

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

Form #5

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Dec 8 7 05 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Board of Registration for Sanitarians TITLE NUMBER: 20

CITE AUTHORITY: § 30-1-8 and § 30-17-9

RULE TYPE: PROCEDURAL XXXX 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 RULE BEING PROPOSED: 2

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

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



Authorized Signature

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(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 20
PROCEDURAL RULE
BOARD OF REGISTRATION FOR SANITARIANS**

Dec 8 7 05 AM '00

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

OFFICE OF THE SECRETARY OF STATE

§ 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. -- December 8, 2000.

1.4. Effective Date. -- February 1, 2001.

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.

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 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 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:

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.