

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

Form #2 ■

FILED
Do Not Mark In This Box

2007-11-10 10:48

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Bd. of Optometry TITLE NUMBER: 14

RULE TYPE: Procedural CITE AUTHORITY: H.B. 4062

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 Optometrists

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 December 21, 2007 AT 12:00 NOON ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Optometry

101 Michael Street

Clarksburg, WV 26301

(304)627-2106

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

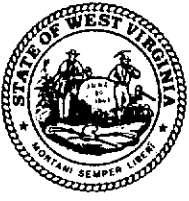
Contact: Barbara L. Palmer

Jack E. Terry, III, Ph.D.
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

\$4.00



West Virginia Board Of Optometry

101 Michael Street

Clarksburg, West Virginia 26301-3937

Phone: (304) 627-2106

Fax: (304) 627-2282

e-mail: wvbdopt@westvirginia.net

October 28, 2002

Secretary of State
State of West Virginia
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, WV 25305-0771

Re: Title 14-Series 4

Dear Sir:

The Board proposed rules to implement disciplinary and complaint procedures for optometrists on November 27, 2000, Title 14-4 which became effective on December 28, 2000. House Bill 207, passed November 14, 2000, provided that the West Virginia Board of Optometry propose procedural rules for the implementation of the provisions of the new law. Subsequently, the Board has found one section very restrictive in its duty to adequately investigate complaints. Thus, the Board has found it necessary to submit revision to Title 14-Series 4.

As President of the Board, I approve the filing of this rule.

Sincerely,

A handwritten signature in cursive script that reads "Jack E. Terry, O.D., Ph.D.".

Jack E. Terry, O. D., Ph.D.
President

MISSION STATEMENT

To ensure that all applicants for licensure and all Doctors of Optometry currently licensed, practice their profession in a manner that benefits and protects the public, and to ensure that the highest quality optometric eye and vision care is provided in a professional, competent, and ethical manner.

WEST VIRGINIA BOARD OF OPTOMETRY

SUMMARY OF PROPOSED RULE, 14-4

Legislative rule 14-4 provides the West Virginia Board of Optometry the necessary procedures for denial, probation, limitation, discipline, suspension or revocation of licenses based on provisions from HB4062. The restrictive definition of "Ethics Investigator" prohibits the Board to ascertain the truth and validity, or lack thereof, of complaints.

WEST VIRGINIA BOARD OF OPTOMETRY

Circumstances

Rule 14-4 Disciplinary and Complaint Procedures for Optometrists

West Virginia Board of Optometry proposes revisions to 14-4, Disciplinary and Complaint Procedures for Optometrists procedural rules to modify the definition of investigator. The Board submits that the terminology is too restrictive. The Board finds that they should utilize any investigator to conduct whatever investigations are necessary to determine the truth and validity, or lack thereof, of complaints, and that said investigators should not be restricted only to that of a West Virginia licensed optometrist.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 14-4 Disciplinary and Complaint Procedures for Optometrists

Type of Rule: Legislative _____ Interpretive Procedural X

Agency: WV Board of Optometry

Address: 101 Michael Street

Clarksburg, WV 26301

(304)627-2106

1. Effect of Proposed rule: None

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

2. Explanation of Above Estimates: There is no cost to the West Virginia licensed optometrists or to the general public

3. Objectives of These Rules: To modify the definition of investigator.

WEST VIRGINIA BOARD OF OPTOMETRY

Rule Title: 14-4 Disciplinary and Complaint Procedures for Optometrists

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: October 28, 2002

Signature of Agency Head or Authorized Representative:

Barbara D. Palmer, Admin. Sec.
Jack E. Terry, OD PhD, President
(304) 627-2106

**TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY
SERIES 4**

FILED

DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS

A 10:48

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. --

1.4. Effective Date. --

§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 ~~or a temporary permit~~ 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. "~~Ethics Investigator~~" means a person ~~licensed to practice optometry in this state,~~ and 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 with a violation of W. Va. Code §30-8-1 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 optometrist 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 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 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 applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee 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 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, 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.

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 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.

§14-4-6. 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 the optometrist's conduct, practices or acts constitute an immediate danger to the public.

§14-4-7. 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.