

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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FILED
DEC 11 6 45 AM '00

Form #5

OFFICE OF THE CLERK OF THE 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 Radiologic Technology Board of Examiners TITLE NUMBER: 18

CITE AUTHORITY: WV Code § 30-23-1 et seq. and § 30-1-1 et seq.

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

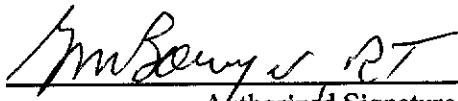
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

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

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



Authorized Signature

5340

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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 18
PROCEDURAL RULE
RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS**

Dec 11 6 46 AM '00

**SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR
RADIOLOGIC TECHNOLOGISTS**

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§ 18-4-1. General.

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

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

1.3. Filing Date. -- December 11, 2000

1.4. Effective Date. -- January 15, 2001

§ 18-4-2. Application.

This rule applies to all licensees 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 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(d).

3.4 “Ethics investigator” means a licensee who is hired by the Board for the purpose of reviewing complaints against their licensees.

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

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 West Virginia Code § 30-23-1 *et seq.* or the rules of the Board.

§ 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.

5.2. A complaint against a licensee 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 West Virginia Code § 30-23-1 *et seq.* 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 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. Upon receipt of a complaint the ethics investigator 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 including a description of the care provided, the records reviewed and a statement of the ethics investigator'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.

5.13. 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 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. 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, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§ 18-4-6. Contested Case Hearings.

5.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that licensee'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 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.