

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED

Dec 15 9 07 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV MASSAGE THERAPY LICENSURE BOARD TITLE NUMBER: 194

CITE AUTHORITY: 30-37-1 and 30-37-6

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series 3

TITLE OF RULE BEING ADOPTED: Disciplinary and Complaint procedures
for MASSAGE THERAPISTS

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 15, ~~2000~~ 2001

Louise Franklin, Jfc. Sec.

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(Plus all the volunteer
help we can get)

Memo

Date: November 20, 2000
Subject: HB 207

HB 207, passed on November 14, 2000, during a special session of the Legislature, was signed into law on November 18, 2000 by the Governor. This bill allows all Boards that are licensed under Chapter 30 of the West Virginia Code to change to procedural and final file rules that had originally been filed as legislative. This applies to rules that relate **ONLY** to complaint procedures or contested case hearing procedures.

The Boards must final file their rules no later than January 31, 2001.

FILED

TITLE 194
LEGISLATIVE RULE
BOARD OF MASSAGE THERAPY

Dec 15 9 07 AM '00

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR MASSAGE THERAPISTS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§194-3-1. General.

1.1. Scope. -- These procedural rules establish procedures for the investigation and resolution of complaints against massage therapists.

1.2. Authority. -- W. Va. Code §§30-1-1 et seq. and §30-37-6 which permits the Board to propose rules and fees for licensure, renewal of licensure continuing education requirements standards of practice and all related matters.

1.3. Filing Date. -- July 1, 2000

1.4. Effective Date. --

3-2. Application.

This rule applies to all licensed massage therapists.

3-3. Definitions.

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

3.1 "Licensee" means an individual who holds a license to practice massage therapy issued by this Board

3.2. "Board" means the West Virginia Massage Therapy Licensure Board.

3.3. "License" means a license by the Board pursuant to W. Va. Code § 30-37-1 .

3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or

Revocation of Licenses of Massage Therapists.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W.Va. Code §30-37-8 or the rules of the Board.

3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board in writing or in person which charges a massage therapist or applicant with a violation of W.Va. or rules of the Board. The Board may accept an anonymous complaint if the information provide adequate to begin an investigation. the Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the massage therapist against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may treated the patient after the alleged incident; and,

5.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a massage therapist shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-37-8 or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or permittee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees, permittees or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or permittee or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator or investigating member or committee for review and investigation.

5.12. Upon receipt of a complaint the Ethics investigator or investigating member or committee for the Board shall, within sixty (60)

days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint, the records reviewed and a statement of the Executive Secretary or Counsel of the Board.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The Council of the Board may request the Board or its president to issue a subpoena or subpoena duces tecum . Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a massage therapist, may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or Executive Secretary or Counsel of the Board shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

3-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that massage therapist conduct, practices or acts constitute an immediate danger to the public.

3-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days

of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.