

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

Form #2

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2003 JUN 30 P 1:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Optometry TITLE NUMBER: 14

RULE TYPE: legislative CITE AUTHORITY: Chap. 30-8 & T 14

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedure

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 30, 2003 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Optometry

723 Kanawaha Blvd., Suite 804

Charleston, WV 25301-2733

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**CIRCUMSTANCES REQUIRING AMENDMENT
SERIES 14 SECTION 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS**

The West Virginia Code and the rules of the Board of Optometry contain provisions granting the Board power to investigate licensees and applicants. They do not contain specific provisions allowing the Board to investigate unlicensed individuals practicing optometry.

The amendment inserts unlicensed individuals and entities engaged in the practice of optometry into the complaint procedure. It also adds a new section, 14-4-8, Court Action and the Unlicensed Practice of Optometry, giving the Board the power to investigate unlicensed individuals and entities and take court action to stop the illegal practice of optometry.

**SUMMARY OF AMENDMENT
SERIES 14 SECTION 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS**

The amendment adds provisions to section 4 that will allow the Board to protect the public by investigating and taking action against unlicensed individuals or entities engaged in the practice of optometry. The amendment inserts these individuals and entities into the complaint procedure.

It also adds a new section, 14-4-8, Court Action And the Unlicensed Practice Of Optometry. The new section establishes a procedure for the Board to take court action against unlicensed individuals and entities engaged in the practice of optometry including injunctions and fines.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedure

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Optometry

Address: 723 Kanawha Blvd, Suite 804

Charleston, WV 25301-2733

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:

This is an amendment to an existing rule. Court costs would be charged-back to the violator.

3. Objectives of These Rules:

To give the WV Board of Optometry the power to investigate a complaint against an unlicensed individual or entity engaged in the practice of optometry.

Rule Title: Disciplinary and Complaint Procedure

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:
none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
none

C. Economic Impact on Citizens/Public at Large.
none

Date: 6/30/03

Signature of Agency Head or Authorized Representative:

Jack E. Terrence

FILED

TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY

2003 JUN 30 P 1:54

SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§14-4-1. General.

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

1.2. Authority. -- W. Va. Code §§30-8-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. -- December 4, 2002.

1.4. Effective Date. -- January 3, 2003.

§14-4-2. Application.

This rule applies to all licensed optometrists.

§14-4-3. 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 pursuant to W. Va. Code §30-8-1 et seq.

3.2. "Board" means the West Virginia Board of Optometry.

3.3. "License" means a license issued by the Board pursuant to W. Va. Code §30-8-1 et seq.

3.4. "Optometrist" means a person who practices optometry as defined in W. Va. Code §30-8-2.

3.5. "Investigator" means a person who is hired by the Board for the purpose of reviewing complaints against optometrists.

§14-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Optometrists.

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 §30-8-1 et seq. or the rules of the Board.

§14-4-5. 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 an optometrist or unlicensed individual or entity engaged in the practice of optometry with a violation of W. Va. Code §30-8-1 et seq. or of conduct which would be a violation 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 optometrist or unlicensed individual or entity engaged in the practice of optometry against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have 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 an optometrist or unlicensed individual or entity engaged in the practice of optometry 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 §30-8-1 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 unlicensed individual or entity engaged in the practice of optometry ~~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 or unlicensed individuals or entities engaged in the practice of optometry ~~or applicants~~ shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or unlicensed individual or entity engaged in the practice of optometry ~~applicant~~ to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or unlicensed individual or entity engaged in the practice of optometry's ~~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 investigator for review and investigation.

5.12. Upon receipt of a complaint the 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 investigator's findings and recommendations. The investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, or unlicensed individual or entity engaged in the practice of optometry ~~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 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.

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 an optometrist or unlicensed individual or entity engaged in the practice of optometry 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 investigator, the committee or investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§14-4-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license, ~~or~~ suspend or revoke a license or bring an action in a court of competent jurisdiction to enforce the provisions of WV Code 30-8 against an unlicensed individual or entity engaged in the practice of optometry if it determines there is probable cause to believe that the optometrist's or unlicensed individual or entity engaged in the

practice of optometry's conduct, practices or acts constitute an immediate danger to the public.

§14-4-7. Appeals.

7.1. Any applicant or unlicensed individual or entity engaged in the practice of optometry who has had his or her application for a license denied or had court action taken against him or her 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.

14-4-8. Court Action and the Unlicensed Practice Of Optometry

8.1. The Board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin the practice of optometry by the following:

8.1.1. An individual who is not licensed to practice optometry pursuant to Chapter 30-8, or who is involved in conduct not specifically exempted from the requirement of Chapter 30-8; or

8.1.2. An individual who was previously licensed by the Board to practice optometry but is currently practicing optometry in violation of Chapter 30-8, regardless of whether the respondent has been convicted of violating the penal provisions thereof.

8.2. Petition for injunction filed under subsection (1) of this section may be filed in Kanawha Circuit Court or the circuit court of the county in which said violation occurred, and the Board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.

8.2.1. In the petition, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of optometry in violation of Chapter 30-8. No showing of damage or injury shall be required.

8.2.2. Issuance of an injunction shall enjoin any act specified under Chapter 30-8 and shall remain in place as long as necessary to prevent the unlawful practice of optometry.

8.2.3. Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by Chapter 30-8 or otherwise.

8.2.4. Violation of an injunction or restraining order shall be punished as a contempt without the intervention of a jury.

8.3. Any person who violates any of the provisions of Chapter 30-8 or the rules of the board shall be guilty of a Class A misdemeanor and shall pay a fine not to exceed five thousand dollars (\$5,000) per violation.