

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED

DEC 11 10 22 AM '00

OFFICE OF THE SECRETARY OF STATE

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

AGENCY: WV Board of Physical Therapy TITLE NUMBER: 16

CITE AUTHORITY: WV Code §30-20-1 et seq. and WV Code §30-1-1

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series 3

TITLE OF RULE BEING ADOPTED: Title 16, Series 3, Disciplinary and
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



Frankie S. Cayton, Administrator
WV Board of Physical Therapy
153 W. Main St., Suite #103
Clarksburg, WV 26301
PH: (304) 627-2251

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
wvsqs@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 16
LEGISLATIVE RULE
BOARD OF PHYSICAL THERAPY**

DEC 11 10 22 AM '00

**SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 16-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against Physical Therapists, Physical Therapy Aides, Physical Therapist Assistants, Permittees, and Applicants.

1.2. Authority. - W.Va. Code § 30-20-1 *et seq.* and § 30-1-1 *et seq.*

1.3. Filing Date. - June 30, 2000.

1.4. Effective Date. -

§ 16-3-2. Application.

This rule applies to all licensed Physical Therapists, Physical Therapy Aides, Physical Therapist Assistants, Permittees, and Applicants.

§ 16-3-3. 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 to practice Physical Therapy or to assist in the practice of Physical Therapy pursuant to West Virginia Code § 30-20-1 *et seq.*

3.2 "Board" means the West Virginia Board of Physical Therapy.

3.3 "License" means a license or temporary permit issued by the Board to practice Physical Therapy or to assist in the practice of Physical Therapy pursuant to W.Va. Code § 30-20-1 *et seq.*

3.4. "Physical Therapist" means a person who practices Physical Therapy. Physical Therapy Aides and Physical Therapist Assistants are persons who assist in the practice of Physical Therapy as defined in W. Va. Code § 30-20-2.

3.5 "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, Physical Therapist Assistants, Permittees and Applicants.

§ 16-3-4. 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 West Virginia Code § 30-20-1 *et seq.* or Title 16, Series 1, Rules of the Board.

§ 16-3-5. 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 Therapist, Physical Therapy Aide, Physical Therapist Assistant, Permittee or Applicant with a violation of West Virginia Code § 30-20-1 *et seq.* or of Title 16, Series 1, 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 must contain the following:

5.1.1. The name and address of the Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant. Permittee or Applicant 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 a Physical Therapist, Physical Therapy Aide, Physical therapist Assistant, Permittee 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 in violation of West Virginia Code § 30-20-1 *et seq.* or Title 16, Series 1, 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 will maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board will maintain a separate file on each complaint received, and each file will have a number assigned to it.

5.6. Upon receipt of a complaint, the Board will 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 will send a copy of the complaint, including any supporting documentation, by certified mail to the Licensee, Permittee or Applicant in question for his or her written comment. He or she must submit a written response to the Board within thirty (30) days of the receipt 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, Permittee or Applicant to keep the Board informed of his or her current address pursuant to W.Va. Code §30-20-5.(8).

5.9. Upon receipt of a Licensee's, Permittee's or Applicant's comments in response to a complaint, the Board will promptly send a copy of the response, 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 5.6.2 of this rule, the Board will conduct or authorize to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations in the complaint. The review of complaints and any investigation 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 will, within sixty (60) days, review and investigate the complaint and provide the Board with a report. The report must include 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 will, 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 will 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 will give notice of the conference. The notice will 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. Failure to attend a conference will not prejudice any party to the case.

5.14. The Board, its Chairperson, the investigating committee or Executive Secretary/Administrator 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, its Chairperson or Executive Secretary/Administrator to issue a subpoena or subpoena duces tecum. Any subpoena request must be accompanied by a brief statement explaining the need for the subpoena.

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 Therapist Assistant, Permittee or Applicant may be sanctioned by the Board. In the event the review and investigation of a complaint is assigned to a 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.

§ 16.3.6. 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 a Physical Therapist, Physical Therapy Aide, Physical Therapist Assistant, or Permittee's conduct, practices or acts constitute an immediate danger to the public.

§ 16.3.7. 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 West Virginia Code § 29A-6-1 *et seq.* and Title 16, Series 2, 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.