

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

**FILED**

2003 JUN 13 A 10:32

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE** OFFICE WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: WV Radiologic Technology Board of Examiners TITLE NUMBER: 18

RULE TYPE: Procedural CITE AUTHORITY: § 30-23-1 et seq. and § 30-1-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures for Radiologic  
Technologists

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 15, 2003 AT 9:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV RT Board of Examiners  
PO Box 638  
1715 Flat Top Road  
Cool Ridge, WV 25825

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Radiologic Technologists

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Board of Examiners of Radiologic Technology

Address: PO Box 638

1715 Flat Top Road

Cool Ridge, WV 25825

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:  
NO INCREASE OR DECREASE

3. Objectives of These Rules:  
ALLOW REPRESENTATIVE MORE LEEWAY IN INVESTIGATIONS, ISSUE SUBPEONAS, NEGOTIATE CONSENT AGREEMENTS, & DISMISS COMPLAINTS THAT CANNOT BE SUBSTANTIATED.

Rule Title: Disciplinary and Complaint Procedures for Radiologic Technologists

4. Explanation of Overall Economic Impact of Proposed Rule:

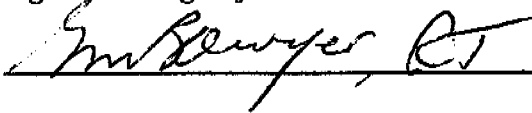
A. Economic Impact on State Government:  
N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: N/A

C. Economic Impact on Citizens/Public at Large.  
N/A

Date: JUNE 13, 2003

Signature of Agency Head or Authorized Representative:



## SUMMARY OF THE RULE

THE MODIFICATIONS TO THIS RULE WILL ALLOW THE REPRESENTATIVE MORE LEEWAY IN THE INVESTIGATION OF COMPLAINTS. IT WILL ALSO ALLOW THE REPRESENTATIVE THE ABILITY TO ISSUE SUBPOENAS, NEGOTIATE CONSENT AGREEMENTS AND DISMISS COMPLAINTS THAT CANNOT BE SUBSTANTIATED.

TITLE 18  
PROCEDURAL RULE  
RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

FILED

2003 JUN 13 A 10:32

SERIES 4  
DISCIPLINARY AND COMPLAINT PROCEDURES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§ 18-4-1. General.**

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against a licensee or permittee.

1.2. Authority. -- W.Va. Code § 30-23-1 *et seq.* and § 30-1-1 *et seq.*

1.3. Filing Date. --

1.4. Effective Date. --

**§ 18-4-2. Application.**

This rule applies to all licensees and permittees under W.Va. Code § 30-23-1 *et seq.*

**§ 18-4-3. Definitions.**

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

3.1 "Applicant" means any person making application for an original or renewal license, a podiatry permit or a temporary permit pursuant to West Virginia Code § 30-23-1 *et seq.*

3.2 "Board" means the West Virginia Radiologic Technology Board of Examiners.

3.3 "License" has the same meaning as W.Va. Code § 30-23-2(c).

3.4 "Licensee" has the same meaning as W. Va. Code § 30-23-2(e).

3.5 "Permittee" has the same meaning as W. Va. Code § 30-23-2(f).

3.6 ~~“Ethics investigator”~~ “Representative” means a licensee who is ~~for the purpose of reviewing complaints against their licensees:~~ the Executive Director of the Board or Counsel for the Board.

**§ 18-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses or Permit.**

The Board may deny an application for license or permit, place a licensee or permittee on probation, limit or restrict a license or permit, suspend a license or permit or revoke any license or permit issued by the Board, upon satisfactory proof that a licensee or permittee 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 West Virginia Code § 30-23-1 *et seq.* or the rules of the Board. The above objectives may be accomplished by mediation, provided that reasonable mediation cost may be reimbursed by the licensee or permittee.

**§ 18-4-5. Disposition of Complaints.**

~~5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a licensee or applicant with a violation of West Virginia Code § 30-23-1 *et seq.* or of the rules of the Board. 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 licensee against whom the complaint is lodged;~~

~~5.1.2. The date(s) of the violation(s);~~

~~5.1.3. A description of the incident(s); and;~~

~~5.1.4. The name of any health care institution in which the alleged incident occurred.~~

5.1 Any individual may make a complaint to the Board concerning a licensee or permittee.

5.2 The Board may accept an anonymous complaint if the information provided is adequate to begin the investigation.

5.3 The Board may accept a complaint in writing, by telephone or in person. The Board may provide a form for the purpose of submitting a written complaint, but shall accept the complaint if the information includes:

5.3.1 the alleged violation which prompted the complaint

5.3.2 the name and address of the individual against whom the complaint is lodged.

5.3.3 the date the incident occurred; and

5.3.4 the name or names of witnesses to the incident.

5.4 All complaints shall be referred to the Executive Director or Counsel for the Board.

~~5.2.~~ 5.5 A complaint against a licensee or permittee 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 or ethical conduct in violation of West Virginia Code § 30-23-1 et seq. or the rules of the Board.

~~5.3:~~ 5.6 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:~~ 5.7 The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

~~5.5:~~ 5.8 The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.9 The Representative shall conduct an investigation to determine the validity of the allegation contained in the complaint.

~~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;~~

5.10 ~~5.6.2: That The Representative shall determine if 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.~~

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

~~5.7:~~ 5.11 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:~~ 5.12 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:~~ 5.13 Upon receipt of a licensee's, permittee'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 sub-division 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 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 for review and investigation.~~

~~5.12. 5.14~~ Upon receipt of a complaint the ethics investigator Representative shall, ~~within sixty (60) days, by the next scheduled Board meeting,~~ 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 including a description of the care provided, the records reviewed and a statement of the ethics investigator's Representative's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.15 The Representative shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

~~5.13. 5.16~~ To facilitate the disposition of a complaint, the ~~Board or the committee~~ Representative 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~~ Representative 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. 5.17~~ The Board, its president, the investigating committee or chairperson Representative may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. ~~The ethics investigator 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. A subpoena issued hereunder may require any facility employing or licensing or practicing radiologic technology to allow inspection of the premises or other tangible things or records in the possession of or controlled by the following.

~~5.15. 5.18~~ 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 licensee or permittee may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator initiated by the the committee or ethics investigator Representative, ~~shall make their~~ respective findings and recommendations shall be made to the Board prior to the Board dismissing the complaint.

5.19 Upon completion of the investigation and approval of the Board, the Representative may negotiate terms of a consent agreement if probable cause for disciplinary action is established.

5.20 The Board shall review the terms of the consent agreement and all investigative information. The Board may approve the consent agreement, request revisions to the consent agreement, or reject the consent agreement.

5.21 If the Board rejects the consent agreement, the Representative shall schedule a hearing on the complaint.

5.22 If the licensee or permittee contests the allegations and an agreement can not be reached, the Representative shall schedule a hearing on the complaint. All hearings shall be in accordance with the W. Va. Code §29A-5-1 et seq. Of the Administrative Procedures Act.

5.23 A hearing shall be held before a hearing examiner or before members of the Board, pursuant to 18 CSR 3.

**§ 18-4-6. Contested Case Hearings.**

5.1. The Board may refuse to renew a license or permit or suspend a license or permit if it determines there is probable cause to believe that licensee's or permittee's conduct, practices or acts constitute an immediate danger to the public.

**§ 18-4-7. Appeals.**

6.1. Any applicant who has had his or her application for a license or permit 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 West Virginia 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.