

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

Form #5

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2013 FEB -5 PM 2:13

SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV BOARD OF SOCIAL WORK TITLE NUMBER: 25

CITE AUTHORITY: 30-1-8

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: SERIES 6

TITLE OF RULE BEING PROPOSED: CONTESTED CASE HEARINGS AND DISCIPLINARY PROCEDURES

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS 02/05/2013



Authorized Signature

**TITLE 25
LEGISLATIVE RULE
BOARD OF SOCIAL WORK EXAMINERS**

**SERIES 6
CONTESTED CASE HEARINGS AND DISCIPLINARY PROCEDURES**

§25-6-1. General.

1.1. Scope. -- This rule specifies the qualifications regarding contested case hearings and disciplinary procedures.

1.2. Authority. -- W. Va. Code §30-30-6

1.3. Filing Date. -- ~~June 24, 2002~~

1.4. Effective Date. -- ~~July 1, 2002~~

§25-6-2. Definitions.

2.1. "Complainant" means the person or agency who has filed a complaint.

2.2. "Professional misconduct" or "unprofessional conduct" means any conduct by a licensed social worker not in compliance with the Code of Ethics.

2.3. "Respondent" means the person against whom a complaint is made.

§25-6-3. Contested Case Hearing Procedures.

3.1. All procedures for contested cases are governed by W. Va. Code §29A-5-(1), et seq.

§25-6-4. Disciplinary Proceedings.

4.1. Professional misconduct by a license holder is defined by W.Va. Code § 30-30-26(g)(1-7) that includes, but is not limited to:

4.1.1. Failure to comply with the Code of Ethics of the National Association of Social Workers.

4.2. An individual may file a complaint by contacting the Board in writing. The Board shall provide a complaint form or additional information about filing a complaint upon request.

4.3. Upon receipt of a written complaint, the Board shall acknowledge the complaint within thirty (30) days by registered or certified mail, return receipt requested.

4.3.1. The Board shall mail a copy of a complaint to a respondent by registered or certified mail, return receipt requested, with a request of a detailed reply to the complaint allegations within 30 days.

4.3.2. Should the Board not receive a written response to the allegations within this period, the matter will proceed to investigation and hearing thereafter.

4.3.3. A licensee who reports or provides evidence to the Board of the negligence, impairment, or incompetence of another licensee is immune from civil or criminal liability which may result by reason of that action or actions if made without actual malice and in the reasonable belief that the action is warranted by the facts known to him or her at the time.

4.4. The Board is not required to await a reply prior to applying to a circuit court for an injunction or restraining order to enjoin the respondent from engaging in an act which constitutes or will constitute an immediate danger to the public.

4.4.1. The Board chair may appoint a member or committee of the Board, or a special investigator, to investigate the allegations of the complaint and make recommendations to the Board.

4.4.2. After considering the recommendation of the Investigator, the Board shall determine if probable exists that the licensee or permittee has violated subsection §30-30-26 or any rules promulgated pursuant to this article.

4.4.3. The Board shall notify a the respondent by registered or certified mail, return receipt requested, when probable cause has been determined to exist. The Board may at this time offer a consent agreement.

4.4.4. A notice forwarded to the respondent shall include the following information:

- (a). That the respondent has the right to a hearing;
- (b). That the respondent has the right to subpoena and present witnesses and documents on his or her behalf;
- (c). That the respondent has the right to be represented by a lawyer at his or her expense and to cross-examine witnesses; and,
- (d). That the complaint will not result in an administrative hearing if the respondent and Board mutually agree upon the findings of fact, conclusions of law and imposed sanctions contained in a consent agreement and order offered to the respondent and subsequently entered into by the respondent and the Board.

4.5. The Board may impose any of the following sanctions, singly or in combination, after finding that a license holder has violated a Board regulation and/or statute:

- 4.5.1. Refuse to renew a license;
- 4.5.2. Suspend an existing license for a set period of time and/or impose requirements for reinstatement or renewal of a license;
- 4.5.3. Revoke an existing license;
- 4.5.4. Issue a public reprimand;
- 4.5.5. Impose a period of probation and requirements for the lifting of probation, including meeting continuing education requirements, mandatory supervision by a licensed social

worker, peer or professional counseling, a medical, psychological or clinical social work evaluation, or other reasonable requirement, singly or in combination, that the Board considers sufficient to protect the public;

4.5.6. Levy fines not to exceed one thousand dollars (\$1,000) per day per offense; and,

4.5.7. Assess fees to recover administrative costs incurred by the Board for disciplinary actions taken.

4.6. The Board may issue a notice to the licensee or permittee to cease and desist.

4.7. Prior to a hearing, the Board shall send the licensee a notice of a hearing, to take place within thirty (30) days, by registered or certified mail, return receipt requested.

4.8. A person representing herself or himself as a social worker who does not have a license, or a person engages in the private, independent practice of social work without an appropriate license, is guilty of a misdemeanor and is subject to penalties of law and/or disciplinary action for professional misconduct.

4.9. After finding that a social worker has violated regulations and/or statute processes and disciplinary action is proposed the Board shall report its findings to the Disciplinary Action Reporting System (DARS) who in turn is the agent for West Virginia in reporting matters to the Health Integrity Practitioner's Data Bank (HIPDB) as set forth by Federal Law; or other recognized national and state disciplinary action reporting organization, licensing agency, professional association or society, community organization, employers of social workers, the public, or other agencies, institutions, and organizations.

WEST VIRGINIA BOARD OF SOCIAL WORK

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February 5, 2013

The Honorable Natalie Tennant,
WV Secretary of State
Main Bldg, East Wing
State Capitol
Charleston WV 25305

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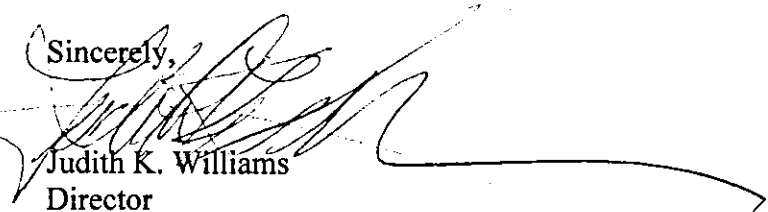
Re: Revision: Title 25 Series 6: Contested Case Hearings and Disciplinary Procedures.

Dear Madam Secretary,

Based upon the recommendation of House counsel and pursuant to WV Code §30-1-8, the Board finds it necessary to withdraw **Title 25 Series 6** as a Legislative Rule. We have been instructed to re-file same as a **Procedural Rule**. It is our understanding that this item must once again be posted for comment and we will follow up with this step.

We have attached the correct items to note the change. If other work needs to be done at this time, please contact me at 304-558-2988.

Sincerely,


Judith K. Williams
Director

cc: LRMRC
Rules 2013 File

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SECRETARY OF STATE