



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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8/6/2018 11:34 AM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Pharmacy TITLE-SERIES: 15-09
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Disciplinary Procedures
CITE STATUTORY AUTHORITY: 30-5-1 et seq and 30-1-8(h)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 10, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Ryan L Hatfield -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 15
PROCEDURAL RULE
WEST VIRGINIA BOARD OF PHARMACY

SERIES 9
DISCIPLINARY PROCEDURES

§15-9-1. General.

- 1.1. Scope. -- This rule relates to the complaint and hearing procedures for all licensees and registrants.
- 1.2. Authority. -- W. Va. Code 30-5-1 et. seq. and 30-1-8(h).
- 1.3. Filing Date. – August 6, 2018
- 1.4. Effective Date. -- September 10, 2018

§15-9-2. Complaint Procedures.

- 2.1. Any individual may make a complaint to the board concerning a licensee or registrant.
- 2.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.
- 2.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:
 - 2.3.1. the alleged violation which prompted the complaint;
 - 2.3.2. the name and address of the individual against whom the complaint is lodged;
 - 2.3.3. the date or dates the incident or incidents occurred; and
 - 2.3.4. the name or names of witnesses to the incident or incidents.
- 2.4. All complaints shall be referred to the Executive Director, Investigator, inspector, or counsel for the Board, who shall act as a representative for the board. A complaint committee shall be established to review such matters. This committee shall consist of two (2) board members, including at least one pharmacist.
- 2.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint. The board shall also maintain a separate file on each complaint received, and each file shall have a number assigned to it.
- 2.6. Upon receipt of a complaint or on its own initiative, the representative for the board shall initiate an investigation into the conduct which is occurring or has occurred which violates W. Va. Code § 30-5-1 et seq. or rules governing the practice of pharmacy. The complaint committee may employ the services of consultants or other employees necessary to assist the representative for the board in an investigation.
 - 2.6.1. The representative for the board shall issue subpoenas to gather necessary facts and evidence

to determine validity of the allegations contained in the complaint. The representative shall have the authority to institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of W. Va. Code § 30-5-1 et seq., or rules governing the practice of pharmacy.

2.6.2. The board shall provide copies of complaint forms and other available evidence to the licensee or registrant against whom a complaint is filed.

2.6.3. The representative for the board may depose witnesses, take sworn statements, and collect other evidence.

2.6.4. The representative for the board may require a criminal history records check. The licensee or registrant under investigation shall furnish to the board a full set of fingerprints for purposes of conducting a criminal history check. Records will be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's or registrant's state of residence, and the United States Federal Bureau of Investigation.

2.6.5. The representative for the board shall evaluate the complaint, any licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation. The representative shall have the authority to enter any pharmacy to review documents related to the complaint and to interview any individual during the course of an investigation. Subpoenas duces tecum to compel the production of documents may be issued by the representative for the board. The subpoenas shall be issued pursuant to W. Va. Code § 29A-5-1(b).

2.7. Upon completion of investigation, the representative for the board shall present investigative information in a report to the complaint committee. The report shall contain a statement of allegations, a statement of facts, and an analysis of the complaint. The analysis shall consist of a description of the conduct of the licensee or registrant, the records reviewed, and a statement of findings and recommendations. If probable cause for further action is not identified, the representative may make a recommendation that a complaint be dismissed. All investigative information shall be provided to the committee for review for any case recommended for dismissal due to lack of probable cause. The committee may approve dismissal of the case or direct the representative for the board to proceed with further investigation if the committee believes further investigation is necessary.

2.8. Upon completion of the investigation and after the investigative information has been reviewed by the complaint committee and probable cause is established, the committee may negotiate terms of a consent agreement with a licensee or recommend to the board that the case be set for hearing.

2.9. The complaint committee shall review the terms of a consent agreement and all investigative information. The committee may then approve the consent agreement, request revisions to the consent agreement, or reject the consent agreement.

2.10. If the licensee or registrant contests the allegations and refuses to enter into a consent agreement, the committee may recommend to the board that the case be set for hearing. All hearings shall be in accordance with W. Va. Code § 29A-1-1 et seq. and the board's legislative rules. All complaint committee recommendations shall be presented to the board in an anonymous fashion so as not to identify the specific individual(s) or location(s) involved. The board members that are not on the complaint committee shall vote upon the recommendations. The recommendation shall be approved by a majority vote or the board may reject the recommendation and return the complaint to the committee for further consideration. After

considering the complaint a second time, if the recommendation of the committee is not approved, then the case shall be set for hearing before the board members not on the complaint committee or a hearing examiner.

2.11. Members of the complaint committee shall be disqualified from the formal hearing process if the case has been presented to the committee prior to the formal hearing.

2.12. All powers of the board, the complaint committee, and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings.

§ 15-9-3. Proceedings for Disciplinary Action.

3.1. Contested case hearings shall be held as provided in W. Va. Code §§29A-5-1. et. seq., and 30-1-1. et. seq.

3.2. The board may amend the charges set forth in a statement of charges as it considers proper.

3.3. Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance shall be in writing and received in the office of the board or with the delegated hearing examiner no later than seven (7) days prior to the hearing date. In determining whether good cause exists, the board or delegated hearing examiner shall give consideration to the ability of the party requesting the continuance to proceed effectively without a continuance. The board or designated hearing examiner shall deny a motion for continuance filed less than seven (7) days from the date of the hearing unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing may be ruled on by the officer of the board to preside or the designated hearing examiner. The board member or the hearing examiner presiding over the hearing shall rule on all other motions for continuance.

3.4. All motions related to a case set for hearing before the board, except motions for continuance shall be received in the office of the board or with the designated hearing examiner at least ten (10) days before the hearing. Prehearing motions shall be heard at the prehearing conference or at the hearing prior to the commencement of testimony. The board member or the hearing examiner presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on the motions accordingly.

3.5. Any party may submit proposed findings of fact and conclusions of law at the time and manner designated by the board or its duly appointed hearing examiner.

§ 15-9-4. Conferences; Informal Disposition of Cases.

4.1. At any time prior to the hearing or thereafter, the board, its designee or its duly appointed hearing examiner may hold conferences for the following purposes:

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

4.2. The board or its duly appointed hearing examiner may cause the conferences to be held on the board's or the hearing examiner's own motion or by the request of a party.

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

4.4. 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 or the board's executive director.