

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED

Nov 29 2 25 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: BOARD OF BARBERS AND COSMETOLOGISTS TITLE NUMBER: 3

CITE AUTHORITY: HB 207

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

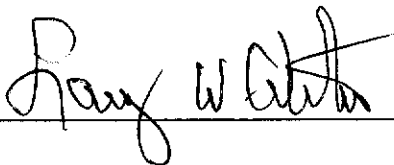
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 9

TITLE OF RULE BEING ADOPTED: COMPLAINT PROCEDURES

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS JANUARY 1, 2001



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(Plus all the volunteer
help we can get)

Memo

Date: November 20, 2000
Subject: HB 207

HB 207, passed on November 14, 2000, during a special session of the Legislature, was signed into law on November 18, 2000 by the Governor. This bill allows all Boards that are licensed under Chapter 30 of the West Virginia Code to change to procedural and final file rules that had originally been filed as legislative. This applies to rules that relate **ONLY** to complaint procedures or contested case hearing procedures.

The Boards must final file their rules no later than January 31, 2001.

FILED

**TITLE 3
PROCEDURAL RULES
BOARD OF BARBERS AND COSMETOLOGISTS**

Nov 29 2 25 PM '00

SERIES 9

OFFICE OF THE SECRETARY OF STATE

COMPLAINT PROCEDURES

§ 3-9-1. General

1.1. **Scope** - This legislative rule establishes procedures to process complaints submitted to the Board.

1.2. **Authority** - W. Va. Code § 30-27-8 and § 30-27-1.

1.3. **Filing Date** - 12/29/00

1.4. **Effective Date** - 01/01/2001

§ 3-9-2. Complaint Procedures

2.1. Any individual may make a complaint to the Board concerning a licensee.

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

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

2.3.a. The alleged violation which prompted the complaint.

2.3.b. The name and address of the individual against whom the complaint is lodged.

2.3.c. The date the incident occurred; and

2.3.d. The name or names of witnesses to the incident.

2.4. All complaints shall be referred to the executive Secretary or counsel for the Board, who shall act as a representative for the Board.

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

2.6. The representative shall conduct an investigation to determine the validity of the

allegation contained in the complaint.

2.7. The Board may issue subpoenas to gather information to determine the validity of the allegations contained in the complaint.

2.8. The Board shall provide copies of complaint forms and other available evidence to the licensee against whom a complaint is filed. The licensee shall respond, in writing, to the allegations contained in the complaint within fourteen (14) days from receipt of the complaint.

2.9. The representative for the Board shall evaluate the complaint, licensee response, and other investigative information to determine if a violation of the law has occurred and to determine the need for additional investigation.

2.10. The representative for the Board may recommend that a complaint be dismissed if probable cause for further action is not identified. Complaints recommended for dismissal due to lack of probable cause shall be referred to the Board for review of the complaint and investigative information. The Board may approve dismissal of the complaint or direct the Board representative to proceed with further investigation of the complaint.

2.11. The representative for the Board may negotiate terms of a consent agreement if probable cause for disciplinary action is established.

2.12. 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.

2.13. If the Board rejects the consent agreement, the Board representative shall schedule a hearing on the complaint.

2.14. If the licensee contests the allegations and an agreement can not be reached, the Board's representative shall schedule a hearing on the complaint. All hearings shall be in accordance with the WV Code §29A-5-1 et seq. of the Administrative Procedures Act.

2.15. A hearing shall be held before a hearing examiner or before members of the Board.

2.16. The Board shall make a determination on the matter based on the facts, evidence submitted, testimony and recommendations of the hearing examiner.

2.17. The Board shall issue a final order which shall include findings of fact, conclusions of law and the decision of the Board on the complaint.

2.18. The licensee, his or her attorney of record, if any, and the individual who filed the complaint shall be provided a copy of the decision and accompanying findings of fact and

conclusions of law, whether it is the result of a formal hearing or the execution of a consent agreement.

2.19. The decision of the Board is final unless vacated or modified upon judicial review.