

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

Form #5

Do Not Mark In This Box

FILED

DEC 7 6 19 AM '00

OFFICE 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: West Virginia Board of Pharmacy TITLE NUMBER: 15

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

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

HB 207

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

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

William T. Douglas, Jr.

Authorized Signature

William T. Douglas, Jr.

558-0558

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
wvsos@secretary.state.wv.us
www.state.wv.us/sos/



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
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.

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. -December 7, 2000
- 1.4 Effective Date. -January 15, 2001

§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

15CSR9

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.

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

FILED

Nov 29 11 12 PM '00

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Pharmacy TITLE NUMBER: 15

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

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

HB 207

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 1, 2001

William T. Douglass, Jr.

Authorized Signature

William T. Douglass, Jr.

558-0558

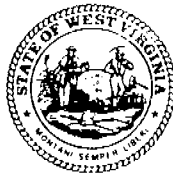
SCANNED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
wvsos@secretary.state.wv.us
www.state.wv.us/sos/



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
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.

FILED

TITLE 15
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF PHARMACY

Nov 29 11 15 PM '00

SERIES 9
DISCIPLINARY AND COMPLAINT PROCEDURES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**§15-9-1. General.**

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints received by the Board of Pharmacy against any permittee holding any license, registration, or other privilege granted or issued by the board .

1.2. Authority. -- W. Va. Code §30-5-1 et. seq., §30-1-1 et. seq..

1.9. Filing Date. -- November 29, 2000

1.4. Effective Date. -- January 1, 2001

§15-9-9. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

9.1 "Applicant" means any person making application for an original or renewal license or a temporary permit pursuant to W. Va. Code §90-20-1 et seq.

9.2. "Board" means the West Virginia Board of Pharmacy.

9.9. "License" means a license or temporary permit issued by the Board pursuant to W. Va. Code §90-20-1 et seq.

9.4. "Physical therapist" means a person who practices physical therapy. Physical therapy aide and physical therapy assistants are defined in W. Va. Code §90-20-2.

9.5. "Ethics investigator" means a person licensed to practice physical therapy in this state, and who is hired by the Board for the purpose of reviewing complaints against physical therapists, physical therapy aides, and physical therapy assistants.

§15-9-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Physical Therapists.

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 §90-20-1 et seq. or the rules of the Board.

§ 15-9-5. 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 physical therapists, physical therapy aide, physical therapy assistant or applicant with a violation of W. Va. Code §90-20-1 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 physical therapist, physical therapy aide, physical therapy assistant against whom the complaint is lodged;

5.1.2. The date of care;

5.1.9. The name of any person who may 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 a physical therapist, physical therapy aide physical therapy assistant 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 §90-20-1 et seq. or the rules of the Board.

5.9. 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,

5.6.9. 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 (90) 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 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, permittee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.19. 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 a physical therapist, physical therapy aide physical therapy assistant, 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.

§15-9-6. 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 physical therapist, physical therapy aide or physical therapy assistant's conduct, practices or acts constitute an immediate danger to the public.

§15-9-7. 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 (90) 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.