

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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FILED

May 19 10 41 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

West Virginia Board of Examiners of
AGENCY: Psychologists TITLE NUMBER: 17
W. Va. Code 30-21-6 and
RULE TYPE: Legislative Rule; CITE AUTHORITY 30-1-4

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 PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint Procedures
for Psychologists

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 18, 2000 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Board of Examiners of Psychologists

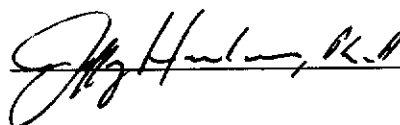
1205 Quarrier Street, Room 200

Charleston, WV 25301

Telephone: (304) 558-0604

Facsimile: (304) 558-0608

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF PROPOSAL

On March 30, 2000 the Kanawha County Circuit Court entered an order granting a writ of mandamus against the West Virginia Board of Examiners of Psychologists and its President requiring them to promulgate emergency legislative rules on or before May 22, 2000 establishing a procedure for the investigation and resolution of complaints against psychologists. A copy of the order is attached hereto and incorporated herein by reference.

The attached proposed rule, 17 CSR 4, Disciplinary and Complaint Procedures for Psychologists, is the first of two series of proposed rules designed to meet the requirements of state law as reflected in the court order referenced above.

Any questions, comments or further correspondence in regard to this proposed rule may be directed to the following:

Charlotte Thurston, Administrative Assistant
West Virginia Board of Examiners of Psychologists
1205 Quarrier Street
Charleston, WV 25301
Telephone: (304) 558-0604
Facsimile: (304) 558-0608

IN THE CIRCUIT COURT OF KANAWHA COUNTY
WEST VIRGINIA

FILED
00 MAR 30 PM 3:02

DAVID A. SADE,
Petitioner,


CATHY S. F. ALLEN, CLERK
KANAWHA COUNTY COURT

vs.

Civil Action No. 00-Misc.-13

THE BOARD OF EXAMINERS OF
PSYCHOLOGISTS, and JEFFREY
HARLOW, Ph.D., in his official capacity
as Chairman of the Board of Examiners,

Respondents.

ORDER

On the 21st day of March 2000, the Petitioner David A. Sade, in person, and the Respondents, by Counsel Robert D. Williams, appeared before this Court pursuant to the Petition for Writ of Mandamus previously filed by the Petitioner and the Rule to Show Cause issued by the Court. Also noticed for hearing on this day were the Petitioner's Motion to Compel Discovery and Motion for Continuance. Served on Petitioner just prior to the hearing and presented to the Court were Respondents' Motion to Dismiss and Response in Opposition to Motion to Compel and Motion for Continuance.

The Court, having reviewed the pleadings and materials filed to date, including, but not limited to H.B. 4062 which amends and clarifies West Virginia Code §30-1-1 et seq, and having heard argument of Petitioner and Counsel for Respondents, has determined that Respondents have not satisfied their burden to show cause why the Petition for Mandamus should not be granted. In consideration of which, the Court hereby finds as follows:

1. Respondents have a clear non-discretionary duty to promulgate and adopt rules and regulations which specify a procedure for the investigation and resolution of all complaints against psychologists licensed under article one and twenty-one of chapter 30 of the West Virginia Code;

2. Petitioner has a clear legal right to the relief requested, as set forth in paragraph 1 above, and as provided for in articles one and twenty-one of the West Virginia Code;

3. Petitioner has no adequate remedy at law to obtain the relief requested and to which he is entitled as a matter of law;

4. Petitioner's Motion to Compel Discovery and Motion for Continuance are rendered moot by the Court's ruling in this matter;

It is therefore **ORDERED, ADJUDGED and DECREED** as follows:

1. Respondents shall promulgate a set of rules and regulations which establish a procedure for the investigation and resolution of all complaints against psychologists licensed under articles one and twenty-one of chapter 30 of the West Virginia Code no later than May 22, 2000;

2. Said rules and regulations shall comply with the terms of West Virginia Code §30-1-8 as amended by H.B. 4062;

2. Said rules and regulations shall be filed by May 22, 2000 as emergency legislative rules under the terms of West Virginia Code §29A-3-15;

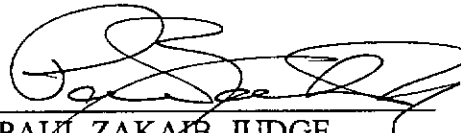
3. Respondents' Motion to Dismiss is denied;

4. The Court shall retain jurisdiction of this matter until an Order of Dismissal is entered.

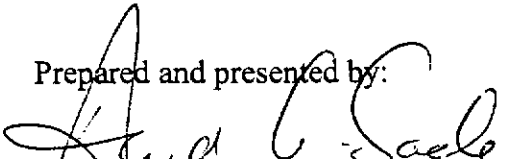
Still outstanding in this matter is Petitioner's request for attorney's fees. The Court will address this issue at a later date either upon submission of an Agreed Order Awarding Attorney's Fees, or upon Petitioner's Motion for an Award of Attorney's Fees and any response filed by Respondents.

The Circuit Clerk is directed to send a certified copy of this Order to the Petitioner and Counsel for the Respondents at their addresses of record.

ENTERED this 30th day of March, 2000.


PAUL ZAKAIB, JUDGE

Prepared and presented by:



DAVID A. SADE

Petitioner

Attorney at Law

WV State Bar No. 3229

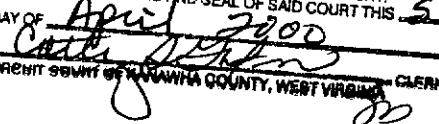
1003 Circle Rd.

Charleston, WV 25314

(304) 558-0526 (office)

(304) 344-8346 (home)

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 5th

DAY OF April, 2000

CATHY S. GATSON, CLERK

Inspected by:



ROBERT D. WILLIAMS

Counsel for Respondents

WV State Bar No. 6146

Assistant Attorney General

Office of the Attorney General

State Capitol

Room 26, East Wing

Charleston, WV 25305

(304) 558-2021

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 17 CSR4 Disciplinary and Complaint Procedures for Psychologists
Type of Rule: X Legislative Interpretive Procedural
Agency WV Board of Examiners of Psychologists
Address 1205 Quarrier Street, Room 200
Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THIRDAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 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:

There is no fiscal effect because the filing of the rule has no impact on the cost of implementing current rules.

3. Objectives of these rules:

To comply with state law as it relates to the investigation and resolution of complaints against psychologists.

Rule Title: 17 CSR4 DISCIPLINARY AND COMPLAINT PROCEDURES FOR PSYCHOLOGISTS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. The Board does not use state funds.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

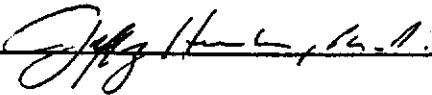
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 5/18/00

Signature of Agency Head or Authorized Representative



**TITLE 17
LEGISLATIVE RULE
PSYCHOLOGISTS**

**SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR PSYCHOLOGISTS**

FILED

MAY 19 10 42 AM '00

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

§ 17-4-1. General.

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

1.2. Authority. -- W.Va. Code § 30-21-6 and § 30-1-4

1.3. Filing Date. -- May 19, 2000

1.4. Effective Date. --

§ 17-4-2. Application.

This rule applies to all licensed psychologists, school psychologists and school psychologist independent practitioners, and to all supervised psychologists, supervised school psychologists and supervised school psychologist independent practitioners.

§ 17-4-3. 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 West Virginia Code § 30-21-1 *et seq.*

3.2. "Board" means the West Virginia Board of Examiners of Psychologists.

3.3. "Ethics coordinator" means a lay member of the Board appointed to coordinate the processing of complaints through an ethics investigator.

3.4. "Ethics investigator" means a person licensed to practice psychology in this state, and who is hired by the Board for the purpose of reviewing complaints against psychologists and supervised psychologists.

3.5. "License" means a license or temporary permit issued by the Board pursuant to W.Va. Code § 30-21-1 *et seq.*

3.6. "Licensee" means an individual who holds a license to practice psychology issued by the Board.

3.7. "Psychologist" means licensed psychologist, school psychologist, school psychologist independent practitioner and applicant.

3.8. "Supervised psychologist" means supervised psychologist, supervised school psychologist, and supervised school psychologist independent practitioner.

§ 17-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Psychologists.

The Board may deny an application for license, place a supervised psychologist on probation, require additional years of supervision for supervised psychologists, limit, restrict, suspend or revoke the approval of any supervised psychologist to progress through the licensure application process, 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 the psychologist or supervised psychologist 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 § 30-21-1 *et seq.* or the rules of the Board.

§ 17-4-5. 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 a psychologist or supervised psychologist with a violation of West Virginia Code § 30-21-1 *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 psychologist or supervised psychologist against whom the complaint is lodged;

5.1.2. The date(s) of the incident(s);

5.1.3. The name of any psychologist or supervised psychologist who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health and/or mental health care institution in which the patient was an inpatient or outpatient after or during the alleged incident(s).

5.2. A complaint against a psychologist or supervised psychologist shall allege that the psychologist or supervised psychologist 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 § 30-21-1 *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; or,

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.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the psychologist or supervised psychologist 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. In the event the complaint is against any supervised psychologist, the Board shall also send a copy of the complaint, including any supporting documentation, by certified mail to the supervisor of the supervised psychologist 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.

5.9. Requests for comment on complaints sent to psychologists or supervised psychologists shall be considered properly served when sent to their last known address. It is the psychologist's or supervised psychologist's responsibility to keep the Board informed of his or her current address.

5.10. Upon receipt of a psychologist's or supervised psychologist's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant who shall be afforded an opportunity to submit a written reply twenty days .

5.11. Board members shall refrain from contact with all concerned parties pending receipt of the psychologist's or supervised psychologist's response or expiration of the time for the psychologist or supervised psychologist to respond.

5.12. 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 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.

5.13. The review and investigation of complaints may be assigned to an ethics investigator. In the event a complaint is assigned to an ethics investigator, Board members shall refrain from contact with the ethics investigator as well as all concerned parties pending receipt of the ethics investigator's report. Provided, That the ethics coordinator may communicate with the ethics investigator for the purpose of facilitating the processing of complaints. Provided further, that the ethics investigator should attempt to communicate with any complainant in writing.

5.14. Upon receipt of a complaint and the psychologist's or supervised psychologist's response, as well as any supporting documentation, 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 psychologist or supervised psychologist in question or other involved parties, a report of which shall be placed in the investigation file.

5.15. To facilitate the disposition of a complaint, the Board 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 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.

5.16. The Board, its president or the ethics coordinator, 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 president or the ethics coordinator to issue a subpoena or subpoena duces tecum. Any such request by the ethics investigator shall be accompanied by a brief statement specifying the necessity for the same.

5.17. At any point in the course of an investigation or inquiry into a complaint, the Board, in its discretion, 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 psychologist or supervised psychologist may be sanctioned by the Board: Notice of any such determination shall be forwarded to all parties to the complaint by certified mail. Provided, That in the event the review and investigation of a complaint is assigned to an ethics investigator, the ethics investigator shall make his or her respective findings and recommendations to the Board prior to the Board dismissing the

complaint. Provided further, that the exercise of the Board's discretion to dismiss a complaint hereunder is final and not subject to appeal. Provided however, that for just cause shown, the Board, in its discretion, may reverse its decision to dismiss a complaint hereunder.

5.18. If after its review and investigation of a complaint the Board determines there is reasonable cause to believe that the conduct, practices or acts alleged in a complaint occurred and constitute a violation for which a psychologist or supervised psychologist may be sanctioned by the Board, the Board shall enter an order identifying the substantive allegations set forth in the complaint, requiring the psychologist or supervised psychologist to respond to the allegations and providing notice of a hearing in accordance with the contested case hearing procedures set forth in W. Va. Code § 29A-5-1 *et seq.* and the rules of the Board. A copy of the order shall be served on the psychologist or supervised psychologist by certified mail.

5.19. The Board may refuse to grant a license, renew a license or suspend a license and may suspend the approval of any supervised psychologist to progress through the licensure application process if it determines there is reasonable cause to believe that a psychologist's or supervised psychologist's conduct, practices or acts constitute an immediate danger to the public. The Board shall enter an order stating the grounds for such action, and shall serve a copy of the order on the psychologist or supervised psychologist by certified mail.

5.20. The Board may take any informal action authorized by law which is warranted by its review and investigation of a complaint.

§ 17.5.6. Appeals.

6.1. 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-5-1 *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.

6.2. Any psychologist who has had his or her license suspended and any supervised psychologist who has had their approval to progress through the licensure application process suspended by the Board without a hearing on the basis that the psychologist or supervised psychologist's continuation in practice constitutes an immediate danger to the public shall be entitled to a hearing on the action in accordance with the contested case hearing procedures set forth in West Virginia Code § 29A-5-1 *et seq.* and the rules of the Board.