

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

Form #5

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

AGENCY: West Virginia Board of Chiropractic TITLE NUMBER: 4

CITE AUTHORITY: West Virginia Code 30-16-1 et seq. and 30-1-1 et seq.

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 for
Chiropractors

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 1, 2001



Authorized Signature

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(Plus all the volunteer
help we can get)

Memo

Date: November 20, 2000
Subject: HB 207

HB 207, passed on November 14, 2000, during a special session of the Legislature, was signed into law on November 18, 2000 by the Governor. This bill allows all Boards that are licensed under Chapter 30 of the West Virginia Code to change to procedural and final file rules that had originally been filed as legislative. This applies to rules that relate **ONLY** to complaint procedures or contested case hearing procedures.

The Boards must final file their rules no later than January 31, 2001.

**TITLE 4
PROCEDURAL RULES
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS**

**SERIES 5
DISCIPLINARY AND COMPLAINT PROCEDURES FOR CHIROPRACTORS**

§4-5-1. General.

1.1. Scope. -- This rule specifies the procedure for the investigation and resolution of complaints against chiropractors and those persons or corporations rendering chiropractic services.

1.2. Authority. -- W. Va. Code §30-16-5(3).

1.3. Filing Date. -- November 28, 2000.

1.4. Effective Date. -- December 29, 2000.

1.5. This series replaces 4CSR1-13.

§4-5-2. Application.

2.1. This rule applies to all chiropractors and persons or corporations providing chiropractic services.

§4-5-3. 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 or a temporary license to practice chiropractic.

3.2. "Board" means the West Virginia Board of Chiropractic.

3.3. "License" means a license or temporary permit issued by the Board to practice chiropractic.

3.4. "Chiropractor" means a practitioner of chiropractic.

3.5. "Investigative Officer" means a person licensed to practice chiropractic in this state, and is appointed by the Board of Chiropractic for the purpose of reviewing complaints against chiropractors.

§4-5-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of License.

4.1. The Board may deny an application for license, place a chiropractor on probation, limit or restrict the same, 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 §30-16-11.

§4-5-5. 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 chiropractor with a violation of W. Va. Code §30-16-11 or the Legislative Rule 4CSR1-13. 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 must contain the following:

5.1.1. The name and address of the chiropractor against whom the complaint is lodged;

5.1.2. The date of care;

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 was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against a chiropractor will 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 §30-16-11 or the Legislative Rule 4CSR1-13.

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, the Board will 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, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

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 supportive documentation, by certified mail to the chiropractor in question for his or her written comment, and 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 the chiropractor or applicants will be considered properly served when sent to their last known address. It is the responsibility of the chiropractor or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a chiropractor'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 subdivision 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 view or investigation 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 investigative officer for review and investigation.

5.12. Upon receipt of a complaint, the investigative officer must, within sixty (60) days, review and investigate the complaint and provide the Board with a report. The report must include 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 investigative officer's findings and recommendations. The investigative officer will, upon request, be afforded an opportunity to have an investigation interview with the licensee or applicant in question or other involved parties. A report of the investigation interview will 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 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.

5.14. 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 investigative officer 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.

5.15. 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 chiropractor may be sanctioned by the Board: Any review or investigation of a complaint assigned to a committee or an investigative officer. The committee or investigative officer will make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§4-5-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend, such if it determines there is probable cause to believe that a chiropractor's practices or acts constitute an immediate danger to the public.

§4-5-7. 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. or 4CSR3-11 of the Board. Provided, that the appeal will not include cases in which the Board denies a license 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.