

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3 ■

Do Not Mark In This Box

FILED

AUG 28 4 12 PM '00

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

CITE AUTHORITY: 30-31-1 and 30-1-1

AMENDMENT TO AN EXISTING RULE: YES  NO

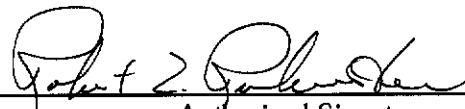
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

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

**West Virginia Board of Examiners in Counseling**

**At Marshall University Graduate College**

**100 Angus E. Peyton Drive**

**South Charleston, WV 25303-1600**

**Phone: (304) 746-2512 Fax: (304) 746-1942**

**Email: jajohnson@marshall.edu**

**August 28, 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**

**At Marshall University Graduate College**

**100 Angus E. Peyton Drive**

**South Charleston, WV 25303-1600**

**Phone: (304) 746-2512 Fax: (304) 746-1942**

**Email: jajohnson@marshall.edu**

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

## **Statement of Circumstances**

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

**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 28, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Examiners in Counseling  
100 Angus E. Peyton Drive  
South Charleston, WV 25303-1600

304-746-2512 or 800-520-3852

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedure for Counselors.

1. Authorizing statute(s) citation 30-31-1 and 30-1-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 3, 2000

b. What other notice, including advertising, did you give of the hearing?  
Mailed out a summary of the rule and gave information  
on how to obtain a copy of the proposed rule to each LPC, US mail. Sent copy to  
West Virginia Counseling Association and West Virginia Licensed Professional  
Counselor Association. Sent copy to graduate counseling program chairs at  
Marshall, MUGC and WVU. Posted copy on our website.

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)

N/A

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

Jean Ann Johnson, Executive Secretary	Email: jajohnson@marshall.edu
100 Angus E. Peyton Drive	Phone: 746-2512 or 800-520-3852
South Charleston, WV 25303-1600	Fax: 746-1942

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- 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)
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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.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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□  
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

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: August 28, 2000

Signature of Agency Head or Authorized Representative:

Robert L. Rubenstein

**TITLE 27  
LEGISLATIVE RULE  
BOARD OF EXAMINERS IN COUNSELING**

**FILED**

**SERIES 5  
DISCIPLINARY AND COMPLAINT PROCEDURES FOR COUNSELORS**

AUG 28 4 15 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§27-5-1. General.**

1.1. Scope. -- This rule specifies the 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 to practice counseling.

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

3.3. License means a license issued by the Board to practice counseling.

3.4. Licensed Professional Counselor means a person who practices counseling pursuant to W. Va. Code §30-31-1.

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, including, but not limited to, the following:

- (1). Used narcotic drugs, other controlled substances or alcohol to the extent that it affects his or her professional competency;
- (2). Is under a declaration of mental incompetence;
- (3). Has obtained or attempted to obtain a counseling license by fraud, deceit or willful misrepresentation;
- (4). Has violated the current code of ethics adopted by the Board;
- (5). Has impersonated another licensed professional counselor;
- (6). Has practiced, condoned, facilitated or collaborated with any form of discrimination against any person or group;
- (7). Has engaged in any action that violates or diminishes the civil or legal rights of clients;
- (8). Has been involved with the sexual exploitation of clients;
- (9). Has claimed, either directly or by implication, professional qualifications that differ from his or her actual qualifications;
- (10). Has practiced outside the areas of competence and services provided that are listed on his or her professional disclosure statement;
- (11). Has engaged in activities resulting in personal gain based upon information accessible solely as a result of the confidential relationship, regardless of the absence of harm or detriment to the client;

(12). Has not condoned, facilitated or collaborated in unethical practices, which he or she is obligated to report to the West Virginia Board of Examiners in Counseling; or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-31-1 et seq. and/or the Legislative Rules, all series, 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 Legislative rules, all series, 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.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, as cited in subsection 4.1 in this rule or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-31-1 et seq. and/or the Legislative rules, all series, 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.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 will 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, he or she must submit a written response to the Board within thirty (30) days of the date of correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees or applicants will be considered properly served when sent to their last known address.

5.9. Upon receipt of a licensee's or applicant'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.b. of this rule, the Board will 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 ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator 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, an analysis of the complaint, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator will, upon request, have the opportunity to conduct an investigation interview with the licensee or applicant in question or other involved parties. A report of the 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.

5.14. 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.

5.15. 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 explaining the need for the subpoena must accompany any subpoena.

5.16. 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. The committee or ethics investigator must 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 Legislative rules, all series, 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.

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During the comment period, July 14, 2000 through August 15, 2000, there were no comments received by the Board pertaining to this proposed rule.