WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #4

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Board of Chiropractic Examiners TITLE NUMBER: 4

CITE AUTHORITY: W. Va.Code § 30-16-5

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Regulation of Chiropractic Practice

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

$4.00

TITLE 4
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

SERIES 1
REGULATION OF CHIROPRACTIC PRACTICE

§4-1-1. General.

1.1. Scope. -- This rule provides for the regulation of the chiropractic profession to protect the health, safety and welfare of the public.

1.2. Authority. -- W. Va. Code § 30-16-5.

1.3. Filing Date. -- June ~~9~~__, ~~2005~~2013.

1.4. Effective Date. -- July 1, ~~2005~~2014.

1.5. Repeal and Replace. -- This rule repeals and replaces the Board of Chiropractic Examiners, 4 C.S.R. 1, filed ~~March 2~~June 9, ~~1999~~2005.

§4-1-2. Definitions.

2.1. "Board" means the Board of Chiropractic as established by W. Va. Code §30-16-4.

2.2. "CCE or its successor" means the Council on Chiropractic Education, an accrediting agency recognized by the United States Department of Health, Education and Welfare as an agency for granting accreditation of chiropractic education.

2.3. "Chiropractic Assistant" means a health care worker who assists a licensed chiropractor in the provision of chiropractic services. A chiropractic assistant shall work under the general supervision of a licensed chiropractor in a manner consistent with W. Va. Code §30-16-1 et seq., and as further set forth in this rule.

2.4. "General supervision" means initial instruction as to delegated duties and established protocol followed by personal periodic inspection of patient care including periodic evaluation of the assistant's performance by the supervising licensed chiropractor. The supervising licensed chiropractor need not be present or on the premises at all times where the chiropractic assistant is performing delegated duties.

2.5. "Professional Incompetence" means an act or omission which may subject the licensee to disciplinary action as it relates to the practice of chiropractic or criminal misconduct which reflects on the capacity of the licensee to safely engage in the practice of chiropractic.

2.6 A "pre-payment plan" is a contract between a chiropractor and a patient under which the patient agrees to pay for, and the chiropractor agrees to provide, a set number of chiropractic treatments in return for a sum certain.

§4-1-3. Qualifications for Receiving and Maintaining a License to Practice Chiropractic.

3.1. In order to make application to practice chiropractic in this State, an individual shall:

3.1.a. Complete the application required by the Board and pay the appropriate fee.

3.1.b. Satisfy all of the licensure requirements set forth in W. Va. Code §30-16-6 et seq.

3.1.c. Achieve a ~~minimum~~ passing score ~~of 475~~ on ~~the required Part IV~~all parts of the National Board of Chiropractic Examiners national examination as outlined in W. Va. Code §§ 30-16-6 and -7.

3.1.d. After July 1, 2005, obtain a bachelor's degree consisting of no less than one hundred twenty-eight semester hours from an accredited academic college or university with a minimum of sixty hours in basic sciences as mandated by the Council on Chiropractic Education. Upon written request, the Board

shall provide the current basic science requirements mandated by the Council on Chiropractic Education.

3.1.d.1. Except as provided in subdivision 3.1.d.3, the licensee shall obtain a bachelor degree prior to matriculation to a chiropractic college.

3.1.d.2. The Board shall ~~annually~~ determine what schools are eligible to offer concurrent degree programs and establish the specific requirements of the approved concurrent degree programs. The Board shall make the concurrent degree requirements and approved schools available upon written request.

3.1.d.3. The Board may approve certain concurrent degree programs offered by appropriate accredited public and private colleges or universities working in conjunction with approved chiropractic colleges provided that:

~~1. The college or university offering the bachelors degree portion of the concurrent degree is physically located in the state of West Virginia;~~

~~2.~~ 1. ~~That t~~The chiropractic school offering the degree of doctor of chiropractic meets the requirement set forth in W. Va. Code §30-16-6(b)(5);

~~3.~~ 2. ~~That t~~The applicant for licensure has successfully completed all requirements of the approved concurrent degree program established by the Board, pursuant to section 3.1.d.2., and certifies the completion of such requirements to the Board, in the form prescribed by the Board, in addition to all other information required for licensure.

3.1.e. Satisfy all continuing education requirements.

3.1.e.1. All current licensees who intend to renew their license shall present evidence to the Board that the licensee has attended 18 ~~classroom~~ hours ~~each year~~ of continuing education each year. Six of these hours may be attended through online courses, but the remaining twelve hours must be attended in person. The hours shall be sponsored through an approved chiropractic college. The Board may require that six (6) of the eighteen (18) hours pertain to certain subjects, such as communicable diseases, first aid, sexual boundaries, record keeping and other subjects that the Board considers appropriate. Any six-hour specific-continuing-education requirement shall not apply to doctors of chiropractic who certify in writing that they did not practice chiropractic in the State of West Virginia within the applicable reporting period. Provided such doctors of chiropractic who so certify shall be required to attend 18 hours of non-specific continuing education to be completed prior to June 30th. When the Board requires six hours of specific continuing education all licensees will be notified in the current annual renewal notice of the subject matter of the required continuing education. The licensee will be given until the next annual renewal period to complete the required hours. The programs shall be approved by the Board prior to their presentation. The programs shall be conducted by a faculty member of a Board approved CCE or its successor school or college, unless otherwise approved by the Board. The Board, at its discretion, may also approve programs conducted by recognized authorities from fields other than chiropractic.

3.1.e.2. The method of recording attendance at the seminars is the responsibility of the sponsoring group. The sponsoring group shall provide the Board with a list of those in attendance at the seminars.

3.1.e.3. Newly graduated doctors of chiropractic who receive their initial license in the year of their graduation are exempt from the requirements of subdivision 3.1.e.1 of this rule. However, they shall be required to meet all other aspects of license renewal as defined in W. Va. Code §30-16-15.

3.1.f. Remit to the Board, an annual license renewal fee. The annual renewal license fee and required continuing education hours are due on or before July 1. A licensee whose license renewal fee and required continuing education hours are postmarked after July 1 incurs a late fee.

3.1.g. Complete and submit a license renewal application as provided by the Board.

3.1.h. After a lapse of two (2) years, a license may be issued or reinstated only after the former certificate holder subsequent to the lapse has fulfilled all other requirements of licensure as set forth in W. Va. Code §30-16-15(e) and/or has passed the National Special Purposes Examination for Chiropractic (SPEC) examination.

§4-1-4. Duties of a Licensee.

4.1. A licensee shall not engage in clinical conduct outside the scope of chiropractic practice. The licensee shall maintain current knowledge of statutes, rules, and Board decisions regarding the practice of chiropractic.

4.1.a. A licensee shall maintain proper records on all patients, including family and staff members, and keep the records confidential. The records shall include:

4.1.a.1. A description of the patient's chief complaint;

4.1.a.2. A history which includes any significant events related to the chief complaint;

4.1.a.3. A record of diagnostic and therapeutic procedures including: an examination and results of that examination, a diagnosis; a plan of care; including all therapeutic modalities utilized; frequency of treatment; any changes in the plan of care; as well as the reasons for changes; and a record of the patient's response to treatment; and

4.1.a.4. A record of standing orders for delegated procedures as a written protocol to be used by chiropractic assistants.

4.1.a.5. A licensee shall release copies of medical records within 10 days of receipt of a written request from the patient.

4.1.b. A licensee shall maintain competence in the production and interpretation of x-rays. A licensee is competent if he or she:

4.1.b.1. Produces x-rays of diagnostic quality;

4.1.b.2. Uses appropriate shielding and collimation;

4.1.b.3. Exposes patients to radiation based on clinical necessity as documented by the patient's record;

4.1.b.4. Produces written interpretations of x-rays, that are part of the patient's record, and demonstrative of competence in reading films; and

4.1.b.5. Uses equipment that meets Board and manufacturer's specifications for safety and use and that is properly maintained.

4.1.c. A licensee shall maintain competence in the application of chiropractic therapeutics and in the management of patient care. A licensee is competent if he or she:

4.1.c.1. Applies therapeutic modalities properly;

4.1.c.2. Applies a modality that is appropriate for the treatment of the patient as documented by the patient record; and

4.1.c.3. Provides Case Management that is supported by the patient's record.

4.1.d. The licensee shall properly train and supervise his or her staff that is engaged in patient care. A licensee who fails to do so is subject to disciplinary action.

§4-1-5. Disciplinary Actions.

5.1. A licensee shall report a misdemeanor or felony conviction or plea bargain within 30 days of the conviction or plea not withstanding whether the licensee has filed or intends to file an appeal relating to any such conviction or plea. A licensee shall again notify the Board within thirty days of any court's decision regarding the result of any such appeal. A conviction or plea to a misdemeanor or felony charge shall constitute an "adverse action" pursuant to W. Va. Code §30-16-11(a)(22). The Board shall review the conduct involved in the criminal

proceedings to determine if the conduct poses a threat to the public and take appropriate disciplinary action.

5.2 Sexual misconduct may include, doctor/patient relations, whether or not initiated by, or consented to, by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual. A licensee shall not use fraud, deception, misrepresentation, or force for the purpose of engaging in sexual contact with a patient in the clinical setting. Patient consent is not a legal defense. A licensee may not have consensual sexual relations with a former patient until six months after the termination of doctor/patient relationship.

5.3. A licensee shall not engage in clinical activities outside of the scope of chiropractic practice.

5.4. A licensee may not represent to the public, the possession of special skill, training, knowledge, equipment or qualifications unless the Board recognizes the training or certification on which the representation is based.

§4-1-6. Advertising.

6.1. False and deceptive or misleading advertising is prohibited.

6.2. Advertisements offering free or discounted services shall include the licensee's usual charge for the service.

6.2.a. In the case where a licensee is offering any service without charge, the advertisement shall state that there is no charge.

6.2.b. Diagnostic services offered without charge, or at discounted fees such as exams or x-rays, shall be medically necessary and sufficient to reach a diagnosis. X-rays shall be diagnostically complete.

6.2.c. Patients receiving free or discounted services shall sign a disclosure statement which clearly describes the service, and which informs the patient of services for which there is a charge. When the advertisement offers free or discounted services for a period of time, the patient shall sign a disclosure statement which clearly states when the free or discounted service ends. The disclosure statements are part of the patient's medical records, and the licensee shall include them in any submission of the claims to the party responsible for bill payment. The licensee shall disclose the normal charges for services before services are rendered.

6.2.d. No licensee may engage in, or knowingly authorize others to engage in, solicitation by telephone, mail, in-person solicitations or otherwise, which involve undue influence, coercion, intimidation, misrepresentation, invasion of the privacy of the person being contacted, or unreasonable interference in the doctor-patient relationship.

6.2.e. Solicitation which does not involve undue influence, coercion, intimidation, misrepresentation, invasion of the privacy of the person being contacted, or unreasonable interference in the chiropractic-patient relationship is permissible.

6.2.f. A licensee may not offer consumer solicitations that require an immediate response or a response within ten days to an offer at the time of the solicitation.

6.2.g. A licensee may not offer free or discounted services which exclude or limit certain classifications of patients.

6.2.h. A licensee shall not advertise or offer a service as free or discounted then change or switch this advertised service to something different for an additional charge or add an additional service for an extra charge during this same office visit.

6.3 Advertising that guarantees any cure is prohibited.

6.4. Advertising that makes claims of professional superiority or uniqueness which can not be substantiated by authoritative and objective evidence deemed professionally appropriate by the Board is prohibited as outlined in W. Va. Code § 30-16-20.

6.5. Advertising shall always clearly state

that the services are being offered by a chiropractor, doctor of chiropractic, chiropractic physician or D.C.

§4-1-7. Testimonials.

7.1. A licensee may use a testimonial for advertising if the basis for the statements in the testimonial is documented, signed by the patient, and made part of the permanent record.

7.2. Before testimonials can be used for advertising, the licensee shall inform patients that the testimonials are to be used publicly and told how they will be used.

§4-1-8. Abusive Billing Practices.

8.1. A licensee shall not engage in fraud, misrepresentation or deception in business affairs relating to the practice of chiropractic.

8.2. A licensee shall not engage in abusive billing practices which include, but are not limited to:

8.2.a. Filing claims for services not rendered;

8.2.b. Filing claims which misrepresent the service performed;

8.2.c. Filing multiple claims for a single service when not required for proper coordination of insurance benefits.

8.2.d. Failing to disclose pertinent information on a claim form; and

8.2.e. Increasing charges when a patient uses a third party payment program.

§4-1-9. Pre-Payment Plans.

8-9.3. Certain restrictions shall apply to billing practices involved in pre-payment plans.

8-9.3.a. The sole purpose behind pre-payment plans must be to provide, in good faith, an affordable healthcare plan to the patient. In offering a pre-payment plan, a chiropractor must, in good faith, explain to the patient the scope of the plan, the patient's rights and responsibilities under the plan, the cost of the plan, and the treatment that will be rendered under the plan.

8-9.3.b. Any contract for a pre-payment plan must contain, in writing, the following provisions:

8-9.3.b.1. The pre-payment plan must note the severity of pain from which the patient is suffering at the time the patient enters into the agreement;

8-9.3.b.2. There shall be a ten (10) day period during which the patient may withdraw from the pre-payment plan without penalty;

8-9.3.b.3. The pre-payment plan shall state specifically and unambiguously the total cost that the patient will incur under the plan, as well as an estimate of the total cost that the patient would have incurred had the patient sought treatment outside of a pre-payment plan;

8-9.3.b.4. The pre-payment plan shall specifically describe which chiropractic services are included in the plan and which services are excluded. This description shall include the time frame and the number of visits that are covered by the plan. The plan shall also identify how absences of care will be treated under the plan;

8-9.3.b.5. The pre-payment plan shall describe how other care shall be handled under the plan if the patient has a subsequent injury that is covered by insurance;

8-9.3.b.6. The pre-payment plan shall have a clear exit provision that identifies the circumstances under which the plan may be terminated and how any amounts owed for treatment rendered will be billed to the patient;

8-9.3.c. A signed copy of the pre-payment plan shall be maintained in the patient's treatment file.

§4-1-9-10. Unlawful Referral.

9-10.1. A licensee may not receive payment for referral of a patient to or from another

facility, health care provider, business, or professional entity.

~~9~~-10.2. A licensee shall not refer a patient to a facility in which he or she has a financial interest, unless the patient is informed of the relationship. This prohibition does not include an ownership interest in a building in which space is leased to a clinical laboratory, pharmacy, or physician at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory, pharmacy, or physician.

§4-1-~~10~~-11. Unlawful Inducement.

~~10~~-11.1. A licensee shall not offer payment to a patient as an inducement to enter or continue care.

§4-1-~~11~~-12. Investigation and Formal Hearings.

~~11~~-12.1. Upon receipt of a complaint or report, or knowledge of a violation in W. Va. Code §30-16-1 et seq. or the rules of the Board, the Board may initiate an investigation to determine whether probable cause exists to substantiate charges. The Board shall give initial notice to the licensee which shall include:

~~11~~-12.1.a. Notice that the Board has received a complaint, report, or knowledge of a possible act of misconduct;

~~11~~-12.1.b. The name of the complainant and a simple statement of the allegations which form the basis of the complaint; and

~~11~~-12.1.c. A request for a written response from the licensee.

~~11~~-12.2. The Board may form an investigative committee, composed of person(s) designated by the Board to conduct the probable cause inquiry.

~~11~~-12.2.a. The full Board shall be screened from any knowledge of complaint and identities of the licensee during the investigative procedure.

~~11~~-12.2.b. Board members who have any involvement with the case before charges are brought shall not participate in the final adjudication of the case.

~~11~~-12.2.c. After the investigation, the investigative committee shall make a recommendation to the Board which may accept or reject the investigative committee's recommended action.

~~11~~-12.3. At the conclusion of the investigatory process, if the Board finds probable cause that a violation of the statute, rules, or ethical standards governing the practice of chiropractic has occurred the Board may initiate a formal hearing.

~~11~~-12.4. All contested hearings shall be held pursuant to the procedures outlined in W. Va. Code §29A-5-1, et seq.

~~11~~-12.5. The Board shall send notice of the disciplinary hearing to all parties at least 30 days prior to the hearing. The notice shall cite the specific rules, and laws which form the basis of the complaint.

§4-1-~~12~~-13. Appeal.

~~12~~-13.1. The licensee may appeal a final Board decision to a circuit court of proper jurisdiction as provided in W. Va. Code §30-1-9.

§4-1-~~13~~-14. Chiropractic Assistants.

~~13~~-14.1. A licensed chiropractor may employ chiropractic assistants to perform operational functions as well as selective and delegated tasks upon the prior approval of the supervising licensed chiropractor. Tasks which may be delegated to a chiropractic assistant include but are not limited to the following: set up and administration of electrical muscle stimulation, ultrasound, traction, massage, diathermy, hydrocollation, cryotherapy, blood pressure examination, range of motion examination and obtaining and recording patient histories.

~~13~~-14.2. The licensed chiropractor shall ensure that a chiropractic assistant receives proper training before beginning his or her duties. The licensed chiropractor shall annually

reevaluate each chiropractic assistant to ensure that the chiropractic assistant is competent and qualified to perform the assigned duties and is in compliance with subsection 13.3. The licensed chiropractor may provide the required training or may require that the chiropractic assistant acquire the required training from a program accredited by the Council on Chiropractic Education (CCE) or the West Virginia Board of Chiropractic. The licensed chiropractor shall document each annual review and all training received by each chiropractic assistant employed and keep the documentation in the chiropractic assistant's employee file.

~~13~~-14.3. The licensed chiropractor that is responsible for assigning duties to a chiropractic assistant is solely responsible for determining that the chiropractic assistant is competent to perform the assigned duties. Further, no licensed chiropractor shall assign any duties to a chiropractic assistant until the licensed chiropractor is assured through personal observation and training that the chiropractic assistant is fully competent and completely qualified to perform the assigned duties.

§4-1-~~14~~-15. Physiotherapeutic Devices; Electrodiagnostic Devices; Certifications; and Specialty Practice.

~~14~~-15.1. Annually the Board shall prepare a schedule of physiotherapeutic devices, electrodiagnostic devices and areas of specialty practice and certifications that are approved by the Board. Upon written request, the Board shall provide the current schedule of approved physiotherapeutic devices, electrodiagnostic devices and areas of specialty practice and certifications that are approved by the Board.

~~14~~-15.2. Within this schedule the Board shall set forth the type of training required, the minimum number of hours required, whether an examination is required and any other prerequisite training required before a licensee may utilize certain physiotherapeutic devices, electrodiagnostic devices or claim an area of special practice or certification.

~~14~~-15.3. A licensee who has not met the requirements set for by the Board for the use of physiotherapeutic devices, electrodiagnostic devices, specialty practice or certification shall be prohibited from utilizing such devices or asserting such specialty or certification in accordance with W. Va. Code §30-16-20.

§4-1-~~15~~-16. Chiropractic Corporations, Partnerships and Other Business Organizations.

~~15~~-16.1. An individual licensed to practice chiropractic within this state may practice as a sole proprietor, as a partner with other duly licensed chiropractors and as a shareholder, member or employee of a chiropractic corporation or a professional limited liability company.

~~15~~-16.2. No individual licensed to practice chiropractic within this state may be employed by or practice pursuant to a contractual agreement with an individual that is not licensed to practice chiropractic in this state.

~~15~~-16.3. No individual licensed to practice chiropractic in this state may be employed by or practice pursuant to a contractual agreement with a partnership that includes an individual or corporation not licensed to practice chiropractic in this state.

~~15~~-16.4. Any licensee that is a shareholder, member or employee of a corporation or limited liability company or any licensee practicing pursuant to a contractual agreement with any corporation or limited liability company shall disclose such business arrangement on a form prescribed by the Board along with the licensee's annual renewal application. In the interest of protecting the public, the Board may request such additional information from the licensee or the business entities disclosed before granting approval of the requested business arrangement. Unless annual approval is granted by the Board, the licensee will be prohibited from practicing chiropractic in the business arrangement requested.

~~15~~-16.5. Upon written request from the Board, a spouse or personal representative of a deceased chiropractor or deceased shareholder of a chiropractic corporation shall have a period of time not to exceed twelve months from the date of death to sell or transfer the deceased

chiropractor's practice or dispose of the deceased shareholder's stock. At all times during this transition period all chiropractic services offered to the public must be rendered by a chiropractor in compliance with these rules and duly licensed in accordance with W. Va. Code § 30-16-1 et seq.

~~15~~ 16.6. A chiropractor duly licensed to practice in this state and a corporation approved by the Board may employ other healthcare providers licensed pursuant to Chapter 30 of the West Virginia Code so long as the employment of the healthcare provider is not inconsistent with the practice act regulating the healthcare provider so employed.

~~§4-1-16. Fees.~~

~~16.1. The annual renewal fee for chiropractors practicing in West Virginia is $200, out of state or retired chiropractors is $100.~~

~~16.2. If the license renewal requirements are postmarked after July 1, there is a $100 late fee.~~

~~16.3. If the license renewal requirements are postmarked after July 31, there is an additional $100 reinstatement fee.~~

~~16.4. The fee for each application for approval for articles of incorporation is $100 per request. The initial filing fee for a chiropractic corporation or a professional limited liability company is $100 and an annual renewal fee of $100.~~

~~16.5. The examination fee is $150 per applicant and a fee of $50 per applicant for reexamination.~~

~~16.6. The license verification fee is $5 per chiropractor.~~

~~16.7. There is a fee of $.75 per copy for requested photocopies.~~

~~16.8. The initial licensing fee is $25 per licensee.~~

~~16.9. The fee for requests for continuing education courses is $35 per course.~~

~~16.10. The application fee for preceptorship approval is $50 per student.~~

~~16.11. There is a fee of $250 per request for address listings.~~

STATE OF WEST VIRGINIA
Board of Chiropractic

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December 12, 2013

West Virginia Secretary of State
ATTN: Judy Cooper
State Capitol Complex
Building 1, Suite 157-K
Charleston, West Virginia 25305

RECEIVED
2013 DEC 12 AM 9:46
SECRETARY OF STATE
STATE OF WEST VIRGINIA

RE: West Virginia Legislative Rule-- Title 4, Series 1
West Virginia Board of Chiropractic Examiners

Dear Ms. Cooper:

Attached please find for filing the original and ten copies of Notice of Rule Modification of a Proposed Rule for Title 4, Series 1–West Virginia Board of Chiropractic Examiners (Board) along with the Legislative Rule-Title 4, Series 1. These proposed amendments went before the Legislative Rule Making Committee on November 18, 2013; however, the Board was unaware of any modifications made to this proposal and, as such, did not file within the ten day time period.

I, as the Board Executive Secretary, followed up with an email on November 25, 2013, to Brandon Hatfield at the West Virginia House of Delegates in order to ensure that no other action was needed to be taken by the Board on these proposed amendments for Title 4, Series 1. I did not hear anything from Mr. Hatfield until December 10, 2013, whereupon he informed me that the deadline for filing the modifications, as approved by Legislative Rule Making Committee, were late. Although, he told me I could still file them, but needed to do so as quickly as possible.

Should you have any questions regarding this filing, please do not hesitate to call me.

Sincerely,

Barbara L. Johnson
Executive Secretary
/blj
Enclosures

cc: Debra Graham, Legislative Rule Making Committee

Roger A. Kritzer, D.C., Chairman **Jeffrey L. Summers, D.C.,** Vice Chairman **Barbara L. Johnson,** Executive Secretary
Barry A. Stowers, D.C., Investigative Officer **Holly L. Harvey, D.C.** , Secretary **H. Jarrett Walker,** Public Member