

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

Form #2

Do Not Mark In This Box **FILED**

2010 JUN 25 PM 2: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Board of Veterinary Medicine TITLE NUMBER: 26

RULE TYPE: Legislative CITE AUTHORITY: §30-10-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 2

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures of the West Virginia Board of Veterinary
Medicine

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 26, 2010 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Veterinary Medicine
5509 Big Tyler Road, Suite 3
Cross Lanes, WV 25313

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures of the West Virginia Board of Veterinary Medicine

Type of Rule: Legislative Interpretive Procedural

Agency: WV Board of Veterinary Medicine

Address: 5509 Big Tyler Road, Suite 3
Cross Lanes, WV 25313

Phone Number: 304-776-8032 Email: wgoodwin@wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No anticipated costs or revenues of state government for this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Disciplinary and Complaint Procedures of the West Virginia Board of Veterinary Medicine 4

Rule Title: _____

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

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

No anticipated increase or decrease in estimated total revenues.

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.

This rule applies to disciplinary and complaint procedures of the Board. No changes are being made which would affect anticipated revenues or expenditures from their current positions.

Date: June 25, 2010

Signature of Agency Head or Authorized Representative

Paula Good

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: June 25, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Veterinary medicine
5509 Big Tyler Road, Suite 3
Cross Lanes, WV 25313

Phone: (304) 776-8032

LEGISLATIVE RULE TITLE: ~~Disciplinary and Complaint Procedures of the West Virginia~~
Board of Veterinary Medicine

1. Authorizing statute(s) citation 30-10-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 25, 2010

b. What other notice, including advertising, did you give of the hearing?
Notice and copy of rule to WV Veterinary Medical Association
Posting on our website

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 26, 2010

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

Attached _____ No comments received _____

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

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

Wanda Goodwin: Executive Director

WV Board of Veterinary Medicine

5509 Big Tyler Road, Suite 3

Cross Lanes, WV 25313

Ph. 304-776-8032 Fax 304-776-8256 email wgoodwin@wvnet.edu

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)

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.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

Statement of Circumstances

West Virginia Code of State Regulations

Title 26, Series 2

The Board of Veterinary Medicine has determined that changes are needed to the Disciplinary and Complaint Procedures of the West Virginia Board of Veterinary Medicine, Title 26, Series 2 Rule of the West Virginia Board of Veterinary Medicine.

These were primarily as a result of changes in the veterinary practice act effective June 11, 2010.

We have been working to make this rule complementary to the language in our veterinary practice act as modified this year.

We also propose changing the rule type from procedural to legislative.

This rule has been reviewed by the Board of Veterinary Medicine.

Brief Summary

Rule 26CSR2

Disciplinary and Complaint Procedures of the West Virginia Board of Veterinary Medicine

This rule is proposed to be changed from procedural to legislative. This is due to our belief that there are requirements and mandates in the rule which should have the weight of law, such as causes for denial and disposition of complaints.

Modifications to the rule are necessary due to changes to the veterinary practice act, which went into effect June 11, 2010.

Changes are made to comply with and complement the code. In some instances, language is stuck as it was moved from the rule and placed in code.

As the practice act as amended references causes for action against veterinarians, registered veterinary technicians and certified animal euthanasia technicians, we thought the language in this rule should specify any person under the regulatory authority of the Board. As such, we define in this rule that a licensee is any person holding a license and that a license includes registrations of veterinary technicians and certified animal euthanasia technicians.

FILED

TITLE 26
~~PROCEDURAL RULES~~ LEGISLATIVE RULE
WEST VIRGINIA BOARD OF
VETERINARY MEDICINE

2010 JUN 25 PM 2: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 2
DISCIPLINARY AND COMPLAINT PROCEDURES OF THE WEST VIRGINIA
BOARD OF VETERINARY MEDICINE

26-2-1. General.

1.1. Scope. -- This rule ~~specifies a procedure~~ establishes the procedures for the investigation and resolution of complaints against ~~veterinarians~~ licensees.

1.2. Authority. -- W. Va. Code §30-10-1 et seq. and § 30-1-1 et seq.

1.3. Filing Date. --~~December 10, 2000~~

1.4. Effective Date. -- February 1, 2004

26-2-2.-Application.

This rule applies to all ~~licensed veterinarians~~ licensees under the regulatory authority of the board.

26-2-3. 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 § 30-10-1 et seq~~

~~3.2.1.~~ "Board" means the West Virginia Board of Veterinary Medicine.

~~3.3~~ 2. "License" means a veterinary license, or temporary permit, registration of a veterinary technician or certification of an animal euthanasia technician issued by the Board pursuant to W. Va. Code § 30-10-1 et seq.

3.3. "Licensee" means an individual who holds a license as specified in 3.2 of this section.

~~3.4. "Licensed Veterinarian" means a person who practices veterinary medicine as defined by W. Va. Code § 30-10-1.~~

~~3.5~~ 4. "Investigator" means a person hired by the Board for the purpose of reviewing and investigating complaints against ~~licensed veterinarians~~ licensees.

26-2-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Veterinarians License.

4.1. The Board may ~~deny an application for license~~, place a licensee on probation, limit, restrict, suspend or revoke any license issued by the Board, upon ~~satisfactory~~ sufficient proof that a licensee has been convicted of a felony, or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence, malpractice or a willful departure from accepted standards of professional conduct in violation of West Virginia Code § 30-10-1 *et seq.* or the rules of the Board.

26-2-5. 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 ~~licensed veterinarian or applicant~~ licensee with a violation of West Virginia Code § 30-10-1 *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, accompanied by a notarized statement from the complainant. In addition to describing the alleged violation that prompted the complaint, the complaint shall contain the following:

5.1.1. The name and address of the ~~licensed veterinarian~~ licensee against whom the complaint is lodged;

5.1.2. The dates of care;

5.1.3. The identity of any person who may have treated the animal after the alleged incident; and,

5.2. A complaint against a ~~licensed veterinarian~~ licensee shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence, malpractice or a willful departure from accepted standards of professional conduct in violation of West Virginia Code § 30-10-1 *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 by the Board.

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; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

- 5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee ~~or applicant~~ in question for his or her written response, and he or she shall submit a written response to the Board within thirty (30) days of the date of the Board's correspondence or shall in writing waive the right to do so.
- 5.8. Requests for comment on complaints sent to licensees ~~or applicants~~ shall be considered properly served when sent to their last known address. It is the responsibility of the licensee ~~or applicant~~ to keep the Board informed of his or her last known address.
- 5.9. Upon receipt of a licensee's ~~or applicant's~~ comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.
- 5.10. 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 validity of the allegations set forth in the complaint. The review of complaints or investigations thereof may, at the discretion of the Board, be assigned to a committee of the Board.
- 5.11. At any point in its investigation of a complaint, the investigation committee of the Board may, at its discretion, assign the matter to an investigator for review and investigation.
- 5.12. Upon receipt of a complaint from the Board, the investigator shall, within sixty (60) days, unless the Board specifies another time period, review and investigate the same and provide the Board with a written 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, persons interviewed and a statement of the investigator's findings. The investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee ~~or applicant~~ in question, or other involved parties, a report of which shall be placed in the investigation file at the office of the Board.
- 5.13. To facilitate the disposition of a complaint, the Board or the committee of 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.
- 5.14. The Board investigating committee or chairperson, or the executive director may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The investigator may request the Board or its investigation committee to issue a subpoena or subpoena duces tecum. A brief written statement specifying the necessity for the same shall accompany any such request.

5.15. At any point in the course of the investigation or inquiry into a complaint, the Board 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 ~~licensed veterinarian~~ licensee may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or investigator, the committee or investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

26-2-6. Contested Case Hearings.

6.1. The Board may suspend a license or refuse to renew a license if it determines there is probable cause to believe that the ~~licensed veterinarian's~~ licensee's conduct, practices or acts constitute an immediate danger to the public.

~~26-2-7. Appeals.~~

~~7.1. 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-5-4 ~~29A-6-1~~ of seq. W. Va. Code §30-10-1 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 an applicant, where the controversy concerns whether the examination was fair or whether the applicant passed the examination.~~