE 10

LEGISLATIVE RULE

WEST VIRGINIA STATE BOARD OF EXAMINERS FOR LICENSED PRACTICAL NURSES

SERIES 2

POLICIES REGULATING LICENSURE OF THE
LICENSED PRACTICAL NURSE

§10-2-1. General.

1.1. Scope. -- This legislative rule establishes the Policies Regulating Licensure of the Licensed Practical Nurse.

1.2. Authority. -- W. Va. Code §§30-7A-5; 30-7A-6; 60-7A-10; 30-1-6(b).

1.3. Filing Date. -- April 7, 2014.

1.4. Effective Date. -- May 15, 2014.

§10-2-2. Qualifications for Licensure.

2.1. Any person who wishes to obtain a license to practice practical nursing shall submit to the board satisfactory evidence that he or she:

2.1.a. is of good moral character;

2.1.b. has at least a tenth-grade education or its equivalent;

2.1.c. completed a course of study in an accredited program of practical nursing as defined by the board, in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, 10 CSR 1, or a program approved by a board that licenses Licensed Practical Nurses in another state or US territory, and holds a diploma from the program.

2.1.d. completed any other general education requirements prescribed by the board.

2.2. Any person who served on active duty in the medical corps of any of the Armed Forces of the United States for at least one (1) year within the three (3) year period immediately preceding the date of application, shall submit satisfactory evidence that he or she:

2.2.a. successfully completed the course of instruction required to qualify him or her for rating as a medical specialist advanced, medical service technician, advanced hospital corpsman, medical service specialist, Class "A" hospital corpsman, or other equivalent rating in his or her branch of the armed forces; and

2.2.b. received an "honorable" discharge.

2.3. Any applicant who was educated in a nursing program in a country located outside of the United States or its territories shall meet the following requirements for licensure:

2.3.a. satisfactory completion of a basic nursing education program approved by an accrediting body or other authority whose role it is to approve nursing programs in the country where the program is located.

2.3.a.1. The nursing education program must be equivalent to the minimum standards prevailing for state board approved schools of practical nursing in West Virginia at the time of graduation as evidenced by verification by a board approved credentials review agency; and,

2.3.a.2. The applicant shall successfully complete any deficiencies in the nursing program (theory and clinical practice) in a state board approved school of nursing;

2.3.b. verification of successful passage of an English proficiency exam that includes the components of reading, speaking, writing and listening, except for applicants from countries where English is the native language, and the nursing program where the applicant attended was taught in English and used English textbooks.

2.3.c. If duly licensed in another country, provide official verification, translated into English, from the licensing authorities in that country including licensure status and any disciplinary actions taken.

§10-2-3. Examination for Licensure.

3.1. All applicants shall pass a United States national licensure examination prior to licensure.

3.2. The board shall contract with the National Council of State Boards of Nursing, Inc. for use of the national licensure examination.

3.3. The board shall use the national passing standard established by the National Council of State Boards of Nursing, Inc. as the passing score for the licensure examination.

§10-2-4. Licensure by Examination.

4.1. An applicant for licensure by examination shall obtain an application for examination from the board and return it to the board office with the fee required in, West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the licensure examination.

4.1.a. A graduate of an accredited program of practical nursing shall cause the program of practical nursing from which he or she graduated to send a copy of his or her official transcript directly to the board office.

4.1.b. A veteran shall submit to the board office a photostatic copy of the certificate issued to him or her upon completion of his or her course of instruction and a copy of his or her discharge from the armed forces and shall cause the Personnel Records Division of the Armed Forces to provide copies of training and discharge records directly to the Board office.

4.1.c. A graduate of a program of practical nursing located outside the United States or its territories shall cause a complete transcript, translated into English, to be sent to the Board office directly from the nursing program.

4.2. Each applicant for licensure by examination is subject to a criminal history records check. Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records shall be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the applicant's state of residence, and the United State Federal Bureau of Investigation. An applicant is exempt from this requirement if a criminal history records check was conducted within the 24 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant. An applicant shall report to the board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement in lieu of conviction.

4.3. An applicant who has had a substance use disorder within the past five years shall submit to a substance use disorder evaluation conducted by a board approved practitioner to verify that the applicant is capable of safely practicing nursing prior to issuance of a license.

4.4. An applicant for licensure by examination who is a graduate of an accredited program in practical nursing, may work under the direct supervision of a registered professional nurse, licensed physician, or licensed dentist and render nursing services during the period between graduation and notification of the results of the first licensing examination following graduation upon issuance of a temporary permit from the board. The board shall issue a temporary permit, valid for up to ninety (90) days from the date of graduation, to cover the period of time between graduation and notification of the results of the first licensing examination. A candidate who does not pass the licensure examination on

the first attempt shall return the temporary permit to the board office within three (3) days of receipt of the notice that he or she did not pass the examination. The board may not extend the temporary permit.

§10-2-5. Notification of Examination Results

5.1. The board shall notify, in writing, each applicant who has passed the licensure examination and shall send to the applicant a certificate of original licensure and a license to practice as a licensed practical nurse in West Virginia for the current year.

5.2. The board shall notify, in writing, each applicant who does not pass the licensure examination. The applicant shall not accept employment as a licensed practical nurse, except as provided for in subsection 4.4. of this rule, until he or she passes the licensure examination.

5.3. If the candidate authorizes release of examination results to the program, the board shall notify the program from which the candidate graduated that the candidate either passed or failed the licensure examination.

5.4. An applicant who does not pass the licensure examination for practical nurses and wishes to take the licensure examination for a second time shall notify the board office, in writing. The board fee for the second licensure examination is the same as for the first-time applicant. The board does not charge a fee to take the examination for the third time. The board fee for successive licensure examinations is the same as for the first-time applicant.

§10-2-6. Licensure by Waiver.

6.1. The board shall not issue a license by waiver.

6.2. Any person who obtained a license by waiver prior to June 30, 1968 and completes extension courses equal in theory to that of a graduate of an approved practical nursing program, as determined by the Board, may take the licensure examination prescribed by the Board for graduate practical nurses and obtain a license without the designation "Waiver" on the license.

§10-2-7. Licensure by Endorsement.

7.1. The board shall issue a license by endorsement to any applicant who is duly licensed or registered as a practical nurse, or who is entitled to perform similar services under the same or a different title in any other state, territory or foreign country, if the applicant meets other requirements for licensed practical nurses in this state.

7.2. Each applicant for endorsement is subject to a criminal history records check. Each applicant shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West

Virginia State Police, a similar agency within the applicant's state of residence, and the United States Federal Bureau of Investigation. An applicant is exempt from this requirement if a criminal history records check was conducted within the 12 months preceding the date of application to the board, if the results were unremarkable and are verified by a source acceptable to the board other than the applicant. An applicant shall report to the board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement in lieu of conviction.

7.3. An applicant who has had a substance use disorder within the past five years shall submit to a substance use disorder evaluation conducted by a board approved practitioner to verify that the applicant is capable of safely practicing nursing prior to issuance of a license.

7.4. An applicant who has had disciplinary action taken or initiated against a professional or occupational license, registration or certification shall provide documentation to the board from the authority which has taken or initiated such action. The board shall evaluate this information to determine the individual's ability to practice nursing safely.

7.5. An applicant who is currently participating in an alternative to discipline program in any other jurisdiction shall disclose this participation at the time of application to the board.

7.6. An applicant for endorsement shall complete an endorsement application and submit the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the board, 10 CSR 4. The applicant for endorsement shall have the board of nursing in the state of original licensure send verification of original licensure to the board office. Upon receipt of the application for endorsement, the fee, and verification of current licensure in another state, the board may issue a letter of intent to endorse. The applicant for endorsement may use the letter of intent to endorse, in conjunction with a current license from another state, for employment as a licensed practical nurse in West Virginia for a maximum of six (6) months. The board shall not renew the letter of intent to endorse.

§10-2-8. Endorsement to Another State.

The board shall provide verification of original licensure and verification of current licensure to another state upon receipt of a written request from the licensee, a request from a board of nursing in another state, and payment of the fee required in West Virginia State Board of Examiners for Licensed Practical Nurses, Fees for Services Rendered by the Board, 10 CSR 4. Should the board participate in the licensure verification system as maintained by the National Council of State Boards of Nursing, the licensee shall follow the process of endorsement to another state in accordance with the procedures set in place for that system.

§10-2-9. Annual Renewal of License.

9.1. Each license issued by this board expires on June 30 of each year. In order to continue practicing a licensee shall renew his or her license annually.

9.1.a. The board shall renew the license of each licensee upon receipt of:

9.1.a.1. a completed application for renewal of the license;

9.1.a.2. a statement in each even numbered year from the renewal applicant that he or she meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.1.a.3. the fee for renewal of a license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10CSR4.

9.2. A license for which a renewal application is postmarked after June 30 is lapsed.

9.2.a. The board may reinstate a lapsed license upon receipt of:

9.2.a.1. a completed application for reinstatement of the lapsed license;

9.2.a.2. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10 CSR 6; and

9.2.a.3. the fee for reinstatement of a lapsed license as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4.

9.3. Any person practicing practical nursing without a current license, valid temporary permit or current letter of intent to endorse is considered an illegal practitioner and is subject to the penalties provided for in W. Va. Code §30-7A-10.

9.4 During periods when a licensee is on active duty as a member of the Armed Forces of the United States, the National Guard of this state or any other state, or any other military reserve component and deployed outside of this state, and for six months after discharge from active duty, the license shall continue in good standing and shall be renewed without payment of any dues or fees for the maintenance or renewal of the license and without meeting continuing education requirements for the license when circumstances associated with military duty prevent the individual from obtaining the required continuing education.

9.4.a. The licensee shall submit a waiver request to the board in writing informing the board of circumstances which include, but are not limited to, deployment outside of the United States or in any combat area.

9.4.b. During periods when the licensee is accompanying his or her spouse who is on active duty as a member of the Armed Forces of the United States, the National Guard of this state or any other state or any other military reserve component and deployed outside of this state, and for six months after discharge from active duty, the license of that person shall continue in good standing and shall be renewed without payment of any dues or fees for the maintenance or renewal of the license and without meeting continuing education requirements for the license when circumstances associated with accompanying a spouse on military duty prevent the individual from obtaining the required continuing education.

9.4.c. The licensee shall submit a waiver request to the board in writing informing the board of these circumstances which include, but are not limited to, deployment outside of the United States or in any combat area.

§10-2-10. Non-Practicing Status.

Any person with a current West Virginia license may request non-practicing status. While on non-practicing status, the person may not be employed as a licensed practical nurse and is not subject to the payment of licensing fees. A person requesting non-practicing status is not subject to the continuing competence requirements in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, 10CSR6.

10.1. The board may reinstate a license from non-practicing status upon receipt of:

10.1.a. a completed application for reinstatement of the license from non-practicing status;

10.1.b. verification that the reinstatement applicant meets the continuing competence requirements specified in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Continuing Competence, §10CSR6; and

10.1.c. the fee for reinstatement of a license from non-practicing status as provided in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, §10CSR4.

10.2. An applicant who is currently participating in an alternative to discipline program in any other jurisdiction shall disclose this participation at the time of application to the board.

§10.2.11. Change of Name or Address, Duplicate License.

11.1. A licensee shall notify the board of a change in his or her name or address.

11.2. A licensee may request a duplicate license if he or she changes his or her name or address. The board shall issue the duplicate license providing the current license is returned to the board office with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4. A copy of a marriage certificate, divorce decree, or an order of a court of competent jurisdiction is required for a name change. There is no fee for name and address changes requested at the time a license is renewed or reinstated or if a duplicate license is not requested.

11.3. A licensee may request a duplicate license in the event of loss of the original license. The licensee shall complete an affidavit verifying loss and submit the affidavit to the Board with the current fee required in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Fees for Services Rendered by the Board, 10 CSR 4, prior to the board issuing a duplicate license.

§10-2.12. Disciplinary Proceedings: Grounds for Discipline

12.1. The Board may take disciplinary action in accordance with Chapter 29A of the W. Va. Code, upon satisfactory proof that an applicant for endorsement or examination, or a licensee:

12.1.a. is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing which includes:

12.1.a.1. falsely representing facts on an application for licensure by examination or licensure by endorsement or on an application for renewal or reinstatement of a license; or

12.1.a.2. having another person appear in his or her place or impersonating an applicant for examination, endorsement or renewal or reinstatement of a license;

12.1.b. has been convicted of a felony;

12.1.c. is habitually intemperate or is addicted to the use of habit-forming drugs;

12.1.d. is mentally incompetent;

12.1.e. is guilty of professional misconduct, which includes but is not limited to:

12.1.e.1. impersonated another licensed practitioner, or permitted another person to use his or her license for the purpose of nursing for compensation;

12.1.e.2. provided false or incorrect information to an employer regarding the status of a license;

12.1.e.3. practiced practical nursing in the State of West Virginia without a current West Virginia license, a valid temporary permit, or a letter of intent to endorse, except as provided in W. Va. Code §30-7A-9;

12.1.e.4. failed to report through proper channels the incompetent, unethical, or illegal practice of another person who is providing health care;

12.1.e.5. practiced practical nursing with gross incompetence or gross negligence on a particular occasion, or incompetence or negligence on more than one occasion;

12.1.e.6. practiced practical nursing while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability;

12.1.e.7. was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state or territory where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct under the laws of this state;

12.1.e.8. permitted, aided or abetted an unlicensed, uncertified, or registered person to perform activities requiring a license, certificate or registration;

12.1.e.9. practiced practical nursing while his or her license was suspended;

12.1.e.10. willfully failed to register or notify the Board of any changes of name or mailing address;

12.1.e.11. was convicted of a felony or a misdemeanor with substantial relationship to the practice of practical nursing in a court of competent jurisdiction;

12.1.e.12. failed to follow established policies and procedures in the practice setting to safeguard patient care;

12.1.e.13. abandoned patients by terminating responsibility for nursing care, intervention, or observation without properly notifying appropriate personnel and ensuring the safety of patients;

12.1.e.14. committed an intentional act which could adversely affect the physical or psychological welfare of a patient;

12.1.e.15. physically or verbally abused, or failed to provide adequate protection or safety for an individual in the context of a nurse/patient relationship;

12.1.e.16. used the nurse/patient relationship to exploit or influence a patient including but not limited to exploiting a patient for financial gain or engaging in a sexual or romantic relationship with a patient;

12.1.e.17. refused or failed to report for a physical or mental examination, including but not limited to laboratory or other tests, requested by the board;

12.1.e.18. failed to exercise technical competence in carrying out nursing care;

12.1.e.19. misappropriated medications, supplies, or personal items of a patient or the employer;

12.1.e.20. self-administered, administered to another, knowingly participated in or permitted the administration of, any prescription drug without a legal, valid prescription, or the use or administration of any illegal drug;

12.1.e.21. falsified patient records, intentionally charted incorrectly; or failed to document appropriately to maintain an accurate record for each patient;

12.1.e.22. knowingly falsified an application for employment;

12.1.e.23. failed to conform to standards of nursing practice as defined in West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Legal Standards of Nursing Practice, 10 CSR 3;

12.1.e.24. knowingly provided false information regarding completion of continuing competency requirements for renewal, reinstatement or endorsement of a license;

12.1.e.25. failed to comply with terms and conditions imposed by the board based on previous disciplinary action of the board;

12.1.e.26. impeded or obstructed an investigation by the board by failing to comply or respond to requests for action or information, whether the failure is intentional or merely negligent;

12.1.e.27. violated the confidentiality of information or knowledge concerning a patient; and,

12.1.e.28. engaged in conduct that violates the security of the licensure examination or the integrity of the examination results;

12.1.e.29. other acts, which in the opinion of the board, constitute professional misconduct.

12.1.f. Practiced or attempted to practice without a license or continued violation of any of the provisions of W. Va. Code §30-7A-1 et. seq.

§10-2-13. Complaint procedures

13.1. Any individual may make a complaint to the board concerning a licensee.

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

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

13.3.a. the alleged violation which prompted the complaint;

13.3.b. the name and address of the individual against whom the complaint is lodged;

13.3.c. the date or dates the incident or incidents occurred; and

13.3.d. the name or names of witnesses to the incident.

13.4. All complaints shall be referred to the Executive Secretary, Assistant Executive Secretary or Counsel for the Board, who shall act as a representative for the board.

13.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint.

13.6. The representative shall conduct an investigation to determine the validity of the allegations contained in the complaint.

13.7. The board shall issue subpoenas to gather necessary facts and evidence to determine the validity of the allegations contained in the complaint.

13.8. The board shall provide copies of complaint forms and other available evidence to the licensee against whom a complaint is filed. The licensee shall respond within fourteen (14) days of receipt of the complaint, to the allegations contained in the complaint by making an appointment with the staff representative to meet in person or by preparing a written statement and returning it to the board.

13.9. The representative for the board shall evaluate the complaint, licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation.

13.10. The representative for the board may recommend that a case be dismissed if probable cause for further action is not identified. Cases recommended for dismissal due to lack of probable cause shall be referred to the Disciplinary Review Committee of the board established by the board under West Virginia State Board of Examiners for Licensed Practical Nurses Rule, Open Meetings and Bylaws, 10 CSR 5, for review of the complaint and investigative information. The committee may approve dismissal of the case or direct the staff representative to proceed with further investigation if the committee believes further investigation is necessary.

13.11. The representative for the board may negotiate terms of a consent agreement, set forth in section 14 of this rule, with a licensee, if probable cause for disciplinary action is established.

13.12. The Disciplinary Review Committee shall review the terms of the consent agreement and all investigative information. The committee may approve the consent agreement, request revisions to the Consent Agreement or reject the consent agreement.

13.13. If the Disciplinary Review Committee rejects the consent agreement, the staff representative shall set the case for hearing.

13.14. If the licensee contests the allegations and refuses to enter into a consent agreement the representative shall set the case for hearing. All hearings shall be in accordance with the W. Va. Code, Chapter 29A, Administrative Procedures Act.

13.15. Members of Disciplinary Review Committee shall be disqualified from the formal hearing process if the case has been presented to the committee for consideration prior to the formal hearing.

13.16. A hearing shall be held before a hearing examiner or before members of the board.

13.17. The board shall make a determination on the matter based on the facts, evidence submitted, testimony and recommendations of the hearing examiner.

13.18. The board shall formulate and issue a final order which shall include findings of fact, conclusions of law and the decision of the board on the matter.

13.19. The licensee, his or her attorney of record, if any, and the individual who filed the complaint shall be provided with a copy of the decision and accompanying findings of fact and conclusions of law, whether it is the result of a formal hearing or the execution of a consent agreement.

13.20. The decision of the board is final unless reversed, vacated or modified upon judicial review.

§10-2-14. Investigations

14.1. Upon complaint or on its own initiative, the board or its representative may investigate conduct which is occurring or has occurred which violates West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing.

14.2. For the purpose of conducting investigations:

14.2.a. The executive secretary or chairperson of the board may subpoena documents or witnesses;

14.2.b. The board may depose witnesses, take sworn statements, and collect other evidence;

14.2.c. The board may require a criminal history records check. The licensee under investigation shall furnish to the agency a full set of fingerprints for purposes of conducting a criminal history record check. Records are checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's state of residence, and the United States Federal Bureau of Investigation.

14.2.d. The board may institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of West Virginia Code §30-7A-1 et seq., or rules governing the practice of licensed practical nursing;

14.2.e. The board shall review medical records during the course of its investigation, and shall remove patient identifying information from records which are introduced as evidence at any disciplinary hearing;

14.2.f. The board, or its representatives within the limits of authority granted by the board, may employ investigators, consultants and other employees as necessary to assist in an investigation;

14.2.g. All powers of the board and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings; and

14.2.h. Upon a finding of probable cause that a basis for disciplinary action exists, the board may require a licensed practical nurse to submit to a physical or mental examination by a practitioner approved by the board. Any individual who applies for or accepts the privilege of practicing as a licensed practical nurse in this state is considered to have given consent to submit to all these examinations when requested to do so in writing by the board and to have waived all objections to the

admissibility of the testimony or examination report of any examining practitioner on the grounds that the testimony or report is privileged communication. If an applicant or licensee fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, this failure is prima facie evidence of his or her inability to practice as a licensed practical nurse competently and in accordance with accepted standards of practical nursing practice. A licensed practical nurse or person applying for licensure as a licensed practical nurse who is adversely affected by this provision may request a hearing before the board within thirty days of any action taken by the board.

§10-2-15. Disciplinary Proceedings: Disciplinary Action.

15.1. The board shall afford every person subject to disciplinary proceedings an opportunity for a hearing.

15.1.a. If an applicant for licensure or a licensee fails to appear at a scheduled hearing or fails to reply to the notification of hearing, the charges specified may be taken as true and the board may proceed with disciplinary actions.

15.1.b. The board may impose a single penalty or a combination of penalties upon any person found guilty of any of the grounds for discipline, set forth in section 12 of this rule, in the follow manner:

15.2. For applicants for examination or endorsement:

15.2.a. The board may refuse to admit an applicant for the licensure examination; or

15.2.b. The board may deny licensure by endorsement.

15.3. For licensees:

15.3.a. The board may revoke a license;

15.3.a.1. The board may specify the minimum length of time the revocation shall remain in effect in the final order of revocation. If the board does not specify a minimum length of time for the revocation in the final order of revocation the revocation shall be effective for a minimum of five years;

15.3.a.2. An individual who has had his or her license revoked and who wishes to again become licensed as a licensed practical nurse shall apply as a new applicant for licensure and is subject to the same rules for original licensure as other applicants not previously licensed. The board shall consider all records pertaining to the revocation of the previously held license when considering the applicant for licensure;

15.3.b. The board may suspend a license for a period of not less than thirty (30) days, nor more than five (5) years. The board shall return the license to the licensee after the period of suspension

has expired, provided the licensee meets all conditions set forth by the board at the time of the suspension;

15.3.c. The board may ask a licensee to voluntarily surrender his or her license and provide to the Board a statement concerning reasons for the surrender. The person may petition for reinstatement of the license one (1) year from the date of original surrender. The person shall furnish proof at the time that the licensee requests reinstatement that the conditions leading to the voluntary surrender no longer exist.

15.3.d. The board may permit a licensee to keep his or her license under a restricted license and to work within specified guidelines. The board shall note specific restrictions regarding practice on the license;

15.3.e. The board may permit a licensee to keep his or her license and continue to work. However, the licensee shall adhere to specific probationary conditions and the board shall closely monitor the licensee during the probationary period;

15.3.f. The board may issue a reprimand in writing and retain a copy in the file of the licensee;

15.3.g. The board may negotiate a settlement with the licensee, in the form of a consent agreement, for any charges pending against a licensee. The licensee, in accepting a consent agreement waives his or her right to a formal hearing on the charges, and accepts the terms and conditions set forth in the consent agreement. Any single penalty or a combination of penalties provided in this section may be imposed through consent between the board and the licensee;

15.3.h. The board may assess fees for monitoring a licensee's compliance with terms and conditions set forth in a consent agreement or order of the board. Monitoring fees may be payable on a quarterly basis or may be assessed as a part of the annual renewal fee. A licensee who fails to pay monitoring fees levied by the board as a part of a disciplinary proceeding, within the time period contained in this rule or as otherwise agreed upon between the parties, is not eligible for renewal of the license until the fee is paid;

15.3.i. The board may order a summary suspension if the board finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect in its order, it may suspend a license, prohibiting the further practice of practical nursing, pending a hearing for revocation or other action. The board shall promptly institute and determine further disciplinary action; or

15.3.j. The board shall order a suspension without hearing when a prior hearing or plea agreement has occurred in another state or federal agency, or in a court of law. The board shall order suspension upon receipt of documentation from a court or agency, state or federal, that a person licensed by the board has had his or her license to practice as a licensed practical nurse revoked or suspended in another jurisdiction and has not had his or her license reinstated within that jurisdiction, or has been

convicted, or entered a plea of guilty or nolo contendere to a felony or has been adjudged legally incompetent. The board shall notify the licensee or his or her legal guardian, trustee, committee or other representative of the suspension in writing to his or her address on record with the board. The notice shall include a copy of the order of the court or agency, certified by the Executive Secretary as the order received from the court or agency. The licensee shall not practice within this state until his or her license is reinstated by the board. A licensee whose license has been suspended as provided in this section may apply to the board for reinstatement of his or her license. The licensee is entitled to a hearing. The hearing shall be promptly instituted and determined.

APPENDIX F

**TITLE 64
LEGISLATIVE RULE DEPARTMENT OF
HEALTH AND HUMAN**

**SERIES 60
MEDICATION ADMINISTRATION AND PERFORMANCE OF HEALTH
MAINTENANCE TASKS BY APPROVED MEDICATION ASSISTIVE PERSONNEL**

§ 64-60-1. General.

1.1. Scope. This legislative rule prescribes specific standards and procedures to provide for training, competency testing, and the certification of approved medication assistive personnel for the limited administration of medications and performance of health maintenance tasks in specified health care facilities. This rule must be read in conjunction with W.Va. Code§ 16-5O-1 et. seq.

1.2. Authority. W.Va. Code§§ 16-5O-11 and 16-1-7.

1.3. Filing Date. April 1, 2015

1.4. Effective Date. June 29, 2015

1.5. Enforcement. This rule is enforced by the secretary of the West Virginia Department of Health and Human Resources or his or her lawful designee.

§ 64-60-2. Definitions.

2.1. Administration of medications.

2.1.a. Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs, or using universal precautions for rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or health care professional authorized to prescribe medication and consistent with his or her scope of practice, or as written on the prescription label; and

2.1.b. Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken. "Administration" does not include:

2.1.b.1. Judgment, evaluation, assessments;

2.1.b.2. Injections of medication or any parenteral medications, except prefilled insulin injections and insulin pens pursuant to W.Va. Code §§ 16-50-10.a. and 16-50-1 et seq.;

2.1.b.3. Monitoring of medication; or

2.1.b.4. Self-administration of medications, including prescription drugs and self-injection of medication by the resident.

2.2. Approved medication assistive personnel (AMAP). The unlicensed facility staff member, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the authorized registered professional nurse to administer medications or perform health maintenance tasks, or both, to residents of the facility in accordance with W.Va. Code § 16-50-1 et seq.

2.3. Assisted living residence. Any living facility or place of accommodation in the state, however named, available for four or more residents, that is advertised, offered, maintained or operated by the ownership or management, for the express or implied purpose of providing personal assistance, supervision, or both to any residents who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care.

2.4. Authorized registered professional nurse. A person who holds an unencumbered license pursuant to W. Va. Code § 30-7-1 et seq., and meets the requirements to train and supervise approved medication assistive personnel pursuant to this rule and W. Va. Code § 16-50-1 et seq., and has completed the facility trainer/instructor course developed by the authorizing agency. The curriculum can be accessed at <http://www.ohflac.wv.gov>.

2.5. Authorizing agency. The department's Office of Health Facility Licensure and Certification.

2.6. Behavioral health group home. A community-based type of housing that: is established for adults/children with similar needs, levels of independence and ability which provides services and supervision for people with developmental disabilities, behavioral disorders or substance addictions; is licensed by the department; and is in compliance with the state fire commission for residential facilities.

2.7. Department. The Department of Health and Human Resources.

2.8. Delegation. Transferring to a competent individual, as determined by the registered professional nurse, the authority to perform a selected task in a selected situation.

2.9. Delegation decision model. Describes the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. The delegation decision model currently approved by the West Virginia Board of Examiners for Registered Professional Nurses is a part of the "Criteria for Determining Scope of Practice for Licensed Nurses and Guidelines for Determining Acts that May be Delegated or Assigned by Licensed Nurses." The delegation decision model describes the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. It is the Registered Professional Nurse who makes the determination regarding competency of the approved medication assistive personnel to whom he or she is delegating a task.

2.10. Facility. An intermediate care facility for individuals with intellectual disabilities, assisted living residences, behavioral health group home, or private residence in which health care services or health maintenance tasks, or both, are provided under the supervision of a registered professional nurse.

2.11. Facility staff member. An individual employed by a facility, but does not include a health care professional acting within the scope of a professional license or certificate.

2.12. Family. Biological parents, adoptive parents, foster parents, or other immediate family members living within the same household.

2.13. Health care professional. A medical doctor or doctor of osteopathic medicine, a podiatrist, registered professional nurse, licensed practical nurse, advanced practice

registered nurse, physician's assistant, dentist, optometrist, pharmacist, physical therapist or respiratory care professional licensed under chapter thirty of the W. Va. Code.

2.14. Health maintenance tasks.

2.14.a. Performing the following tasks according to the legibly written or printed directions of a physician under the provisions of W. Va. Code §§ 30-3-1 et seq. or 30-14-1 et seq. or health care professional authorized to prescribe medication and consistent with his or her scope of practice, or as written on the prescription label and consistent with the delegation decision model and the training curriculum developed by the authorizing agency according to the provisions of this rule, and making a record of that assistance with regard to each health maintenance tasks administered, including but not limited to, the time, route, and amount taken:

2.14.a.1. Administering glucometer tests;

2.14.a.2. Administering gastrostomy tube feedings;

2.14.a.3. Administering enemas;

2.14.a.4. Performing ostomy care which includes skin care and changing appliances;

2.14.a.5. Administering prefilled insulin or insulin pens;

2.14.a.6. Performing tracheostomy care for residents in a private residence who are living with family or natural supports, or both; and

2.14.a.7. Performing ventilator care for residents in a private residence who are living with family or natural supports, or both.

2.14.b. Health maintenance tasks do not include:

2.14.b.1. Judgment, evaluation, assessments;

2.14.b.2. Injections of medication or any parenteral medications, except prefilled insulin injections and insulin pens pursuant to W. Va. Code §§ 16-50-10-a and 16-50-1 et seq.

2.14.b.3. Monitoring of medication; or

2.14.b.4. Self-administration of medications, including prescription drugs and self-injection of medication by the resident.

2.15. ICF/IID. An intermediate care facility for individuals with intellectual disabilities which is certified by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to provide health or rehabilitation services to persons with intellectual disabilities or persons with related conditions who are receiving active treatment.

2.16. Immediate family. A mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child, grandparent, or grandchild.

2.17. Medication. A drug, as defined in W. Va. Code § 60A-1-101 et seq., which has been prescribed by a health care professional authorized to prescribe and consistent with his or her scope of practice, to be ingested through the mouth; inhaled through the nose or mouth; administered through a gastrostomy tube; administered through pre-filled insulin or insulin pen; applied to the outer skin, eye or ear; or applied through nose drops, vaginal or rectal suppositories.

2.18. Medication error. Any deviation from the "six rights of medication administration," that occurs during medication administration process required by the provisions of this rule. A resident refusal is not considered a medication error.

2.19. Natural supports. Family, friends, neighbors, or anyone who provides assistance and support to a resident but is not reimbursed.

2.20. Prefilled insulin or insulin pen. A self-contained cartridge that is not drawn up from a bottle.

2.21. Primary health care professional. A medical doctor or doctor of osteopathic medicine, advanced practice registered nurse, and physician's assistant licensed under chapter thirty of the W. Va. Code.

2.22. Registered professional nurse. A person who holds a valid license pursuant to W. Va. Code §30-7-1et seq.

2.23. Resident. A resident of a facility who for purposes of this rule, is in a stable condition.

2.24. Secretary. The secretary of the Department of Health and Human Resources or his or her designee.

2.25. Self-administration of medication. The act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, or an authorized health care professional authorized to prescribe and consistent with his or her scope of practice, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs at the correct time and under the correct circumstances.

2.26. Self-administration of medication with assistance. Assisting residents who are otherwise able to self-administer their own medication except their physical disability prevents them from completing one or more steps in the process.

2.27. Single specific agency. A person or entity operating two or more facilities.

2.28. Six rights of medication administration. The criteria used to assure that each resident receives the specific medication, prescribed for the person, in the ordered amount, at the scheduled time, by the designated route, both as prescribed and prepared, which is accurately recorded in the resident's record. The six rights of medication administration are: the right resident, the right drug, the right *dosage*, the right time, the right route, and the right record and documentation. The six rights of medication administration is defined in the curriculum, and can be accessed at <http://www.ohflac.wv.gov>.

2.29. Stable. The individual's health condition is predictable and consistent as determined by the authorized registered professional nurse.

2.30. Supervision of self-administration of medications. A personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

§ 64-60-3. Facility Administrative Procedures.

3.1. Any facility may offer the training and competency evaluation program developed by the department to authorize approved medication assistive personnel. The training and competency program shall be provided by the facility through an authorized registered professional nurse.

3.1.a. Prior to initiating a training program, the facility shall submit to the authorizing agency written notification of the intent to participate in this program, documentation of the credentials of the authorized registered professional nurse who will provide the training, and the facility policies and procedures required by the provisions of this rule.

3.1.b. Participation in the program shall only be permitted after review and approval of the registered professional nurse's credentials and the facility policies and procedures by the authorizing agency, and after the authorized registered professional nurse has completed the facility trainer and instructor orientation course developed by the authorizing agency.

3.1.c. Approved medication assistive personnel who have successfully trained and tested in one facility shall, prior to being approved to administer medications or health maintenance tasks, or both, in another facility, be re-evaluated for competency by the authorized registered professional nurse. This re-evaluation of competency shall be determined by using the tasks in the curriculum adopted in policy by the authorizing agency. The curriculum can be accessed at <http://ohflac.wv.gov>.

3.2. The authorizing agency may contract with an entity to provide facility trainer/instructor orientation training for the authorized registered professional nurse and to test the competency of prospective approved medication assistive personnel. The facility utilizing services shall pay any fees for training and testing.

§ 64-60-4. Administration of Medications and Performance of Health Maintenance Tasks in Facilities.

4.1. Before delegating the performance of medication administration or health maintenance tasks, or both, the authorized registered professional nurse must decide whether the task is appropriate to delegate based on the criteria set forth by the "Delegation Decision Model."

4.2. Administration of medication or the performance of health maintenance tasks, or both pursuant to this rule shall only be performed by:

4.2.a. licensed health care professionals subject to the provisions of their respective licensing law; and

4.2.b. Approved medication assistive personnel who have been trained and retrained every two years and who are subject to the supervision of and approval by the authorized registered professional nurse.

4.3. After having assessed the health status of an individual resident, the authorized registered professional nurse, in collaboration with the resident's primary health care professional and the approved medication assistive personnel, may recommend that the administration of medications or performance of health maintenance tasks, or both, be provided by an approved medication assistive personnel.

4.4. Authorization to administer medications or health maintenance tasks, or both, may only be granted and continued if the approved medication assistive personnel:

4.4.a. Has successfully completed the approved medication administration or health maintenance tasks, or both, training programs and received a satisfactory competency evaluation as required by the provisions of this rule;

4.4.b. Is considered by the authorized registered professional nurse to be competent, including satisfactory completion of the training program and competency evaluation and possession of the ability to perform the required tasks to administer medications or health maintenance tasks, or both;

4.4.c. Consults with the authorized registered professional nurse on a regular basis;

4.4.d. Is monitored or supervised by the authorized registered professional nurse as required by the provisions of this rule; and

4.4.e. Participates in the required retraining program at least every two years.

4.5. Any facility which uses approved medication assistive personnel to administer medications or health maintenance tasks, or both, pursuant to the provisions of this rule

shall make available to the authorizing agency a list of the approved medication assistive personnel upon request, but no less than annually.

4.6. Any agency or facility employing a health care provider licensed pursuant to chapter thirty of the W. Va. Code for the purposes of supervising the administration of medication or the performance of health maintenance tasks, or both, shall maintain liability insurance for the licensed care provider and any approved medication assistive personnel who have been trained and are employed to administer medication or perform health maintenance, or both, pursuant to W. Va. Code § 16-50-1 et seq. and this rule.

4.7. The authorized registered professional nurse shall initiate and keep current a file for all approved medication assistive personnel which contains proof of compliance with eligibility requirements as required by the provisions of this rule. This file shall be maintained in the facility and available to representatives of the authorizing agency on request.

4.8. Exclusions from this rule for administration of medications in facilities.

4.8.a. Nothing in this rule may be construed to prohibit any facility staff member from administering medications or performing health maintenance tasks, or both, or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

4.8.b. Supervision of self-administration of medication by facility staff members who are not licensed health care professionals may be permitted in certain circumstances when the substantial purpose of the setting is other than the provision of health care.

4.8.c. Any parent or guardian may administer medication to, or perform health maintenance tasks, or both, for his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.

4.9. The location of medication administration or location where health maintenance tasks are performed is not limited to the facility. Medication administration or health maintenance tasks, or both, must be administered or performed in a manner that protects the facility resident's personal privacy and dignity.

§ 64-60-5. Instruction and Training.

5.1. Curriculum.

5.1.a. The authorizing agency will develop the training curricula in accordance with W. Va. Code §§ 16-50-5 and 16-50-1et seq.

5.1.b. The curriculum adopted in policy by the authorizing agency utilized to train prospective approved medication assistive personnel shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Approved Medication Assistive Personnel. The curriculum may be obtained from the authorizing agency, and the curriculum can be accessed at <http://www.ohflac.wv.gov>.

5.2. Competency evaluation.

5.2.a. The authorizing agency will develop the competency evaluation in accordance with W. Va. Code §§ 16-50-5 and 16-50-1et seq.

5.2.b. The administration of the competency test to the prospective approved medication assistive personnel shall be by the authorized registered professional nurse. The authorized registered professional nurse shall handle competency tests in accordance with the instructions of the authorizing agency.

5.2.c. Competency evaluation includes the prospective approved medication assistive personnel and his or her:

5.2.c.1. Satisfactory completion and demonstration of all tasks in the curriculum; and

5.2.c.2 Satisfactory completion of a competency test approved by the authorizing agency.

5.2.d. The prospective approved medication assistive personnel shall be allowed two opportunities to satisfactorily complete a competency test, utilizing a different test for each opportunity. A third and final competency test may only be given if the prospective approved medication assistive personnel repeats the training program. The decision to repeat the training course will be at the discretion of the authorized registered professional nurse.

5.3 Retraining Program

5.3.a. Retraining of the approved medication administration personnel shall be conducted every two years by the authorized registered professional nurse.

5.3.b. The retraining shall include the curriculum and documentation of the required AMAP observation by the authorized registered professional nurse of medication administration or performance of health maintenance tasks or both.

5.4. Requirements of the authorized registered professional nurse.

5.4.a. The authorized registered professional nurse shall train approved medication assistive personnel to administer medications or perform health maintenance tasks, or both and shall:

5.4.a.1. Possess a current valid and unencumbered West Virginia license in good standing to practice as a registered professional nurse;

5.4.a.2. Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications and health maintenance tasks for the immediate two years prior to being authorized to train approved medication assistive personnel;

5.4.a.2.a As used in this section, "immediate two years" means the two years prior, disregarding short absences, including, but not limited to, vacation or illness.

5.4.a.3. Be familiar with the nursing care needs of the residents of the facility;

5.4.a.4. Have completed the facility trainer and instructor orientation course developed by the authorizing agency;

5.4.a.5. Have knowledge of all facility policies and procedures pertaining to medication administration and health maintenance tasks;

5.4.a.6. Have knowledge of the provisions in this rule; and

5.4.a.7. Have competencies for health maintenance tasks reassessed and documented annually by the employer of record to ensure continued competency.

§ 64-60-6. Eligibility Requirements for Approved Medication Assistive Personnel to be Trained.

6.1. A facility may permit a facility staff member to be trained as an approved medication assistive personnel to administer medications or health maintenance tasks, or both, in a single specific agency only after compliance with all of the following:

6.1.a. The facility determines there is no statement on the state administered nurse aide registry indicating that the facility staff member has been the subject of a finding of abuse or neglect of a long-term care facility resident or convicted of the misappropriation of such a resident's property;

6.1.b. The facility staff member has had a criminal background check or if applicable, a check of the state police abuse registry, establishing that the individual has not been convicted of any crimes against persons or drug related crimes;

6.1.c. The facility staff member holds a high school diploma or a general education diploma;

6.1.d. The facility staff member has successfully completed the training curriculum and passed the competency evaluation developed by the authorizing agency;

6.1.e. The approved medication assistive personnel is currently certified in cardiopulmonary resuscitation and first aid;

6.1.f. The approved medication assistive personnel participates in a retraining program every two years; and

6.1.g. The approved medication assistive personnel must have competencies for health maintenance tasks reassessed and documented annually by the authorized registered professional nurse and maintained by the employer of record to ensure continued competency.

§ 64-60-7. Facility Oversight of Medication Administration and Health Maintenance Tasks by Approved Medication Assistive Personnel.

7.1. Administrative policy requirements.

7.1.a. The facility or single specific agency must submit policies and procedures pertaining to medication administration and health maintenance tasks to the authorizing agency for approval, prior to receiving authorization to train facility staff members as approved medication assistive personnel.

7.1.b. An authorized registered professional nurse shall participate in development and revision of these policies and procedures.

7.1.c. The policies and procedures shall include at least the following:

7.1.c.1. Eligibility requirements for the authorized registered professional nurse and approved medication assistive personnel participating in medication administration or health maintenance tasks, or both;

7.1.c.2. Limitations on the functions of the approved medication assistive personnel;

7.1.c.3. Requirements for documentation in personnel records;

7.1.c.4. Requirements for documentation in resident medical records, shall include at least the following:

7.1.c.4.A. Each facility shall maintain a medication or a treatment administration record, or both, for each resident, to be maintained as a part of the permanent medical record. This record shall be available for review by the authorized registered professional nurse, representatives of the authorizing agency, and other authorized persons. This record shall include:

7.1.c.4.A.1. The name of the resident to receive the medication or health maintenance task, or both;

7.1.c.4.A.2. The name of the medication or health maintenance task, or both the dosage to be administered and the route of administration;

7.1.c.4.A.3. The time or intervals at which the

medication or health maintenance task, or both, is to be administered or performed;

7.1.c.4.A.4. The date the medication or health maintenance task, or both, is to begin and cease.

7.1.c.4.A.5. The printed name, the initials and the signature of the individual who administered the medication or performed health maintenance task, or both; and

7.1.c.4.A.6. Any special instructions for handling or administering the medication or performing health maintenance task, or both, including instructions for maintaining aseptic conditions and appropriate storage.

7.1.c.4.B. Written, signed and dated orders by the physician or authorized health care professional shall be present in the medical record of each resident, for each medication to be administered, including over-the-counter medications. Verbal orders may only be taken by the authorized registered professional nurse and must be countersigned by the physician or authorized health care professional within the designated timeframe not to exceed 14 days.

7.1.c.4.C. Written, signed and dated by the physician or authorized health care professional orders shall be present in the medical record of each resident, for each authorized health maintenance task to be performed. Verbal orders may only be taken by the authorized registered professional nurse and must be countersigned by the physician or authorized health care professional within the designated timeframe not to exceed 14 days.

7.1.c.4.D. Written, signed and dated verification of physician or authorized health care professional collaboration in the decision to allow medication administration or health maintenance tasks, or both, by approved medication assistive personnel shall be present in the medical record of each resident.

7.1.c.5. Requirements for the monitoring and supervision of the approved medication assistive personnel by the authorized registered professional nurse employed or contracted by the facility shall include at least the following:

7.1.c.5.A. The authorized registered professional nurse coverage to respond to questions related to any aspect of medication administration or health maintenance tasks, or both by approved medication assistive personnel;

7.1.c.5.B. The number of approved medication assistive personnel, residents, and sites the authorized registered professional nurse will supervise;

7.1.c.5.C. The number of residents and sites for which the approved medication assistive personnel will administer medications or health maintenance tasks, or both;

7.1.c.5.D. The furthest distance the authorized registered professional nurse will be expected to travel to a site and between sites;

7.1.c.5.E. Periodic and ongoing observation and supervision, not less frequently than quarterly, of the medication administration or health maintenance tasks, or both;

7.1.c.5.F. The training and approval process for an approved medication assistive personnel to administer medications or health maintenance tasks, or both, at different sites within a specific agency;

7.1.c.5.G. Ongoing review of the physician=s or authorized health care professional=s orders, medication administration records, and medication labels by the authorized registered professional nurse for consistency and documentation of such; ongoing review of medication error reports and medication related incident reports by the authorized registered professional nurse and the primary health care professional; and

7.1.c.5.H. The withdrawal of approval for an approved medication assistive personnel to administer medication or perform health maintenance tasks, or both, including the reasons for the withdrawal of approval.

7.1.c.6. Requirements for communication and monitoring between the approved medication assistive personnel and the authorized registered professional nurse in situations where a condition arises which may create a risk to the resident=s health and safety, shall include at least the following:

7.1.c.6.A. Any change in a resident's condition;

7.1.c.6.B. Any discrepancy between the pharmacy label and the medication administration record;

7.1.c.6.C. Any deviation from the six rights of medication administration;

7.1.c.6.D. Any doubt or question about the medication administration or health maintenance tasks processes;

7.1.c.6.E. Resident refusal of medication or health maintenance tasks, or both;

7.1.c.6.F. Any question about a medication or health maintenance task, or both ordered to be given "as needed";

7.1.c.6.G. Any question about a medication or health maintenance task, or both looking different or unusual;

7.1.c.6.H. Receipt of any change in the physician=s or authorized health care professional=s orders, and the need for disposal of medications; and

7.1.c.6.I. The type and frequency of monitoring and the training requirements for management of these occurrences shall be determined through the nurse delegation decision model.

7.1.c.7. The medication delivery system to be utilized by the facility shall include at least the following: the type of medication packaging required; medication storage; how the six rights of medication administration are assured; disposal of medications; and special procedures for controlled substances;

7.1.c.8. Infection control, including: universal precautions, use of personal protective equipment, and medical aseptic practices;

7.1.c.9. The process for resident identification; and

7.1.c.10. The process to prevent drug diversion.

7.1.d. Each facility shall have available the most, current published resource information on all drugs being administered by the facility, including the risks and possible side effects.

7.1.e. The authorizing agency shall require alterations to facility policy if the determination is made that medication administration or health maintenance task, or both, is not being administered in accordance with the nurse delegation decision model or if potentially unsafe conditions exist.

7.1.f. Failure by the facility to provide oversight of medication administration or health maintenance tasks, or both, as required by this rule or by facility policies may result in penalties, including the denial of participation in this program.

7.1.g. Have competencies for health maintenance tasks reassessed and documented annually by the employer of record to ensure continued competency for the authorized registered professional nurse and approved medication assistive personnel.

§ 64-60-8. Withdrawal of Authorization.

8.1. The authorized registered professional nurse may withdraw the authorization for the approved medication assistive personnel if the registered professional nurse determines that the approved medication assistive personnel is not performing in accordance with the training and written instructions.

8.2. The withdrawal of authorization and the reasons for the withdrawal, with any corresponding evidence, shall be documented and shall be relayed to the facility and the authorizing agency in order to remove the approved medication assistive personnel from the list of authorized individuals.

§ 64-60-9. Limitations on Medication Administration and Health Maintenance Tasks Approved Medication Assistive Personnel.

9.1. The medication to be administered shall be received and maintained in the original container in which it was dispensed by a pharmacist or the physician until such time as it is administered to the resident.

9.2. No injections nor any parenteral medications shall be administered, except that prefilled insulin or insulin pens may be administered.

9.3. No irrigations nor debriding agents used in the treatment of a skin condition or minor abrasions shall be administered.

9.4. No verbal medication orders shall be accepted, no new medication orders or health maintenance task orders, or both, shall be transcribed, and no drug dosages shall be converted or calculated.

9.5. Medications ordered by the physician or a health care professional with legal prescriptive authority to be given as needed shall be administered only if the order is written with specific parameters which preclude independent judgment.

9.6. Delegation of tracheostomy care and ventilator care is not permitted in an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, or private residence where the resident is not residing with family and/or natural supports.

§ 64-60-10. Administrative Due Process.

10.1. Those persons adversely affected by the enforcement of this rule may submit a written request for a desk review to determine whether the privileges were appropriately withdrawn in a manner prescribed by the policy developed by the authorizing agency.

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