

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

Form #2

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JUL 3 8 53 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Pharmacy TITLE NUMBER: 15

RULE TYPE: Legislative CITE AUTHORITY: 30-5-1, 30-1-8 (h)

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 RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Complaint Procedures

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 August 7, 2000 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Pharmacy
232 Capitol Street
Charleston, WV 25301

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

William S. Dyer

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF PROPOSED RULE

Title 15

Legislative Rules

Series 9

Complaint Procedures

This rule establishes procedures for handling complaints received by the Board of Pharmacy. The rule states the information needed in a complaint, requires the maintenance of a complaint log, creates a complaint committee and establishes their authority. The rule also authorizes the board to issue subpoenas, depose witnesses, and collect other evidence in order to investigate any complaints.

STATEMENT OF CIRCUMSTANCES

Title 15

Legislative Rules

Series 9

Complaint Procedures

HB 4062 passed by the 2000 Legislature requires licensing boards listed under Chapter 30 of the West Virginia Code to file by July 1, 2000 proposed legislative rules establishing complaint and hearing procedures. Hearing procedures were promulgated in Series 1 which went into effect on May 1, 1999. However, it was necessary to file this rule establishing complaint procedures to comply with HB 4062.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Complaint Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Pharmacy

Address: 232 Capitol Street

Charleston, WV 25301

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:
Rule would not have any fiscal impact upon state government or citizens of state.

3. Objectives of These Rules:
Establish Procedures for handling complaints received by the Board.

Rule Title: Complaint Procedures

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: 07-03-2000

Signature of Agency Head or Authorized Representative:

Walt S. D. G. h

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 15
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF PHARMACY

SERIES 9
COMPLAINT PROCEDURES

§15-9-1. General.

- 1.1 Scope. - This rule relates to the complaint and hearing procedures for all licensees and registrants.
- 1.2 Authority. - WV Code §30-5-1 et. seq., §30-1-8(h).
- 1.3 Filing Date. -
- 1.4 Effective Date. -

§15-9-2. Complaint Procedures.

- 2.1. Any individual may make a complaint to the board concerning a licensee or registrant.
- 2.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.
- 2.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:
 - 2.3.1. the alleged violation which prompted the complaint;
 - 2.3.2. the name and address of the individual against whom the complaint is lodged;
 - 2.3.3. the date or dates the incident or incidents occurred; and
 - 2.3.4. the name or names of witnesses to the incident or incidents.
- 2.4. All complaints shall be referred to the Executive Director, Investigator, inspector, or counsel for the Board, who shall act as a representative for the board. A complaint committee shall be established to review such matters. This committee shall consist of two board members, including at least one pharmacist.
- 2.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint. The board shall also maintain a separate file on each complaint received, and each file shall have a number assigned it.
- 2.6. Upon receipt of complaint or on its own initiative, the representative for the board shall initiate an investigation into the conduct which is occurring or has occurred which violates W.Va. Code §30-5-1 et seq. or rules governing the practice of pharmacy. The complaint committee may employ the services of consultants or

other employees necessary to assist the representative for the board in an investigation.

2.6.1. The representative for the board shall issue subpoenas to gather necessary facts and evidence to determine validity of the allegations contained in the complaint. The representative shall have the authority to institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of W.Va. Code §30-5-1 et seq., or rules governing the practice of pharmacy.

2.6.2. The board shall provide copies of complaint forms and other available evidence to the licensee or registrant against whom a complaint is filed when the licensee is invited to appear before the complaint committee to address the complaint..

2.6.3 The representative for the board may depose witnesses, take sworn statements, and collect other evidence.

2.6.4 The representative for the board may require a criminal history records check. The licensee or registrant under investigation shall furnish to the board a full set of fingerprints for purposes of conducting a criminal history check. Records will be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's or registrant's state of residence, and the United States Federal Bureau of Investigation.

2.6.5. The representative for the board shall evaluate the complaint, any licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation. The representative shall have the authority to enter any pharmacy to review documents related to the complaint and to interview any individual during the course of an investigation. Subpoenas duces tecum to compel the production of documents may be issued by the representative for the board. The subpoenas shall be issued pursuant to W.Va. Code §29A-5-1(b).

2.7. Upon completion of investigation, the representative for the board shall present investigative information in a report to the complaint committee. The report shall contain a statement of allegations, a statement of facts, and an analysis of the complaint. The analysis shall consist of a description of the conduct of the licensee or registrant, the records reviewed, and a statement of findings and recommendations. If probable cause for further action is not identified, the representative may make a recommendation that a complaint be dismissed. All investigative information shall be provided to the committee for review for any case recommended for dismissal due to lack of probable cause. The committee may approve dismissal of the case or direct the representative for the board to proceed with further investigation if the committee believes further investigation is necessary.

2.8. Upon completion of the investigation and after the investigative information has been reviewed by the complaint committee and probable cause is established, the committee may negotiate terms of a consent agreement with a licensee or recommend to the board that the case be set for hearing.

2.9. The complaint committee shall review the terms of a consent agreement and all investigative information. The committee may then approve the consent agreement, request revisions to the consent agreement or reject the consent agreement.

2.10. If the licensee or registrant contests the allegations and refuses to enter into a consent agreement, the committee may recommend to the board that the case be set for hearing. All hearings shall be in accordance with Chapter 29A of W.Va. Code and §15-1-7 of the board's legislative rules. All complaint committee recommendations shall be presented to the board in an anonymous fashion so as not to identify the specific individual(s) or location(s) involved. The board members that are not on the complaint committee shall vote upon the recommendations. The recommendation shall be approved by a majority vote or the board may reject the recommendation and return the complaint to the committee for further consideration. After considering the

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complaint a second time, if the recommendation of the committee is not approved, then the case shall be set for hearing before the board members not on the complaint committee.

2.11. Members of the complaint committee shall be disqualified from the formal hearing process if the case has been presented to the committee prior to the formal hearing.

2.12. All powers of the board, the complaint committee, and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings.