

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

Form #1

Do Not Mark In This Box

**FILED**

JUN 26 10 57 AM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: West Virginia Board of Dental Examiners TITLE NUMBER: 5

RULE TYPE: Legislative CITE AUTHORITY: 30-1-1 et seq 30-4-1 et seq & 30-4A-1 et seq

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 RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Contested Case Hearing Procedures

DATE OF PUBLIC HEARING: July 31, 2000 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Board of Dental Examiners  
207 South Heber Street  
Beckley, WV 25801

COMMENTS LIMITED TO: ORAL \_\_\_ , WRITTEN X , BOTH \_\_\_

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia Board of Dental

Examiners  
PO Drawer 1459  
Beckley, WV 25802-1459

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Authorized Signature

Executive Secretary

## SUMMARY OF PROPOSED RULE

To specify procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code more specifically Chapter 30, Article 1, Section 8, Subsection (h) as contained in House Bill 4062.

## STATEMENT OF CIRCUMSTANCES

To specify procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code more specifically Chapter 30, Article 1, Section 8, Subsection (h) as contained in House Bill 4062.

## STATEMENT OF PURPOSE

To specify procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code more specifically Chapter 30, Article 1, Section 8, Subsection (h) as contained in House Bill 4062.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Contested Case Hearing Procedures

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Board of Dental Examiners

Address: 207 South Heber Street  
PO Drawer 1459  
Beckley, WV 25802-1459

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	0.00	0.00			
<b>PERSONAL SERVICES</b>	0.00	0.00			
<b>CURRENT EXPENSE</b>	0.00	0.00			
<b>REPAIRS &amp; ALTERATIONS</b>	0.00	0.00			
<b>EQUIPMENT</b>	0.00	0.00			
<b>OTHER</b>	0.00	0.00			

2. Explanation of Above Estimates:

Does not affect budget.

3. Objectives of These Rules:

To fulfill requirements of House Bill 4062.

Rule Title: Contested Case Hearing Procedures

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

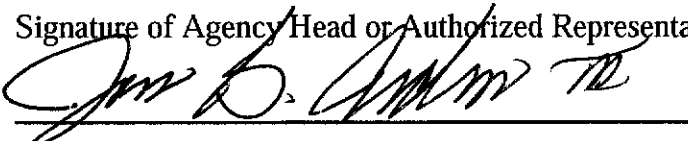
None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 23, 2000

Signature of Agency Head or Authorized Representative:



Executive Secretary

JUN 26 10 57 AM '00

TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 4  
CONTESTED CASE HEARING PROCEDURE

**§5-4-1. General.**

1.1. Scope. -- This rule specifies the procedure for the adjudication of contested case hearings before the Board.

1.2. Authority. -- W. Va. Code §30-1-1 et seq., §30-4-1 et seq. and §30-4A-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

**§5-4-2. Definitions.**

The following words and phrases as used in this rule shall have the following meanings, unless the context otherwise requires:

2.1. "Board" means the West Virginia Board of Dental Examiners.

2.2. "Demanding party" means an individual who has been denied a license and/or permit by the Board and who, as a result, demands that a hearing be held before the Board on the issue of such denial.

2.3. The term "Charged party" means an individual who holds a license and/or permit issued by the Board and who has been charged by the Board as described in Section 3.4 of these rules.

2.4. "License" means a license and/or permit issued by the Board pursuant to W. Va. Code §30-4-1 et seq. and §30-4A-1 et seq.

2.5. The term "Licensee" means an individual who holds a license to practice issued by the Board. A "permittee" is a person who holds a permit issued by the Board.

2.6. "Practice of dentistry" means the practice of dentistry as defined in W. Va. Code §30-4-2.

2.7. "Practice of dental hygiene" means the practice of dental hygiene as defined in W. Va. Code §30-4-3.

**§5-4-3. Hearing Procedure.**

3.1. Any applicant denied a license and/or permit or any licensee and/or permit holder who has had their license and/or permit suspended by the Board who believes such denial was in violation of W. Va. Code §30-1-1 et seq., §30-4-1 et seq. and/or §30-4A-1 et seq., shall be entitled to a hearing on the action denying or suspending such license and/or permit.

3.2. Any person who desires a hearing for the reason described in subsection 3.1 of this section must present a written demand for such to the Board.

3.3. When the chair of the Board or his or her authorized designee is presented with such a demand for a hearing, he or she shall schedule a hearing within sixty (60) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement.

3.4. Charges may be instituted against any licensee or permittee by the Board when probable cause exists for believing that the licensee or permittee may have engaged in conduct, practices or acts in such condition that his or her license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code §30-1-1 et seq., §30-4-1 et seq., §30-4A-1 et seq. or the Board's legislative rules. Charges may be based upon information received by way of a written complaint filed with the Board and any information gathered by the Board in the process of investigating such complaint. Charges may also be based upon information obtained solely through investigative activities undertaken by the Board.

3.5. Charges instituted against a licensee or permittee as described in subsection 3.4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of dentistry and/or dental hygiene. Such Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the licensee and/or permittee involved in the proceeding as the "Respondent"; 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; and shall state the date, time and place for the hearing.

3.6. Upon receipt of a demand for a hearing described in subsections 3.1 and 3.2 of this section, the chair or his or her designee shall provide the demanding party, with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of dentistry and/or dental hygiene. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license or permit with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; and shall state the date, time and place for the hearing.

3.7. The Board may amend the charges set forth in a Complaint and Notice of Hearing as it deems proper.

3.8. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.

3.9. Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of a

license and/or permit shall be provided to the demanding or charged party or his or her counsel, at least ten (10) days prior to the hearing date.

3.10. Hearings shall be conducted as follows:

3.10.1. Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia.

3.10.2. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs

3.10.3. The rules of privilege recognized by the law of this state shall be followed.

3.10.4. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

3.10.5. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Board and, when appropriate, may cross-examine witnesses called by the Board in support of the charges or in defense of its decision to deny licensure or a permit.

3.10.6. 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 charged or demanding party and/or his or her attorney in person; or if he or she

cannot be found, by delivering such notice at his or her usual place of abode and giving information of its purport, to his wife or her husband, or to any other person found there who is a member of his or her family and above the age of sixteen (16) years; or if neither his wife or her husband nor any such person can be found there, and he or she cannot be found, by leaving such notice posted at the front door of such place of abode; or if he or she does not reside in this state, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

3.10.7. Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, That no member of the Board who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he testified.

3.10.8. The hearing shall be conducted by a quorum of the Board.

3.10.9. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

3.10.10. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

3.10.11. Where a hearing is held upon the instance of the Board after charges have been brought against a licensee pursuant to subsection 3.4 and 3.5 of this section, the Board shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

3.10.12. Where a hearing is held upon demand under the provisions of subsections 3.1, 3.2, 3.3, and 3.6 of this action, the demanding party shall have the burden of proof and shall therefore be required to present his or her evidence first. The Board may require the person demanding the hearing to give security for the costs thereof and if the demanding party does not substantially prevail, such facts may be assessed against them and may be collected in a civil action or by other proper remedy.

3.10.13. Following the conclusion of the Board's presentation of evidence in accordance with subsection 3.10.11 of this section the Respondent or charged party shall have the right to submit his or her evidence in defense.

3.10.14. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.10.12 of this section, the Board shall have the right to offer its evidence in rebuttal.

3.10.15. The Board may call witnesses to testify in support of its decision to deny licensure to deny a permit or in support of the charges instituted against a licensee or permittee; may present such other evidence to support its position; and, may cross-examine witnesses called by the demanding party or charged party in support of his or her position.

3.10.16. All parties shall have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation, unless otherwise lengthened by the Board.

3.10.17. Hearings held by the Board as a result of charges instituted against a licensee or permittee may be continued or adjourned to a later date or different place by the Board or its designee by appropriate notice to all parties.

3.10.18. Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than ten (10) days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting the continuance to proceed effectively without a continuance. A motion for a continuance filed less than ten (10) days from the hearing date may be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing shall be ruled on by the chair or executive secretary of the Board. All other motions for continuance shall be ruled on by the Board member(s) or the member presiding over the hearing.

3.10.19. All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony. The Board member(s) presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on such motions accordingly.

**§5-4-4. Transcription of 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. All reported materials shall be transcribed. The Board shall have the responsibility to make arrangements for the transcription of the reported testimony and evidence.

4.3. Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board chair or presiding member shall settle all differences arising as to whether such

transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the truth.

4.4. A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any licensure or permit disciplinary matter.

**§5-4-5. Submission of Proposed Findings of Fact and Conclusions of Law.**

5.1. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board.

**§5-4-6. Conferences; Informal Disposition of Cases.**

6.1. At any time prior to the hearing or thereafter, the Board, its designee may hold conferences for the following purposes:

- 6.1.1. To dispose of procedural requests, prehearing motions or similar matters;
- 6.1.2. To simplify or settle issues by consent of the parties; or,
- 6.1.3. To provide for the informal disposition of cases by stipulation or agreement.

6.2. The Board may cause such conferences to be held on its own motion or by the request of a party.

6.3. The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

**§5-4-7. Depositions.**

7.1. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

**§5-4-8. Subpoenas.**

8.1. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by any member of the Board, its Executive Secretary, its Assistant Executive Secretary.

Such subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

8.2. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 8.1 of this section must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1(b)

**§5-4-9. Orders.**

9.1. Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §29A-5-3 and §30-1-8. Such orders shall be entered within sixty (60) 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.

9.2. 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 demanding or charged party and/or his or her attorney of record, if any, within ten (10) days after entry by the Board by personal service or by registered or certified mail.

**§5-4-10. Appeal.**

10.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §29A-6-1 et seq. and §30-1-9.

George D. Conrad, Jr., DDS  
President  
6353 East Pea Ridge Road  
Huntington, WV 25705

John C. Dixon, DDS  
Secretary  
1961 Parkwood Road  
Charleston, WV 25314

Bernard J. Grubler, DDS  
21 Damian Road  
Wheeling, WV 26003

James G. Anderson, III  
Executive Secretary  
PO Drawer 1459  
Beckley, WV 25802-1459



WEST VIRGINIA BOARD OF DENTAL EXAMINERS  
PO DRAWER 1459  
BECKLEY, WV 25802-1459  
(304) 252-8266  
(304) 252-2779

Thomas S. Wilkerson, DDS  
1400 Kanawha Boulevard, East  
Charleston, WV 25301

H. Richard Marshall, Jr., DDS  
120 Maplewood Avenue  
Ronceverte, WV 24970

Mrs. Dina Agnone Vaughan, BSDH, MS  
151 May Apple Trail  
Lewisburg, WV 24901

Mrs. Dolores L. Gribble  
11 Davis Place  
Clarksburg, WV 26301

John F. Parkulo  
Assistant Executive Secretary  
PO Drawer 1459  
Beckley, WV 25802-1459

June 23, 2000

Ms. Judy Cooper  
Office of the Secretary of State  
Administrative Law Division  
Capitol Complex  
Charleston, WV 25305

Dear Ms. Cooper:

It would be appreciated if the Secretary of State's office would file the enclosed Notice of Hearing on a Proposed Rule with attachments and place the same on the State Register. Please return to us a copy of the same with the filing date shown for our records. If additional information is needed please do not hesitate to contact this office.

I wish to thank you for your help and cooperation. The Board greatly appreciates it.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James G. Anderson, III".

JAMES G. ANDERSON, III  
Executive Secretary

JGA/smc  
Enclosure

## NOTICE OF PUBLIC HEARING

Please take notice that a public hearing will be held at the office of the West Virginia Board of Dental Examiners, 207 South Heber Street, Beckley, Raleigh County, West Virginia, on Monday, July 31, 2000, at 1:00 o'clock p.m., for the purpose of receiving oral and/or written comments on two proposed new series 4 and 5, Title Number 5, Agency: West Virginia Board of Dental Examiners. The issues to be heard shall be limited to the proposed rules. The basic substance of the rules are as follows:

### Series 4

1. Contested Case Hearing Procedures.

### Series 5

1. Disciplinary and Complaint Procedures.

Copies of the proposed rules may be obtained from the Secretary of State's Office as follows: Secretary of State, Administrative Law Division, Capitol Complex, Charleston, WV 25305, or by writing the West Virginia Board of Dental Examiners as follows: West Virginia Board of Dental Examiners, P. O. Drawer 1459, Beckley, West Virginia, 25802-1459. Comments may also be mailed to the following address: West Virginia Board of Dental Examiners, P. O. Drawer 1459, Beckley, West Virginia, 25802-1459. Persons wishing to make comments at the hearing should make an effort to submit written comments in order to facilitate the review of these comments.

West Virginia Board of Dental Examiners

James G. Anderson, III  
Executive Secretary