

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

Form #3 ■

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Aug 29 12 49 PM '00

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Registration for Sanitarians TITLE NUMBER: 20

CITE AUTHORITY: § 30-1-8 § 30-17-9

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: 2

TITLE OF RULE BEING PROPOSED: Procedure for the Investigation and Resolution of
Complaints

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

Michael Eltzroth, R.S., Chairman
West Virginia Board of Registration
for Sanitarians

Brief Summary of the Rule

20CSR2

Procedure for the Investigation and Resolution of Complaints

This rule establishes the procedure for the investigation and resolution of complaints filed with the West Virginia Board of Registration for Sanitarians in accordance with § 30-1-8(h). This rule includes procedures for filing of complaints; issuing a notice of hearing; investigating complaints; conducting hearings; the final disposition of complaints; penalties; and right of appeal.

Statement of Circumstances Which Require the Proposed Rule

20CSR2

Procedure for the Investigation and Resolution of Complaints

This rule was mandated by the revision of § 30-1-8 in H. B. 4062 passed by the 2000 Legislature.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 29, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Registration for Sanitarians
Building 3, Capitol Complex, 1900 Kanawha Blvd. E.
Charleston WV 25305
Telephone (304) 558-2981

LEGISLATIVE RULE TITLE: Procedure for the Investigation and Resolution
of Complaints

1. Authorizing statute(s) citation § 30-1-8 and § 30-17-9

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 21, 2000

b. What other notice, including advertising, did you give of the hearing?

A press release was prepared and a copy of the rule was provided to each local health department.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 31, 2000

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached XXX No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact) August 29, 2000

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Ronald K. Forren, Director, Public Health Sanitation Division
Bureau for Public Health
815 Quarrier St., Suite 418, Charleston WV 25301

Telephone (304) 558-2981 Fax (304) 558-1071 Email rforren@wvdhhr.org

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

(same)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 20CSR2, Procedure for the Investigation and Resolution of Complaints

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency: West Virginia Board of Registration for Sanitarians

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

| 1. Effect of the Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------------|----------|----------|-------------|------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | \$ | \$0 | \$0 | \$0 |
| Personal Services | | | | | |
| Current Expense | | | | | |
| Repairs & Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Revenue | | | | | |

2. Explanation of above estimates.

The rule has no fiscal implications.

3. Objectives of this rule:

To establish the procedure for investigation and resolution of complaints against persons who are registered by the West Virginia Board of Registration for Sanitarians.

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.

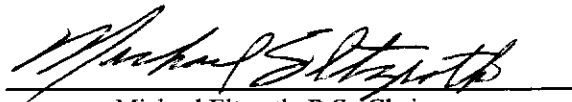
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 8/29/00

Signature of Agency Head or Authorized Representative:



Michael Eltzroth, R.S., Chairman
West Virginia Board of Registration for Sanitarians

**TITLE 20
LEGISLATIVE RULE
BOARD OF REGISTRATION FOR SANITARIANS**

**SERIES 2
PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS**

**FOR REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**TITLE 20
LEGISLATIVE RULE
BOARD OF REGISTRATION FOR SANITARIANS**

**SERIES 2
PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS**

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**TITLE 20
LEGISLATIVE RULE
BOARD OF REGISTRATION FOR SANITARIANS**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 2

PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS

§ 20-2-1. General.

1.1. Scope. -- This rule specifies the procedure for the investigation and resolution of complaints against sanitarians-in-training and registered sanitarians. This rule should be read in conjunction with the provisions of W. Va. Code § 30-1-1 et seq and § 30-17-1 et seq.

1.2. Authority. -- W. Va. Code § 30-1-8 and § 30-17-9.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- This rule applies to all registered sanitarians and sanitarians-in-training.

1.6. Enforcement. -- This rule is enforced by the West Virginia Board of Registration for Sanitarians.

§ 20-2-2. Definitions.

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

2.1. Board. -- The West Virginia Board of Registration for Sanitarians.

2.2. Certificate of Registration. -- A document issued as evidence of registration and qualification to practice as a sanitarian or a sanitarian-in-training under § 30-17-3 and bearing the designation "registered sanitarian" or "sanitarian-in-training" and showing the name of the person, date of issue, serial number, seal and signatures of the members of the board authorized to grant such certificates.

2.3. Complainant. -- The person, firm, corporation, member of the board, or public officer who files a complaint with the board charging a registered sanitarian or sanitarian-in-training with a violation of W. Va. Code § 30-1-8 or § 30-17-12.

2.4. Ethics Investigator. -- A registered sanitarian who is appointed by the board for the purpose of reviewing complaints against registered sanitarians and sanitarians-in-training.

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2.5. Registered Sanitarian. -- A sanitarian registered in accordance with the provisions of § 30-17-3.

2.6. Respondent. -- The registered sanitarian or sanitarian-in-training charged by a complainant with a violation of W. Va. Code § 30-1-8 or § 30-17-12.

2.7. Sanitarian. -- A public health professional uniquely qualified by education in the arts and sciences, specialized training, and credible field experience to assist in the enforcement of public health laws and environmental sanitation regulations, and to effectively plan, organize, manage, evaluate and execute one or more of the many diverse disciplines comprising the field of public health and environmental sanitation.

2.8. Sanitarian-in-Training. -- A person who possesses the necessary educational qualifications as prescribed in § 30-17-4 for registration as a professional sanitarian, but who has not completed the experience requirements in the fields of environmental sanitation as required for registration.

§ 20-2-3. Filing of Complaint.

3.1. Any person, firm, corporation, member of the board, or public officer may file a complaint with the board charging a registered sanitarian or sanitarian-in-training with a violation of W. Va. Code § 30-1-8 or § 30-17-12. The complainant shall file the complaint in writing and shall include in the complaint:

3.1.a. The name and address of the registered sanitarian or sanitarian-in-training against whom the complaint is filed;

3.1.b. The date of complaint;

3.1.c. The date, time, place, and substance of each alleged offense, act or failure to act and the exact portion of the law that was violated; and

3.1.d. The name and address of the complainant.

3.2. 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.

3.3. The board shall assign a unique number to each complaint received and shall maintain each complaint in a separate file.

3.4. The board shall maintain a complaint log which indicates the date the complaint was

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received; the name and address of the complainant; the name and address of the respondent; the nature of the complaint; and the final disposition of the complaint.

§ 20-2-4. Notice of Hearing.

4.1. Within thirty (30) days of the receipt of a complaint, the board shall send the respondent a written notice of hearing in accordance with § 30-1-8, § 30-17-12, and the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

4.1.a. The board shall send the notice of hearing by certified mail to the respondent not less than thirty (30) days prior to the date of the hearing.

4.1.b. The board shall include in the notice of hearing:

4.1.b.1. The date, time, and place of the hearing;

4.1.b.2. A copy of the complaint; and

4.1.b.3. A statement informing the respondent that he or she may appear with witnesses and be heard in person, by counsel, or both to present evidence in his or her defense, and that the hearing will be conducted in accordance with the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

4.1.c. The board shall send a copy of the notice of hearing by certified mail to the complainant not less than thirty (30) days prior to the date of the hearing.

4.2. The board is not required to send the respondent a notice of hearing if the complaint is dismissed in accordance with section 7.1 of this rule.

§ 20-2-5. Investigation of Complaint.

5.1. Prior to the date of the hearing scheduled in accordance with section 4 of this rule, the board shall conduct any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint in accordance with § 30-1-5.

5.1.a. The board may assign the complaint to an ethics investigator or to a committee of the board for investigation. The ethics investigator or the committee shall investigate the complaint and shall be afforded an opportunity to interview the respondent and other involved parties. Prior to the date of the hearing, the ethics investigator or the committee shall provide the board with a written report of their findings and recommendations including an account of any

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interviews conducted.

§ 20-2-6. Conduct of Hearing

6.1. The board shall conduct all hearings in accordance with section 4.4 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

6.2. The board may issue subpoenas or subpoenas duces tecum in accordance with § 30-1-5(a) and section 10 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

6.3. The board may continue a hearing or adjourn a hearing to a later date in accordance with section 4.5 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

6.4. The board shall make arrangements for the transcription of the reported testimony and evidence of all hearings in accordance with § 30-1-8(f) and section 5 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

6.5. The board may appoint a hearing examiner in accordance with section 7.1 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

§ 20-2-7. Disposition of Complaints

7.1. At any time during the investigation and resolution of a complaint, the board may dismiss the complaint if it determines that there is not sufficient evidence to warrant further proceedings, or that the complaint fails to demonstrate that the respondent violated W. Va. Code § 30-1-8 or § 30-17-12.

7.1.a. If the board has assigned investigation of the complaint to an ethics investigator or to a committee, the board may not dismiss the complaint until the ethics investigator or the committee has filed a written report of their findings and recommendations with the board.

7.1.b. The board shall advise the respondent and the complainant in writing by certified mail if the complaint is dismissed.

7.2. Pursuant to § 30-1-8 and § 30-17-12, if the board determines that the charges are true based upon the record of hearings conducted in accordance with this rule, the board may:

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7.2.a. Suspend or revoke the respondent's certificate of registration;

7.2.b. Enter into consent decrees, reprimand, enter into probation orders, or levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination; or

7.2.c. Assess administrative costs.

7.3. In accordance with § 30-1-5(c) and § 30-17-15, the board may apply to any court having equity powers, or to the judge thereof in vacation, for an injunction to restrain any violation of the provisions of § 30-1-1 et seq and § 30-17-1 et seq.

7.4. In accordance with § 30-1-8 and section 8 of the Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," the board may hold conferences at any time prior to a hearing or thereafter to:

7.4.a. Dispose of procedural requests or similar matters;

7.4.b. Simplify or settle issues by consent of the parties; or

7.4.c. Provide for the informal disposition of complaints by stipulation, agreed settlement, or consent order.

7.5. In accordance with § 30-1-8(d), the board may suspend its decision and place on probation a respondent found by the board to be in violation of § 30-1-8 and § 30-17-12.

§ 20-2-8. Penalties.

8.1. Upon conviction of a violation of § 30-17-1 et seq, the respondent is guilty of a misdemeanor and is subject to the penalties of § 30-17-15.

8.2. The board may levy fines and assess administrative costs in accordance with § 30-1-8(a) and section 7 of this rule.

§ 20-2-9. Appeals.

9.1. Any person whose certificate of registration has been suspended or revoked by the board may, within thirty (30) days of the decision of the board, appeal to the circuit court of the county in which such person resides, or to the judge of such court in vacation, in accordance with § 30-1-9.

PUBLIC COMMENTS AND RESPONSES
BOARD OF REGISTRATION FOR SANITARIANS

PROPOSED RULE 20CSR2
PROCEDURE FOR THE INVESTIGATION
AND RESOLUTION OF COMPLAINTS

A public comment period on the proposed rule ended July 31, 2000. Five (5) comments were received. Comments are summarized below, and the Board's responses and changes to the proposed rule are detailed. Some of the changes listed below were made in order to bring the rule into compliance with the W. Va. code and applicable procedural rules (§ 30-1-1 et seq, § 30-17-1 et seq, and 20CSR1).

- | | |
|---------------|---|
| Title | Title of rule changed to correspond to wording in the code authorizing the promulgation of the rule, § 30-1-8(h). Comment: No allowance is made to reimburse the respondent for expenses incurred in answering the charges of the complaint. Response: The sections of the code authorizing the promulgation of the rule and establishing the scope of the rule contain no provision or authority for such reimbursement. |
| 1.1 | Added reference to § 30-17-1 et seq. |
| 1.2 | More specific code reference cited. "§ 30-17-1 et seq and § 30-1-1 et seq" changed to "§ 30-1-8 and § 30-17-9." |
| 2.1 | Deleted definition of "applicant." Applicants are not included in the scope of the rule or in § 30-1-8(h) authorizing its promulgation. |
| 2.3 | Added definition of "complainant" for clarity and to distinguish between "complainant" and "respondent." |
| 2.3 (now 2.2) | More specific code reference cited. "§ 30-17-1 et seq" changed to "§ 30-17-3." |
| 2.4 | Clarified definition of "ethics investigator." Comment: Reference to "hiring" of ethics investigator suggests a cost, but fiscal note indicates no cost involved. Response: "Hired" changed to "appointed." |

Public Comments and Board Responses 20CSR2

Comment: How will the ethics investigator be selected? What assurance is there that he or she will be unbiased? West Virginia sanitarians are a close-knit group.

Response: The board will appoint the ethics investigator and is expected to exercise good judgment in choosing an individual who will conduct a professional, unbiased and objective investigation. If the respondent feels that the investigation was not conducted accordingly, he or she should raise this issue with the board before or during the hearing.

2.5 More specific code reference cited. “§ 30-17-1 et seq” changed to “§ 30-17-3.”

2.6 (now 2.7) **Comment:** Regarding definition of “sanitarian”, shouldn’t this class be governed by W. Va. code § 30-17-1 and § 30-1-1?

Response: The definition used in the proposed rule is identical to the definition of “sanitarian” provided in § 30-17-2(b).

2.6 Added definition of “respondent.” Term has been added in the rule for clarity and to distinguish between “complainant” and “respondent.”

2.7 (now 2.8) More specific code reference cited. “§ 30-17-1 et seq” changed to “§ 30-17-4.”

Comment: Section references sections of the W. Va. code and rules of the board. Copies of the code and the rule should be provided for review.

Response: Copies of the W. Va. code and rules referenced in 20CSR2 are readily available to interested parties through the Internet, local libraries, and the local courthouses. It would be costly and impractical to attach to each rule copies of all referenced sections of W. Va. code and other applicable rules.

3.0 Deleted section 3.0. The causes for disciplinary action are established and provided for in the section of the W. Va. code already referenced in section 1.1, Scope. Subsequent sections renumbered accordingly.

Comment: Body of section 3.0 does not deal with subjects stated in the heading. What about probation, limiting duties, or other disciplinary actions?

Response: Section 3.0 has been deleted. Probation, limiting duties, and other disciplinary actions are now addressed in section 7 of the proposed rule.

Public Comments and Board Responses 20CSR2

4.1 (now 3.1) **Comment:** Recommend requiring that all complaints be submitted in writing.

Response: Agreed. Requirement stated in section 3.1.

Comment: No reference is made to identify the name of the complainant. The respondent is entitled to face their accuser.

Response: Agreed. Revised so as to require that the name and address of the complainant be included in the written complaint, a copy of which is provided to the respondent in the notice of hearing (see sections 3.1 and 4.1.b).

Comment: If the name of the complainant is released to the respondent, a sanitarian may be reluctant to file a complaint.

Response: Disagree. It is important that the respondent be given the opportunity to question the complainant regarding the allegations submitted in the complaint. Also, § 30-1-5(b) states that, "Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any other person licensed or registered by the same board, and shall do so in a timely manner."

Comment: "Registered" is omitted before the word "sanitarian."

Response: Correction made.

Deleted "applicant." Applicants are not included in the scope of the rule or in § 30-1-8(h) authorizing its promulgation.

More specific code reference cited. "§ 30-20-1 et seq" changed to "§ 30-1-8 or § 30-17-12."

4.1.a(now 3.1.a) Changed "sanitarian" to "registered sanitarian" to comply with scope of rule.

4.1.c(now 3.1.c) Revised to more specifically define what information about the complaint is to be submitted.

4.2 Deleted. The basis for filing a complaint has already been established in 3.1.

4.3 **Comment:** Allowing the board to make the determination of whether or not a complaint has been "filed in bad faith or for a malicious purpose" may cause problems. Commenter did not submit a suggested alternative.

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Response: Disagree. Board is the correct entity to make such a determination. The only other parties involved are the complainant and the respondent, neither of which is in a position to make an objective decision in this matter.

- 4.4 (now 3.4) Clarified what information is required to be recorded in the complaint log.
- 4.5 (now 3.5) Clarified numbering system; must assign a “unique” number to each complaint received.
- 4.6 Deleted. Providing acknowledgment to the complainant is adequately covered by the requirements of 4.1.c and 7.1 which require the board to notify the complainant in writing of a notice of hearing or a decision to dismiss the complaint.
- 4.7 (now 4.1) Revised to reflect the required issuance of a notice of hearing in accordance with § 30-1-8, § 30-17-12, and Board of Registration for Sanitarians Procedural Rules, 20CSR1, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings.” Previous section 4.7 required that a copy of the complaint be sent to the respondent with a request for comment. Did not reflect the required notice of a hearing.
- 4.8 Deleted. Unnecessary since the address of the respondent is required to be submitted by the complainant.
- 4.9 (now 4.1.c) Revised to correspond to change in 4.1. The complainant is to receive a copy of the notice of hearing issued per 4.1.
- 4.10, 4.11, 4.12 Combined, revised and renumbered as 5.1 and 5.1.a. Revision was necessary to correspond to new 4.1 and to reference § 30-1-5.

Comment: “Description of the care provided” does not apply to sanitarians.

Response: Agreed. Deleted in revision of section.

- 4.13 The requirements of this section are now stated in section 7.4 and were revised to correspond to § 30-1-8 and section 8 of 20CSR1, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings.”
- 4.14 The requirements of this section are now stated in section 6.2 and were revised to correspond to section 10 of 20CSR1, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings” and to reference § 30-1-5.

Public Comments and Board Responses 20CSR2

Comment: No provision is made for the respondent to subpoena witnesses or demand the presence of any person to support their case.

Response: Section 10 of 20CSR1 sets forth the provisions for subpoenas and states that “. . .written requests for the issuance of subpoenas or subpoenas duces and tecum . . . shall be made no later than ten (10) days of a scheduled hearing.” Such written requests may be submitted by both complainant and respondent. § 30-1-8(c) of the W. Va. code also states that the respondent “. . . may appear with witnesses . . .”

Comment: Eliminate the word “chairman” and use “chairperson.”

Response: “Chairman” was deleted when section was revised and renumbered to 6.2.

4.15 The requirements of this section are now stated in section 7.1 and 7.1.a. Section 7.1.b was added to assure that the complainant is duly notified of all board decisions regarding the complaint.

5.0 Deleted as unnecessary. The causes for disciplinary action are established and provided for in the section of the W. Va. code already referenced in section 1.1, Scope. Subsequent sections renumbered accordingly.

Comment: Replace “probable cause” with “satisfactory proof.”

Response: Corrected by deletion of this section as detailed above.

6.0 Added to correspond to the provisions of 20CSR1, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings.” References procedures for conducting hearings including continuing or adjourning a hearing; transcriptions; appointment of a hearing examiner; and issuance of subpoenas.

6.0 (now 9.0) Complete rewrote section to comply with the provisions of § 30-1-9. Old wording referred solely to appealing the denial of an application. Application denials are not covered in the scope or authority of this rule.

Comment: Section doesn’t mention to whom the appeal should be addressed.

Response: New section 9.0 references § 30-1-9 which details appeal procedures, including to whom the appeal should be addressed or submitted.

Public Comments and Board Responses 20CSR2

- 7.2, 7.3, 7.5 Added these sections to clarify and define procedures for resolution of complaints by referencing the applicable requirements of § 30-1-5, § 30-1-8, § 30-17-12, and § 30-17-15.
- 8.0 Added section 8.0 to reference the penalties allowed under § 30-1-8(a) and § 30-17-15.

July 6, 2000

Ronald K. Forren, R.S.
Office of Environmental Health Services
815 Quarrier St., Suite 418
Charleston, WV 25301

Dear Ron:

I received the notice for public comment on the procedures for investigation and resolution of complaints against Sanitarians. First I'd like to point out that I was under the impression that the Board already had the duty and power to investigate complaints against those that it licenses. I'd also like to make you aware that many Sanitarians in the state do not feel that lodging a complaint with the Board of Registration against Sanitarians has come to any resolution in the past. In recent months, I have been approached by several individuals (who are Sanitarians) who know of Sanitarians being derelict in their duties, however, they are reluctant to send their concerns on to the Board because the Board has failed to act in the past in cases involving Sanitarians' unprofessional conduct or failure to adequately perform their duties. I hope that the Board actually plans to put into place and use the procedures outlined to improve the quality of the professional Sanitarians in West Virginia.

In reading the Disciplinary and Complaint Procedures for Sanitarians, I found a couple of things that stuck out in my mind as being problematic. First, is that the complaint is forwarded to the Sanitarian for his/her response within 30 days. Will the information forwarded include the name of the complainant? It is possible that a Sanitarian who knows something would be reluctant to come forward to complain against a fellow Sanitarian, if they knew that the Sanitarian in question would be notified of who filed the complaint. For example, if a district Sanitarian knew of a malfeasance issue involving one of the Sanitarians in his district, I think he would be obligated to report this issue to the Board. If the Board reports this back to the county Sanitarian and the county Sanitarian remains in the position, it would prove to be difficult circumstances under which the District Sanitarian worked with this county Sanitarian in the future. The Sanitarian community in West Virginia is fairly small and close knit.

Next, is the issue of hiring an ethics investigator. I understand the need for this individual and the role they would play, but again, West Virginia Sanitarians are a close knit group. How would you choose the ethics investigator? How can you be sure to get someone who will be unbiased? Have you considered having this individual be someone who has maintained their certification but is no longer working as a Sanitarian? For example, it could be someone who is now in another profession, or is retired.

Another issue that I take exception to is the statement that there is no cost involved. Does that mean there's no cost for putting this plan into place? What about this ethics investigator that would be hired on certain cases? Hired implies being paid and also covering the cost of doing the


investigation ie. phone calls, mileage etc. Where would funds for that come from (from the state or would the Board cover it)? Does this mean that the cost of maintaining our registration will go up to cover the costs of the investigations? Doesn't a lack of funds being attached for an ethics investigator pretty much mean that one will never be hired to do anything?

Lastly, I would like to point out that the heading for §20-2-3 states "Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of a Certificate of Registration" while the body of that paragraph only deals with suspending and revoking a registration. Why does that paragraph not address putting Sanitarians on probation, limiting their duties or any other disciplinary actions? Allowances are made for it in the paragraph heading, but there is no discussion of it in the body, which I assume means that the Board would not pursue any of these options, which I think are viable options for action.

Also, the copy I received has a typo §29-2-4 should read §20-2-4.

I thank you for the opportunity to provide input and hope that you will take these suggestions into consideration.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Cochran".

Michelle Cochran, R.S.



Berkeley County Health Department
800 South Queen Street
Martinsburg, West Virginia 25401

July 27, 2000
Ronald K. Forren, RS
Office of Environmental Health Services
815 Quarrier Street, suite 418
Charleston, West Virginia 25301

Dear Ron:

The Berkeley County Health Department has the following comments for the Disciplinary And Complaint Procedures For Sanitarians.

- #1. Under section 20-2-3 **satisfactory proof** is a term we agree upon, but under 20-2-5 the term **probable cause** should be *deleted*. **Satisfactory proof should replace probable cause.**
- #2. Under Section 4.12 the statement "**description of the care provided**" does not apply to Sanitarians.

Thank you for the opportunity to voice our comments.

Sincerely,

A handwritten signature in cursive script that reads "Twila Stowers Carr".

Twila Stowers Carr, RS

From: <WVMAXFISHR@aol.com>
To: <rforren@wvdhhr.org>
Date: 6/29/00 9:19AM
Subject: 20 CSR 2 review comments

I received a copy of the proposed 20 CSR 2 ("Disciplinary and Complaint Procedures for Sanitarians" and submit the following comments:
Section 4.1-- It is very important that language be included in this section that specifies that all complaints must be in writing. This could be accomplished by adding the words "All complaints must be made in writing" in the middle of the third line of this section. The present language leaves a loop hole for the Berkeley County Politicians to file verbal complaints which are impossible to investigate because the facts keep changing!!! I received several verbal complaints against sanitarians and there is no way to investigate them and document any kind of findings. I would hate to see the Board or an Ethics investigator try to resolve a verbal complaint to the satisfaction of either party.

Section 4.14-- Should eliminate the word "Chairman" and have only the word "chairperson" (Old Kay Howard training!!!)

Thats it for what it is worth. Hope to see you at Snowshoe if my retirees scholarship is approved.

CC: <mooren@mail.wvnet.edu>

*Mingo County Health Department
P. O. Box 1096
Williamson, West Virginia 25661*

Fax (304) 235-2654

Phone (304) 235-3570

July 25, 2000

Mr. Forren:

I have reviewed the proposed rule entitled "Disciplinary and Complaint Procedures for Sanitarians" and have several questions.

Page 1 of the document in question refers in section 2.4 refers to an Ethics Investigator being hired by the Board to review complaints against Sanitarians, but the attached Fiscal Note for Proposed Rules states that "no fiscal implication" should ensue. Who pays this investigator and at what rate? Having been "hired" by the Board suggests at least some cost?

Section 2.7 as well as other sections of my copy of the proposed rule refers to sections of the code including 30-17-1, 30-1-1, 30-1-8 and 29-A-6-1 and also refers to "rules of the Board." I believe copies of these codes and rules or, at least pertinent excerpts from them should be provided for our review.

Section 29-2-4 relates to information required in complaints received. No mention is made concerning the identity of the complainant. This would seem to preclude the right of the Sanitarian to face the accuser. This seems to offer considerable protection to accusers, but very little to Sanitarians. The very nature of the Sanitarian's job entails a great deal of resentment on the part of the citizenry due to the large percentage of time Sanitarians devote to enforcement.

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Now, due to the present wording of this proposed rule, not only can complainants take the Sanitarian away from their duties to answer charges. the Sanitarian may incur a drain on their finances or even eventual prosecution, all without being able to ascertain the identity of an accuser or the right to face said accuser.

This is decidedly unfair.

Section 4.3 states that complainants are immune from liability unless complaints are filed in bad faith or for a malicious purpose. It suggests to me that the "Board" makes that determination. I strongly suspect that unless the evidence of bad faith or maliciousness is overwhelming, the "Board" will not pursue any liability on the part of the complainant.

As a matter of fact, no mention is made of who may assign liability to the complainant, although I suspect the Sanitarian will have to do so.

Section 4.8 refers to requests for comments to be sent to personal addresses. It would probably be more certain to reach the accused if sent to the work place and listed as personal or confidential to the personal or confidential to the individual indicated.

Section 4.14 states, in part, that the Board, its chairman, the investigating committee or committee chairman may issue subpoenas. No provision seems to be in place which grants the accused the right to demand the presence, through subpoena or any other means, of any person or persons to support the Sanitarian's case.

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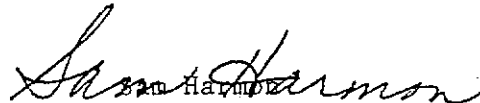
Phone (304) 235-3570

The proposed rule also doesn't seem to have in place any information concerning remuneration of the Sanitarian for expenses incurred in answering these charges including travel, meals, lodging, attorney fees, loss of annual leave etc.

Section 20-2-6, which deals with appeals doesn't mention to whom the appeal will be addressed. I believe that should be specified.

Thank you for your attention. I hope to hear from you soon.

Sincerely,


Sam Harmon
Registered Sanitarian