

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

Form #2

Do Not Mark In this Box

FILED  
1987 AUG 31 11:11:22  
SECRET

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

AGENCY: Board Of Chiropractic Examiners TITLE NUMBER: 4

RULE TYPE: Procedural; CITE AUTHORITY WV Code 30-16

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: Procedures of the West Virginia  
Board of Chiropractic Examiners

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 October 1, 1987 AT 4:00pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Board of Chiropractic Examiners  
2703 Third Ave.  
Huntington, WV 25702  
Attn: Doris Mays

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

*Doris Mays*

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 4  
PROCEDURE  
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

SERIES 2  
PROCEDURES OF THE WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

FILED  
1987 AUG 31 10 11 AM  
SECRETARY

4-2-1. General.

1.1. Scope.--These procedures establish the organization, operation and licensing of chiropractors by the West Virginia Board of Chiropractic Examiners.

1.2. Authority.--WV Code 30-16-1 et seq

1.3. Filing Date .--

1.4. Effective Date .--

4-2-2 Hearings.

2.1. Any party 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 request.

2.2. When the Chairman or his authorized designee is presented with a demand for a hearing as described in subsection (1) of this rule, he shall schedule a hearing within forty-five(45) days of receipt by him of such written demand unless postponed to a later date by mutual agreement. However, if the chairman or his designee shall determine that the hearing demanded would either involve an exercise of authority in excess of that available to him under law, or would serve no useful purpose, he shall, within forty-five(45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his reason(s) for such refusal. Appeal may be taken from such order as provided by WV Code 29A-5-4.

2.3. Charges may be instituted against any chiropractic physician 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 chiropractic physician may have engaged in such conduct or be in such condition that his license should be placed on probation or limited or restricted, or have his license suspended or revoked for one or more of the grounds set forth in the Chiropractic Practice Act, or these regulations.

2.4. Upon the receipt of a demand for a hearing as described in subsection (a) of this rule, or where a hearing is otherwise required, the Chairman or his designee shall as soon thereafter as possible provide the party making such demand and the party charged with a violation of licensing provisions of the law or regulations promulgated by the Board with Notice of Hearing (assuming an order has not been entered denying a hearing as provided in subsection(b) of this Rule). 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 WV and designate the Board as "Petitioner" and shall designate the chiropractic physician 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 as it deems proper.

Upon proper motion, a more definite statement of the matters asserted or charged shall be provided to the respondent or his counsel, at least fifteen (15) days prior to the hearing date.

4-2-3. Hearing shall be conducted as follows:

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 may be represented by the Office of the Attorney General.

3.3. The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed.

3.4. Hearings conducted by the Board or by a hearing examiner appointed by the Board, upon a complaint issued by the Board, are a continuance of the investigation designated to enable the Board to properly discharge its administrative functions and authority. The purpose of such hearing is to afford the Respondent an opportunity, in person or by counsel or other representative, to respond to the complaint, to present his position, to present evidence in support of his contention, 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 general 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. The hearing 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. Initially, the Board shall be given an opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the Board, in support of its position.

3.12. Every party shall have the right of cross-examination of 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 which represents the profession 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 of fact and conclusions of law for submission to the Board.

3.17. Summons and subpoenas may be issued by the Chairman of the Board and by hearing examiners appointed by the Board.

3.18. The Board or its hearing examiner may institute proceedings in circuit courts to punish persons for contemptuous or contumacious conduct directed to the Board or to its hearing examiner in the course of hearings.

3.19. The Respondent shall serve his 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 confessed by the Respondent.

3.20. Hearings may be continued from one day to another, or adjourned to a later date or a different place by announcement thereof or by appropriate notice to all parties.

3.21. A continuance may be granted by the Chairman or his designee for good cause shown. A written notice of continuance shall be filed at least five (5) days prior to the hearing date.

#### 4.2.4. Transcription of reported testimony and evidence:

4.1. All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported 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 and a copy thereof furnished to such party at his expense.

4.3. In all cases where a hearing examiner is appointed, all reported materials shall be transcribed and forwarded to the Chairman. A party who requests a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at his 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 the motion of the Board or any party assigning error in any part of the transcript, the Board through the Chairman, shall settle all differences, and shall direct the transcript be corrected and revised so as to make it conform to the whole truth.

#### 4.2.5. 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 hearings 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 is called.

#### 4.2.6. Hearing Examiner

6.1. The Chairman, with the approval of a majority of the Board, may appoint a hearing examiner who 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 4.2.3. herein. If a hearing examiner is appointed under this rule, he shall make proposed Findings of Fact and Conclusions of Law.

6.2. The Chairman, with the approval of a majority of the Board, may appoint one (1) or more members of the Board to serve as hearing examiners for the purpose of conducting any hearing on behalf of the Board. The hearing examiner shall submit written Findings of Fact and Conclusions of Law to the Board pursuant to WV Code 29A-5-3, and the Board may adopt, modify or reject such Findings of Fact and Conclusions of Law.

#### 4.2.7. Conferences: Informal Disposition of Cases:

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

- (a). To dispose of procedural requests of similar 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 Chairman, or duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

#### 4.2.8. Depositions:

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

#### 4.2.9. Subpoenas:

9.1. The Chairman or his designee shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in WV Code 29A-5-1.

9.2. Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in 4.2.9. shall be made no later than ten (10) days before a scheduled hearing.

#### 4.2.10. Orders:

10.1. Any final order entered by the Chairman or his designee following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of WV 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 Fact and Conclusions of Law.

10.2. The Findings of Fact and Conclusions of Law must be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board 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.

#### 4.2.11. Appeal:

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