

COMMITTEE SUBSTITUTE

FOR

H. B. 2531

(BY DELEGATE(S) MORGAN, STEPHENS, PAXTON,
HARTMAN, FERNS, HOWELL, FOLK, SMITH, R., FAIRCLOTH,
ARVON AND NELSON, J.)

(Originating in the Committee on Government Organization.)

(March 26, 2013)

A BILL to amend and reenact §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20, §30-32-21 and §30-32-23 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto two new sections, designated §30-32-22 and §30-32-24, all relating to the Board of Examiners of Speech-language Pathology and

Audiology; setting forth unlawful acts; providing exemptions; specifying applicability of other law; providing definitions; continuing the Board of Examiners for Speech-Language Pathology and Audiology; specifying qualifications of board members; providing terms and conditions of board members' service; providing for election of board officers; providing for compensation and expense reimbursement of board members; setting forth powers and duties of the board; providing rule-making authority; continuing the board of Examiners for Speech-Language Pathology and Audiology Fund; providing qualifications for practicing speech-language pathology or audiology; providing for provisional licenses to practice while attaining required postgraduate professional experience; providing for waiver of requirements for persons who hold a license from another state with substantially equivalent standards; providing for practice pending disposition of application; providing scopes of practice for speech-language pathology and audiology; requiring speech-language pathology assistants and audiology assistants to register with the board; providing registration and supervision requirements for speech-language pathology assistants and

audiology assistants; authorizing telepractice; providing conditions and requirements for telepractice; providing for renewal of licenses and registrations; providing for renewal of lapsed licenses and registrations; providing for the suspension, revocation and refusal to renew licenses and registrations; providing for the reinstatement of revoked licenses and registrations; authorizing actions to enjoin violations; providing for the investigation of complaints; setting forth complaint procedures and hearing procedures; establishing grounds for disciplinary actions; providing for rights of appeal and judicial review; providing that a single act is sufficient to justify disciplinary action; providing for criminal proceedings; providing for criminal penalties; and requiring the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for Speech-Language Pathologists, Audiologists and Assistants to practice in public schools.

Be it enacted by the Legislature of West Virginia:

That §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18,

§30-32-19, §30-32-20, §30-32-21 and §30-32-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto two new sections, designated §30-32-22 and §30-32-24, all to read as follows:

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice speech-language pathology or audiology in this state, or
3 advertise or use any title or description tending to convey the
4 impression that the person is a speech-language pathologist or
5 audiologist unless the person has been licensed under the
6 provisions of this article, and the license has not expired, been
7 suspended or revoked.

8 (b) No business entity, except through a licensee, may render
9 any service or engage in any activity which if rendered or
10 engaged in by an individual, would constitute the practices
11 licensed under the provisions of this article.

§30-32-2. Exemptions.

1 Nothing in this article prevents or restricts:
2 (1) Any person licensed or registered under any other law of

3 this state from practicing the profession and performing services
4 for which he or she is licensed or registered;

5 (2) A licensed physician or surgeon while engaging in the
6 profession for which he or she is licensed;

7 (3) A trained individual providing hearing testing or balance
8 system assessment under the direct supervision of a licensed
9 physician or surgeon;

10 (4) A person credentialed by this state as a teacher of the
11 deaf;

12 (5) The activities and services of persons pursuing a course
13 of study leading to a degree in speech-language pathology or
14 audiology at a college or university, if:

15 (A) These activities and services constitute a part of a
16 planned course of study at that institution;

17 (B) They are designated by a title such as intern, trainee,
18 student or other title clearly indicating the status appropriate to
19 their level of education; and

20 (C) They work under the supervision of a person licensed by
21 this state to practice speech-language pathology or audiology;

22 (6) The activities of persons who are nonresidents of this
23 state from engaging in the practice of speech-language pathology

24 or audiology if the activities of the persons do not exceed five
25 days in any calendar year and they:

26 (A) Meet the qualifications of this article;

27 (B) Register with the board in accordance with procedures
28 specified by the board; and

29 (C) Abide by the standards of professional conduct;

30 (7) The practice of a licensed hearing aid dealer engaged
31 solely in the practice of dealing in or fitting of hearing aids; or

32 (8) The activity of an occupational hearing conservationist
33 engaged in hearing testing as part of a hearing conservation
34 program in compliance with regulations of the Occupational
35 Safety and Health Administration.

§30-32-3. General provisions.

1 The practices licensed under the provisions of this article
2 and the West Virginia Board of Examiners for Speech-Language
3 Pathology and Audiology are subject to the provisions of article
4 one of this chapter, the provisions of this article and any rules
5 promulgated hereunder.

§30-32-4. Definitions.

1 The following terms have the following meanings:

2 (1) “Applicant” means a person applying for a license
3 required by this article.

4 (2) “Assistant” means a registered speech-language
5 pathology assistant or a registered audiology assistant.

6 (3) “Audiologist” means a person who engages in the
7 practice of audiology and is licensed pursuant to the provisions
8 of this article.

9 (4) “Audiology” means the application of principles,
10 methods, and procedures related to hearing and the disorders of
11 hearing and to related language and speech disorders.

12 (5) “Audiology assistant” means a person registered with the
13 board who practices under the supervision of a licensed
14 audiologist.

15 (6) “Audiology disorders” means any and all conditions,
16 whether of organic or nonorganic origin, peripheral or central,
17 that impede the normal process of human communication
18 including, but not limited to, disorders of auditory sensitivity,
19 acuity, function or processing.

20 (7) “Board” means the West Virginia Board of
21 Speech-Language Pathology and Audiology.

22 (8) “Business entity” means any firm, partnership,
23 association, company, corporation, limited partnership, limited
24 liability company or other entity.

25 (9) “Direct supervision” means the actual physical presence
26 of a supervising licensed speech-language pathologist or
27 supervising licensed audiologist in the room where treatment is
28 provided by an assistant.

29 (10) “General supervision” means initial direction and
30 periodic inspection of the activities of an assistant by the
31 supervising licensed speech-language pathologist or supervising
32 licensed audiologist, who is physically present in the building
33 where treatment is provided and is quickly and easily available.

34 (11) “Initial supervision training” means training required of
35 supervising licensed speech-language pathologists and
36 supervising licensed audiologists before providing supervision
37 of assistants.

38 (12) “Instruction” means:

39 (A) Providing speech-language pathology or audiology
40 services in infant/toddler, preschool, elementary or secondary
41 school programs; or

42 (B) Teaching students in institutions of higher education.

43 (13) “License” means a license issued pursuant to the
44 provisions of this article.

45 (14) “Licensee” means a person who is licensed pursuant to
46 the provisions of this article.

47 (15) “Provisional license” means a license issued pursuant
48 to the provisions of this article.

49 (16) “Registrant” means an assistant who is registered
50 pursuant to the provisions of this article.

51 (17) “Registration” means a registration issued pursuant to
52 the provisions of this article.

53 (18) “Speech-language pathologist” means any person who
54 engages in the practice of speech-language pathology and who
55 is licensed pursuant to the provisions of this article.

56 (19) “Speech-language pathology” means the application of
57 principles, methods and procedures related to the development,
58 disorders and effectiveness of human communication and related
59 functions.

60 (20) “Speech-language pathology assistant” means a person
61 registered with the board who practices under the supervision of
62 a licensed speech-language pathologist.

63 (21) “Speech-language pathology disorders” means
64 conditions, whether of organic or nonorganic origin, that impede
65 the normal process of human communication including, but not
66 limited to, disorders and related disorders of speech, articulation,
67 fluency, voice, verbal and written language, Auditory
68 comprehension, cognition/communication, and oral, pharyngeal
69 and/or laryngeal sensorimotor competencies.

70 (22) “Telepractice” means the application of
71 telecommunication technology to deliver speech-language
72 pathology or audiology services through real time interaction
73 from one site to another for assessment, intervention or
74 consultation in a manner sufficient to ensure patient
75 confidentiality.

§30-32-5. Board of Examiners for Speech-language Pathology and
Audiology.

1 (a) The West Virginia Board of Examiners for
2 Speech-Language Pathology and Audiology is continued. The
3 members of the board in office on July 1, 2013 may, unless
4 sooner removed, continue to serve until their respective terms
5 expire or until their successors have been appointed and
6 qualified.

7 (b) The board consists of the following members appointed
8 by the Governor by and with the advice and consent of the
9 Senate:

10 (1) Two persons who are licensed speech-language
11 pathologists;

12 (2) Two persons who are licensed audiologists; and

13 (3) One citizen member who is not licensed or registered
14 under this article.

15 (c) The terms are for three years. No member may serve for
16 more than two consecutive terms.

17 (d) Each licensed member of the board, at the time of his or
18 her appointment, must have held a license in this state for at least
19 three years.

20 (e) Each member of the board must be a resident of this state
21 during the appointment term.

22 (f) No board member may serve as an officer of the West
23 Virginia Speech Language and Hearing Association concurrently
24 with his or her service on the board.

25 (g) A vacancy on the board shall be filled by appointment by
26 the Governor for the unexpired term of the member whose office
27 is vacant.

28 (h) The Governor may remove any member from the board
29 for neglect of duty, incompetency or official misconduct.

30 (i) A licensed member of the board immediately and
31 automatically forfeits membership to the board if his or her
32 license or registration to practice is suspended or revoked.

33 (j) A member of the board immediately and automatically
34 forfeits membership to the board if he or she is convicted of a
35 felony under the laws of any jurisdiction or becomes a
36 nonresident of this state.

37 (k) The board shall elect annually one of its members as
38 chairperson and one of its members as secretary-treasurer who
39 shall serve at the will and pleasure of the board.

40 (l) Each member of the board is entitled to receive
41 compensation and expense reimbursement in accordance with
42 article one of this chapter.

43 (m) A majority of the members of the board constitutes a
44 quorum.

45 (n) The board shall hold at least one annual meeting. Other
46 meetings shall be held at the call of the chairperson or upon the
47 written request of four members, at the time and place as
48 designated in the call or request.

49 (o) Prior to commencing his or her duties as a member of the
50 board, each member shall take and subscribe to the oath required
51 by section five, article four of the Constitution of this state.

52 (p) Board members are immune from civil liability for the
53 performance of their official duties so long as they act in good
54 faith.

§30-32-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this
2 article, by legislative rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings and conduct hearings;

6 (2) Establish requirements for licenses and registrations;

7 (3) Establish procedures for submitting, approving and
8 rejecting applications for licenses and registrations;

9 (4) Determine the qualifications of any applicant for a
10 license or registration;

11 (5) Communicate disciplinary actions to relevant state and
12 federal authorities, the American Speech-Language-Hearing
13 Association, the West Virginia Speech-Language and Hearing

14 Association and other applicable authorities when public safety
15 is at risk;

16 (6) Maintain an office and hire, discharge, establish the job
17 requirements and fix the compensation of employees and
18 contracted employees necessary to enforce the provisions of this
19 article;

20 (7) Investigate alleged violations of the provisions of this
21 article, legislative rules, orders and final decisions of the board;

22 (8) Conduct disciplinary hearings of persons regulated by the
23 board;

24 (9) Determine disciplinary action and issue orders;

25 (10) Institute appropriate legal action for the enforcement of
26 the provisions of this article;

27 (11) Maintain an accurate registry of names and addresses of
28 all persons regulated by the board;

29 (12) Keep accurate and complete records of its proceedings,
30 and certify the same as may be necessary and appropriate;

31 (13) Issue, renew, combine, deny, suspend, revoke or
32 reinstate licenses and registrations pursuant to the provisions of
33 this article;

34 (14) Establish a fee schedule;

35 (15) Take all actions necessary and proper to effectuate the
36 purposes of this article; and

37 (16) Propose rules in accordance with the provisions of
38 article three, chapter twenty-nine-a of this code to implement the
39 provisions of this article.

40 (c) The board may:

41 (1) Approve and contract with third parties to administer the
42 examinations required under the provisions of this article;

43 (2) Sue and be sued in its official name as an agency of this
44 state;

45 (3) Confer with the Attorney General or his or her assistants
46 in connection with legal matters and questions; and

47 (4) Perform random audits of continuing education,
48 supervision records and documentation of licensure and
49 registration requirements to determine compliance with this
50 article.

§30-32-7. Rulemaking.

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter

3 twenty-nine-a of this code, to implement the provisions of this
4 article, including:

5 (1) Standards and requirements for licenses and
6 registrations;

7 (2) Requirements, qualifications and designation of third
8 parties to establish educational requirements and to prepare
9 and/or administer examinations and reexaminations;

10 (3) Procedures for the issuance and renewal of a license,
11 registration and provisional license;

12 (4) A fee schedule;

13 (5) Continuing education and competency requirements for
14 licensees and registrants;

15 (6) Establishment of competency standards;

16 (7) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee or registrant;

18 (8) Requirements for reinstatement of revoked licenses and
19 registrations;

20 (9) Guidelines for telepractice;

21 (10) Rules to define the role of the speech-language
22 pathology assistant or audiology assistant, including, but not
23 limited to:

- 24 (A) The supervision requirements of licensees;
25 (B) The ratio of assistants to licensees;
26 (C) The scope of duties and restrictions of responsibilities of
27 assistants;
28 (D) The frequency, duration and documentation of
29 supervision required under the provisions of this article; and
30 (E) The quantity and content of pre-service and in-service
31 instruction.
- 32 (11) Professional conduct and ethical standards of practice;
33 and
- 34 (12) Any other rules necessary to effectuate the provisions
35 of this article.
- 36 (b) The board may promulgate emergency rules in
37 accordance with section fifteen, article three, chapter
38 twenty-nine-a of this code to establish requirements and
39 procedures for telepractice in accordance with the provisions of
40 this article, including the scope of duties and restrictions of
41 assistants in telepractice.
- 42 (c) All rules in effect on January 1, 2013 shall remain in
43 effect until they are amended or repealed, and references to

44 provisions of former enactments of this article are interpreted to
45 mean provisions of this article.

§30-32-8. Funds.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special
3 revenue fund in the State Treasury designated the “Board of
4 Examiners for Speech-Language Pathology and Audiology
5 Fund”, which is continued. The fund is used by the board for the
6 administration of this article. Except as may be provided in
7 article one of this chapter, the board retains the amount in the
8 special revenue account from year to year. No compensation or
9 expense incurred under this article is a charge against the
10 General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to this
12 article, shall be deposited into the General Revenue Fund of the
13 State Treasury.

§30-32-9. Qualifications for licensure as a speech-language pathologist.

1 (a) To be eligible for licensure by the board as a
2 speech-language pathologist, the applicant shall:

3 (1) Make application to the board, upon a form prescribed by
4 the board;

5 (2) Pay to the board an application fee as established by the
6 board;

7 (3) Possess at least a master's degree or equivalent in
8 speech-language pathology from an educational institution
9 approved by the board which consists of coursework approved
10 by the board and delineated in legislative rule;

11 (4) Complete supervised clinical practicum experiences from
12 an educational institution or its cooperating programs, the
13 content of which shall be approved by the board and delineated
14 in the rules;

15 (5) Complete a postgraduate professional experience as
16 approved by the board and described in legislative rule;

17 (6) Pass the national examination in speech-language
18 pathology; and

19 (7) Pass a jurisprudence examination developed by the
20 board.

21 (b) Subject to the renewal requirements set forth in section
22 seventeen of this article, a license issued by the board under

23 prior enactments of this article shall for all purposes be
24 considered a license issued under this article.

§30-32-10. Qualifications for licensure as an audiologist.

1 (a) To be eligible for licensure by the board as an
2 audiologist, the applicant shall:

3 (1) Make application to the board, upon a form prescribed by
4 the board;

5 (2) Pay to the board an application fee as established by the
6 board;

7 (3) Possess at least a master's degree or equivalent in
8 audiology from an educational institution approved by the board
9 which consists of coursework approved by the board and
10 delineated in legislative rule;

11 (4) Complete supervised clinical practicum experiences from
12 an educational institution or its cooperating programs, the
13 content of which shall be approved by the board and delineated
14 in the rules;

15 (5) Complete a postgraduate professional experience as
16 approved by the board and described in legislative rule;

17 (6) Pass the national examination in audiology; and

18 (7) Pass a jurisprudence examination developed by the
19 board.

20 (b) Subject to the renewal requirements set forth in section
21 seventeen of this article, a license issued by the board under
22 prior enactments of this article shall for all purposes be
23 considered a license issued under this article.

§30-32-11. Provisional licenses.

1 (a) The board may issue a provisional license to an applicant
2 who is in the process of obtaining postgraduate professional
3 experience and who:

4 (1) Meets the academic, practicum, and examination
5 requirements of this article;

6 (2) Submits an application to the board, upon a form
7 prescribed by the board, including a plan for the content of the
8 postgraduate professional experience; and

9 (3) Pays the fee.

10 (b) A provisional licensee may practice speech-language
11 pathology or audiology under the general supervision of a
12 licensed speech pathologist or audiologist only in the
13 professional field for which the provisional license was issued.

14 (c) The provisional license shall be valid for a term of one
15 year and may be renewed.

§30-32-12. Waiver of requirements; practice pending disposition of application.

1 (a) The board shall waive the national examination
2 requirements in speech-language pathology and/or audiology for
3 an applicant who either:

4 (1) Presents proof of current licensure in a state that has
5 standards that are substantially equivalent to those of this state;
6 or

7 (2) Holds a certificate of clinical competence in
8 speech-language pathology or audiology from the American
9 Speech-Language-Hearing Association in the professional field
10 for which they seek licensure.

11 (b) An applicant who holds current licensure from another
12 state with substantially equivalent standards or who holds the
13 certificate of clinical competence from the American
14 Speech-Language-Hearing Association may practice
15 speech-language pathology or audiology in this state, pending
16 the board's disposition of the application, if the applicant:

17 (1) Is practicing in the professional field in which the
18 licensure or certificate of clinical competence was granted; and

19 (2) Has filed an application with the board and paid the
20 appropriate application fee.

§30-32-13. Scope of practice for speech-language pathology.

1 The scope of practice for speech-language pathology
2 includes:

3 (1) Prevention, screening, consultation, assessment and
4 diagnosis, treatment, intervention, management, counseling and
5 follow-up services for disorders of speech (i.e., articulation,
6 fluency, resonance and voice), language (i.e., phonology,
7 morphology, syntax, preliteracy and language-based skills),
8 swallowing or other upper aerodigestive functions;

9 (2) Cognitive aspects of communication (i.e., attention,
10 memory, problem solving);

11 (3) Establishing augmentative and alternative
12 communication techniques and strategies, including developing,
13 selecting and prescribing of systems and devices (e.g., speech
14 generating devices) and providing training in their use;

15 (4) Providing services to individuals with hearing loss and
16 their families (e.g., Auditory training, speech reading, speech
17 and language intervention secondary to hearing loss;

18 (5) Screening hearing of individuals who can participate in
19 conventional puretone air conduction methods and screening
20 middle ear pathology through screening tympanometry for the
21 purpose of referral for further evaluation: *Provided*, That
22 judgments and descriptive statements about the results of the
23 screenings are limited to pass/fail determinations;

24 (6) Using instrumentation (e.g., videofluoroscopy) to observe,
25 collect data and measure parameters of communication and
26 swallowing as directed by a licensed physician; and

27 (7) Selecting, fitting and establishing effective use of
28 prosthetic/adaptive devices for communication, swallowing or
29 other upper aerodigestive functions.

§30-32-14. Scope of practice for audiology.

1 (a) The scope of practice for audiology includes:

2 (1) Facilitating the conservation of Auditory system
3 function, developing and implementing environmental and
4 occupational hearing conservation programs;

5 (2) Screening, identifying, assessing and interpreting,
6 preventing and rehabilitating peripheral and central Auditory
7 system disorders;

8 (3) Providing and interpreting behavioral and electro-
9 physiological measurements of Auditory and vestibular
10 functions;

11 (4) Selecting, fitting, programming and dispensing of
12 amplification, assistive listening and alerting devices and
13 programming and other systems (e.g., implantative devices) and
14 providing training in their use;

15 (5) Providing audiologic and aural rehabilitation and related
16 counseling services to individuals with hearing impairments and
17 their families;

18 (6) Providing vestibular rehabilitation;

19 (7) Cerumen removal; and

20 (8) Screening of speech-language and other factors affecting
21 communication disorders: *Provided*, That judgments and
22 descriptive statements about the results of the screenings are
23 limited to pass/fail determinations.

24 (b) A person licensed under this article as an audiologist is
25 not required to obtain a license under the provisions of article
26 twenty-six of this chapter.

§30-32-15. Speech-language pathology and audiology assistants;
supervision requirements.

1 (a) Commencing July 1, 2014, speech-language pathology
2 assistants and audiology assistants shall register with the board
3 and shall:

4 (1) Possess a minimum of an associate's degree from an
5 institution or technical training program with a program of study
6 designed to prepare the student to be a speech language
7 pathology or audiology assistant;

8 (2) Work only under the supervision of a licensee licensed
9 in the professional field in which the assistant is working; and

10 (3) Meet all requirements set by the board.

11 (b) Licensees who supervise assistants shall:

12 (1) Report to the board the name and field of practice of each
13 assistant working under the licensee's supervision;

14 (2) Complete initial supervision training prior to accepting
15 an assistant for supervision and upgrade supervision training as
16 required by the board;

17 (3) Document preservice training and credentials of the
18 assistant;

19 (4) Provide direct supervision of the first three hours of
20 treatment by the assistant for each patient or client, followed by
21 a minimum of one direct observation for each subsequent two
22 week period and document the direct observation;

23 (5) Provide general supervision and be responsible for the
24 extent, kind and quality of service provided by the assistant and
25 for all services provided by the assistant;

26 (6) Ensure that persons receiving services from an assistant
27 receive prior written notification that services are to be provided,
28 in whole or in part, by an assistant; and

29 (7) Meet all other requirements set by the board.

§30-32-16. Telepractice services.

1 (a) Licensed speech-language pathologists and audiologists
2 may provide services in this state by telepractice.

3 (b) Speech-language pathologists and audiologists providing
4 services by telepractice shall deliver services consistent with the
5 quality of services delivered in person, and shall:

6 (1) Acquire written informed consent from the student,
7 patient or client before the services are provided;

8 (2) Maintain the confidentiality of the student, patient or
9 client as required by law;

10 (3) Provide documentation of the delivery of services;

11 (4) Train assistants before allowing them to assist in the
12 delivery of service by telepractice, and document the training
13 and delivery of service by the assistants; and

14 (5) Meet any other requirements set by the board.

**§30-32-17. Renewal of license or registration; renewal of lapsed
license or registration; suspension, revocation and
refusal to renew; reinstatement of revoked license or
registration.**

1 (a) Licenses, except provisional licenses, and registrations
2 may be renewed biennially, upon documentation of required
3 continuing education and payment of a renewal fee.

4 (b) A license or registration which has lapsed may be
5 renewed within one year of its expiration date in the manner set
6 by the board.

7 (c) A license or registration which has lapsed for more than
8 one year but fewer than five years may be reinstated, upon
9 documentation of continuing education credits earned during the
10 lapsed period equal to the credits required for renewal and
11 payment of a reinstatement fee.

12 (d) A license or registration which has lapsed for more than
13 five years may not be reinstated. A new license or registration
14 may be issued to an applicant who complies with the
15 requirements relating to the issuance of an original license or
16 registration in effect at the time of the application.

17 (e) The board may suspend, revoke or refuse to renew a
18 license or registration for any reason which would justify the
19 denial of an original application for licensure or registration.

20 (f) The board may consider the reinstatement of a license or
21 registration which has been revoked upon a showing that the
22 applicant can resume practicing with reasonable skill and safety.

§30-32-18. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act which
3 constitutes or will constitute a violation of the provisions of this
4 article, the rules promulgated pursuant to this article, or a final
5 order or decision of the board, it may issue a notice to the person
6 to cease and desist in engaging in the act and/or apply to the
7 circuit court in the county of the alleged violation for an order
8 enjoining the act.

9 **(b) The circuit courts of this state may issue a temporary**
10 **injunction pending a decision on the merits, and may issue a**
11 **permanent injunction based on its findings in the case.**

12 **(c) The judgment of the circuit court on an application**
13 **permitted by the provisions of this section is final unless**
14 **reversed, vacated or modified on appeal to the West Virginia**
15 **Supreme Court of Appeals.**

§30-32-19. Complaints; investigations; due process procedure;
grounds for disciplinary action.

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

6 **(b) Upon initiation or receipt of the complaint, the board**
7 **shall provide a copy of the complaint to the licensee or**
8 **registrant.**

9 **(c) After reviewing any information obtained through an**
10 **investigation, the board shall determine if probable cause exists**
11 **that the licensee or registrant has violated any provision of this**
12 **article.**

13 (d) Upon a finding that probable cause exists that the
14 licensee or registrant has violated any provision of this article or
15 rules promulgated pursuant to this article, the board may enter
16 into a consent decree or hold a hearing for the suspension or
17 revocation of the license or registration or the imposition of
18 sanctions against the licensee or registrant.

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

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

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

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

33 (2) Being convicted of a felony or other crime related to the
34 practice of the professions regulated by this article;

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

37 (4) Violating provisions of this article, rule or a lawful order
38 of the board;

39 (5) Providing substandard care due to a deliberate or
40 negligent act or failure to act regardless of whether actual injury
41 to a patient or client is established;

42 (6) As an assistant, exceeding the authority to perform
43 components of service selected and delegated by the supervising
44 speech-language pathologist or audiologist regardless of whether
45 actual injury to a patient is established;

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

49 (8) As a licensee, failing to provide appropriate supervision
50 to a speech-language pathology assistant or audiology assistant
51 in accordance with this article and legislative rules of the board;

52 (9) Practicing when competent services to recipients may not
53 be provided due to physical or mental impairment;

54 (10) Having had a speech-language pathologist or
55 audiologist license or assistant registration revoked or
56 suspended, other disciplinary action taken, or an application for
57 licensure or registration refused, revoked or suspended by the
58 proper authorities of another jurisdiction;

59 (11) Engaging in sexual misconduct which includes:

60 (A) Engaging in or soliciting sexual relationships, whether
61 consensual or nonconsensual, while a professional relationship
62 exists between the licensee or registrant and a patient or client;
63 or

64 (B) Making sexual advances, requesting sexual favors or
65 engaging in physical contact of a sexual nature with a patient or
66 client;

67 (12) Aiding or abetting a person who is not licensed or
68 registered in this state and who directly or indirectly performs
69 activities requiring a license or registration;

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

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

- 75 (h) Disciplinary action may include:
- 76 (1) Reprimand;
- 77 (2) Probation;
- 78 (3) Administrative fine, not to exceed \$1,000 per day per
- 79 violation;
- 80 (4) Mandatory attendance at continuing education seminars
- 81 or other training;
- 82 (5) Practicing under supervision or other restriction;
- 83 (6) Requiring the licensee or registrant to report to the board
- 84 for periodic interviews for a specified period of time;
- 85 (7) Denial, suspension, revocation or nonrenewal of license
- 86 or registration; or
- 87 (8) Other disciplinary action considered by the board to be
- 88 necessary to protect the public, including advising other parties
- 89 whose legitimate interests may be at risk.

§30-32-20. Procedures for hearing; right of appeal.

- 1 (a) Notice and hearing requirements are governed by the
- 2 provisions of article one of this chapter.
- 3 (b) The board may conduct the hearing or elect to have an
- 4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, the administrative law judge shall prepare a proposed
7 written order at the conclusion of a hearing containing findings
8 of fact and conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The board
10 may accept, reject or modify the decision of the administrative
11 law judge.

12 (d) Any member of the board has the authority to administer
13 oaths, examine any person under oath and issue subpoenas and
14 subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee or
16 registrant has violated any provision of this article or the board's
17 rules, a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description of
19 the disciplinary actions imposed.

§30-32-21. Judicial review.

1 Any licensee or registrant adversely affected by a decision
2 of the board entered after a hearing may obtain judicial review
3 of the decision in accordance with section four, article five,
4 chapter twenty-nine-a of this code, and may appeal any ruling

5 resulting from judicial review in accordance with article six,
6 chapter twenty-nine-a of this code.

§30-32-22. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act prohibited
3 by this article is sufficient to justify a penalty, injunction,
4 restraining order or conviction without evidence of a general
5 course of conduct.

§30-32-23. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or
2 otherwise, the board has reason to believe that a licensee or
3 registrant has committed a criminal offense, the board may bring
4 the information to the attention of an appropriate
5 law-enforcement official.

6 (b) Effective July 1, 2013, a person violating a provision of
7 this article is guilty of a misdemeanor and, upon conviction,
8 shall be fined not less than \$500 nor more than \$1,000 or
9 confined in jail not more than six months, or both fined and
10 confined.

§30-32-24. Required update of review of Legislative Auditor.

1 On or before December 1, 2014, the Legislative Auditor
2 shall update the Sunrise Report of January 2013 on the
3 requirements for speech-language pathologists, audiologists and
4 assistants to practice in public schools, and present the report to
5 the Joint Standing Committee on Government Organization, with
6 recommendations.

