

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

Form #5

Do Not Mark In This Box

2011 APR 29 PM 12:20

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 SANITARIANS TITLE NUMBER: 20

CITE AUTHORITY: WV CODE §§ 30-1-8 and 30-17-15.

RULE TYPE: PROCEDURAL X INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: PROCEDURE FOR THE INVESTIGATION
AND RESOLUTION OF COMPLAINTS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 30, 2011

Ante L. Reyes
Authorized Signature

FILED

TITLE 20

2011 APR 29 PM 12: 20

PROCEDURAL RULE
STATE BOARD OF SANITARIANSOFFICE OF THE 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 WV Code §§30-1-1, et seq. and 30-17-1, et seq.

1.2. Authority. -- WV Code §§30-1-8 and 30-17-15.

1.3. Filing Date. -- April , 2011

1.4. Effective Date. -- April , 2011

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

1.6. Enforcement. -- This rule is enforced by the State Board of 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 State Board of Sanitarians.

2.2. Certificate. -- A document issued as evidence of qualifications to practice 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 WV Code §30-17-15 or rules of the Board.

2.4. 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 person who is licensed under the provisions of WV 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 WV Code §§30-1-8 or 30-17-15.

2.7. Sanitarian. -- 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 sanitation.

2.8. Sanitarian-in-Training. -- A person who possesses the necessary educational qualifications as prescribed in WV Code §30-17-10 for certification as a sanitarian, but who has not completed the experience requirements in the fields of public health sanitation as required for 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 WV Code §§30-1-8 or 30-17-15. The complainant shall file the complaint in writing and shall include:

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 WV Code §30-1-5.

4.1.a. The board may assign the complaint to an investigator or to a committee of the board for investigation. The 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 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 WV Code §§30-1-8 or 30-17-15.

5.1.a. If the board has assigned investigation of the complaint to an investigator or to a committee, the board may not dismiss the complaint until the 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 WV Code §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 WV Code §§30-1-5(c) 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 WV Code §§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 Sanitarians 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 WV 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 WV Code §§30-1-8 and 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 WV §§30-1-8, 30-17-16 and the State Board of Sanitarians rule, 20CSR1, Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

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 5.1. of this rule.

§20-2-7. Conduct of Hearing

The board shall conduct all hearings in accordance with section 3.4. of the State Board of 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 WV §30-17-1 et seq, the respondent is guilty of a misdemeanor and is subject to the penalties of WV Code §30-17-18.

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

§20-2-9. Appeals.

Any person whose 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 WV Code §30-1-9.