

WEST VIRGINIA CODE ANNOTATED

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*** (STATUTES CURRENT THROUGH 2003 REGULAR AND FIRST
EXTRAORDINARY SESSIONS OF THE LEGISLATURE) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 16, 2003 ***

CHAPTER 30. PROFESSIONS AND OCCUPATIONS

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER

§30-1-1. Application of article .

Unless otherwise specifically provided, every board of examination or registration referred to in this chapter shall conform to the requirements prescribed in the following sections of this article.

HISTORY: 1931 Code, § 30-1-1; 1996, c. 204.

IN GENERAL. --The former public health council and the board of examiners for registered nurses were subject to the provisions of this article. State ex rel. Gordon Mem. Hosp. v. West Virginia State Bd. of Exmrs., 136 W. Va. 88, 66 S.E.2d 1 (1951).

CITED in State ex rel. Board of Educ. v. Dyer, 154 W. Va. 840, 179 S.E.2d 577 (1971); Serian v. State, 171 W. Va. 114, 297 S.E.2d 889 (1982).

NOTES APPLICABLE TO ENTIRE CHAPTER

ALR REFERENCES. --Wrongful discharge based on public policy derived from professional ethics codes, 52 ALR5th 405.

EXEMPTION FROM TAXES. --The professional services which are excepted from the payment of the consumers sales and service tax are not limited to services performed in the practice of law, theology or medicine or in pursuit of occupations specifically recognized as professions by this chapter of the Code, but any other profession must be clearly established as a profession by the one who asserts that services rendered in connection therewith are professional services excepted from taxation. Wooddell v. Dailey, 160 W. Va. 65, 230 S.E.2d 466 (1976).

NOTES APPLICABLE TO ENTIRE ARTICLE

CODE OF STATE RULE REFERENCES. --Administrative hearing procedures, board of registration for professional engineers, 7CSR2, effective March 1, 2001.

Contested case hearing procedure, board of chiropractic examiners, 4CSR3, effective June 10, 1993.

Contested case hearing procedure, board of examiners for registered professional nurses, 19CSR5, effective February 7, 1993.

Contested case hearing procedure, board of examiners for speech-language pathology and audiology, 29CSR3, effective March 1, 2001.

Contested case hearing procedure, board of examiners in counseling, 27CSR6, effective February 1, 2001.

Contested case hearing procedure, board of hearing aid dealers, 8CSR2, effective February 28, 2001.

Contested case hearing procedure, board of licensed dietitians, 31CSR3, effective February 23, 2001.

Contested case hearing procedure, board of optometry, 14CSR3, effective December 28, 2000.

Contested case hearing procedure, board of osteopathy, 24CSR3, effective March 1, 2001.

Contested case hearing procedure, board of physical therapy, 16CSR2, effective January 15, 2001.

Contested case hearing procedure, board of respiratory care, 30CSR6, effective March 1, 2001.

Contested case hearing procedure, board of veterinary medicine, 26CSR2A, effective February 1, 2001.

Contested case hearing procedure, radiologic technology board of examiners, 18CSR3, effective January 15, 2001.

Contested case hearing, state board of accountancy, 1CSR2, effective January 31, 2001.

Contested case hearing procedure, state board of registration for foresters, 200CSR2, effective January 15, 2001.

Disciplinary action, 19CSR9, effective May 1, 2001.

Disciplinary and complaint procedures, board of osteopathy, 24CSR6, effective March 1, 2001.

Disciplinary and complaint procedures for counselors, 27CSR5, effective February 1, 2001.

Disciplinary and complaint procedures for foresters, 200CSR3, effective January 15, 2001.

Disciplinary and complaint procedures for hearing aid dealers, 8CSR3, effective February 28, 2001.

Disciplinary and complaint procedures for nursing home administrators, administrator-in-training, emergency and temporary permit holders, 21CSR2, effective December 20, 2000.

Disciplinary and complaint procedures for optometrists, 14CSR4, effective December 28, 2000.

Disciplinary and complaint procedure for public accountants, 1CSR3, effective January 31, 2001.

Disciplinary and complaint procedures for radiologic technologists, 18CSR4, effective January 15, 2001.

Disciplinary and complaint procedures for speech-language pathology and audiology, 29CSR4, effective March 1, 2001.

Disciplinary and complaint procedures, board of physical therapy, 16CSR3, effective January 15, 2001.

Hearing procedure, 194CSR2, effective January 28, 1999.

Hearing procedures of the West Virginia board of veterinary medicine, 26CSR2, effective February 1, 2001.

Nursing home administrators, 21CSR1, effective April 3, 2000.

Procedures for open meetings and bylaws, 19CSR6, effective November 13, 1987.

Registration of veterinary technicians, 26CSR3, effective April 28, 1992.

Rules and regulations for the West Virginia board of dental examiners, 5CSR1, effective May 12, 1997.

Rules for expanded prescriptive authority, 14CSR2, effective April 6, 1998.

§30-1-1a. Legislative findings and declaration.

The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

HISTORY: 1996, c. 204.

RIGHT TO FAIR TREATMENT AND JUDICIAL REVIEW --Even though the practice of medicine is a privilege and not a right, a doctor accused of wrongdoing has a substantial right to fair treatment in disciplinary proceedings before the state medical board, and that right includes the right to seek judicial review of the state medical board's disciplinary decisions. *Webb v. W. Va. Bd. of Med.*, -- W. Va. --, 569 S.E.2d 225 (2002), *this is a per curiam opinion.*

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-2. Oath.

Every person appointed as a member of any board referred to in this article, before proceeding to exercise the authority or discharge the duties of the office, shall take the oath prescribed by section 5 of article IV of the state constitution, and shall file the certificate thereof with the secretary of state.

HISTORY: 1931 Code, §30-1-2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-2a. Required orientation session.

(a) After the first day of April and not later than the first day of December of each year, the auditor shall provide at least one orientation session on relevant state law and rules governing state boards and commissions. All state agencies shall cooperate with and assist in providing the orientation session if the auditor requests.

(b) After the effective date of this section, all chairs or chief financial officers of state boards and commissions newly created by the Legislature shall attend an orientation session designed to inform the state boards and commissions of the duties and requirements imposed on state boards and commissions by state law and rules. The chair or chief financial officer of the newly created board or commission shall attend an orientation session at the earliest possible date following the creation of the board or commission.

(c) The orientation session shall include a minimum of thirty minutes of instructional time dedicated to the statutory duty of boards to investigate and resolve complaints, including procedures for investigations, administrative hearings and remedies, due process protections, and the duty to provide public access to records of the disposition of complaints, as set forth in section five [§30-1-5] of this article.

(d) Topics for the orientation session may include, but are not limited to: The official conduct of members, state budgeting and financial procedures, purchasing requirements, open meetings requirements, ethics, rule-making procedures, records management, annual reports and any other topics the auditor determines to be essential in the fulfillment of the duties of the members of state boards and commissions.

(e) The orientation session shall be open to any member of new or existing boards and commissions and each board or commission may approve expense reimbursement for the attendance of one or more of its members. The chair or chief financial officer of each existing board or commission shall attend an orientation session within two years following the effective date of this section.

(f) No later than the thirty-first day of December of each year, the auditor shall provide to the chairs of the joint standing committee on government operations a list of the names of board or commission members attending, together with the names of the boards and commissions represented, the orientation session or sessions offered by the auditor during the previous year.

(g) The auditor may charge a registration fee for the orientation session to cover the cost of providing the orientation session. The fee may be paid from funds available to a board or commission.

(h) Notwithstanding the member's normal rate of compensation for serving on a board, a member attending the orientation session may be reimbursed for necessary and actual expenses, as long as the member attends the complete orientation session.

(i) Ex officio members who are elected or appointed state officers or employees, and members of boards or commissions that have purely advisory functions with respect to a department or agency of the state, are exempt from the requirements of this section.

HISTORY: 1999, c. 209; 2000, c. 195.

NOTES:

EDITOR'S NOTES. --Concerning the references in (b) and (e) to "the effective date of this section," Acts 1999, c. 209, which enacted this section and added the language, provided that the act take effect June 11, 1999.

Acts 2000, c. 195, which amended the section, provided that the act take effect May 15, 2000.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-3. Officers.

(a) Every board referred to in this chapter shall elect annually from its members a president and a secretary who shall hold their offices for one year, but shall continue to hold their offices until their successors are elected. However, the state board of law examiners, the state board of examiners for nurses and the state board of dental examiners may each elect a secretary from outside their membership.

(b) The officers of the boards referred to in this chapter shall register annually with the governor, the secretary of administration, the legislative auditor and the secretary of state.

HISTORY: 1931 Code, §30-1-3; 1969, c. 103; 1996, c. 204.

SURETY BONDS. --Governmental boards may require surety bonds for their secretaries, but such bonds are required for law examiners' board and nurses' board secretaries. 50 Op. Att'y Gen. 276 (1963).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-4. Official seal; rules and regulations.

Every such board shall adopt an official seal which shall be affixed to all licenses or certificates of registration issued by it, and shall make such rules and regulations, not inconsistent with law, as are necessary to regulate its proceedings and to carry out the purposes and enforce the provisions of this chapter applicable to such board.

HISTORY: 1931 Code, §30-1-4.

NOTES:

CODE OF STATE RULE REFERENCES. --Accreditation of schools policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing, 19CSR1, effective April 10, 2000.

Contested case hearing procedure, 17CSR5, effective March 1, 2001.

Continuing education, 19CSR11, effective April 5, 1995.

Disciplinary and complaint procedures for psychologists, 17CSR4, effective March 1, 2001.

Fees for services rendered by the board of osteopathy, 24CSR5, effective April 29, 1999.

Licensing procedures, osteopathic physicians, 24CSR1, effective July 5, 2001.

Registration of foresters, 200CSR1, effective April 14, 2000.

Requirements for registration and licensure, 19CSR3, effective April 5, 1995.

ACCREDITATION. --The West Virginia state board of examiners for registered nurses has authority to promulgate regulations governing accreditation of schools of nursing when a change in ownership of the school is contemplated. 44 Op. Att'y Gen. 379 (1952).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-4a. Lay members of professional boards.

(a) Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board which is referred to in this chapter. If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed. Lay members shall serve in addition to any other members otherwise provided for by law or rule. Lay members shall be at least eighteen years of age, shall be of good moral character, and shall be competent to represent and safeguard the interests of the public. Each lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he or she is appointed.

(b) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-nine, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

(c) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board shall serve for a term ending in an even-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-eight, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

HISTORY: 1977, c. 102; 1996, c. 204.

TRANSACTION OF BUSINESS WITHOUT LAY MEMBERS. --The supreme court declined to aggrandize the language of this section to the extent that the West Virginia board of optometry could not transact business without lay members. *Serian v. State*, 171 W. Va. 114, 297 S.E.2d 889 (1982).

Where appointments of lay persons by governor had not been made, the West Virginia board of optometry nevertheless had jurisdiction to conduct license revocation proceedings against optometrist practicing in the state where record indicated that pursuant to § 30-1-5 a quorum of board members existed during transaction of business relating to such revocation proceedings. *Serian v. State*, 171 W. Va. 114, 297 S.E.2d 889 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§ 30-1-5. Meetings; quorum; investigatory powers; duties.

(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business. The board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and other evidence concerning any matter within its jurisdiction. The president and secretary of the board are authorized to administer oaths for these purposes.

(b) Every board referred to in this chapter has a duty to investigate and resolve complaints which it receives and shall do so in a timely manner. Every board shall provide public access to the record of the disposition of the complaints which it receives, in accordance with the provisions of chapter twenty-nine-b [§§29B-1-1 et seq.] of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed, and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any other person licensed or registered by the same board, and shall do so in a timely manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate board any violations of individual practice acts by any individual.

(c) Whenever a board referred to in this chapter obtains information that a person subject to its authority has engaged in, is engaging in, or is about to engage in any act which constitutes or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging, or is about to engage in any such act, the court shall order an injunction, restraining order or other order as the court may deem appropriate.

HISTORY: 1931 Code, §30-1-5; 1996, c. 204.

NOTES:

CODE OF STATE RULE REFERENCES. --Open meetings and bylaws, 10CSR5, effective September 15, 2000.

TRANSACTION OF BUSINESS WITHOUT LAY MEMBERS. --Where appointments of lay persons by governor pursuant to § 30-1-4a had not been made, the West Virginia board of optometry nevertheless had jurisdiction to conduct license revocation proceedings against optometrist practicing in the state where record indicated that pursuant to this section a quorum of board members existed during transaction of business relating to such revocation proceedings. *Serian v. State*, 171 W. Va. 114, 297 S.E.2d 889 (1982).

APPLIED in *Kanagy v. Fiesta Salons, Inc.*, 208 W. Va. 526, 541 S.E.2d 616 (W. Va. 2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-6. Application for license or registration; examination fee; prohibiting discrimination.

(a) Every applicant for license or registration under the provisions of this chapter shall apply for the license or registration in writing to the proper board and shall transmit with his or her application an examination fee which the board is authorized to charge for an examination or investigation into the applicant's qualifications to practice.

(b) Each board referred to in this chapter is authorized to establish by rule a deadline for application for examination which shall be no less than ten nor more than ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority: Provided, That when any board proposes to promulgate a rule regarding fees for licensing or registration, that board shall notify its membership of the proposed rule by mailing a copy of the proposed rule to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five [§ 29A-3-5], article three, chapter twenty-nine-a of this code.

(d) In addition to any other information required, the applicant's social security number shall be recorded on the application.

(e) No board may discriminate against any applicant because of political or religious opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or other protected group status.

(f) Any board may deny the application for licensure or registration of an applicant whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof. The application may be denied by a board without a hearing unless the applicant requests a hearing within thirty days of the denial. Any hearing must be conducted pursuant to the provisions of section eight [§30-1-8] of this article or provisions contained in the rules of the board.

HISTORY: 1931 Code, §30-1-6; 1931, c. 42; 1951, c. 145; 1996, c. 204; 1997, 1st Ex. Sess., c. 16; 2002, c. 236.

NOTES:

CODE OF STATE RULE REFERENCES. --Fees established by board, 5CSR3, effective June 1, 2001.

Fees for registration of architects, 2CSR3, effective May 1, 2001.

Fees for services rendered by the board of osteopathy, 24CSR5, effective April 29, 1999.

EFFECT OF AMENDMENT OF 2002. --Acts 2002, c. 236, effective February 15, 2002, added "prohibiting discrimination" to the section heading; and added (e) and (f).

NUMBER OF TIMES APPLICANT MAY TAKE EXAMINATION. --Nothing in this section limits the number of times that an applicant for a license to practice nursing may be examined by the board of examiners for registered nurses. 44 Op. Att'y Gen. 267 (1951).

SPECIAL REEXAMINATION. --If an applicant fails, in his first examination, to make a passing grade on one of the ten subjects covered by an examination, and the medical licensing board, in the exercise of its discretion, determines that is necessary to call such applicant back for a special reexamination, it is authorized to do so. 46 Op. Att'y Gen. 53 (1954).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by each board shall bear a serial or license number, the full name of the applicant, the date of issuance, and the seal of the board: Provided, That licenses or certificates of registration issued or renewed on or after the first day of July, two thousand three, will indicate both the date of issuance and the date of expiration. The licenses or certificates of registration shall be signed by the board's president and secretary or executive secretary. No license or certificate of registration granted or issued under the provisions of this chapter may be assigned.

HISTORY: 1931 Code, §30-1-7; 1931, c. 42; 1996, c. 204; 2002, c. 236.

NOTES:

EFFECT OF AMENDMENT OF 2002. --Acts 2002, c. 236, effective February 15, 2002, in the first sentence, inserted "or license" following "serial" and added the proviso to the end; and substituted "The licenses or certificates of registration shall" for "It shall" at the beginning of the second sentence.

PRIVILEGES NOT ASSIGNABLE. --Though it does not expressly so state, the plain implication of this section is that any right, privilege, or authority granted or issued by any board subject to its provisions shall not be assignable. State ex rel. Gordon Mem. Hosp. v. West Virginia State Bd. of Exmrs., 136 W. Va. 88, 66 S.E.2d 1 (1951).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-7a. Continuing education.

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

(b) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or a license as a physician assistant by the West Virginia board of medicine, each person licensed as a pharmacist by the West Virginia board of pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia board of examiners for registered professional nurses, each person licensed as a licensed practical nurse by the West Virginia state board of examiners for licensed practical nurses and each person licensed to practice medicine and surgery as an osteopathic physician and surgeon or certified as an osteopathic physician assistant by the West Virginia board of osteopathy shall complete two hours of continuing education coursework in the subject of end-of-life care including pain management during each continuing education reporting period. The two hours shall be part of the total hours of continuing education required by each board by rule and not two additional hours.

HISTORY: 1996, c. 204; 2001, c. 224.

NOTES:

CODE OF STATE RULE REFERENCES. --Disciplinary and complaint procedures for architects, 2CSR2, effective January 12, 2001.

EFFECT OF AMENDMENT OF 2001. --Acts 2001, c. 224, effective July 12, 2001, added (b).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

(a) Every board referred to in this chapter may suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter may enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board may also assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this

chapter may promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ § 29A-1-1] of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Every board referred to in this chapter may revoke the license or registration of an individual licensed or otherwise lawfully practicing within this state whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof.

(c) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this requirement does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public.

(d) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder of the certificate, license, registration or authority and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one [§ 56-2-1], article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may consider advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(e) Pursuant to the provisions of section one [§ 29A-5-1], article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(f) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection are in accordance with the provisions for hearings which are set forth in this section.

(g) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript of the hearing retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(h) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

(i) On or before the first day of July, two thousand one, every board referred to in this chapter shall adopt procedural rules in accordance with the provisions of article three [§ § 29A-3-1 et seq.], chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and

resolution of all complaints against persons licensed under this chapter. The proposed legislative rules relating only to complaint procedures or contested case hearing procedures required by the prior enactment of this subsection shall be redesignated as procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Each board shall file the procedural rules required by this subsection by the thirty-first day of January, two thousand one. The public hearing or public comment period conducted for the proposed legislative rules shall serve as the public hearing or public comment period required by section five [§ 29A-3-5], article three, chapter twenty-nine-a of this code.

HISTORY: 1931 Code, §30-1-8; 1978, c. 86; 1996, c. 204; 2000, c. 195; 2000, 2nd Ex. Sess., c. 6; 2002, c. 236.

NOTES:

CODE OF STATE RULE REFERENCES. --Certification, disciplinary and complaint procedures: physician assistants, 11CSR1B, effective June 1, 2001.

Complaint and hearing procedures, 6CSR4, effective January 1, 2001.

Complaint procedures, 15CSR9, effective January 15, 2001.

Contested case hearing procedures, 5CSR4, effective February 5, 2001.

Disciplinary and complaint procedures (board of dental examiners), 5CSR5, effective February 5, 2001.

Disciplinary and complaint procedures (board of licensed dietitians), 31CSR4, effective January 21, 2001.

Licensing, disciplinary and complaint procedures: physicians; podiatrists, 11CSR1A, effective June 1, 2001.

Procedure for the investigation and resolution of complaints, 20CSR2, effective February 1, 2001.

Qualifications for licensure as a social worker, 25CSR1, effective July 1, 1998.

Rules of procedure for contested case hearings related to licensing of private detectives and security guards, 153CSR12, effective December 21, 2000.

Schedule of fines, 3CSR7, effective March 26, 1999.

EFFECT OF AMENDMENT OF 2002. --Acts 2002, c. 236, effective February 15, 2002, inserted (b) and redesignated the remaining subsections accordingly; and made minor stylistic changes.

APPLICABILITY. --Both the public health council (now West Virginia Board of Medicine) and state board of examiners for registered nurses, are subject to the general provisions of this article, and the provisions of this section and § 30-1-9 apply to each of them with respect to proceedings had by either for the suspension or the revocation of a certificate, license, registration, or authority issued by it. State ex rel. Gordon Mem. Hosp. v. West Virginia State Bd. of Exmrs., 136 W. Va. 88, 66 S.E.2d 1 (1951).

EFFECT OF NONCOMPLIANCE. --Where the procedural requirements of this section were not complied with by the board of examiners for registered nurses before its decision to remove petitioner's hospital from the accredited list, and the required notice was not given or served, the board was without jurisdiction to render any binding decision against the petitioner; its action was of no force or effect with respect to any right of the petitioner; and if any right which petitioner possessed had been adversely affected by the board's action, prohibition would lie to prevent it from

carrying its order or decision into effect. *State ex rel. Gordon Mem. Hosp. v. West Virginia State Bd. of Exmrs.*, 136 W. Va. 88, 66 S.E.2d 1 (1951).

Where no notice was given and no valid hearing was had, the petitioner was not required to invoke or exhaust the remedy provided by this section. *State ex rel. Gordon Mem. Hosp. v. West Virginia State Bd. of Exmrs.*, 136 W. Va. 88, 66 S.E.2d 1 (1951).

NOTICE BY PUBLICATION. --A proceeding under this section to revoke a dentist's license to practice dentistry is, in effect, one in rem, and notice by publication on a nonresident is sufficient under §§ 56-2-1 and 56-2-2 construed together. *Board of Dental Exmrs. v. Hedrick*, 116 W. Va. 222, 179 S.E. 809 (1935).

PRESUMPTION OF SUFFICIENT NOTICE. --Where the record contains a recital that the hearing before the board was had "at the time and place appointed in the notice," though recital does not show to whom, or the manner in which that notice was given, the presumption arises that the notice referred to in the recital is the notice required by this section. *Board of Dental Exmrs. v. Hedrick*, 116 W. Va. 222, 179 S.E. 809 (1935).

PROHIBITION TO PREVENT REINSTATEMENT. --The circuit court of Kanawha county, under § 14-2-2, has jurisdiction of a proceeding in prohibition, to prevent the state public health council (now the West Virginia board of health) from exceeding its lawful powers relating to the reinstatement of the license of a person to practice medicine and surgery. *West Virginia State Medical Ass'n v. Public Health Council*, 125 W. Va. 152, 23 S.E.2d 609 (1942).

REVOCAION PROCEEDING IN ANOTHER STATE. --The certified copies of the transcript of a revocation proceeding held in another state, providing that the licensee had notice of said proceeding, are admissible at a hearing before the board of examiners for registered nurses and as such are competent and substantial evidence upon which the board may base its findings. 47 Op. Att'y Gen. 60 (1956).

STATEMENT OF CHARGES. --The statement of charges against a person whose license to practice medicine is sought to be revoked, required by this section, is sufficient if it informs such person of the facts which the complaining party will endeavor to establish, without stating in haec verba the statutory ground for such revocation. *Mingo County Medical Soc'y v. Simon*, 124 W. Va. 493, 20 S.E.2d 807 (1942).

A notice, which, after advising a practicing optometrist that he is operating in violation of law, sets out facts sufficient in themselves to apprise the practitioner of the statutory ground upon which his right to continue in the practice is being challenged, is sufficient to confer jurisdiction over the person. It is not necessary to set out the particular statutory cause in haec verba. *Eddy v. West Virginia Bd. of Optometry*, 116 W. Va. 698, 182 S.E. 870 (1935).

SUSPENSION OF LICENSE FOR MENTAL ILLNESS. --The medical licensing board (now West Virginia Board of Medicine) is not authorized by law to suspend a physician's license when such physician is suffering from some mental illness. A mentally ill person may be adjudged insane, however, and committed by a county hygiene commission or circuit court. 45 Op. Att'y Gen. 155 (1952).

APPLIED in *State v. Huber*, 129 W. Va. 198, 40 S.E.2d 11 (1946).

QUOTED in *Stewart v. West Va. Bd. of Exmrs. for Registered Professional Nurses*, 197 W. Va. 386, 475 S.E.2d 478 (1996).

CITED in *Serian v. State*, 171 W. Va. 114, 297 S.E.2d 889 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-8a. Reinstatement of license.

(a) Every board referred to in this chapter is authorized to consider the reinstatement of any license or registration that has been suspended, revoked or not renewed, upon a showing that the applicant can resume practicing with reasonable skill and safety.

(b) Each board may adopt a procedural rule in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, specifying forms and procedures for application for reinstatement.

HISTORY: 2002, c. 236.

NOTES:

EFFECTIVE DATES. --Acts 2002, c. 236, provided that the act take effect February 15, 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-8b. Mediation of complaints.

(a) Any board referred to in this chapter may, on its own motion or by stipulation of the parties, refer any complaints against persons licensed under this chapter to mediation.

(b) Any board may maintain a list of mediators with expertise in professional disciplinary matters or may obtain a list from the West Virginia center for dispute resolution or the West Virginia state bar's mediator referral service. The board shall designate a mediator from the list by neutral rotation.

(c) The mediation is not considered a proceeding open to the public and any reports and records introduced at the mediation are not part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings

subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree to the use in writing.

(d) The mediation may not be used to delay any disciplinary proceeding.

HISTORY: 2002, c. 236.

NOTES:

EFFECTIVE DATES. --Acts 2002, c. 236, provided that the act take effect February 15, 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-9. Review by circuit court and supreme court of board's refusal to issue; suspension or revocation of license or registration.

A person, not an applicant for or holder of a license to practice law, who has been refused a license or registration for any cause other than failure to pass the examination given by the board, or whose certificate, license, registration or authority has been suspended or revoked, may, within thirty days after the decision of the board, present his petition in writing to the circuit court of the county in which such person resides, or to the judge of such court in vacation, praying for the review and reversal of such decision. Before presenting his petition to the court or judge, the petitioner shall mail copies thereof to the president and secretary, respectively, of the board. Upon receipt of such copy the secretary shall forthwith transmit to the clerk of such court the record of the proceeding before the board. The court or judge shall fix a time for the review of said proceeding at his earliest convenience. Notice in writing of the time and place of such hearing shall be given to the president and secretary of the board at least ten days before the date set therefor. The court or judge shall, without a jury, hear and determine the case upon the record of the proceedings before the board. The court or judge may enter an order affirming, revising, or reversing the decision of the board if it appears that the decision was clearly wrong. Prior to the entry of such order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any such certificate, license, registration or authority. The judgment of the circuit court may be reviewed upon appeal in the supreme court of appeals.

HISTORY: 1931 Code, §30-1-9.

NOTES:

RULES OF CIVIL PROCEDURE. --Applicability of rules to appeals from administrative agencies, R.C.P., Rule 81(a)(1).

IN GENERAL. --This section does not provide for a hearing de novo but gives the person whose license has been revoked the right to have such decision reviewed by the circuit court of the county in which he resides, without a jury, upon record of proceedings before the board, after which the court may affirm, revise or reverse the decision, if it appears that it is clearly wrong. *Mingo County Medical Soc'y v. Simon*, 124 W. Va. 493, 20 S.E.2d 807 (1942).

A county board of education has the authority under the provisions of this section for a review of a decision of the committee of barbers and beauticians by the circuit court and thereafter by the supreme court of appeals. *State ex rel. Board of Educ. v. Dyer*, 154 W. Va. 840, 179 S.E.2d 577 (1971).

MANDAMUS. --The remedy provided by this section to a person who has been refused a license or registration for any cause other than the failure to pass an examination, to have his case reviewed by the circuit court, is unavailable to an applicant desiring to take an examination in any professional specialty, whose application has been neither definitely approved nor rejected, and therefore such applicant is without any adequate remedy in the premises and mandamus will lie. *State ex rel. Sheppe v. West Virginia Bd. of Dental Exmrs.*, 147 W. Va. 473, 128 S.E.2d 620 (1962).

REFUSAL OF BOARD TO ACT. --In the absence of a specific time limit, the failure of a state board or agency to take decisive action within a reasonable time, upon a matter properly before it, will be assumed to be a refusal of the action sought. *State ex rel. Sheppe v. West Virginia Bd. of Dental Exmrs.*, 147 W. Va. 473, 128 S.E.2d 620 (1962).

STANDARD OF REVIEW. --Evidentiary findings made at an administrative hearing should not be reversed unless they are clearly wrong. *Stewart v. West Va. Bd. of Exmrs. for Registered Professional Nurses*, 197 W. Va. 386, 475 S.E.2d 478 (1996).

The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Stewart v. West Va. Bd. of Exmrs. for Registered Professional Nurses*, 197 W. Va. 386, 475 S.E.2d 478 (1996).

A decision of the public health council (now the West Virginia board of health) revoking the license of a physician will not be disturbed upon appeal, unless it appears that the council has exceeded its powers or based such decision on a mistake of law. *Mingo County Medical Soc'y v. Simon*, 124 W. Va. 493, 20 S.E.2d 807 (1942).

APPLIED in *West Virginia State Medical Ass'n v. Public Health Council*, 125 W. Va. 152, 23 S.E.2d 609 (1942).

CITED in *Board of Dental Exmrs. v. Hedrick*, 116 W. Va. 222, 179 S.E. 809 (1935); *Eddy v. West Virginia Bd. of Optometry*, 116 W. Va. 698, 182 S.E. 870 (1935); *Serian v. State*, 171 W. Va. 114, 297 S.E.2d 889 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-10. Disposition of money fines; legislative audit.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the state treasury which has been established for each board. This money

shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited into the general revenue fund of the state treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.

(b) Every licensing board which is authorized by the provisions of this chapter shall be subject to audit by the office of the legislative auditor.

HISTORY: 1931 Code, §30-1-10; 1996, c. 204.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-11. Compensation of members; expenses.

(a) Each member of every board referred to in this chapter shall receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. The limitations contained in this section do not apply if they conflict with provisions of this chapter relating to a particular board and enacted after the first day of January, one thousand nine hundred ninety-five.

(b) A board may reimburse actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(c) No member of any board referred to in this chapter may receive compensation as an employee of the board.

HISTORY: 1931 Code, §30-1-11; 1974, c. 96; 1996, c. 204; 2002, c. 236.

NOTES:

EFFECT OF AMENDMENT OF 2002. --Acts 2002, c. 236, effective February 15, 2002, designated the former paragraph as (a) and (b), and added (c); in (a), deleted "which is" preceding "referred to", substituted "for attending official meetings or engaging in official duties not to exceed" for "and expense reimbursement which shall not exceed", and added the second sentence; in (b), added "A board may reimburse actual and necessary expenses incurred" at the beginning and "in a manner consistent ...administration" at the end.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state and with the legislative librarian.

(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area telephone directory. Every board shall regularly evaluate the feasibility of adopting additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and computer-based communications.

HISTORY: 1931 Code, §30-1-12; 1996, c. 204; 1998, c. 227; 2000, c. 195.

NOTES:

CROSS REFERENCES. --Annual report to governor, §5-1-20.

RULES OF CIVIL PROCEDURE. --Proof of official records, R.C.P., Rule 44.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-13. Roster of licensed or registered practitioners.

The secretary of every board shall prepare and maintain a complete roster of the names and office addresses of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name and also by the cities or counties in which their offices are situated. Each board shall make the roster available upon request to any member of the public.

HISTORY: 1931 Code, §30-1-13; 1997, 1st Ex. Sess., c. 16; 2002, c. 236.

NOTES:

EFFECT OF AMENDMENT OF 2002. --Acts 2002, c. 236, effective February 15, 2002, deleted "such" preceding "board", "also" preceding "prepare" and "social security numbers" following "names", added "cities or" preceding "counties," and substituted the present last sentence for the former, which read "The board may call for and require a registration whenever it deems it necessary or expedient to secure an accurate roster".

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-14. Remission of certain fees.

Every board of examination or registration referred to in this chapter is hereby authorized, under such rules and regulations as may be adopted by each board, to remit all annual license or annual registration fees required to be paid by any licensee or registrant under its supervision during such time as such licensee or registrant is serving with the armed forces of the United States of America, and to retain the name of such licensee or registrant in good standing on the roster of said board during said time.

HISTORY: 1943, c. 60.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

The office of the executive secretary of the health profession licensing boards is hereby created. The health profession licensing boards shall include those boards provided for in articles two-a [repealed], four, five, six, seven, seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-one, twenty-five and twenty-six [§ § 30-2A-1 et seq., repealed; §§30-4-1 et seq., §§30-5-1 et seq., § 30-6-1 et seq., §§30-7-1 et seq., §§30-7A-1 et seq., §§30-8-1 et seq., §§30-10-1 et seq., §§30-14-1 et seq., §§30-16-1 et seq., §§30-17-1 et seq., §§30-20-1 et seq., §§30-21-1 et seq., §§30-25-1 et seq. and §§30-26-1 et seq.] of chapter thirty of this code. Notwithstanding any other provision of this code to the contrary, the office space, personnel, records and like business affairs of the health profession licensing boards shall be within the office of the executive secretary of the health profession licensing boards. The secretaries of each of the health profession licensing boards shall coordinate purchasing, record keeping, personnel, use of reporters and like matters under the executive secretary in order to achieve the most efficient and economical fulfillment of their functions. The executive secretary shall be appointed by the director of health and shall report to the director. The executive secretary shall keep the fiscal records and accounts of each of the boards. The executive secretary shall keep the director informed as to the needs of each of the boards. The executive secretary shall coordinate the activities and efforts of the boards with the activities of the health resources advisory council and shall see that the needs for health manpower perceived by the boards are communicated to the health resources advisory council. The executive secretary shall keep any statistics and information on health professions, collected by or for the boards and shall

make such statistics and information available to the health resources advisory council to aid it in carrying out its responsibilities.

HISTORY: 1977, c. 102.

NOTES:

CODE OF STATE RULE REFERENCES. --Qualifications for licensure as a social worker, 25CSR1, effective July 1, 1998.

EDITOR'S NOTES. --Article 2A of chapter 30 was repealed by Acts 1980, c. 83.

Chapter 30, article 4, §§30-4-1 et. seq., was revised and reenacted by Acts 2001, c. 228, effective July 1, 2001.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.

§30-1-16. Liability limitations of peer review committees and professional standards review committees.

No member of a peer review committee or a professional standards review committee of a state or local professional organization, including, but not limited to, committees established to review the practices of doctors of chiropractic, doctors of veterinary medicine, doctors of medicine, doctors of dentistry, attorneys-at-law, real estate brokers, architects, professional engineers, certified public accountants, public accountants or registered nurses shall be deemed liable to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter as to which such action is taken or recommendation is made.

HISTORY: 1979, c. 88.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subpart, article, or chapter.