

WEST VIRGINIA PROCEDURAL RULES
BOARD OF REGISTRATION FOR SANITARIANS

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 30-17
Series I
(1983)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-30-82
Administrative Law Division

WEST VIRGINIA PROCEDURAL RULES
BOARD OF REGISTRATIONS FOR SANITARIANS

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 30-17
Series I
(1983)

INDEX

	Page
Section 1. General	1
Section 2. Application	1
Section 3. Definitions	2
Section 4. Hearings	2
Section 5. Transcription of Reported Testimony and Evidence	5
Section 6. Submission of Proposed Findings of Fact and Conclusions of Law	6
Section 7. Appointment of Hearing Examiner	6
Section 8. Conferences; Informal Disposition of Cases	6
Section 9. Depositions Permitted	6
Section 10. Subpoenas	7
Section 11. Orders	7
Section 12. Principal Office	8
Section 13. Declaratory Ruling - Procedures	8
Section 14. Appeal	9
Section 15. Severability	9

Title 20

mm

WEST VIRGINIA² PROCEDURAL RULES
BOARD OF REGISTRATION FOR SANITARIANS

Chapter 30-17^e
Series I
(1983)^e

Subject: Rules of Procedure for Contested Case Hearing and Declaratory Rulings

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings in accordance with Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.2. Authority - These procedural rules are issued under the authority of Chapter 29A, Article 5, Section 1(a) and Chapter 29A, Article 4, Section 1 and are related to Chapter 30, Article 17, Section 1 et seq of the West Virginia Code of 1931, as amended.

1.3. Effective Date - These procedural rules became effective on the 6th day of May 1982.

1.4. Filing Date - These procedural rule were promulgated on the 12th day of March 1982, and filed on the 5th day of April 1982, in the Secretary of State's office.

1.5. Refiling Date - These procedural rules were refiled pursuant to Chapter 29A, Article 2, Section 5 of the West Virginia Code of 1931, as amended on the 30th day of December 1982, in the Secretary of State's office.

Section 2. Application - These procedural rules shall apply to any person affected by any rules, regulations or statutes enforceable by the West Virginia board of registration for sanitarians.

Section 3. Definitions

3.1. Board - means the West Virginia board of registration for sanitarians.

3.2. Sanitarian - means a public health professional qualified by education in the arts and sciences, specialized training, and credible field experience to assist in the enforcement of public health laws and environmental health and sanitation regulations and to effectively plan, organize, manage, evaluate and execute one or more of the many diverse disciplines comprising the field of public and environmental health.

3.3. Registered Sanitarian - means a sanitarian registered in accordance with the provisions of Chapter 30, Article 17, Section 1, et seq.

3.4. Sanitarian-in-Training - means a person who possesses the necessary educational qualifications as prescribed in Chapter 30, Article 17, Section 1, et seq for registration as a professional sanitarian, but who has not completed the experience requirements in the fields of environmental health as required for registration.

3.5. Certificates of Registration - means a document issued as evidence of registration and qualification to practice as a sanitarian or a sanitarian-in-training and bearing the designation "Registered Sanitarian" or "Sanitarian-In-Training" and showing the name of the person, date of issue, serial number, seal and signatures of the members of the board hereby authorized to grant such certificates.

Section 4. Hearings

4.1. Demand for Hearing; Form Required - Any party who demands a hearing to have determined any constitutional rights, legal rights, duties,

interests or privileges of specific parties as required by law shall specify in writing the grounds relied upon as a basis for the relief requested.

4.2. Hearing on Written Demand - When the board is presented with a demand for a hearing as described in Subsection 4.1 of this section he shall conduct a hearing with 45 days of receipt by the board of such written demand, unless postponed to a later date by mutual agreement. However, if the board shall determine that the hearing demanded:

(A) Would involve an exercise of authority in excess of that available to the board under law; or,

(B) Would serve no useful purpose, the board shall, within twenty (20) days of the receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein the reason for such refusal. Appeal may be taken from such order as provided in Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

4.3. Notice of Hearing - Upon the receipt of a demand for a hearing as described in Subsection 4.1 of this section, the board shall within twenty (20) days provide the party making such demand with a notice of hearing; Provided, that (assuming the board has not entered an order denying a hearing as provided in Subsection 4.2 of this section. Said notice shall contain:

(A) The date, time and place of the hearing;

(B) A statement of the matters asserted; and

(C) A statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 7 herein; such notice shall be given not less than ten (10) days in advance of the date of the hearing.

4.4. How Hearings Conducted - Hearings shall be conducted as follows:

(A) Any party shall have the right to be represented by an attorney at law, duly qualified to practice in the state of West Virginia;

(B) The board may be represented by the office of the attorney general;

(C) The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed;

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rule of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs;

(E) The board shall be bound by the rules of privilege recognized by law;

(F) Documentary evidence may be received in the form of copies or excerpts or by incorporation of reference;

(G) Initially the board shall be given an opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the board in support of its position;

(H) Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the board's presentation, shall have the right to submit rebuttal evidence;

(I) The board shall have the right to cross-examine witnesses providing rebuttal testimony;

(J) Following the presentation of all the evidence, every party,

including the board, shall have the right to offer argument, not to exceed 10 minutes for each presentation.

4.5. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof of the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date.

Section 5. Transcription of Reported Testimony and Evidence

5.1. What Reported - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

5.2. Request from any Party - Upon the request to the board from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at their expense.

5.3. Transcription in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported materials shall be transcribed and forwarded to the board. Parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at their expense.

5.4. Responsibility for Transcript - This board shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this section it shall be accomplished with all dispatch.

5.5. Correction of Error in Transcript - Upon the motion of the board of any party assigning error or omission in any part of any transcript, the

board or its duly appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, so as to make it conform to the whole truth.

Section 6. Submission of Proposed Findings of Fact and Conclusions of Law

6.1. Time for Submission - Any party may submit to the board proposed findings of fact and conclusions of law within 30 days of the conclusion of a hearing, or, in the event the proceedings of a hearing are transcribed, within 20 days from the date the final transcript is available.

Section 7. Appointment of Hearing Examiner

7.1. Function of Hearing Examiner - The board may appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings as provided in Section 4 herein. If a hearing examiner is appointed under this section he may make recommended findings of fact and conclusions of law to the board.

Section 8. Conferences; Informal Disposition of Cases

8.1. Conferences - At any time prior to the hearing or thereafter, the board or its duly appointed hearing examiner may hold conferences:

- (A) To dispose of procedural requests or similar matters;
- (B) To simplify or settle issues by consent of the parties; or
- (C) To provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

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

Section 9. Depositions

9.1. Depositions Permitted - Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this state.

Section 10. Subpoenas

10.1. Where Permitted by Chapter 30 - In accordance with any provision contained in Chapter 30 of the West Virginia Code of 1931, as amended authorizing the board to issue subpoenas or subpoenas duces tecum, the board or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b) of the West Virginia Code of 1931, as amended.

10.2. Time for Requestion the Issuances of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 10.1 of this section shall be made no later than ten (10) days of a scheduled hearing.

Section 11. Orders

11.1. Content - Every final order entered by the board, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

Section 12. Principal Office

12.1. The principal office of the board shall be the West Virginia State Department of Health, State Office Building No. 3, 1800 Washington Street, East, Charleston, West Virginia 25305, County of Kanawha, State of West Virginia. The board may have such other offices as may from time to time be designated by the board.

Section 13. Declaratory Ruling - Procedures

13.1. On petition of any interested person, the board may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule, regulation or statute enforceable by the department of health.

13.2. Any interested person may petition the board in writing, stating the issues upon which the declaratory ruling is requested.

13.3. Upon receipt of such petition, the board may cause a hearing to be held for the presentation of arguments and evidence within thirty (30) days of receipt of such petition. The board shall notify the parties thereto and set a time, a place, and a date for such hearing.

13.4. A declaratory ruling issued after argument and stated to be binding shall be binding between the board and the petitioner on the state of facts alleged, unless altered or set aside by a court in accordance with Chapter 29A, Article 4, Section 2 of the West Virginia Code of 1931, as amended. Furthermore, such declaratory ruling shall not be binding on any other person.

13.5. A declaratory ruling issued upon petition, proper notice and argument shall not preclude the petitioner from seeking a contested case

hearing in accordance with the provisions of the Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain the applicability to any person, property, or state of facts or any rule or statute enforceable by the board.

Section 14. Appeal - An appeal from any final order or ruling entered in accordance with these rules shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

Section 15. Severability - If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these rules which can be given effect without the invalid provision or application and to this end the provision of these rules are declared to be severable.

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 16-1
Series I
(1983)

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 16-1
Series I
(1983)

INDEX

	Page
Section 1. General	1
Section 2. Application	1
Section 3. Definitions	2
Section 4. Demand for Hearing, Form Required	2
Section 5. Continuation and Adjournment	4
Section 6. Transcription of Reported Testimony and Evidence	4
Section 7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission	5
Section 8. Appointment of Hearing Examiner; Function of Hearing Examiner	5
Section 9. Conferences; Informal Disposition of Cases	6
Section 10. Dispositions Permitted	6
Section 11. Subpoenas	6
Section 12. Orders; Content	7
Section 13. Declaratory Ruling - Procedures	7
Section 14. Appeal	8
Section 15. Severability	8

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Chapter 16-1
Series I
(1983)

Subject: Rules of Procedure for Contested Case Hearings and Declaratory Rulings

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings. The purpose of these rules is to facilitate the resolution of contested cases in a just, speedy, and inexpensive manner and to provide for declaratory rulings in accordance with Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.2. Authority - These procedural rules are issued under the authority of Chapter 16, Article 1, Section 7 and are related to Chapter 29A, Article 5, Section 1(a) and Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These procedural rules were promulgated on the 9th day of October 1981, and were filed on the 9th day of October 1981, in the Secretary of State's office.

1.4. Effective Date - These procedural rules became effective on the 10th day of November 1981.

1.5. Refiling Date - These procedural rules were refiled pursuant to Chapter 29A, Article 2, Section 5 of the West Virginia Code of 1931, as amended on the 30th day of December 1982, in the Secretary of State's office.

Section 2. Application - These procedural rules shall apply to every per-

son, partnership, association, corporation or public corporation affected by any rules, regulations or statutes enforceable by the department of health. These rules of procedure shall not apply to contested case hearings arising under the authority of Chapter 16, Article 2D, Section 1, et seq. of the West Virginia Code of 1931, as amended.

Section 3. Definitions

3.1. Director - shall mean the director of the West Virginia department of health.

3.2. Agency - shall mean the West Virginia department of health.

Section 4. Hearings

4.1. Demand for Hearing; Form Required - Any party who demands a hearing to have determined any constitutional rights, legal rights, duties, interests or privileges of specific parties as required by law shall specify in writing the grounds relied upon as a basis for the relief requested.

4.2. Hearing on Written Demand - When the director is presented with a demand for a hearing as described in Subsection 4.1 of this Section he shall conduct a hearing within fortyfive (45) days of receipt by him of such written demand, unless postponed to a later date by mutual agreement. However, if the director shall determine that the hearing demanded:

(A) would involve an exercise of authority in excess of that available to him under law; or

(B) would serve no useful purpose, he shall, within twenty (20) days of the receipt of such demand enter an Order refusing to grant the hearing as requested, incorporating therein his reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article

5, Section 4 of the West Virginia Code of 1931, as amended.

4.3. Notice of Hearing Upon the receipt of a demand for a hearing as described in Subsection 4.1 of this Section, the director shall within twenty (20) days provide the party making such demand with a notice of hearing providing the director has not entered an Order denying a hearing as provided in Subsection 4.2 of this Section. Such notice shall contain:

- (A) the date, time and place of the hearing;
- (B) a short plain statement of the matters asserted; and
- (C) a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 8 herein; such notice shall be given at least 10 days in advance of the date of the hearing.

4.4. How Hearings Conducted - Hearings shall be conducted as follows:

- (A) Any party shall have the right to be represented by an attorney at law, duly qualified to practice in the state of West Virginia;
- (B) The agency may be represented by the office of the attorney general;
- (C) The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed;
- (D) When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs;
- (E) The agency shall be bound by the rules of privilege recognized by law;

(F) Documentary evidence may be received in the form of copies or excerpts or by incorporation of reference;

(G) Initially the agency shall be given opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the agency in support of its position;

(H) Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence;

(I) The agency shall have the right to cross-examine witnesses providing rebuttal testimony;

(J) Following the presentation of all the evidence, every party, including the agency, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the director or the hearing examiner.

Section 5. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date.

Section 6. Transcription of Reported Testimony and Evidence

6.1. What Reported - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

6.2. Request from any Party - Upon the request to the agency from any party to the hearing, all reported materials shall be transcribed and a

copy thereof furnished to such party at his expense.

6.3. Transcription in the Event a Hearing Examiner is Appointed -

In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the director. Any parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at their expense.

6.4. Responsibility for Transcript - The agency shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this Section it shall be accomplished with all dispatch.

6.5. Correction of Error in Transcript - Upon the motion of the agency or any party assigning error or omission in any part of any transcript, the agency through the director or his duly appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, so as to make it conform to the whole truth.

Section 7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission - Any party, including the agency, may submit to the director proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

Section 8. Appointment of Hearing Examiner; Function of Hearing Examiner - The director may, in his discretion, appoint a hearing examiner

who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings as provided in Section 4 herein.

Section 9. Conferences; Informal Disposition of Cases - At any time prior to the hearing or thereafter, the director, or his duly appointed hearing examiner may hold conferences:

- (A) to dispose of procedural request or similar matters;
- (B) to simplify or settle issues by consent of the parties; or
- (C) to provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

The director, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

Section 10. Depositions Permitted Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this state.

Section 11. Subpoenas

11.1. Where Permitted by Chapter 16 - In accordance with any provision contained in Chapter 16 of the West Virginia Code of 1931, as amended authorizing the director to issue subpoenas or subpoenas duces tecum, the director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b) of the West Virginia Code of 1931, as amended.

11.2. Time for Requesting the Issuance of Subpoenas - Written

requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 11.1 of this Section shall be made no later than 10 days prior to a scheduled hearing.

Section 12. Orders; Content - Every final order entered by the director, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. Such orders shall be entered within fortyfive (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

Section 13. Declaratory Ruling - Procedures

13.1. On petition of any interested person, the director may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule, regulation or statute enforceable by the department of health.

13.2. Any interested person shall petition the director in writing, succinctly stating the issues upon which the declaratory ruling is requested.

13.3. Upon receipt of such petition, the director may cause a hearing to be held for the presentation of arguments and evidence within thirty (30) days of receipt of such petition. The director shall notify the parties thereto and set a time, a place, and a date for such hearing.

13.4. A declaratory ruling issued after argument and stated to be binding shall be binding between the health department and the petitioner on the state of facts alleged, unless altered or set aside by a court in

accordance with Chapter 29A, Article 4, Section 2 of the West Virginia Code of 1931, as amended. Furthermore, such declaratory ruling shall not be binding on any other person.

13.5. A declaratory ruling issued upon petition, proper notice and argument shall not preclude the petitioner from seeking a contested case hearing in accordance with the provisions of these Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain or to elucidate the applicability to any person, property, or state of facts or any rule or statute enforceable by the department of health.

Section 14. Appeal - an appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

Section 15. Severability - If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.