

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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FILED

2007 JAN 22 AM 8:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Procedural CITE AUTHORITY: §30-1-8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures

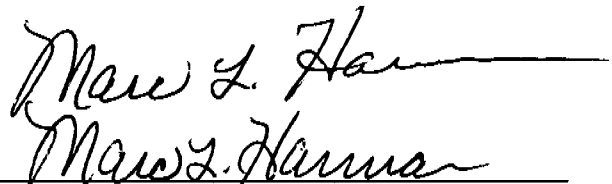
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 February 21 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Dental
Examiners
PO Box 1447
Crab Orchard, WV 25827

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.60

SUMMARY OF PROPOSED RULE

To amend the current procedures for the investigation and resolution of complaints against persons licensed and regulated by the West Virginia Board of Dental Examiners. This would allow the Board discretion as to when a licensee is notified of a complaint filed against their license when the tampering of evidence is possible.

STATEMENT OF CIRCUMSTANCE

These proposed rules would allow the Board discretion as to when a licensee would be notified a complaint has been filed against their license when the tampering of evidence is possible.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Box 1447
Crab Orchard, WV 25827

Phone Number: (304)252-8266 Email: wvbde@charterinternet.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule should have no impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Disciplinary and Complaint Procedures

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

These rules will not increase nor decrease fees collected by the Board of Dental Examiners.

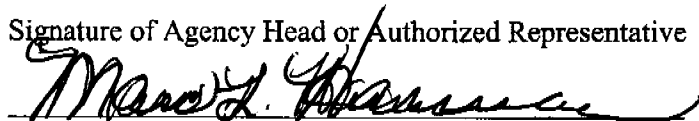
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

A fiscal impact is not expected as a result of these rules.

Date: January 22, 2007

Signature of Agency Head or Authorized Representative



2007 JAN 22 AM 8: 54

**TITLE 5
PROCEDURAL RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES**

§5-5-1. General.

1.1. Scope. -- This rule specifies procedure for the investigation and resolution of complaints against dentists and dental hygienists.

1.2. Authority. -- W. Va. Code §30-1-8.

1.3. Filing Date. -- January 5, 2001.

1.4. Effective Date. -- February 5, 2001.

§5-5-2. Application.

This rule applies to all licensed and/or permitted dentists and dental hygienists.

§5-5-3. 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 and/or a permit pursuant to W. Va. Code §§30-4-1 et seq. and 30-4A-1 et seq.

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

3.3. "Complainant" means the person making a complaint.

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

3.5. "Dentist" means a person who practices dentistry as defined in W. Va. Code §30-4-1 et seq.

3.6. "Dental Hygienist" means a person who practices dental hygiene as defined in W. Va. Code §30-4-1 et seq.

§5-5-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses and/or Permit of Dentists or Dental Hygienists.

The Board may deny an application for license and/or permit, 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 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 §§30-1-1 et seq., 30-4-1 et seq., 30-4A-1 et seq. and/or the rules of the Board.

§5-5-5. 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 dentist or dental hygienist or applicant with a violation of W. Va. Code §§30-1-1 et seq., 30-4-1 et seq., 30-4A-1 et seq. and/or of the rules of the Board. The Board may provide a form for filing a complaint, 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:

5.1.1. The name and address of the dentist or dental hygienist against whom the complaint is lodged;

5.1.2. The date of treatment;

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 may have been an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a dentist or dental hygienist 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 §§30-4-1 et seq. or 30-4A-1 et seq. 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 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, it will be assigned to a two (2) member complaint committee appointed by the Board to review and make recommendations to the Board. The Board will then 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.

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 supporting documentation, by certified mail to the licensee or permittee 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 the correspondence, or waive the right to do so.

5.7.1 Exception. The board may use its discretion regarding the notification of complaint to the licensee or permittee or applicant if such notification would result in possible tampering of evidence. However, once such evidence is collected by the representative for the board, the licensee must be notified, pursuant to 5CSR5-7.

5.8. Requests for comment on complaints sent to licensees, permittees or applicants will be considered properly served when sent to their last known address. It is the responsibility of the licensee or permittee or applicants 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 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 subsection 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 investigation may, at the discretion of the Board, be assigned to a committee and/or investigator of the Board.

5.11. 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.

the controversy concerns whether the examination was fair or whether the applicant passed the examination.

5.12. 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 investigator and/or committee 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.

5.13. 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 dentist or dental hygienist may be sanctioned by the Board.

§5-5-6. Contested Case Hearings.

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

§5-5-7. 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., 30-1-9 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