WEST VIRGINIA CODE: §30-28-16

§30-28-16. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall, upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated any provision of this subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license of, impose probationary conditions upon or take disciplinary action against, any licensee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

(4) A violation of a lawful order or legislative rule of the board;

(5) Providing substandard care as an Occupation Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to a patient is established;

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(6) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising Occupational Therapist regardless of whether actual injury to a patient is established;

(7) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;

(8) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this article and legislative rules of the board;

(9) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the therapist's own physical or mental impairment;

(10) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked or suspended by the proper authorities of another jurisdiction;

(11) Engaging in sexual misconduct. For the purposes of this subdivision, sexual misconduct includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person; or

(B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;

(12) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this state and who directly or indirectly performs activities requiring a license;

(13) Abandoning or neglecting a patient or client under and in need of immediate professional care without making reasonable arrangements for the continuation of care; or

(14) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;

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(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other disciplinary action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

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