

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED
Nov 20 1 45 PM '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: Nursing Home Administrators Licensing Board TITLE NUMBER: 21

CITE AUTHORITY: 30-25-1 & 30-1-1

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: 2

TITLE OF RULE BEING ADOPTED: Disciplinary and Complaint Procedures for
Nursing Home Administrators, Administrator-In-Training, Emergency and
Temporary Permit Holders.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 20, 2000


Authorized Signature

54.60

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

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Supervisor, Corporations

(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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 2, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Nursing Home Administrators Licensing Board

5303 Kensington Dr., Cross Lanes, WV 25313

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedures for Nursing Home Administrators, Administrator-In-Training, Emergency and Temporary Permit Holders

1. Authorizing statute(s) citation 30-25-1 & 30-1-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 22, 2000

b. What other notice, including advertising, did you give of the hearing?
Notices were mailed to the Administrators by the WVHCA

c. Date of Public Hearing(s) or Public Comment Period ended:
July 28, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received XX

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 2, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Alberta Slack, Director

5303 Kensington Dr.

Cross Lanes, WV 25313

Ph# 304-759-0722 Fax # 304-759-0724

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 22, 2000 through July 28, 2000

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached



WV NURSING HOME ADMINISTRATORS LICENSING BOARD

5303 KENSINGTON DRIVE

CROSS LANES, WEST VIRGINIA 25313

PHONE (304) 759-0722

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TITLE 21 LEGISLATIVE RULE

WEST VIRGINIA NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 2

DISCIPLINARY AND COMPLAINT PROCEDURES FOR NURSING HOME
ADMINISTRATORS, ADMINISTRATOR-IN-TRAINING, EMERGENCY &
TEMPOARY PERMIT HOLDERS

SUMMARY OF PROPOSED LEGISLATIVE RULE

The purpose of this rule is to provide specific procedures for the investigation and resolution of complaints against Nursing Home Administrators, Administrator-In-Training, Emergency & Temporary Permit holders.



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TITLE 21 LEGISLATIVE RULE

WEST VIRGINIA NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 2

DISCIPLINARY AND COMPLAINT PROCEDURES FOR NURSING HOME
ADMINISTRATORS, ADMINISTRATOR-IN-TRAINING, EMERGENCY &
TEMPORARY PERMIT HOLDERS

STATEMENT OF CIRCUMSTANCES

The Legislative Session of "2000" passed House Bill 4062 which mandates that Board's file complaint procedure rules.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Nursing Home Administrators, Administrator-In-Training, Emergency and Temporary Permit Holders.

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Nursing Home Administrators Licensing Board

Address: 5303 Kensington Drive

Cross Lanes, WV 25313

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:

3. Objectives of These Rules: Provide the Board with specific procedures to follow for investigation and resolution of complaints.

Rule Title: Disciplinary and Complaint Procedures for Nursing Home Administrators, Administrator-In-Training, Emergency & Temporary Permit Holders.

4. Explanation of Overall Economic Impact of Proposed Rule: None

A. Economic Impact on State Government:

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

C. Economic Impact on Citizens/Public at Large.

Date: June 22, 2000

Signature of Agency Head or Authorized Representative:

Alberta Slack

TITLE 21
LEGISLATIVE RULE
WEST VIRGINIA NURSING HOME ADMINISTRATORS
LICENSING BOARD

FILED

NOV 20 1 45 PM '00

SERIES 2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**DISCIPLINARY AND COMPLAINT PROCEDURES FOR NURSING
HOME ADMINISTRATORS, ADMINISTRATOR-IN-TRAINING (AIT),
EMERGENCY AND TEMPORARY PERMIT HOLDERS**

§ 21-2-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against nursing home administrators, administrator in training (AIT), permit holder, emergency and temporary permit holders.

1.2. Authority. -- W.Va. Code § 30-25-1 *et seq.* and § 30-1-1 *et seq.*

1.3. Filing Date. -- July 1, 2000

1.4. Effective Date. --

§ 21-2-2. Application.

This rule applies to all licensed nursing home administrators, administrators-in-training or permittees.

§ 21-2-3. 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 as a nursing home administrator or administrator-in-training (AIT) permit or an emergency or temporary permit holder pursuant to West Virginia Code § 30-26-1 *et seq.*

3.2 "Board" means the West Virginia Board of Nursing Home Administrators.

3.3 "License" means a license, temporary or emergency permit or administrator-in-training (AIT) permit issued by the Board pursuant to W.Va. Code § 30-26-1 *et seq.*

3.4. "Nursing home administrator" means a professional who is responsible for planning, organizing, directing and controlling a nursing home as defined in W. Va. Code § 30-25-1.

3.5 "Ethics investigator" means a person or board committee member licensed to practice nursing home administration in this state, and who is hired by the Board or who may be a board committee member for the purpose of reviewing complaints against nursing home administrators, AITs or other permit holders.

§ 21-2-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses or permits of Nursing Home Administrators, AITs, permit holders or applicants.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, reprimand a licensee, 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 or committed other acts in violation of West Virginia Code § 30-25-1 *et seq.* or the rules of the Board.

§ 21-2-5. 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 nursing home administrator, AIT, permit holder or applicant with a violation of West Virginia Code § 30-25-1 *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 nursing home administrator, AIT, permit holder or applicant against whom the complaint is lodged;

5.1.2. The date of the transaction or event which is the subject of the complaint;

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

5.1.4. The name of the nursing home where the incident took place.

5.2. A complaint against a nursing home administrator, AIT, permit holder or applicant 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 or committed other acts in violation of West Virginia Code § 30-25-1 *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 applicant to keep the Board informed of his or her current address.

5.9. 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. 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 or investigating committee 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 or committee's findings and recommendations. The ethics investigator or committee 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 investigating 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, 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, investigating committee or chairperson to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.