

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

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY: §30-1-8

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X 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: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS June 1, 2007


Authorized Signature

FILED

TITLE 5
PROCEDURAL RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

2007 APR 27 PM 1:46

SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. -- June 1, 2007.

§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

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April 26, 2007

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

Dear Ms. Cooper:

Following the comment period for proposed rule Title 5, Series 5, please be advised no comments were received and no amendments were made.

Very truly yours,

A handwritten signature in cursive script that reads "Marc L. Harman".

MARC L. HARMAN
Executive Secretary

MLH/smc