

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2010 JUL 29 AM 11:36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: DHHR/BPH on behalf of THE STATE BOARD OF SANITARIANS TITLE NUMBER: 20

CITE AUTHORITY: §§30-17-6 AND 30-17-15.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 02

TITLE OF RULE BEING AMENDED: This proposal changes an existing PROCEDURAL rule into a LEGISLATIVE rule, with the title: PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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.

Patsy A. Hardy
Authorized Signature

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

[Empty box for explanation of estimates]

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum]

Date

July 30, 2010

Agency

Department of Health and Human Resources

Authorized Representative

Patsy A. Hardy

Patsy A. Hardy
Cabinet Secretary

State Board of Sanitarians, 20CSR02
PROCEDURE FOR THE INVESTIGATION
AND RESOLUTION OF COMPLAINTS
Office of Environmental Health Services
Bureau for Public Health
Department of Health and Human Resources

BRIEF SUMMARY

This legislative rule specifies the procedure for the investigation and resolution of complaints against sanitarians-in-training, sanitarians, and registered sanitarians. The Board name has also been changed from the WV Board of Registration for Sanitarians to the State Board of Sanitarians.

STATEMENT OF CIRCUMSTANCES

This current Legislative Rule is being amended to comply with the changes made by the 2010 Legislature to WV Code Chapter 30, Article 17, governing the State Board of Sanitarians.

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: July 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Ann A. Goldberg
Bureau for Public Health
350 Capitol Street, Rm. 702
Charleston, WV 25301
304 558-2971

LEGISLATIVE RULE TITLE: PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS 20CSR02

1. Authorizing statute(s) citation WV Code §§30-17-6 and 30-17-15.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 23, 2010

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

c. Date of ~~Public Hearing(s)~~ or Public Comment Period ended:
July 23, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

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

N/A

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

Ann Goldberg, Director,
Public Health Regulations
350 Capitol Street, Rm. 702
Charleston, WV 25301
304 558-0035 - phone
~~304 559-1035~~ - fax
ann.a.goldberg@wv.gov

- 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)

Brad Cochran, Director, Public Health Sanitation
Office of Environmental Health Services
Bureau for Public Health
350 Capitol Street
Charleston, WV 25301
~~304 558-2981~~ phone
304 558-1071 fax
brad.j.cochran@wv.gov

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 hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

From June 23 2010 to July 23 2010

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

FILED

TITLE 20

2010 JUL 29 AM 11:36

**PROCEDURAL LEGISLATIVE RULE
STATE BOARD OF REGISTRATION FOR SANITARIANS**

OFFICE 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, sanitarians, 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 30-17-15.~~

1.3. Filing Date. -- ~~December 8, 2000.~~

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

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

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

1.7. Format. -- While this is an amendment of the existing rule title 20, series 2, rather than submitting a repeal and replacement rule, this rule is submitted with strike-throughs and underscoring to show changes from the existing rule. However, the sections have been re-order to more accurately reflect the flow of these procedures; i.e. the sections following "Filing of a Complaint" in section 3 are now "Investigation" in section 4 and "Disposition of Complaint" in section 5 prior to "Notice of Hearing" in section 6. In all other respects this rule is an accurate reflection of the content of the current rule, with proposed amendments.

§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 State Board of Registration for Sanitarians.~~

2.2. Certificate of Registration. -- ~~A document issued as evidence of registration and qualifications to practice as a sanitarian or a sanitarian in training under W. Va. Code §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. public health sanitation under provisions of WV Code §30-17-1, et seq.~~

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, sanitarian or sanitarian-in-training with a violation of W.-Va. Code §~~30-1-8 or 30-17-12~~ 30-17-15 or rules of the Board.

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

2.5. Registered Sanitarian. -- ~~A sanitarian registered in accordance with the provisions of W. Va. Code §30-17-1.~~ A person who is licensed under the provisions of W.-Va. Code §30-17-1 and possesses the educational qualifications, experience requirements and successfully passed a national examination.

2.6. Respondent. -- The registered sanitarian, sanitarian or sanitarian-in-training charged by a complainant with a violation of W.-Va. Code §§~~30-1-8 or 30-17-12~~ 30-17-15.

2.7. Sanitarian. -- ~~A public health professional person who is certified by the Board being~~ 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 W.-Va. Code §~~30-17-4~~ 30-17-10 for ~~registration~~ certification as a ~~professional~~ sanitarian, but who has not completed the experience requirements in the fields of ~~environmental~~ public health sanitation as required for ~~registration~~ certification.

§20-2-3. Filing of a 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, sanitarian or sanitarian-in-training with a violation of W.-Va. Code §30-1-8 or ~~30-17-12~~ 30-17-15. The complainant shall file the complaint in writing and shall include ~~in the~~ in the complaint:

3.1.a. The name and address of the registered sanitarian, 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.

3.5. Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee or certificate holder.

§20-2-4. Investigation of Complaint.

4.1. 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 W.-Va. Code §30-1-5.

4.1.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.

§20-2-5. Disposition of Complaints.

5.1. 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~~ 30-17-15.

5.1.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.

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

5.2. Pursuant to W.-Va. Code ~~§§30-1-8 and 30-17-12~~ 30-17-15, if the board determines that the charges are true based upon the record of hearings conducted in accordance with this rule, the board may:

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

5.2.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

5.2.c. Assess administrative costs.

5.3. 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.~~

5.4. In accordance with § 30-1-8 and section 8 of the ~~State Board of Registration for Sanitarians Procedural Rules rule~~, 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:

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

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

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

5.5. In accordance with W.-Va. Code §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 W.-Va. Code §§30-1-8 and ~~30-17-12~~ 30-17-15.

§20-2-6. Notice of Hearing.

6.1. Within thirty (30) days of the receipt of a complaint, the board shall send the respondent a written notice of hearing in accordance with W.-Va. §§30-1-8, ~~30-17-12~~16 and the State Board of Registration for Sanitarians Procedural Rules rule, 20CSR1, Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

~~6.1.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.~~

~~6.1.b. The board shall include in the notice of hearing:~~

~~6.1.b.1. The date, time, and place of the hearing;~~

~~6.1.b.2. A copy of the complaint; and~~

~~6.1.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 State Board of Registration for Sanitarians Procedural Rules, 20CSR1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."~~

~~6.1.e. 6.1.a.~~ 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.

6.2. The board is not required to send the respondent a notice of hearing if the complaint is dismissed in accordance with section ~~7.1.~~ 5.1. of this rule.

§20-2-7. Conduct of Hearing

7.1. The board shall conduct all hearings in accordance with section ~~4.4.~~ 3.4. of the State Board of Registration for Sanitarians Procedural Rules, 20CSR1, Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

~~7.2. The board may issue subpoenas or subpoenas duces tecum in accordance with W. Va. Code §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.~~

~~7.3. 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.~~

~~7.4. 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.~~

~~7.5. 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.~~

§20-2-8. Penalties.

8.1. Upon conviction of a violation of W. Va. §30-17-1 et seq, the respondent is guilty of a misdemeanor and is subject to the penalties of W-Va. Code ~~§30-17-15~~ 30-17-18.

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

§20-2-9. Appeals.

~~9.1. Any person whose certificate of registration~~ permit, certificate or license 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 W-Va. Code §30-1-9.