

COMMITTEE SUBSTITUTE

FOR

H. B. 2531

(By Delegates 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

1 rule-making authority; continuing the board of Examiners for
2 Speech-Language Pathology and Audiology Fund; providing
3 qualifications for practicing speech-language pathology or
4 audiology; providing for provisional licenses to practice
5 while attaining required postgraduate professional experience;
6 providing for waiver of requirements for persons who hold a
7 license from another state with substantially equivalent
8 standards; providing for practice pending disposition of
9 application; providing scopes of practice for speech-language
10 pathology and audiology; requiring speech-language pathology
11 assistants and audiology assistants to register with the
12 board; providing registration and supervision requirements for
13 speech-language pathology assistants and audiology assistants;
14 authorizing telepractice; providing conditions and
15 requirements for telepractice; providing for renewal of
16 licenses and registrations; providing for renewal of lapsed
17 licenses and registrations; providing for the suspension,
18 revocation and refusal to renew licenses and registrations;
19 providing for the reinstatement of revoked licenses and
20 registrations; authorizing actions to enjoin violations;
21 providing for the investigation of complaints; setting forth
22 complaint procedures and hearing procedures; establishing
23 grounds for disciplinary actions; providing for rights of
24 appeal and judicial review; providing that a single act is

1 sufficient to justify disciplinary action; providing for
2 criminal proceedings; providing for criminal penalties; and
3 requiring the Legislative Auditor to present a report to the
4 Joint Standing Committee on Government Organization on the
5 requirements for Speech-Language Pathologists, Audiologists
6 and Assistants to practice in public schools.

7 *Be it enacted by the Legislature of West Virginia:*

8 That §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5,
9 §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11,
10 §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17,
11 §30-32-18, §30-32-19, §30-32-20, §30-32-21 and §30-32-23 of the
12 Code of West Virginia, 1931, as amended, be amended and reenacted;
13 and that said code be further amended by adding thereto two new
14 sections, designated §30-32-22 and §30-32-24, all to read as
15 follows:

16 **ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.**

17 **§30-32-1. Unlawful acts.**

18 (a) It is unlawful for any person to practice or offer to
19 practice speech-language pathology or audiology in this state, or
20 advertise or use any title or description tending to convey the
21 impression that the person is a speech-language pathologist or
22 audiologist unless the person has been licensed under the
23 provisions of this article, and the license has not expired, been
24 suspended or revoked.

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

5 **§30-32-2. Exemptions.**

6 Nothing in this article prevents or restricts:

7 (1) Any person licensed or registered under any other law of
8 this state from practicing the profession and performing services
9 for which he or she is licensed or registered;

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

12 (3) A trained individual providing hearing testing or balance
13 system assessment under the direct supervision of a licensed
14 physician or surgeon;

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

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

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

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

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

3 (6) The activities of persons who are nonresidents of this
4 state from engaging in the practice of speech-language pathology or
5 audiology if the activities of the persons do not exceed five days
6 in any calendar year and they:

7 (A) Meet the qualifications of this article;

8 (B) Register with the board in accordance with procedures
9 specified by the board; and

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

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

13 (8) The activity of an occupational hearing conservationist
14 engaged in hearing testing as part of a hearing conservation
15 program in compliance with regulations of the Occupational Safety
16 and Health Administration.

17 **§30-32-3. General provisions.**

18 The practices licensed under the provisions of this article
19 and the West Virginia Board of Examiners for Speech-Language
20 Pathology and Audiology are subject to the provisions of article
21 one of this chapter, the provisions of this article and any rules
22 promulgated hereunder.

23 **§30-32-4. Definitions.**

24 The following terms have the following meanings:

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

3 (2) "Assistant" means a registered speech-language pathology
4 assistant or a registered audiology assistant.

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

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

11 (5) "Audiology assistant" means a person registered with the
12 board who practices under the supervision of an licensed
13 audiologist.

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

19 (7) "Board" means the West Virginia Board of Speech-Language
20 Pathology and Audiology.

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

24 (9) "Direct supervision" means the actual physical presence of

1 a supervising licensed speech-language pathologist or supervising
2 licensed audiologist in the room where treatment is provided by an
3 assistant.

4 (10) "General supervision" means initial direction and
5 periodic inspection of the activities of an assistant by the
6 supervising licensed speech-language pathologist or supervising
7 licensed audiologist, who is physically present in the building
8 where treatment is provided and is quickly and easily available.

9 (11) "Initial supervision training" means training required of
10 supervising licensed speech-language pathologists and supervising
11 licensed audiologists before providing supervision of assistants.

12 (12) "Instruction" means:

13 (A) Providing speech-language pathology or audiology services
14 in infant/toddler, preschool, elementary or secondary school
15 programs; or

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

17 (13) "License" means a license issued pursuant to the
18 provisions of this article.

19 (14) "Licensee" means a person who is licensed pursuant to the
20 provisions of this article.

21 (15) "Provisional license" means a license issued pursuant to
22 the provisions of this article.

23 (16) "Registrant" means an assistant who is registered
24 pursuant to the provisions of this article.

1 (17) "Registration" means a registration issued pursuant to
2 the provisions of this article.

3 (18) "Speech-language pathologist" means any person who
4 engages in the practice of speech-language pathology and who is
5 licensed pursuant to the provisions of this article.

6 (19) "Speech-language pathology" means the application of
7 principles, methods and procedures related to the development,
8 disorders and effectiveness of human communication and related
9 functions.

10 (20) "Speech-language pathology assistant" means a person
11 registered with the board who practices under the supervision of a
12 licensed speech-language pathologist.

13 (21) "Speech-language pathology disorders" means conditions,
14 whether of organic or nonorganic origin, that impede the normal
15 process of human communication including, but not limited to,
16 disorders and related disorders of speech, articulation, fluency,
17 voice, verbal and written language, Auditory comprehension,
18 cognition/communication, and oral, pharyngeal and/or laryngeal
19 sensorimotor competencies.

20 (22) "Telepractice" means the application of telecommunication
21 technology to deliver speech-language pathology or audiology
22 services through real time interaction from one site to another for
23 assessment, intervention or consultation in a manner sufficient to
24 ensure patient confidentiality.

1 §30-32-5. Board of Examiners for Speech-language Pathology and
2 Audiology.

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

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

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

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

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

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

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

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

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

24 (g) A vacancy on the board shall be filled by appointment by

1 the Governor for the unexpired term of the member whose office is
2 vacant.

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

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

8 (j) A member of the board immediately and automatically
9 forfeits membership to the board if he or she is convicted of a
10 felony under the laws of any jurisdiction or becomes a nonresident
11 of this state.

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

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

18 (m) A majority of the members of the board constitutes a
19 quorum.

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

24 (o) Prior to commencing his or her duties as a member of the

1 board, each member shall take and subscribe to the oath required by
2 section five, article four of the Constitution of this state.

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

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

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

10 (b) The board shall:

11 (1) Hold meetings and conduct hearings;

12 (2) Establish requirements for licenses and registrations;

13 (3) Establish procedures for submitting, approving and
14 rejecting applications for licenses and registrations;

15 (4) Determine the qualifications of any applicant for a
16 license or registration;

17 (5) Communicate disciplinary actions to relevant state and
18 federal authorities, the American Speech-Language-Hearing
19 Association, the West Virginia Speech-Language and Hearing
20 Association and other applicable authorities when public safety is
21 at risk;

22 (6) Maintain an office and hire, discharge, establish the job
23 requirements and fix the compensation of employees and contracted
24 employees necessary to enforce the provisions of this article;

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

4 (8) Conduct disciplinary hearings of persons regulated by the
5 board;

6 (9) Determine disciplinary action and issue orders;

7 (10) Institute appropriate legal action for the enforcement of
8 the provisions of this article;

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

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

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

16 (14) Establish a fee schedule;

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

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

22 (c) The board may:

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

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

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

5 (4) Perform random audits of continuing education, supervision
6 records and documentation of licensure and registration
7 requirements to determine compliance with this article.

8 **§30-32-7. Rulemaking.**

9 (a) The board shall propose rules for legislative approval, in
10 accordance with the provisions of article three, chapter
11 twenty-nine-a of this code, to implement the provisions of this
12 article, including:

13 (1) Standards and requirements for licenses and registrations;

14 (2) Requirements, qualifications and designation of third
15 parties to establish educational requirements and to prepare and/or
16 administer examinations and reexaminations;

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

19 (4) A fee schedule;

20 (5) Continuing education and competency requirements for
21 licensees and registrants;

22 (6) Establishment of competency standards;

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

1 (8) Requirements for reinstatement of revoked licenses and
2 registrations;

3 (9) Guidelines for telepractice;

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

6 (A) The supervision requirements of licensees;

7 (B) The ratio of assistants to licensees;

8 (C) The scope of duties and restrictions of responsibilities
9 of assistants;

10 (D) The frequency, duration and documentation of supervision
11 required under the provisions of this article; and

12 (E) The quantity and content of pre-service and in-service
13 instruction.

14 (11) Professional conduct and ethical standards of practice;
15 and

16 (12) Any other rules necessary to effectuate the provisions of
17 this article.

18 (b) The board may promulgate emergency rules in accordance
19 with section fifteen, article three, chapter twenty-nine-a of this
20 code to establish requirements and procedures for telepractice in
21 accordance with the provisions of this article, including the scope
22 of duties and restrictions of assistants in telepractice.

23 (c) All rules in effect on January 1, 2013 shall remain in
24 effect until they are amended or repealed, and references to

1 provisions of former enactments of this article are interpreted to
2 mean provisions of this article.

3 **§30-32-8. Funds.**

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

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

16 **§30-32-9. Qualifications for licensure as a speech-language**
17 **pathologist.**

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

20 (1) Make application to the board, upon a form prescribed by
21 the board;

22 (2) Pay to the board an application fee as established by the
23 board;

24 (3) Possess at least a master's degree or equivalent in

1 speech-language pathology from an educational institution approved
2 by the board which consists of coursework approved by the board and
3 delineated in legislative rule;

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

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

9 (6) Pass the national examination in speech-language
10 pathology; and

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

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

16 **§30-32-10. Qualifications for licensure as an audiologist.**

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

19 (1) Make application to the board, upon a form prescribed by
20 the board;

21 (2) Pay to the board an application fee as established by the
22 board;

23 (3) Possess at least a master's degree or equivalent in
24 audiology from an educational institution approved by the board

1 which consists of coursework approved by the board and delineated
2 in legislative rule;

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

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

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

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

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

14 **§30-32-11. Provisional licenses.**

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

18 (1) Meets the academic, practicum, and examination
19 requirements of this article;

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

23 (3) Pays the fee.

24 (b) A provisional licensee may practice speech-language

1 pathology or audiology under the general supervision of a licensed
2 speech pathologist or audiologist only in the professional field
3 for which the provisional license was issued.

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

6 **§30-32-12. Waiver of requirements; practice pending disposition**
7 **of application.**

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

11 (1) Presents proof of current licensure in a state that has
12 standards that are substantially equivalent to those of this state;

13 or

14 (2) Holds a certificate of clinical competence in
15 speech-language pathology or audiology from the American
16 Speech-Language-Hearing Association in the professional field for
17 which they seek licensure.

18 (b) An applicant who holds current licensure from another
19 state with substantially equivalent standards or who holds the
20 certificate of clinical competence from the American
21 Speech-Language-Hearing Association may practice speech-language
22 pathology or audiology in this state, pending the board's
23 disposition of the application, if the applicant:

24 (1) Is practicing in the professional field in which the

1 licensure or certificate of clinical competence was granted; and

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

4 **§30-32-13. Scope of practice for speech-language pathology.**

5 The scope of practice for speech-language pathology includes:

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

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

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

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

21 (5) Screening hearing of individuals who can participate in
22 conventional puretone air conduction methods and screening middle
23 ear pathology through screening tympanometry for the purpose of
24 referral for further evaluation: *Provided*, That judgments and

1 descriptive statements about the results of the screenings are
2 limited to pass/fail determinations;

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

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

9 **§30-32-14. Scope of practice for audiology.**

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

11 (1) Facilitating the conservation of Auditory system function,
12 developing and implementing environmental and occupational hearing
13 conservation programs;

14 (2) Screening, identifying, assessing and interpreting,
15 preventing and rehabilitating peripheral and central Auditory
16 system disorders;

17 (3) Providing and interpreting behavioral and electro-
18 physiological measurements of Auditory and vestibular functions;

19 (4) Selecting, fitting, programming and dispensing of
20 amplification, assistive listening and alerting devices and
21 programming and other systems (e.g., implantative devices) and
22 providing training in their use;

23 (5) Providing audiologic and aural rehabilitation and related
24 counseling services to individuals with hearing impairments and

1 their families;

2 (6) Providing vestibular rehabilitation;

3 (7) Cerumen removal; and

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

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

11 **§30-32-15. Speech-language pathology and audiology assistants;**
12 **supervision requirements.**

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

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

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

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

23 (b) Licensees who supervise assistants shall:

24 (1) Report to the board the name and field of practice of each

1 assistant working under the licensee's supervision;

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

5 (3) Document preservice training and credentials of the
6 assistant;

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

11 (5) Provide general supervision and be responsible for the
12 extent, kind and quality of service provided by the assistant and
13 for all services provided by the assistant;

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

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

18 **§30-32-16. Telepractice services.**

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

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

24 (1) Acquire written informed consent from the student, patient

1 or client before the services are provided;

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

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

5 (4) Train assistants before allowing them to assist in the
6 delivery of service by telepractice, and document the training and
7 delivery of service by the assistants; and

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

9 **§30-32-17. Renewal of license or registration; renewal of lapsed**
10 **license or registration; suspension, revocation and refusal to**
11 **renew; reinstatement of revoked license or registration.**

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

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

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

23 (d) A license or registration which has lapsed for more than
24 five years may not be reinstated. A new license or registration

1 may be issued to an applicant who complies with the requirements
2 relating to the issuance of an original license or registration in
3 effect at the time of the application.

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

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

10 **§30-32-18. Actions to enjoin violations.**

11 (a) If the board obtains information that any person has
12 engaged in, is engaging in or is about to engage in any act which
13 constitutes or will constitute a violation of the provisions of
14 this article, the rules promulgated pursuant to this article, or a
15 final order or decision of the board, it may issue a notice to the
16 person to cease and desist in engaging in the act and/or apply to
17 the circuit court in the county of the alleged violation for an
18 order enjoining the act.

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

22 (c) The judgment of the circuit court on an application
23 permitted by the provisions of this section is final unless
24 reversed, vacated or modified on appeal to the West Virginia

1 Supreme Court of Appeals.

2 **§30-32-19. Complaints; investigations; due process procedure;**
3 **grounds for disciplinary action.**

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

9 (b) Upon initiation or receipt of the complaint, the board
10 shall provide a copy of the complaint to the licensee or
11 registrant.

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

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

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

1 article.

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

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

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

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

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

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

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

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

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

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

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

9 (10) Having had a speech-language pathologist or audiologist
10 license or assistant registration revoked or suspended, other
11 disciplinary action taken, or an application for licensure or
12 registration refused, revoked or suspended by the proper
13 authorities of another jurisdiction;

14 (11) Engaging in sexual misconduct which includes:

15 (A) Engaging in or soliciting sexual relationships, whether
16 consensual or nonconsensual, while a professional relationship
17 exists between the licensee or registrant and a patient or client;
18 or

19 (B) Making sexual advances, requesting sexual favors or
20 engaging in physical contact of a sexual nature with a patient or
21 client;

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

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

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

6 (h) Disciplinary action may include:

7 (1) Reprimand;

8 (2) Probation;

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

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

13 (5) Practicing under supervision or other restriction;

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

16 (7) Denial, suspension, revocation or nonrenewal of license or
17 registration; or

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

21 **§30-32-20. Procedures for hearing; right of appeal.**

22 (a) Notice and hearing requirements are governed by the
23 provisions of article one of this chapter.

24 (b) The board may conduct the hearing or elect to have an

1 administrative law judge conduct the hearing.

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

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

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

17 **§30-32-21. Judicial review.**

18 Any licensee or registrant adversely affected by a decision of
19 the board entered after a hearing may obtain judicial review of the
20 decision in accordance with section four, article five, chapter
21 twenty-nine-a of this code, and may appeal any ruling resulting
22 from judicial review in accordance with article six, chapter
23 twenty-nine-a of this code.

24 **§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.

6 **§30-32-23. Criminal proceedings; penalties.**

7 (a) When, as a result of an investigation under this article
8 or otherwise, the board has reason to believe that a licensee or
9 registrant has committed a criminal offense, the board may bring
10 the information to the attention of an appropriate law-enforcement
11 official.

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

16 **§30-32-24. Required update of review of Legislative Auditor.**

17 On or before December 1, 2014, the Legislative Auditor shall
18 update the Sunrise Report of January 2013 on the requirements for
19 speech-language pathologists, audiologists and assistants to
20 practice in public schools, and present the report to the Joint
21 Standing Committee on Government Organization, with
22 recommendations.