



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Psychologists

RULE TYPE: Legislative

TITLE-SERIES: 17-04

RULE NAME: DISCIPLINARY AND COMPLAINT
PROCEDURES FOR PSYCHOLOGISTS

CITE AUTHORITY: §30-21-6

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Kathy G Lynch -- 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 17
LEGISLATIVE RULE
WV BOARD OF EXAMINERS OF PSYCHOLOGISTS

SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR PSYCHOLOGISTS

§17-4-1. General.

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

1.2. Authority. -- W. Va. Code §§30-21-6 and 30-1-4.

1.3. Filing Date. -- ~~January 23, 2001.~~

1.4. Effective Date. -- ~~March 1, 2001.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§17-4-2. Application.

This rule applies to all licensed psychologists, school psychologists and school psychologist independent practitioners, and to all supervised psychologists, supervised school psychologists and supervised school psychologist independent practitioners.

§17-4-3. 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 permit pursuant to W. Va. Code §30-21-1 ~~et seq.~~ et seq.

3.2. "Board" means the West Virginia Board of Examiners of Psychologists.

3.3. "Ethics coordinator" means a lay member of the Board appointed to coordinate the processing of complaints through an ethics investigator.

3.4. "Ethics investigator" means a person licensed to practice psychology in this state, and who is hired by the Board for the purpose of reviewing complaints against psychologists and supervised psychologists.

3.5. "License" means a license or temporary permit issued by the Board pursuant to W. Va. Code §30-21-1 ~~et seq.~~ et seq.

3.6. "Licensee" means an individual who holds a license to practice psychology issued by the Board.

3.7. "Psychologist" means licensed psychologist, school psychologist, school psychologist independent practitioner and applicant.

3.8. “Supervised psychologist” means supervised psychologist, supervised school psychologist, and supervised school psychologist independent practitioner.

§17-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Psychologists.

4.1. The Board may deny an application for license, place a supervised psychologist on probation, require additional years of supervision for supervised psychologists, limit, restrict, suspend or revoke the approval of any supervised psychologist to progress through the licensure application process, 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 the psychologist or supervised psychologist 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 §30-21-1 ~~et seq.~~ et seq. or the rules of the Board.

§17-4-5. 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 psychologist or supervised psychologist with a violation of W. Va. Code §30-21-1 ~~et seq.~~ 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:

5.1.1. The name and address of the psychologist or supervised psychologist against whom the complaint is lodged;

5.1.2. The date(s) of the incident(s);

5.1.3. The name of any psychologist or supervised psychologist who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health and/or mental health care institution in which the patient was an inpatient or outpatient after or during the alleged incident(s).

5.2. A complaint against a psychologist or supervised psychologist shall allege that the psychologist or supervised psychologist 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 §30-21-1 ~~et seq.~~ 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, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed; or,

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.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the psychologist or supervised psychologist 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. In the event the complaint is against any supervised psychologist, the Board shall also send a copy of the complaint, including any supporting documentation, by certified mail to the supervisor of the supervised psychologist 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.

5.9. Requests for comment on complaints sent to psychologists or supervised psychologists shall be considered properly served when sent to their last known address. It is the psychologist's or supervised psychologist's responsibility to keep the Board informed of his or her current address.

5.10. Upon receipt of a psychologist's or supervised psychologist's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant who shall be afforded an opportunity to submit a written reply within twenty (20) days.

5.11. Board members shall refrain from contact with all concerned parties pending receipt of the psychologist's or supervised psychologist's response or expiration of the time for the psychologist or supervised psychologist to respond.

5.12. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of sub-division 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.

5.13. The review and investigation of complaints may be assigned to an ethics investigator. In the event a complaint is assigned to an ethics investigator, Board members shall refrain from contact with the ethics investigator as well as all concerned parties pending receipt of the ethics investigator's report. Provided, That the ethics coordinator may communicate with the ethics investigator for the purpose of facilitating the processing of complaints. Provided further, that the ethics investigator should attempt to communicate with any complainant in writing.

5.14. Upon receipt of a complaint and the psychologist's or supervised psychologist's response, as well as any supporting documentation, the ethics investigator 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 ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the psychologist or supervised psychologist in question or other involved parties, a report of which shall be placed in the investigation file.

5.15. To facilitate the disposition of a complaint, the Board 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 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.

5.16. The Board, its president, or the ethics coordinator may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board, its president or the ethics coordinator to issue a subpoena or subpoena duces tecum. Any such request by the ethics investigator shall be accompanied by a brief statement specifying the necessity for the same.

5.17. At any point in the course of an investigation or inquiry into a complaint, the Board, in its discretion, 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 psychologist or supervised psychologist may be sanctioned by the Board: Notice of any such determination shall be forwarded to all parties to the complaint by certified mail. Provided, That in the event the review and investigation of a complaint is assigned to an ethics investigator, the ethics investigator shall make his or her respective findings and recommendations to the Board prior to the Board dismissing the complaint. Provided further that the exercise of the Board's discretion to dismiss a complaint hereunder is final and not subject to appeal. Provided however, that for just cause shown, the Board, in its discretion, may reverse its decision to dismiss a complaint hereunder.

5.18. If after its review and investigation of a complaint the Board determines there is reasonable cause to believe that the conduct, practices or acts alleged in a complaint occurred and constitute a violation for which a psychologist or supervised psychologist may be sanctioned by the Board, the Board shall enter an order identifying the substantive allegations set forth in the complaint, requiring the psychologist or supervised psychologist to respond to the allegations and providing notice of a hearing in accordance with the contested case hearing procedures set forth in ~~W. Va. Code §29A-5-1 et seq.~~ and the rules of the Board. A copy of the order shall be served on the psychologist or supervised psychologist by certified mail.

5.19. The Board may refuse to grant a license, renew a license or suspend a license and may suspend the approval of any supervised psychologist to progress through the licensure application process if it determines there is reasonable cause to believe that a psychologist's or supervised psychologist's conduct, practices or acts constitute an immediate danger to the public. The Board shall enter an order stating the grounds for such action, and shall serve a copy of the order on the psychologist or supervised psychologist by certified mail.

5.20. The Board may take any informal action authorized by law which is warranted by its review and investigation of a complaint.

§17-4-6. Appeals.

6.1. ~~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-5-1 et seq. 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. Any Person adversely affected by an order of the Board may appeal the order to the Intermediate Court of Appeals in accordance with W. Va. Code §§29A-5-4 and 51-11-1 et seq.~~

~~6.2. Any psychologist who has had his or her license suspended and any supervised psychologist who has had their approval to progress through the licensure application process suspended by the Board without a hearing on the basis that the psychologist or supervised psychologist's continuation in practice constitutes an immediate danger to the public shall be entitled to a hearing on the action in accordance with the contested case hearing procedures set forth in W. Va. Code '29A-5-1 et seq. and the rules of the Board.~~