

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

Form #1

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JUN 26 10 59 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

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

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 , 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 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.

STATEMENT OF CIRCUMSTANCE

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: Disciplinary and Complaint 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 |
| ESTIMATED TOTAL COST | 0.00 | 0.00 | | | |
| PERSONAL SERVICES | 0.00 | 0.00 | | | |
| CURRENT EXPENSE | 0.00 | 0.00 | | | |
| REPAIRS & ALTERATIONS | 0.00 | 0.00 | | | |
| EQUIPMENT | 0.00 | 0.00 | | | |
| OTHER | 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: Disciplinary and Complaint 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:

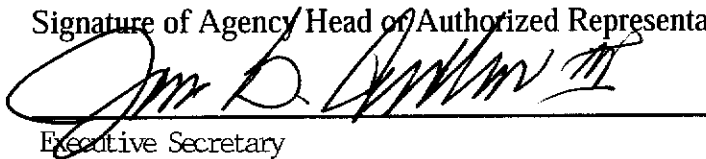
None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 23, 2000

Signature of Agency Head or Authorized Representative:


Executive Secretary

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

JUN 26 10 59 AM '00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES

§5-5-1. General.

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

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. --

§5-5-2. 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 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, it shall be assigned to a two (2) member complaint committee appointed by the Board to review and make recommendations to the Board. The Board shall 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 shall 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, 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, permittees or applicants shall 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 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 5.6.2 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 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 investigator and/or committee of the Board for review and investigation.

5.12. Upon receipt of a complaint the investigator and/or committee of the Board 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, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the investigator's and/or committee's findings and recommendations. The investigator and/or committee shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, permittee 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 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 such request shall be accompanied by a brief statement specifying the necessity for the same.

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 dentist or dental hygienist 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 investigator, the committee or investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§5-5-6. 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 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 the controversy concerns whether the examination was fair or whether the applicant passed the examination.

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



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PO Drawer 1459
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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 black 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