

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2002 AUG -8 P 2:13

WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: BOARD OF LICENSED DIETITIANS TITLE NUMBER: 31

CITE AUTHORITY: W. VA CODE §§ 30-1-8(h), 30-35-4 AND 30-35-10

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: DISCIPLINARY AND COMPLAINT PROCEDURES

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS 9-08-02

Helen Loda
Authorized Signature

SCANNED

FILED

TITLE 31
LEGISLATIVE RULE
BOARD OF LICENSED DIETITIANS

2002 AUG -8 P 2:13

SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES

DEPARTMENT OF WEST VIRGINIA
SECRETARY OF STATE

§31-4-1. General.

1.1. Scope. -- This rule establishes the due process procedure for disciplinary and complaint procedures for the Board. The Board is charged with these duties in W. Va. Code §30-35-10.

1.2. Authority. -- W. Va. Code §§30-1-8 (h), 30-35-4 and 30-35-10.

1.3. Filing Date. --

1.4. Effective Date. --

§31-4-2. Application.

This legislative rule applies to all licensed dietitians.

§31-4-3. Definitions.

3.1. "West Virginia Dietitian Practice Act." -- W. Va. Code §30-35-1 et seq.

3.2. "Adjudicatory hearing." -- A formal administrative hearing before the Board or a designated hearing examiner, conducted to determine the truth and validity of complaints filed against a licensee. An adjudicatory hearing may result in disciplinary action including, but not limited to, suspension or revocation of a licensee's license, reprimand, fine, censure or other limitation, including probation, on a licensee's practice.

3.3. "Crimes involving moral turpitude." -- Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud or

misrepresentation.

3.4. "Licensee" means any dietitian licensed by the Board of Licensed Dietitians and, except as noted, any dietitian granted a provisional permit by the Board.

3.5. "Medical nutrition therapy" or "nutrition therapy" means nutritional diagnostic assessment and nutrition therapy services for the purpose of disease management.

3.6. "Probation." -- Imposing conditions and requirements upon a licensee for a period of time that the Board, in its discretion, determines to be justified under any provision of law. A licensee placed on probation may continue to practice subject to limitations imposed by the Board, including the requirements that the licensee appear before the Board, or an officer or agent of the Board, at times and places designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.

§31-4-4. Disposition of Reports and Complaints.

4.1. Any person, medical peer review committee, firm, corporation, members of the Board or public officer may make a complaint to the Board which charges a licensee with a violation of the W. Va. Code §30-36-1 et seq., or of the Rules of the Board. The Board may provide a form for that purpose, 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:

4.1.1. The name and address of the individual against whom the complaint is lodged;

4.1.2. The date of care;

4.1.3. The name of individual who may have treated the patient after the alleged incident; and

4.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

4.2. Reports submitted by a medical peer review committee, a dietitian, a physician, the chief executive officer of a hospital, a professional association, an insurer or any other person, in compliance with the provisions of W. Va. Code §30-3-14 (b) may result in the initiation of a complaint by the Board.

4.2.1. The Board may prepare forms for filing required reports and make them available upon request.

4.2.2. Any information regarding a complaint shall be sent by the Board to the licensed dietitian concerned for his or her written comment and he or she will submit a written reply within fifteen (15) days, or waive the right to do so.

4.2.3. Any requests for comment sent to licensed dietitians shall be considered properly served when sent to their last known address. It is the licensed dietitian's responsibility to keep the Board informed of his or her appropriate current address.

4.2.4. Any individual or any medical entity having reason to believe that the conduct of a licensed dietitian amounts to professional malpractice or professional incompetence will be encouraged to report the information to the Board.

4.2.5. The chief executive officer of every hospital shall within sixty (60) days after completion of the hospital's formal disciplinary procedure, and also after the commencement of

and again after the conclusion of any resulting legal action, report in writing to the Board the name of any dietitian practicing in the hospital whose has been disciplined, together with all pertinent information relating to the action. The provisions of this section do not apply to any temporary suspension for failure to maintain records on a timely basis or for failure to attend staff or section meetings.

4.2.6. Any professional association of dietitians in this State comprised primarily of dietitians, which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall, within sixty (60) days of a final decision, report in writing to the Board the name of the member, together with all pertinent information relating to the action.

4.2.7. Every insurer providing professional liability insurance to a licensed dietitian in this State shall submit of the Board the following information within thirty (30) days from any judgement, dismissal or settlement of a civil action involving the insured: The date of any judgement, dismissal or settlement; whether any appeal has been taken on the judgement, and if so, by which party; the amount of any settlement or judgement against the insured; and any other information within the knowledge of the insurer as the Board required.

4.2.8. Within thirty (30) days after the conviction of a person known to be an dietitian licensed or otherwise lawfully practicing in this state, or applying to be licensed, of a felony under the laws of this State, or of any crime under the laws of this State involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the Board a certified true and correct abstract of record or the convicting court. The abstract shall include the name and address of the dietitian or applicant, the nature of the offense committed and the final judgement and sentence of the court.

4.2.9. Information received by the Board under the provisions of W. Va. Code §30-35-1 et. seq., and this rule may be used by the Board in its determination as to whether to deny an application for a license or to initiate disciplinary action against a dietitian licensed in this State, and information may be submitted into evidence notwithstanding its prior use in any administrative civil or criminal hearing involving the applicant or licensed dietitian.

4.3. All communications with the Board charging a licensed dietitian with violations are conditionally privileged and a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.

4.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

4.5. The Board shall issue one of the following acknowledgments to an individual making a complaint:

4.5.1. That the matter will be reviewed by the Board;

4.5.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or

4.5.3. That more information will be required in order to adequately review the individual complaint.

4.6. The Board shall maintain a separate investigative or complaint folder on each case reviewed, and each folder shall have a case number assigned to it.

4.7. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.5.2. of this rule, the Board as a whole shall cause to be conducted any reasonable inquiry or investigation it

considers necessary to determine the truth and validity of the allegations set forth in the complaint. The Board may assign the investigation to a committee of the Board.

4.8. A complaint against a licensed dietitian or applicant shall allege that in his or her professional capacity he or she is acting in violation of the law, rules, or good and accepted medical practice and may be founded on any violation enumerated in the W. Va. Code §30-35-1 et. seq. or subsections 4.1 of this rule.

4.9. The Board, its executive director, hearing examiner or the committee, may issue subpoenas and subpoena duces tecum as required to complete the Board's investigation and may utilize a Board investigator to conduct whatever investigations are necessary to determine the truth or validity of complaints.

4.10. To facilitate disposition of a complaint, the Board or the committee, shall request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the commencement of an adjudicatory proceeding. The Board or 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 hearing on the merits without consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

4.11. If the Board or committee determines that a complaint complies substantially with subsection 5.8 of this rule and it relates to matters set forth in W. Va. Code §30-35-1 et. seq. or subsections 4.1 or 4.2 of this rule, it may request that the individual complained of (hereinafter referred to as the "Respondent") respond to the complaint within thirty (30) days. The Board may attach a copy of the complaint to the order for response or may describe the acts alleged in the complaint. A respondent may answer either personally or through his or her attorney, but the answer shall address the substantive allegations set forth in the complaint or order.

4.12. Upon receipt of the respondent's answer or at any point in the course of investigation or inquiry into a complaint, the committee 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 licensee may be sanctioned by the Board. In that event, the committee shall recommend to the Board that it dismiss the complaint. The committee shall retain a file of all complaints and shall review this file periodically.

4.13. At any point in its investigation of a complaint, the Board or complaint committee may designate a dietitian consultant and assign the matter to the dietitian consultants for review. The report of the dietitian or medical consultants shall contain a statement of the allegations, the facts, an analysis of the complaint and care provided, a brief description of the records reviewed and a recommendation and finding. The consultant shall, upon request, be afforded an opportunity to have an investigation interview with the licensed dietitian in question or other involved parties, a report of which shall be placed in the investigative file.

4.14. If a respondent fails to answer within the thirty (30) day period or if the committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a respondent may be sanctioned by the Board, the committee shall recommend that there be a finding of probable cause to believe there is a violation of the law or this rule.

4.15. The Board shall review the recommendation of the committee and shall require an adjudicatory hearing if it determines that there is probable cause to believe that acts alleged occurred and may constitute a violation of any provision of law or this rule. The Board may take any informal action warranted by a complaint.

4.16. The Board may suspend or refuse to renew a license pending a hearing in the health and safety or welfare of the public necessitates the

summary action. The Board shall provide a hearing on the necessity for the summary action within fifteen (15) days after the suspension.

4.17. A licensed dietitian shall respond within thirty (30) days to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about his or her professional conduct. The thirty (30) day period commences on the date the Board sends the communication by registered or certified mail with return receipt requested to his or her last known address.

4.18. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee should be disciplined pursuant to the West Virginia Dietetic Practice Act or rules of the Board, the Board may take any one or more of the following actions:

4.18.1. Refuse to grant a license to an applicant;

4.18.2. Administer a public reprimand;

4.18.3. Suspend, limit or restrict any license for a definite period, not to exceed five (5) years;

4.18.4. Require any licensee to participate in a program of education prescribed by the Board;

4.18.5. Revoke any license;

4.18.6. Require the licensee to submit to care, counseling or treatment by physicians or other professional persons;

4.18.7. Assess a civil fine of between \$500 and \$1,000 and/or assess the cost of the Board's investigation and administrative proceedings against the licensee;

4.18.8. Require him or her to practice under the direction or supervision of another licensed dietitian; or

4.18.9. Require the licensee to provide a period of free public or charitable service.

4.18.10. In addition to and in conjunction with these actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgement and penalty, or it may impose the judgement and penalty but suspend enforcement of the penalty and place the dietitian on probation, which may be vacated upon the noncompliance with any terms imposed by the Board. In its discretion, the Board may restore and reissue a license under the West Virginia Dietitian Practice Act, W. Va. Code §30-35-1 et. seq., and as a condition it may impose any disciplinary or corrective measure provided for in this Rule or in the West Virginia Dietitian Practice Act.

4.19. The Board has the authority to place a licensee in a probationary status and to apply varying conditions upon the licensee during the probationary period. Upon reaching the conclusion that a licensee to practice as a licensed dietitian should be placed on probation, the Board may impose any one or more of the following conditions:

4.19.1. The Board may appoint one or more Board members to be responsible for having the probationary licensee report for interviews on a regular basis. These interviews may be set up on a periodic basis as determined by the Board and the appointed Board members will then report back to the Board at its regularly scheduled meeting on the progress of the licensee;

4.19.2. The Board may request the probationary licensee to appear before the Board at intervals determined by the Board order that the licensee may report on his or her progress. During these appearances by the probationary licensee, the Board may ask the probationary licensee questions so as to observe his or her behavior and progress;

4.19.3. The Board may select a physician or request the probationary licensee to select a physician who will be approved by the Board and

the physician shall submit periodic progress reports on the probationary licensee as directed by Board;

4.19.4. The Board may appoint a medical consultant whose responsibility is to handle interviews with the probationary licensee. The probationary licensee shall then report to the appointed medical consultant on a regular basis as determined by the Board, and the medical consultant shall report to the Board at intervals determined by the Board;

4.19.5. In cases of alcoholism and/or drug abuse, as a condition of probation, the Board may require that the probationary licensee submit periodic blood samples and/or urine drug screen samples;

4.19.6. The Board may require that the probationary licensee authorize his or her personal physician to submit to the Board, for review, the probationary licensee's medical history, both as to past medical history and any and all new medical history as may become available to the personal physician during the period of the probationary term;

4.19.7. The Board may require that the probationary licensee report all medications that he or she may be utilizing and that he or she make the reports to the Board, at intervals as directed by the Board from time to time;

4.19.8. The Board may require that prior to the termination of a probationary term, the probationary licensee appear at a regularly scheduled Board meeting and furnish the Board with information as it may request, and the Board may utilize subpoenas, subpoenas duces tecum and its investigators as it considers necessary to gather facts and evidence to determine compliance by the probationary licensee with the terms of probation; and

4.19.9. In those situations where indicated, the Board may impose additional terms of probation, restriction, or revocation upon a licensee who has initially been placed on

probation. The period of probation shall not exceed five (5) years from its initiation date.

§31-4-5. Appeal.

5.1. Any applicant for a license who has had his or her application denied by order of the Board may appeal the order within thirty (30) days of that action, in accordance with the contested case hearing procedure, W. Va. Code §29A-5-1 et seq., and 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.

5.2. Any licensee practicing medical nutrition therapy or other nutrition/dietetic services in this State, who has had his or her license denied, suspended, restricted, or revoked by order of the Board, may appeal the order within thirty (30) days of this action in accordance with the contested case hearing procedure, W. Va. Code §29A-5-1 et seq., and the rules of the Board: Provided, That the appeal shall not include cases in which the Board issues a license, permit or certificate after an examination to test the knowledge or the ability of the licensee where the controversy concerns whether the examination was fair or whether the licensee passed the examination.