

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

Form #2

Do Not Mark In This Box

FILED

JUL 3 2 37 PM '00

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: West Virginia Board of Examiners in Counseling TITLE NUMBER: 27

RULE TYPE: Legislative CITE AUTHORITY: 30-31-1 and 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: 5

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint Procedures for Counselors

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 August 15, 2000 AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Examiners in  
Counseling @MUGC  
100 Angus E. Peyton Drive  
South Charleston, WV 25303-1600

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.00

## West Virginia Board of Examiners in Counseling

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At Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston, West Virginia 25303-1600  
Phone: (304) 746-2512 Fax: (304) 746-1942

**July 3, 2000**

### **Approval of Filing**

#### **Disciplinary and Complaint Procedures for Counselors, Series 5**

**The Board of Examiners in Counseling has given their approval for the filing of this legislative rule.**



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**Robert L. Rubenstein, Chair**

# West Virginia Board of Examiners in Counseling

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South Charleston, West Virginia 25303-1600  
Phone: (304) 746-2512 Fax: (304) 746-1942

## **Brief Summary of the Proposed Rule Disciplinary and Complaint Procedures for Counselors Title 27 Series 5**

This rule establishes guidelines for the Board of Examiners in Counseling disciplinary and complaint procedures. The rule applies to all licensed professional Counselors (LPC) and all individuals making application to become an LPC.

This rule offers clear and concise guidelines for the investigation and resolution of complaints. It gives all the information from the time an individual contacts the Board office to initiate the complaint through resolution. The timelines for the entire process are included.

## **West Virginia Board of Examiners in Counseling**

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### **Statement of Circumstances**

This rule, Disciplinary and Complaint Procedures, was mandated by House Bill 4062, passed during the most recent Legislative Session.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Counselors

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Board of Examiners in Counseling

Address: 100 Angus E. Peyton Drive, South Charleston, WV 25303-1600

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	N/A				
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERATIONS	N/A				
EQUIPMENT	N/A				
OTHER	N/A				

2. Explanation of Above Estimates: *N/A*

3. Objectives of These Rules: *N/A*

Rule Title: Disciplinary and Complaint Procedures for Counselors

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: *N/A*

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: *N/A*

C. Economic Impact on Citizens/Public at Large. *N/A*

Date: July 3, 2000

Signature of Agency Head or Authorized Representative:

*Robert L. Palmer*

TITLE 27  
LEGISLATIVE RULE  
BOARD OF EXAMINERS IN COUNSELING

SERIES 5  
DISCIPLINARY AND COMPLAINT PROCEDURES FOR COUNSELORS

FILED  
JUL 3 2 37 PM '00  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§27-5-1. General.**

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

1.2. Authority. -- W. Va. Code §§30-31-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

**§27-5-2. Application.**

This rule applies to all persons practicing or making application to practice as professional counselors.

**§27-5-3. 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 pursuant to W. Va. Code §30-31-1 et seq.

3.2. Board means the West Virginia Board of Examiners in Counseling.

3.3. License means a license issued by the Board pursuant to W. Va. Code §30-31-1 et seq.

3.4. Licensed Professional Counselor means a person who practices counseling W. Va. Code §30-31-2.

3.5. Ethics investigator means a person who is hired and/or engaged by the Board for the purpose of reviewing complaints against counselors.

**§27-5-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of an Applicant for Licensure or Licensee.**

4.1. The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory

proof that a licensee or applicant 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 W. Va. Code §30-31-1 et seq. and/or the rules of the Board.

**§ 27-5-5. 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 licensed professional counselor or applicant with a violation of W. Va. Code §30-31-1 et seq. and/or the rules 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 should contain the following:

5.1.a. The name and address of the licensed professional counselor against whom the complaint is lodged;

5.1.b. The date or dates the incident or incidents occurred;

5.1.c. The name of any professional who may have treated the client after the alleged incident;

5.1.d. The name or names of witnesses to the incident or incidents; and,

5.1.e. The complaint must be notarized.

5.2. A complaint against a licensed professional counselor shall 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 W. Va. Code §30-31-1 et seq. and/or the rules 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 shall maintain a complaint log, which records the receipt of each complaint, its nature and its disposition.

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

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

5.6.a. That the matter will be reviewed by the Board;

5.6.b. 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.c. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee 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.

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

5.9. Upon receipt of a licensee'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.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.b. of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof 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 ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, 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, an analysis of the complaint, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, 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 which shall 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 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.

5.14. The Board, its Executive Secretary, 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 ethics investigator may request the Board or its chairperson to issue a subpoena or subpoena duces tecum. A brief statement specifying the necessity for the same shall accompany any such request.

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 licensed professional counselor may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

**§27-5-6. Contested Case Hearings.**

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

**§27-5-7. 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 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.