

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

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: BOARD OF CHIROPRACTIC TITLE NUMBER: 4

CITE AUTHORITY: WEST VIRGINIA CODE 30-16-1 et seq. and 30-1-1 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 RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: DISCIPLINARY AND COMPLAINT PROCEDURES
FOR CHIROPRACTORS

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



STATE OF WEST VIRGINIA

Board of Chiropractic

P. O. Box 153 – St. Albans, WV 25177
Phone: (304) 722-1424 - Fax: (304) 722-1425
E-mail: wvbc@citynet.net
Website: <http://www.state.wv.us/wvbc>

BRIEF SUMMARY PROPOSED LEGISLATIVE RULES TITLE 4, SERIES 2 DISCIPLINARY & COMPLAINT PROCEDURES FOR CHIROPRACTORS

This rule specifies a procedure for the investigation and resolution of complaints against chiropractors and those persons or corporations rendering chiropractic services.

A handwritten signature in cursive script, appearing to read "Connie J. Skaggs".

Connie J. Skaggs
Executive Secretary
WV Board of Chiropractic



STATE OF WEST VIRGINIA
Board of Chiropractic

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STATEMENT OF CIRCUMSTANCES
PROPOSED LEGISLATIVE RULES
TITLE 4, SERIES 2
DISCIPLINARY & COMPLAINT PROCEDURES FOR CHIROPRACTORS

The purpose of filing these legislative rules is to meet the requirement of H.B. 4062 passed in the most recent Legislative Session.

A handwritten signature in black ink, appearing to read "Connie J. Skaggs", written over a horizontal line.

Connie J. Skaggs
Executive Secretary
WV Board of Chiropractic

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 16, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Chiropractic

P. O. Box 153, St. Albans, WV 25177

(304) 722-1424

LEGISLATIVE RULE TITLE: Disciplinary & Complaint Procedures for Chiropractors

1. Authorizing statute(s) citation WV Code 30-16-1 et seq. and 30-1-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 1, 2000 -- Comment Period

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) or Public Comment Period ended:

August 15, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____

No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 17, 2000

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

West Virginia Board of Chiropractic

Connie J. Skaggs, Executive Secretary

P. O. Box 153

St. Albans, WV 25177

(304) 722-1424/(304) 722-1425/wvboc.citynet.net

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If 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 or comment period:

Comment Period -- July 1, 2000-August 15, 2000

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

FILED

AUG 18 10 10 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 4
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

SERIES 2
DISCIPLINARY AND COMPLAINT PROCEDURES FOR CHIROPRACTORS

§4-2-1. General.

1.1. Scope. This rule specifies the procedure for the investigation and resolution of complaints against chiropractors and those persons or corporations rendering chiropractic services.

1.2. Authority. -- West Virginia Code §30-16-5(3)

1.3. Filing Date. -- ____ __, 19__

1.4. Effective Date. -- ____ __, 19__

1.5. This series replaces section 13 of series 1 of this title.

§4-2-2. Application.

2.1 This rule applies to all chiropractors and persons or corporations providing chiropractic services.

§4-2-3. 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 making application for an original or renewal license or a temporary license to practice chiropractic.

3.2. "Board" means the West Virginia Board of Chiropractic.

3.3. "License" means a license or temporary permit issued by the Board to practice chiropractic.

3.4. "Chiropractor" means a practitioner of chiropractic.

3.5 "Investigative Officer" means a person licensed to practice chiropractic in this state, and is appointed by the Board of Chiropractic for the purpose of reviewing complaints against chiropractors.

§4-2-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of License.

4.1. The Board may deny an application for license, place a chiropractor on probation, limit or restrict the same, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony 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 West Virginia Code §30-16-11.

§4-2-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a chiropractor with a violation of West Virginia Code §30-16-11 or the Legislative Rule 4-1-13 of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint must contain the following:

5.1.1. The name and address of the chiropractor against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a chiropractor will allege that such person has been convicted of a felony 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 conduct in violation of West Virginia Code §30-16-11 or the Legislative Rule 4-1-13 of the Board.

5.3. 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.

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

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

5.6. Upon receipt of a complaint, the Board will issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That 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; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board will send a copy of the complaint, including any supportive documentation, by certified mail to the chiropractor in question for his or her written comment, and he or she must submit a written response to the Board within thirty (30) days of the date of the correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to the chiropractor or applicants will be considered properly served when sent to their last known address. It is the responsibility of the chiropractor or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a chiropractor's comments in response to a complaint, the Board will promptly send a copy of the response, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board will conduct or authorize any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations in the complaint. The review of complaints and any view or investigation may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an Investigative Officer for review and investigation.

5.12. Upon receipt of a complaint, the Investigative Officer must, within sixty (60) days, review and investigate the complaint and provide the Board with a report. The report must include a statement of the allegations, a statement of facts, and

an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the Investigative Officer's findings and recommendations. The Investigative Officer will, upon request, be afforded an opportunity to have an investigation interview with the licensee or applicant in question or other involved parties. A report of the investigation interview will be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee 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 Board or the committee must give notice of the conference. The notice must 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. Failure to attend a conference will not prejudice any party to the case.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The Investigative Officer may request the Board or its president to issue a subpoena or subpoena duces tecum. Any subpoena request must be accompanied by a brief statement explaining the need for the subpoena.

5.15. 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 chiropractor may be sanctioned by the Board: Any review or investigation of a complaint assigned to a committee or an Investigative Officer. The committee or Investigative Officer will make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§4-2-6. Contested Case Hearings.

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

§4-2-7. Appeals

7.1 Any applicant who has had his or her application for a license 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 West Virginia Code §29A-6-1

et seq. or the Legislative Rule 4-3-11 of the Board. Provided, that the appeal will not include cases in which the Board denies a license 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.



STATE OF WEST VIRGINIA

Board of Chiropractic

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August 17, 2000

Judy Cooper
Administrative Law
Secretary of State's Office
Building 1, Room 157K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Judy:

Enclosed you will find the following documents:

- Notice of Agency Approval of a Proposed Rule (Form 3) with an original signature
- Brief Summary of the proposed rule
- Statement of Circumstances which require this rule
- Copy of completed LRMRC questionnaire
- Copy of Fiscal Note with name of contact person and telephone number
- One copy of proposed rule with page numbering (no staples)

I am also enclosing the required 15 copies for the LRMRC to be time stamped at the Secretary of State's office. If you have any questions, please do not hesitate to call me on 722-1424. Thank you.

Sincerely,

Connie J. Skaggs
Executive Secretary

cc: Debra Graham, Counsel
LRMRC