

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WEST VIRGINIA BOARD OF VETERINARY MED. TITLE NUMBER: 26

RULE TYPE: Procedural; CITE AUTHORITY: W. Va. Code 30-10-1 et seq

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 2

TITLE OF RULE BEING PROPOSED: Hearing Procedures of the West Virginia
Board of Veterinary Medicine

DATE OF PUBLIC HEARING: August 16, 1991 TIME: 2:00

LOCATION OF PUBLIC HEARING: Governor's Conference Room
Capitol Complex
Charleston, West Virginia 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Albert C. Dunn, Jr.
A/G's Office
W-435 Capitol Complex
Charleston, W. Va. 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Albert C. Dunn, Jr.
Asst. Attorney General
Counsel for Board

3.16

JUN 17 1991

FISCAL NOTE FOR PROPOSED RULES ATTORNEY GENERAL

Rule Title: Title 26
RULES AND REGULATIONS GOVERNING VETERINARY PROFESSION

Type of Rule: Legislative Interpretive Procedural

Agency WV BOARD OF VETERINARY MEDICINE Address 712 MACCORKLE AVE., S. CHAS WV
25303

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	15,000		20,000	20,000	20,000
Current Expense					
Repairs and Alterations					
Equipment					
Other					

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2. Explanation of above estimates:

UNDER PERSONAL SERVICES, INCREASE ESTIMATED FOR INSPECTION OF VETERINARY FACILITIES UNDER NEW RULES AND REGULATIONS. ESTIMATED 100 INSPECTIONS AT \$150.00 EACH WILL COVER THIS EXPENSE. ALSO ANNUAL LICENSE RENEWAL FEE WILL GO FROM \$25.00 TO \$100.00

3. Objectives of these rules:

TO ESTABLISH RULES AND REGULATIONS TO ENFORCE THE VETERINARY PRACTICE ACT AND BRING IT INTO COMPLIANCE WITH NATIONAL STANDARDS.

1. Is 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: _____

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 _____



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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MARIO J. PALUMBO
~~XXXXXXXXXXXXXX~~
ATTORNEY GENERAL

(304) 348-2522

CONSUMER HOTLINE
(800) 368-8808

MEMORANDUM

TO: Secretary of State
FROM: Albert C. Dunn Jr.
DATE: July 12, 1991
RE: Proposed procedural rule of Board of Veterinary Medicine

=====
This is a brief summary of the proposed procedural rule of the Board of Veterinary Medicine that is attached. This title 26, series 2, procedural rule entitled Hearing Procedures of the West Virginia Board of Veterinary Medicine establishes the procedure for the Board to utilize in receiving and processing complaints of its constituents, along with guidelines established similar to other Boards concerning administrative hearings. This series provides for the hiring of a hearing examiner by the Board; makes provisions for the taking of evidence, filing of proposed findings of fact/conclusions of law; allows for the Board to issue subpoenas pursuant to W. Va. Code § 29A-5-1; and allows for the issuance of final orders of the Board.

TITLE 26
PROCEDURAL RULES
WEST VIRGINIA BOARD OF
VETERINARY MEDICINE

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SERIES 2
HEARING PROCEDURES OF THE WEST VIRGINIA
BOARD OF VETERINARY MEDICINE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

26-2-1 General

- 1.1 Scope - These rules establish the hearing procedures of the West Virginia Board of Veterinary Medicine.
- 1.2 Authority. - West Virginia Code 30-10-1 et seq.
- 1.3 Filing Date_____.
- 1.4 Effective Date_____.

26-2-2 Complaints and Hearings

- 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 veterinarian in writing of the filing of such complaint and shall proceed to hold a hearing thereon as specified in this series.
- 2.2 Any person who demands a hearing to have determined any 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.
- 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 West Virginia Code 29A-5-4.

- 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 opposition 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

- 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.

26-2-5 Submission of Proposed Findings of Fact and Conclusions of Law

- 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.

26-2-6 Hearing Examiner

- 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 hearings as provided in these rules.

- 6.2 The hearing examiner shall submit written findings of fact and conclusions of law pursuant to West Virginia Code Section 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

- 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.
- 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 West Virginia Code 29A-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 West Virginia Code 29A-5-3. Such orders shall be entered within forth-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 West Virginia Code 29A-5-4.