

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

Form #3

Do Not Mark In This Box

FILED

AUG 24 8 37 AM '00

OFFICE OF THE 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 Dental Examiners TITLE NUMBER: 5

CITE AUTHORITY: 30-1-8

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

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

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 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.

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 23, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Dental Examiners
207 South Heber Street
PO Drawer 1459
Beckley, WV 25802-1459

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedures

1. Authorizing statute(s) citation 30-1-8

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 26, 2000

b. What other notice, including advertising, did you give of the hearing?
Placed a legal advertisement in the Charleston Gazette which run 6/29/2000. Also sent notice to the WV Dental Association, WV Dental Hygiene Association and WV Dental Assistants Association.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 31, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received 0
Reasons for amendments attached

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 26, 2000

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

James G. Anderson, III
Executive Secretary
PO Drawer 1459
Beekley, WV 25802-1459
(304) 252-8266

- 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)

same

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

b. Date of hearing or comment period:

n/a

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

n/a

d. Attach findings and determinations and reasons:

Attached n/a

LIST OF PERSONS WHO APPEARED AT HEARING

James G. Anderson, III	Executive Secretary
John F. Parkulo	Assistant Executive Secretary
Susan M. Combs	Office Manager

REASONS FOR AMENDMENTS

Amended to comply with rules drafting guides of legislature.

□
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:

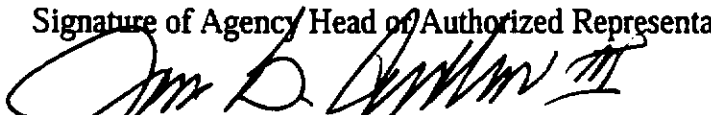
None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 23, 2000

Signature of Agency Head or Authorized Representative:


Executive Secretary

FILED

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

AUG 24 8 32 AM '00

SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES

OFFICE OF 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. --

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 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.

5.8. 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.

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

PUBLIC HEARING

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

In Re:

A public hearing on two proposed new series, 4 and 5,
Title Number 5, Agency: West Virginia Board of Dental
Examiners.

Conference Room, Law Office of
Anderson, Parkulo,
Stansbury & Associates, LC,
207 South Heber Street,
Beckley, West Virginia,
Monday, July 31, 2000.

The Public Hearing was taken before James A.
Stewart, a Stenotype Reporter and Notary Public within
and for the State of West Virginia at Large, pursuant
to agreement of the parties hereto, to be used for all
lawful purposes, pursuant to the Virginia Rules of
Civil Procedure, commencing at 1:27 p.m., EDST.

VOLUME: I

ORIGINAL

PAGES: 1 - 15

A P P E A R A N C E S

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JAMES G. ANDERSON, III, ESQ.,

Executive Secretary,

West Virginia Board of Dental Examiners

P.O. Drawer 1459,

Beckley, West Virginia, 25802-1459.

JOHN F. PARKULO, ESQ.,

Assistant Executive Secretary,

West Virginia Board of Dental Examiners,

P.O. Drawer 1459,

Beckley, West Virginia, 25802-1459.

Also Present: Ms. Susan Michelle Combs

1 P R O C E E D I N G S

2 MR. ANDERSON: My name is James G.
3 Anderson, III, Executive Secretary for the West
4 Virginia Board of Dental Examiners. The purpose that
5 we are here for is a public hearing concerning the
6 Board of Dental Examiners regulations, which would be
7 Title Number 5, Agency: West Virginia Board of Dental
8 Examiners, with two proposed new series, 4 and 5.

9 This matter is set for public hearing
10 Monday, July 31st at 1 o'clock p.m. at 207 South Heber
11 Street, Beckley, Raleigh County, West Virginia, in the
12 office the West Virginia Board of Dental Examiners.

13 It should be noted that we have been
14 together since 1 o'clock, the time set for the
15 hearing, and have waited to see if anyone would show,
16 and the time now is 1:27.

17 Those present, besides myself and the court
18 reporter, are John F. Parkulo, Assistant Executive
19 Secretary, and Susan Combs, Office Manager.

20 I would ask the court reporter to swear
21 Susan Combs in, please.

22 Whereupon,

23 SUSAN COMBS

24 was called as a witness and, after having been first
25 duly sworn by the Notary Public, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ANDERSON:

4 Q. Would you state your name, please?

5 A. Susan Combs.

6 Q. What's your position with the West Virginia
7 Board of Dental Examiners?

8 A. Office manager.

9 Q. And as office manager, are you in charge of
10 receiving, opening papers, and filing all papers
11 concerning the Board of Dental Examiners?

12 A. Yes.

13 Q. I'm going to show you a copy of a letter
14 dated April the 28th, 2000 from Vicki V. Douglas -- or
15 rather Edwin -- and Edwin J. Bowman, Senator, and
16 delegates, who are both respectively with the
17 government organization chairmen of their respective
18 houses of the legislature. Have you seen this letter
19 before?

20 A. Yes.

21 Q. Was that received at this office?

22 A. It was.

23 Q. And that talked about House Bill 4060 that
24 passed during the regular 2000 session of
25 the legislature?

1 A. Yes.

2 Q. And that bill required by July 1 of this
3 year to file legislative rules to set forth a
4 complaint process for all boards. Is that correct?

5 A. No, it's 4062.

6 MR. ANDERSON: Okay, 4062. Thank you.
7 I stand corrected. I would ask that this be marked
8 and made part of this record as Exhibit 1.

9 (Exhibit No. 1 was
10 marked for identification
11 and received in evidence.)

12 BY MR. ANDERSON:

13 Q. Ms. Combs, to your knowledge, were there
14 regulations drafted for the board's consideration?

15 A. Yes.

16 Q. And were these two series of regulations 4
17 and 5?

18 A. Yes, they were.

19 Q. And did the board hold an open emergency
20 meeting by telephone conference?

21 A. They did.

22 Q. And that was done pursuant to the proper
23 notice. Is that correct?

24 A. That's correct.

25 Q. And I'm going to show you what's been marked

1 at the top 6/00.

2 A. Okay.

3 Q. Are those the minutes that you generated
4 concerning the emergency meeting by telephone
5 conference?

6 A. Yes, it is.

7 Q. Does this show that all of the board
8 members, with the exception of John C. Dixon, were
9 present?

10 A. Yes, that's right.

11 Q. And this was done with a conference call to
12 the other six people. Is that correct?

13 A. That's right.

14 Q. And the other six people were the -- could
15 you tell me who they were?

16 A. They were Dr. George Conard, C-o-n-a-r-d,
17 President; Dr. Bernard Grubler; Dr. Thomas Wilkerson;
18 Dr. H. Richard Marshall, Jr.; Mrs. Dina Vaughan; Mrs.
19 Dolores Gribble.

20 Q. Also on that phone conversation was
21 yourself. Correct?

22 A. Yes.

23 Q. And I was present, part of the phone
24 conversation?

25 A. That's correct.

1 Q. You took the minutes. Is that correct?

2 A. That's correct.

3 Q. They had previously been sent the Title 5
4 series 4 and 5 for consideration?

5 A. Yes.

6 Q. And did they approve these rules with the
7 correction of two typing errors?

8 A. Yes, they did.

9 Q. And they directed this office to file those
10 proposed rules to the Secretary of State's office. Is
11 that correct?

12 A. That's correct.

13 MR. ANDERSON: I would ask that this be
14 marked as Exhibit 2 to the public hearing.

15 (Exhibit No. 2 was
16 marked for identification
17 and received in evidence.)

18 BY MR. ANDERSON:

19 Q. Did you file these rules with the Secretary
20 of State's office?

21 A. Yes, I did.

22 Q. I'm going to show you what's been marked, a
23 letter dated June 23rd, and ask you to look at that.
24 Who is that letter to?

25 A. This letter is to Judy Cooper. She is with

1 the Administrative Law Division of the Secretary of
2 State's office.

3 Q. And in that letter did you ask her to file
4 Title 5, series 4 and 5, with the Secretary of State's
5 office?

6 A. Yes, I did.

7 Q. Also, did you ask her to place those on the
8 State Register?

9 A. Yes.

10 MR. ANDERSON: I request that that be
11 marked as Exhibit 3.

12 (Exhibit No. 3 was
13 marked for identification
14 and received in evidence.)

15 BY MR. ANDERSON:

16 Q. Did you subsequently receive back from the
17 Secretary of State's office your rules that were filed
18 and marked the date of filing?

19 A. Yes.

20 Q. And there were two sets of rules; one being
21 rule 4 and the other being series 5, rather?

22 A. Yes.

23 MR. ANDERSON: I would ask you to look
24 at these and have them marked as Exhibits 4 and 5,
25 respectively, if those are the copies you received

1 back. Are they?

2 THE WITNESS: Yes, they are.

3 (Exhibits Nos. 4 and 5 were
4 marked for identification
5 and received in evidence.)

6 BY MR. ANDERSON:

7 Q. The date that those were filed with the
8 Secretary of State's office, they are marked June
9 26th. Is that correct?

10 A. That's correct.

11 Q. So it was filed June 26th of this year
12 "Received"?

13 A. Yes.

14 Q. And did you also check the State Register?

15 A. I did.

16 Q. And were these placed on the State Register?

17 A. They were.

18 Q. Did you print off of the internet a copy of
19 the State Register?

20 A. Yes.

21 Q. I would ask you to look at this. Is this
22 what you printed off of the internet?

23 A. Yes, it is.

24 MR. ANDERSON: I would ask that that be
25 marked as Exhibit 6.

1 (Exhibit No. 6 was
2 marked for identification
3 and received in evidence.)

4 BY MR. ANDERSON:

5 Q. Also at that time were you asked to do a
6 publication concerning this hearing?

7 A. Yes.

8 Q. And did you place a Publication Notice of
9 hearing?

10 A. Yes, I did.

11 Q. And where did you place that?

12 A. Charleston Newspapers.

13 Q. And I would ask you to look at a copy of
14 this. Is that the Affidavit of Publication?

15 A. It is.

16 Q. And does it show what date this was
17 published on?

18 A. Yes.

19 Q. What was the publication date?

20 A. June 29th, 2000.

21 MR. ANDERSON: I would ask that this be
22 marked Exhibit 7.

23 (Exhibit No. 7 was
24 marked for identification
25 and received in evidence.)

1 BY MR. ANDERSON:

2 Q. In addition, were you requested to send
3 letters to the various dental associations?

4 A. Yes.

5 Q. And you sent a letter to Mr. Richard
6 Stevens?

7 A. Yes.

8 Q. And that's with the West Virginia Dental
9 Association. Is that correct?

10 A. That's correct.

11 Q. You sent a letter to Mrs. Robyn J. Allen.
12 Is that correct?

13 A. Yes.

14 Q. And she is with the West Virginia Dental
15 Hygienists' Association?

16 A. Yes.

17 Q. You sent a letter to the West Virginia
18 Dental Assistants Association, Mrs. Beverly Stevens?

19 A. Yes.

20 Q. And did all of these have a notice of
21 hearing?

22 A. Yes, they did.

23 Q. Did they all show that hearing was to be
24 today?

25 A. Yes.

1 Q. For a public hearing. Is that correct?

2 A. That's correct.

3 Q. And that notice talked about the rule, that
4 they could submit written comments as well as being
5 here publicly?

6 A. Yes.

7 Q. And did it also attach as part of the notice
8 the series 4 and 5 of Title 5 as part of these
9 letters?

10 A. Yes, it did.

11 Q. Now, to not be redundant, on the attached
12 copies I'm showing you, you did not attach the 4 and
13 5?

14 A. No, I didn't.

15 Q. But you did attach the notice in the letter
16 sent to each of them. Is that correct?

17 A. Yes, I did.

18 Q. And you have stapled those in a group for
19 all three letters. Is that correct?

20 A. Yes.

21 MR. ANDERSON: I would ask that this be
22 marked and made part of the record as Exhibit 8.

23 (Exhibit No. 8 was
24 marked for identification
25 and received in evidence.)

1 BY MR. ANDERSON:

2 Q. Did you receive any calls from anyone
3 concerning this Title 5, series 4 and 5 regulations to
4 be adopted concerning contested cases?

5 A. No.

6 Q. Did you receive any written comments
7 concerning this?

8 A. No.

9 Q. It would then be our request that the Joint
10 Committee, Rules and Regulations, of the House and
11 Senate adopt these rules as regulations in the 2001
12 legislative session. Is that correct?

13 A. Yes.

14 Q. And your rules were filed timely before July
15 1. Is that also correct?

16 A. That is correct.

17 Q. To your knowledge, we've complied with the
18 statute that was passed with the 2000 term of the
19 legislature. Is that correct?

20 A. We have.

21 MR. ANDERSON: Unless there is anything
22 else, we will close today's hearing. Thank you.

23 (Witnesses excused)

24 (Whereupon, at 1:32 p.m., EDST, the
25 foregoing hearing was concluded.)

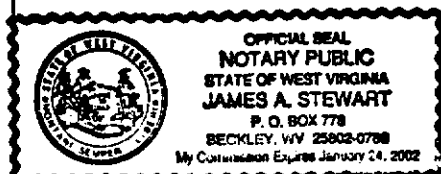
1 STATE OF WEST VIRGINIA

2 STATE AT LARGE, to-wit:

3 I, James A. Stewart, a Certified Shorthand
 4 Reporter and Notary Public within and for the State of
 5 West Virginia at Large, do hereby certify that I did
 6 appear at the time and place specified in the caption
 7 hereof; That the said witness was by me first duly
 8 sworn; That the testimony of the said witness was by
 9 me personally taken down in Stenotype Characters and
 10 transcribed into the English Language by
 11 Computer-Aided Transcription as set forth herein, the
 12 same being a true and correct transcript of the said
 13 testimony; That I am neither counsel for nor related
 14 to any of the parties hereto and have no interest in
 15 the matter whatsoever.

16 IT IS STIPULATED AND AGREED by the parties
 17 hereto that the signature of the foregoing witnesses
 18 is hereby waived.

19 Given under my hand this 4th day of August,
 20 2000.



24

25

James A. Stewart
 Notary Public, State of
 West Virginia at Large

My Commission expires January 24, 2002.

I N D E X

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Susan M. Combs	4	-	-	-

E X H I B I T S

HEARING	FOR IDENTIFICATION	IN EVIDENCE
No. 1	5	5
No. 2	7	7
No. 3	8	8
No. 4 and 5	9	9
No. 6	10	10
No. 7	10	10
No. 8	12	12

Reporter's Certificate

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**HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE**

BUILDING 1, ROOM E-213
1900 KANAWHA BLVD., EAST
CHARLESTON, WV 25305-0470
PHONE (304) 340-3192

VICKI V. DOUGLAS, Chair
COMMITTEE ON GOVERNMENT ORGANIZATION
1003 CHESTNUT DRIVE
MARTINSBURG, WV 25401
PHONE: (304) 263-1070

April 28, 2000

Committees:
House Rules
Joint Committee on
Government Organization
Joint Committee on
Government Operations

James G. Anderson
Board of Dental Examiners
P.O. Drawer 1459
Beckley, WV 25802

Re: Legislative Update

Dear Mr. Anderson:

We thought you would appreciate some information regarding revisions to sections of the code which govern professional licensing boards. As you may know, this committee continually strives to improve and clarify the law, and we invite you to contact us at any time with your questions and comments regarding this important subject matter.

During the 2000 Regular Session, the Legislature passed two bills which directly impact the business of licensing boards. House Bill 4060 established a sunset review process, whereby every licensing board established under Chapter 30 of the code will undergo an evaluation at least once every 12 years. The evaluation will determine whether the board complies with the policies and provisions of applicable laws and rules, whether the board follows a complaint process which observes due process rights and protects the public interest, and whether the public interest requires that the board be continued.

House Bill 4062 requires licensing boards, by July 1 of this year, to file a legislative rule that sets forth a complaint process. This bill also requires that the training session offered by the State Auditor include instructional time devoted to this topic. It is our understanding that the State Auditor will offer a special training session on June 8, to help boards prepare to file rules. If you are interested in attending this training, we encourage you to contact the State Auditor at 558-2251. The contact person for the training is Mr. Carl "Chuck" Kinder, Jr., whose telephone extension is 102.

**DEPOSITION
EXHIBIT**

*1 JAS
7/31/00

prefers interim mail, April through December, at home address

RECEIVED MAY 03 2000

It is likely that the Committee on Government Organization will review the complaints rules during the upcoming 2001 Regular Session. We look forward to working with you. The Senate staff may be reached at 347-7935, and the House of Delegates staff may be reached at 340-3192.

Sincerely,



Vicki V. Douglas
House Co-Chair



Edwin J. Bowman
Senate Co-Chair

1 The West Virginia Board of Dental Examiners met June 20, 2000 at the Office of
2 the West Virginia Board of Dental Examiners, 207 South Heber Street, Beckley, Raleigh
3 County, West Virginia for an open emergency meeting by telephone conference.

4 Those present were Dr. George D. Conard, Jr., President, Dr. Bernard J. Grubler, Dr.
5 Thomas S. Wilkerson, Dr. H. Richard Marshall, Jr., Mrs. Dina A. Vaughan, Mrs. Dolores
6 L. Gribble, James G. Anderson, III, Executive Secretary and Mrs. Susan M. Combs,
7 Office Manager. Absent was Dr. John C. Dixon, Secretary due to prior commitments.

8 The meeting was called to Order by the President, Dr. George D. Conard, Jr.

9 The first order of business was the proposed regulations concerning contested
10 case hearing procedures and disciplinary and complaint procedures. Upon motion by
11 Dr. Bernard J. Grubler, and properly seconded by Mrs. Dina A. Vaughan, and
12 unanimously passed, with the correction of two typing errors the Board directed the
13 Executive Secretary to file both sets of proposed rules with the Secretary of State's
14 office. Attached hereto and made a part hereof are said proposed rules.

15 The meeting was adjourned with the next meeting to be held July 22, 2000 at the
16 Greenbrier Hotel, White Sulphur Springs, West Virginia.

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

**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. -- July 1, 2000

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.

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

**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. -- July 1, 2000

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.

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PO Drawer 1459
Beckley, WV 25802-1459



WEST VIRGINIA BOARD OF DENTAL EXAMINERS
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Clarksburg, WV 26301

John F. Parkalo
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 black ink, appearing to read "James G. Anderson, III".

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosure

DEPOSITION
EXHIBIT

#3 SAS
7/31/00

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**

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

Do Not Mark In This Box

FILED

JUN 26 10 58 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #1

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

**DEPOSITION
EXHIBIT**

* 4 JAS
7/31/00

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
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.

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

FILED

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

JUN 26 10 58 AM '00

SERIES 4
CONTESTED CASE HEARING PROCEDURE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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.

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

Do Not Mark In This Box

FILED

JUN 26 11 00 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

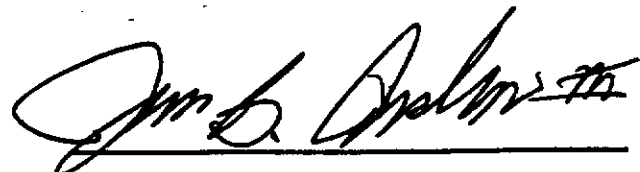
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia Board of Dental

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.

Issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL



Authorized Signature

Executive Secretary

**DEPOSITION
EXHIBIT**

#5 JAS
7/31/00

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 11 00 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.

CHRONOLOGICAL INDEX, VOLUME XVII ISSUE 26

PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>
Accountancy (1-2)	Contested Case Hearing Procedure Legislative	§§30-9-1 et seq. 30-1-1 et seq. 2 5-1 et seq.
Accountancy (1-3)	Disciplinary & Complaint Procedures for Public Accountants Legislative	§§30-9-1 et seq. 30-1-1 et seq. 2 5-1 et seq.
Acupuncture (32-7)	Disciplinary & Complaint Procedures for Acupuncturists Legislative	§30-36-7
Auditor (148-7)	Purchasing Card Program Legislative	§12-3-10A
Corrections (90-8)	Electronic Monitoring of Offenders Legislative	§25-1-14
Corrections (90-9)	Inmate Grievance Procedures Legislative	§§25-1-1 & 25-1 2
Dental Examiners (5-4)	Contested Case Hearing Procedures Legislative	§§30-1-1 et seq. 30-4-1 et seq & 4A-1 et seq.

**DEPOSITION
EXHIBIT**

* 6 JAS
7/31/00

<p>Dental Examiners (5-5)</p>	<p>Disciplinary & Complaint Procedures Legislative</p>	<p>§§30-1-1 et seq, 30-4-1 et seq & 4A-1 et seq.</p>
<p>Foresters, State Bd of Registration for (200-2)</p>	<p>Contested Case Hearing Procedure Legislative</p>	<p>§§30-19-1 et se 30-1-1 et seq & 29A-5-1 et seq</p>
<p>Foresters, State Bd of Registration for (200-3)</p>	<p>Disciplinary & Complaint Procedures for Foresters Legislative</p>	<p>§§30-19-1 et se 30-1-1 et seq & 29A-5-1 et seq</p>
<p>Highways (157-8)</p>	<p>Waste Tire/Remediation/Environmental Clean Up Legislative</p>	<p>§§17-23-2 & 3, 1 24 et seq</p>
<p>Massage Therapy (194-3)</p>	<p>Disciplinary & Complaint Procedures for Massage Therapists Legislative</p>	<p>§§30-1-1 et seq 30-37-6 et seq</p>
<p>Medicine (11-1A)</p>	<p>Licensing, Disciplinary & Complaint Procedures: Physicians; Podiatrists Legislative</p>	<p>§§30-3-7(a)(1) & 30-1-8(h)</p>
<p>Medicine (11-1B)</p>	<p>Licensure, Disciplinary & Complaint Procedures, Continuing Education, Physician Assistants Legislative</p>	<p>§§30-3-16(b) & 30-1-8(h)</p>
<p>Nursing Home Administrators Licensing Bd (21-2)</p>	<p>Disciplinary & Complaint Procedures for Nursing Home Administrators, Administrator-In-Training, Emergency & Temporary Permit Holders Legislative</p>	<p>§§30-25-1 & 30-</p>
<p>Occupational Therapy (13-2)</p>	<p>Disciplinary, Complaint & Contested Case Hearing Procedures for Occupational Therapists & Occupational Therapy Assistants Legislative</p>	<p>§30-28-6</p>

Registered Professional Nurses (19-9)	Disciplinary Action Legislative	§30-1-4
Speech-Language Pathology/Audiology (29-3)	Contested Case Hearing Procedure Legislative	§30-32-1
Speech-Language Pathology/Audiology (29-4)	Disciplinary & Complaint Procedures for Speech-Language Pathology & Audiology Legislative	§30-32-1

EMERGENCY RULES FILED

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DA</u>
Highways (157-8)	Waste Tire Remediation/Environmental Clean Up	§§17-23-2 & 3; 17-24 et seq	ERD by August

MEETING NOTICES

Open Government Proceedings Act §8-9A et seq.

<u>AGENCY</u>	<u>DATE FILED</u>	<u>PURPOSE</u>	
Ad Hoc Business Study Group	8/27/00	Organizational meeting formed by BIDCO & the Charleston	July 7

		Chamber of Commerce to assess future requirements for air transportation in the region.	Charl Rm 2 Charl
Aeronautics Commission	6/14/00	Tour of the airport Regular meeting	July 6 July 6 Wood Parke
Aracoma Medical Foundation/Bd of Directors	*6/26/00	Special meeting	*June Seco Kruge Loga
Compensation Programs Performance Council	6/28/00	To consider the Division's response to public comments on 85CSR31 and passage of the Rule.	July 7 Charl Rm 2 Charl
	6/27/00	Claims & Administration Committee - Regular meeting	July 1 Charl Parlor Charl
Children's Health Policy Bd	6/23/00	Not specified	July 6 State Bldg Charl
EMS Advisory Council	6/19/00	Not specified	July 1 Conf 350 C Charl
EMS Technical Support Network/ Bd of Directors	5/23/00	Regular meeting	July 1 Days Flatw
Environmental Protection Advisory Council	6/21/00	To discuss DEP's proposed Rule amendments for 2001 Legislative Session	July 6 Direct 10 Mc Nitro,
Ethics Commission	6/9/00	Regular meeting - the agenda will be available on June 30, 2000 at the Commission office	July 6 1207 4 th Fl Litton Charl
Ethics Commission Committee on Open Governmental Meetings	6/8/00	Regular meeting - the agenda will be available on June 30, 2000 at the Commission office	July 6 1207 4 th Fl Litton Charl
Fire Commission, Jt Committee of the	6/27/00	Emergency meeting - for the purpose of Rescue Rules	June Bridg

Hatfield-McCoy Regional Recreation Authority	8/27/00	Regular meeting	July 7 Charl 600 K Charl
Interdisciplinary Examining Bd	8/28/00	Regular meeting	July 1 Work 4700 12 th F Charl
Jefferson Co Public Service District Bd	2/14/00	Not specified	July 1 108 E Charl
Lottery Commission	8/28/00	To discuss the agenda for the July 31, 2000 Lottery Commission meeting, will also hear a report from its consulting CPA firm concerning the proposed refinancing of video lottery terminals & associated equipment by Charles Town Races & its parent Company, Penn National Gaming, Inc; the Commission may vote to approve this change in financing under WV Code §29-22A-7(a)(5).	July 1 Telec 312 Educ Charl
Manufactured Housing	8/26/00	Rescheduling of July 6, 2000 meeting to July 20, 2000	
Medicine	8/21/00	Complaint Committee meeting Physician Assistant Committee meeting Malpractice Committee meeting Americans w/Disabilities Act Committee meeting Licensure Committee meeting Complaint Committee meeting Executive/Management Committee meeting Legislative Committee meeting Regular meeting	July 7 July 9 July 9 July 9 July 9 July 9 July 9 July 9 July 1 101 D Charl
Mildred Mitchell-Bateman Hospital	4/3/00	Not specified	July 1 Admi Mildre Huntl
Monterra Health System Inc/Bd of Directors	*6/28/00	Special meeting	*June Seco Kruge Loga
Neighborhood Investment Program Advisory Bd	8/23/00	Not specified	July 1 Charl 200 L Charl
Optometry	8/6/00	To conduct Board business & administer examinations	July 9 Conf Miner
Public Defender Corp/10th Judicial Circuit	8/28/00	Not specified	July 1 Public 228 N Beckl

Regional Jail & Correctional Facility Authority	6/28/00	Regular meeting	July 1 Conf 307 J Chart
Respiratory Care	6/8/00	Regular meeting Disciplinary Hearing #82299	July 1 July 1 106 D Chart
Solid Waste Authority/Calhoun Co	6/15/00	Not specified	July 1 Resto Mill St Grant
Solid Waste Authority/Harrison Co	2/18/00	Regular meeting	July 1 Rm # Harris
Solid Waste Authority/Tucker Co	6/21/00	Regular meeting	July 1 Davis
Solid Waste Authority/Wetzel Co	6/22/00	Regular meeting	July 6
State Retail Liquor Licensing Bd	6/28/00	Emergency meeting - to award successful bidders their 10-year retail liquor licenses prior to their effective date.	June ABCA 322 7 Chart
Statewide Internet Group	*6/22/00	Discussion of the Featured web site software, Web site critique, if the facilities are available, Discussion of the IT Expo & other business	*June Gover 505 C Suite Chart
WVU Medical Corp/Bd of Directors	6/21/00	Not specified	July 1 Rm 2 Morg

PRICE LIST

AGENCY

RULE/ORDER

Accountancy
(1-2)

Contested Case Hearing Procedure

Accountancy (1-3)	Disciplinary & Complaint Procedures for Public Accountants
Acupuncture (32-7)	Disciplinary & Complaint Procedures for Acupuncturists
Auditor (148-7)	Purchasing Card Program
Corrections (90-8)	Electronic Monitoring of Offenders
Corrections (90-9)	Inmate Grievance Procedures
Dental Examiners (5-4)	Contested Case Hearing Procedures
Dental Examiners (5-5)	Disciplinary & Complaint Procedures
Foresters, State Bd of Registration for (200-2)	Contested Case Hearing Procedure
Foresters, State Bd of Registration for (200-3)	Disciplinary & Complaint Procedures for Foresters
Highways (157-8)	Waste Tire Remediation/Environmental Clean Up
Massage Therapy (194-3)	Disciplinary & Complaint Procedures for Massage Therapists
Medicine (11-1A)	Licensing, Disciplinary & Complaint Procedures: Physicians; Podiatrists
Medicine (11-1B)	Licensure, Disciplinary & Complaint Procedures, Continuing Education, Physician Assista
Nursing Home Administrators Licensing Bd (21-2)	Disciplinary & Complaint Procedures for Nursing Home Administrators, Administrator-In-T Holders
Occupational Therapy (13-2)	Disciplinary, Complaint & Contested Case Hearing Procedures for Occupational Therapists
Registered Professional Nurses (19-9)	Disciplinary Action

Speech-Language Pathology/ Audiology
(29-3)

Contested Case Hearing Procedure

Speech-Language Pathology/
Audiology
(29-4)

Disciplinary & Complaint Procedures for Speech-Language Pathology & Audiology



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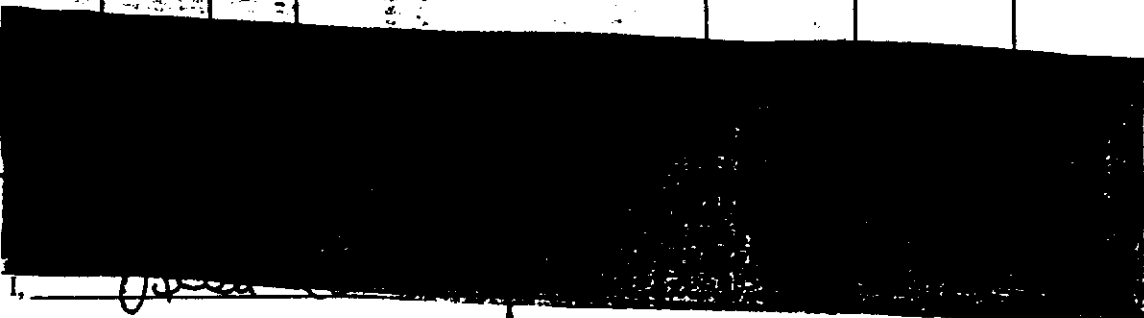
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OFFICIAL SEAL
 NOTARY PUBLIC
 STATE OF WEST VIRGINIA
 Robin J. Clark
 107 - 121st Street
 Chesapeake, WV 25315
 My Commission Expires November 8, 2007

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
 published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
PUBLIC HEARING
 was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County,
 West Virginia, on the 30TH day of JUNE 2000. Published during the following dates: 06/29/00-06/29/00
 Subscribed and sworn to before me this 3 day of July 2000. Robin J. Clark
 Printers fee \$ 33.47
 Notary Public of Kanawha County, West Virginia

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



WEST VIRGINIA BOARD OF DENTAL EXAMINERS
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(304) 252-2779

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Lewisburg, WV 24901

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Assistant Executive Secretary
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Bernard J. Grabler, DDS
21 Damian Road
Wheeling, WV 26003

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

June 23, 2000

Mr. Richard Stevens
West Virginia Dental Association
2003 Quarrier Street
Charleston, WV 25311

Dear Mr. Stevens:

Please be advised that legislature passed a bill this past session requiring all Boards to file legislative rules which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code.

Please find enclosed a copy of the proposed rules, Title Number 5, Series 4 and Series 5, Rules for the West Virginia Board of Dental Examiners and a Notice of Public Hearing.

If you have any questions please do not hesitate to contact this office.

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

DEPOSITION
EXHIBIT

* 8 JAS
7/31/00

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**

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



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Charleston, WV 25301

H. Richard Marshall, Jr., DDS
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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

June 23, 2000

Mrs. Robyn J. Allen
West Virginia Dental Hygienists' Association
PO Box 566
Pinch, WV 25156

Dear Mrs. Allen:

Please be advised that legislature passed a bill this past session requiring all Boards to file legislative rules which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code.

Please find enclosed a copy of the proposed rules, Title Number 5, Series 4 and Series 5, Rules for the West Virginia Board of Dental Examiners and a Notice of Public Hearing.

If you have any questions please do not hesitate to contact this office.

Very truly yours,

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

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosures

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Executive Secretary**

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



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21 Damian Road
Wheeling, WV 26003

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

June 23, 2000

WV Dental Assistants Association
Mrs. Beverly Stevens
5 Players Club Drive
Condo B203
Charleston, WV 25311

Dear Mrs. Stevens:

Please be advised that legislature passed a bill this past session requiring all Boards to file legislative rules which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under Chapter 30 of the WV Code.

Please find enclosed a copy of the proposed rules, Title Number 5, Series 4 and Series 5, Rules for the West Virginia Board of Dental Examiners and a Notice of Public Hearing.

If you have any questions please do not hesitate to contact this office.

Very truly yours,

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

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
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West Virginia Board of Dental Examiners

**James G. Anderson, III
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Mrs. Dolores L. Gribble
 11 Davis Place
 Clarksburg, WV 26301

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

August 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 Agency Approved Rule, Title 5, Series 5 and deliver 15 copies to LRMRC. Please return to us one 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,

James G. Anderson, III
 JAMES G. ANDERSON, III
 Executive Secretary

JGA/smc
 Enclosures

FILED
 AUG 24 8 31 AM '00
 OFFICE OF THE SECRETARY OF STATE