

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

Form #2

Do Not Mark In This Box

FILED

2009 JUN 30 AM 11:33

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Board of Barbers and Cosmetologists TITLE NUMBER: 3

RULE TYPE: Legislative CITE AUTHORITY: 30-27-1 & 30-1-1

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 RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint Procedures


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<sup>th</sup>, 2009 AT 8:30am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

1716 Pennsylvania Ave. Suite 7

Charleston, WV 25302

adam.l.higgins@hham.wv.gov

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  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: Board of Barbers and Cosmetologists  
 Address: 1716 Pennsylvania Ave., Suite 7  
Charleston, WV 25302  
 Phone Number: 304-558-2924 Email: adam.j.higginbotham@wv.gov

**Fiscal Note Summary**

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

N/A

**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                                   | 0                                | 0                                      |
| Personal Services           | 0                                   | 0                                | 0                                      |
| Current Expenses            | 0                                   | 0                                | 0                                      |
| Repairs & Alterations       | 0                                   | 0                                | 0                                      |
| Assets                      | 0                                   | 0                                | 0                                      |
| Other                       | 0                                   | 0                                | 0                                      |
| 2. Estimated Total Revenues | 0                                   | 0                                | 0                                      |

Rule Title:

Rule Title:

Disciplinary and Complaint Procedures

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

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

N/A

**MEMORANDUM**

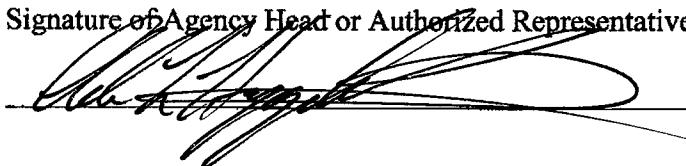
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

No fiscal impact. This will update disciplinary & complaint procedures.

Date:

6/29/09

Signature of Agency Head or Authorized Representative





**State of West Virginia**  
**Board of Barbers and Cosmetologists**

1716 Pennsylvania Avenue, Suite 7  
Charleston, West Virginia 25302  
Telephone: 304-558-2924  
Fax: 304-558-3450

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

**Adam L. Higginbotham**  
Director

**Date:** June 29, 2009

**To:** Administrative Law Division of Secretary of State's Office

**From:** Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

**Re:** Disciplinary and Complaint Procedures

**SUMMARY OF PROPOSAL**

This is a new rule to establish disciplinary and complaint procedures for the Board of Barbers and Cosmetologists.

X 

---

Adam L. Higginbotham M.B.A.  
Executive Director

FILED

**TITLE 3**  
**PROCEDURAL RULE**  
**WEST VIRGINIA MEDICAL BOARD OF BARBERS AND COSMETOLOGISTS**

2009 JUN 30 AM 11:33

**SERIES 8**  
**DISCIPLINARY AND COMPLAINT PROCEDURES**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§3-8-1. General.**

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against a licensee or permittee.

1.2. Authority. -- W. Va. Code §§30-27-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

**§3-8-2. Application.**

This rule applies to all licensees and permittees under W.Va. Code §30-27-1 et seq.

**§3-8-3. 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 or other entity making application for a professional license, license, certificate, registration, permit or renewal under the provisions of W. Va. Code §30-27-1 et seq.

3.2. "Board" means the West Virginia Board of Barbers and Cosmetologists.

3.3. "License" has the same meaning as W. Va. Code § 30-27-3(p).

3.4. "Licensee" has the same meaning as W. Va. Code § 30-27-3(q).

3.5. "Permit" has the same meaning as W. Va. Code § 30-27-3(t).

3.6. "Permittee" has the same meaning as W. Va. Code § 30-27-2(u).

3.7. "Professional license" has the same meaning as W. Va. Code § 30-27-3(v).

3.8. "Registration" has the same meaning as W. Va. Code § 30-27-3(w).

3.9. "Registrant" has the same meaning as W. Va. Code § 30-27-3(x).

3.10. "Representative" means any member of the Board, the Executive Director of the Board or Counsel for the Board.

3.11. "Salon" has the same meaning as W. Va. Code § 30-27-3(y).

3.12 "School" has the same meaning as W. Va. Code § 30-27-3(aa).

**§3-8-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses or Permit.**

The Board may deny an application for license, permit or registration, place a licensee, permittee or registrant on probation, limit or restrict a license, suspend a license, permit or registration or revoke any license, permit or registration issued by the Board, upon satisfactory proof that a licensee, permittee or registrant has been convicted of any felony or misdemeanor, if the misdemeanor conviction relates to the practice of Barbering and/or Cosmetology, 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 W. Va. Code §30-27-1 et seq. or the rules of the Board. The above objectives may be accomplished by mediation, provided that reasonable mediation cost may be reimbursed by the licensee, permittee or registrant.

**§3-8-5. Disposition of Complaints.**

5.1. Any individual may make a complaint to the Board concerning a licensee, permittee or registrant.

5.2. The Board may accept an anonymous complaint if the information provided is adequate to begin the investigation.

5.3. The Board may accept a complaint in writing or in person. The Board may provide a form for the purpose of submitting a written complaint, but shall accept the complaint if the information includes:

5.3.1. the alleged violation which prompted the complaint

5.3.2. the name and address of the individual against whom the complaint is lodged.

5.3.3. the date the incident occurred; and

5.3.4. the name or names of witnesses to the incident.

5.4. All complaints shall be referred to the Executive Director or Counsel for the Board.

5.5. A complaint against a licensee or permittee shall allege that such person has been convicted of a felony or misdemeanor, if the misdemeanor conviction relates to the practice of Barbering and/or Cosmetology, 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 or ethical conduct in violation of W. Va. Code §30-27-1 et seq. or the rules of the Board.

5.6. 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.

5.7. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.8. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.9. The Representative shall conduct an investigation to determine the validity of the allegation contained in the complaint.

5.10. The Representative shall determine if 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.

5.11. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee, permittee, registrant or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.12. Requests for comment on complaints sent to licensees, permittees, registrants or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee, permittee, registrant or applicants to keep the Board informed of his or her current address.

5.13. Upon receipt of a licensee's, permittee's, registrant'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.

5.14. Upon receipt of a complaint the Representative shall, by the next scheduled Board meeting, review and investigate the same and provide the Board with a 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 services provided, the records reviewed and a statement of the Representative's findings and recommendations.

5.15. The Representative shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee, registrant or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.16. To facilitate the disposition of a complaint, the Representative 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 Representative 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.

5.17. The Representative may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. Any such request shall be accompanied by a brief statement specifying the necessity for the same. A subpoena issued hereunder may require any facility employing or licensing or practicing radiologic technology to allow inspection of the premises or other tangible things or records in the possession of or controlled by the following.

5.18. At any point in the course of an 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 licensee, permittee or registrant may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is initiated by the Representative, respective findings and recommendations shall be made to the Board prior to the Board dismissing the complaint.

5.19. Upon completion of the investigation and approval of the Board, the Representative may negotiate terms of a consent agreement if probable cause for disciplinary action is established.

5.20. The Board shall review the terms of the consent agreement and all investigative information. The Board may approve the consent agreement, request revisions to the consent agreement, or reject the consent agreement.

5.21. If the Board rejects the consent agreement, the Representative shall schedule a hearing on the complaint.

5.22. If the licensee, permittee or registrant contests the allegations and an agreement can not be reached, the Representative shall schedule a hearing on the complaint. All hearings shall be in accordance with the W. Va. Code §29A-5-1 et seq. of the Administrative Procedures Act.

5.23. A hearing shall be held before a hearing examiner or before members of the Board, pursuant to 3CSR.

**§3-8-6. Contested Case Hearings.**

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

**§3-8-7. Appeals.**

7.1. Any applicant who has had his or her application for a license, permit or registration 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 W. Va. 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 the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.