

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

Form #2

Do Not Mark In This Box

FILED

JUN 30 3 46 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Veterinary Medicine TITLE NUMBER : 26

RULE TYPE: Legislative CITE AUTHORITY: 30-10-1

AMENDMENT TO AN EXISTING RULE: YES NO

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

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

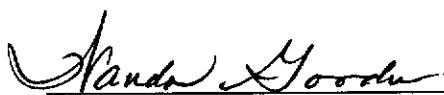
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JULY 30, 2000 AT 9:00 A.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Veterinary Medicine

1900 Kanawha Boulevard, East

Charleston, WV 25305-0119

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

The West Virginia legislature passed in its last session House Bill 4062. This bill establishes a requirement that West Virginia licensing boards establish legislative rules on the duty of boards to investigate and resolve complaints.

This is being accomplished for the West Virginia Board of Veterinary Medicine by amending current Series 2, and creating Series 2A. The title of Series 2 will be modified from "Hearing Procedures for the West Virginia Board of Veterinary Medicine" to "Disciplinary and Complaint Procedures for the West Virginia Board of Veterinary Medicine".

FISCAL NOTE FOR PROPOSED RULES

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

Type Of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Veterinary Medicine

Address: 1900 Kanawha Boulevard, East, Charleston, WV 25305-0119

1. Effect of Proposed rule : NONE

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates: N/A

**3. Objectives of These Rules: Comply with H.B. 4062, as passed by the WV
Legislature in 2000. Establish legislative rules on procedure for handling complaints
and investigations.**

Rule Title: Hearing Procedures for the West Virginia Board of Veterinary Medicine

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

4. Explanation of Overall Economic Impact of Proposed Rule: None

- 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: June 30, 2000

Signature of Agency Head or Authorized Representative

Nanda Goodwin

FILED

JUN 30 3 47 PM '00

TITLE 26
PROCEDURAL RULES
WEST VIRGINIA BOARD OF
VETERINARY MEDICINE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

§26-2-1. General.

1.1. Scope. -- ~~These rules establish the hearing procedures of the West Virginia Board of Veterinary Medicine. This rule specifies a procedure for the investigation and resolution of complaints against veterinarians.~~

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

1.3. Filing Date. -- ~~August 19, 1994.~~

1.4. Effective Date. -- ~~September 19, 1994.~~

§26-2-2. ~~Complaints and Hearings~~ Application.

2.1. ~~Upon the filing with the board by any person of a verified written complaint against a licensed veterinarian, the board shall notify such complaint and shall proceed to hold a hearing thereon as specified in this series. This rule applies to all licensed veterinarians.~~

2.2. ~~Any person who demands a hearing to have determined nay constitutional rights, legal rights, duties, interests or privileges of specific parties as required by law shall specify in writing the grounds relied upon as a basis for the relief requested.~~

§ 26-2-3. Definitions.

2.3. ~~When the president, secretary treasurer, or authorized designee receives a verified complaint or a written demand for a hearing, he or she shall schedule a hearing within forty five (45) days of receipt of such complaint or written demand unless postponed or continued to a later date by the Board upon its own motion or upon a showing of good cause by any party. However, if the president, secretary treasurer, or authorized designee shall determine that the complaint or hearing demanded would either involve an exercise of authority in excess of that available to him or her under law, would serve no useful purpose, or that no probable cause exists for such hearing, he or she shall, within forty five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein the reason(s) for such refusal. Appeals may be taken from such order as provided by W. Va. Code §29A-5-4.~~

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

3.3. "License" means a license or temporary permit issued by the Board pursuant to W. Va. Code § 30-10-1 et seq.

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

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

~~2.4. Charges may be instituted against any veterinarian by the Board and shall be noted in the official minutes of the Board. Charges may be based upon information indicating that there are reasonable causes for believing that said veterinarian may have engaged in such conduct or be in such condition that his or her license should be placed on probation or limited or restricted, or have his or her license suspended or revoked.~~

~~2.5. Upon the receipt of a demand for a hearing as described in these rules, or where a hearing is otherwise required, the President, secretary-treasurer or authorized designee shall as soon thereafter as possible provide notice of hearing to the party making such demand and the party charged with a violation of licensing provisions or the law or regulations promulgated by the Board (the respondent). Said notice shall be served upon the respondent at least thirty (30) days prior to the hearing date. Said notice shall contain the following information:~~

- ~~— a. The date, time and place of the hearing.~~
- ~~— b. A short, plain statement of the matters asserted or charged.~~
- ~~— c. A statement of intention to appoint a hearing examiner.~~

~~The complaint shall be issued in the name of the Board as an agency of the State of West Virginia and designate the Board as "Petitioner" and shall designate the veterinarian being proceeded against as "Respondent". The Petitioner shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time, and place of the conduct or condition complained of therein. The Board may amend the complaint at any time as it deems proper.~~

~~2.6. The Respondent shall serve an answer within thirty (30) days after service of the complaint upon him. Upon failure of the Respondent to respond to the complaint as required, all of the allegations set out therein as to conduct or conditions of the Respondent may be taken by the Board as admitted by the Respondent.~~

~~§26-2-3. Hearing Procedures.~~

~~3.1. Any party to a hearing shall have the right to be represented by an attorney at law, duly qualified to practice in the State of West Virginia.~~

~~3.2. The Board shall be represented by an attorney from the West Virginia Attorney General's Office as is statutorily required.~~

~~3.3. The West Virginia Rules of Evidence shall be followed only to the same extent that is required by the West Virginia State Administration Procedures Act, W. Va. Code §28A-5-2, dealing with contested cases.~~

~~3.4. The purpose of such hearing is to afford the Respondent an opportunity, in person or in person and by counsel, to respond to the complaint, to present his or her position, to present evidence in support of his or her contentions, to examine and cross-examine evidence and witnesses produced in support of the complaint and to argue orally at the hearing.~~

~~3.5. The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the Respondent in person or by registered mail.~~

~~3.6. The hearing shall not be open to the public unless the Respondent makes and files a written request therefor with the Board or with the hearing examiner.~~

~~3.7. The purpose of the hearing shall be to further inquire into the matters set forth in the complaint or any amended complaint, and to record evidence and arguments in support of the same and in apposition thereto, so that the Board may determine all issues.~~

~~3.8. All hearings shall be conducted before a quorum of the Board and may be conducted by a Board member, or by a hearing examiner appointed by the Board.~~

~~3.9. A record of the hearing shall be prepared under the supervision of the Board, if the hearing is conducted by it, or by a hearing examiner who conducts the hearing on behalf of the Board.~~

~~3.10. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.~~

~~3.11. The Board shall be first given an opportunity to present evidence, including testimony, papers, records, agency staff memoranda and other documents in the possession of the Board, in support of its position.~~

~~3.12. Every party shall have the right to cross-examine witnesses who testify, and following the conclusion of the Board's presentation, shall have the right to submit rebuttal evidence.~~

~~3.13. The Board shall have the right to cross-examine witnesses providing rebuttal testimony.~~

~~3.14. Following the presentation of all evidence, every party, including the Board, shall have the right to offer argument, not to exceed ten (10) minutes for each presentation.~~

~~3.15. The state or local organization to which the Respondent belongs may intervene in any hearing for the purpose of assisting in the prosecution of the complaint, or may with the consent of the Respondent, intervene for the purpose of assisting the Respondent in contesting the complaint.~~

~~3.16. Hearing examiners are not authorized or empowered to suspend or revoke any license or to place any licensee on probation. The function of a hearing examiner is to preside at the hearing and to cause to be prepared a record of the hearing so that the Board can discharge its functions. The hearing examiner shall prepare recommended findings and conclusions for submission to the Board.~~

~~3.17. Summonses and Subpoenas may be issued by the President or secretary-treasurer of the Board and by hearing examiners appointed by the Board.~~

~~3.18. Pursuant to W. Va. Administrative Procedures Act, W. Va. Code §29A-5-1, the Board or its hearing examiner may institute proceedings upon application to the circuit courts to punish persons for contemptuous or contumacious conduct directed to the Board or to its hearing examiner in the course of hearings. The circuit court may compel obedience by attachment proceedings for the disobedience of a subpoena or subpoena duces tecum or a refusal of a witness to testify at an administrative hearing of the Board.~~

~~3.19. A continuance may be granted by the President, the secretary-treasurer, or by a hearing examiner for good cause shown. A written request for continuance shall be filed at least seven (7) days prior to the hearing date.~~

§26-2-4. Transcription of Reported Testimony and Evidence. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Veterinarians.

~~4.1. All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.~~

~~4.2. Upon request to the Board by any party to the hearing, all reported materials shall be transcribed in a copy thereof furnished to such party at his or her expense.~~

~~4.3. In all cases where a hearing examiner is appointed, all reported materials shall be transcribed and forwarded to the President and the secretary-treasurer. A party who requests a copy of a transcript prepared pursuant to this rule shall be furnished a copy at his or her expense.~~

~~4.4. The Board shall have the responsibility to make arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this section, it shall be accomplished within a reasonable time.~~

~~4.5. Upon motion of the Board or any party assigning error regarding any part of the transcript, the Board, through the President, shall settle all differences, and shall direct the transcript to be corrected and revised so as to make it conform to the whole truth.~~

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 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 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. Submission of Proposed Findings of Fact and Conclusions of Law. Disposition of Complaints.

~~5.1. Any party may submit proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing, or in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available to all parties and to all members of the Board. Transcripts of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote on the proposed findings of fact and conclusions of law.~~

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 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 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 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 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 complaint.

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 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 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. Hearing Examiner, Contested Case Hearings.

6.1. The President, with the approval of a majority of the Board, may appoint a hearing examiner who shall be an attorney licensed by the State of West Virginia. Such hearing examiner shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary questions, hold conferences for the settlement or simplification of issues by consent of the parties and otherwise conduct hearing as provided in these rules. 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 conduct, practices or acts constitute an immediate danger to the public.

6.2. The hearing examiner shall submit written findings of fact and conclusions of law pursuant to W. Va. Code §29A-5-3, and the Board may adopt, modify or reject such findings of fact and conclusions of law.

~~§26-2-7. Conferences: Informal Disposition of Cases, Appeals.~~

~~7.1. At any time prior to the hearing or thereafter, the President or his duly appointed hearing examiner may hold conferences for the following purposes:~~

~~— a. To dispose of procedural matters.~~

~~— b. To simplify or settle issues by consent of the parties.~~

~~— c. To provide for the informal disposition of cases by stipulation, agreed settlement or consent order. 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-6-1 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.~~

~~7.2. The President, or his duly appointed hearing examiner may cause such conferences to be held on his or her own motion or at the request of a party.~~

~~§26-2-8. Depositions.~~

~~8.1. Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this State.~~

~~§26-2-9. Subpoenas.~~

~~9.1. The President, secretary-treasurer, or duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in W. Va. Code §29-5-1.~~

~~9.2. Written requests for the issuance of subpoenas or subpoenas duces tecum shall be made no later than ten (10) days before a scheduled hearing.~~

~~§26-2-10. Orders.~~

~~10.1. Any final order entered by the President or his designee following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §29A-5-3. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain Findings of Facts and Conclusions of Law.~~

~~10.2. The Findings of Fact and Conclusions of Law must be approved by a majority of the Board and shall be served upon the Respondent within five (5) days after entry by the Board, by means of registered or certified mail sent to the party or his counsel.~~

~~§26-2-11. Appeal.~~

~~11.1. An appeal from any final order entered in accordance with these regulations shall comply with the provisions of W. Va. Code §29A-5-4.~~