

WEST VIRGINIA RULES OF PROCEDURE

The Medical Licensing Board of West Virginia

Chapter 20194-5
Series I
(1980)

Subject: Rules of Procedure for Contested Case Hearings.

obsolete
void
May 12, 1980 to
May 5, 1983

Section 1. General

1.01. Purpose - These rules are intended to meet the requirements of Chapter 29A, Article 5, Sections 1 et seq. of the West Virginia Code of 1931, as amended. The primary purpose of these rules is to help resolve contested cases in a just, speedy and inexpensive manner.

1.02. Authority - These rules are issued under the authority of Chapter 29A, Article 5, Section 1 (a) of the West Virginia Code of 1931, as amended.

1.03. Applicability and Scope - These rules shall be applied in connection with a contested case arising under the provisions of Chapter 29A, Article 5, Sections 1 et seq. of the West Virginia Code of 1931, as amended.

1.04. Effective Date - These rules shall be effective after the completion of the filing, notice and hearing requirements of Chapter 29A, Article 3, Section 8 of the West Virginia Code and thirty days after the filing of the notice of final approval by the board with the Secretary of State as required by law.

1.05. Filing Date - These rules were filed in the State Register on May 12, 1980.

Section 2. Definitions

2.01. Chairman - Shall mean the Chairman of the West Virginia medical licensing board.

2.02. Board - Shall mean the medical licensing board of West Virginia or its chairman or secretary acting therefor.

2.03. Secretary - Shall mean the director of the state department of health.

2.04. Hearing examiners - Shall mean one or more members of the board appointed to conduct the hearing, or such other qualified hearing examiners as may be provided by law.

2.05. In a contested hearing, the board shall be designated as petitioner and the party upon whom the notice is served as respondent.

Section 3. Hearings

3.01. 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.

3.02. Hearing on Written Demand - When the chairman, or secretary acting therefor, is presented with a demand for a hearing as described in subsection 3.01 of this section he shall conduct a hearing within 45 days of receipt by him of such written demand, unless postponed to a later date by mutual agreement. However, if the chairman 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 45 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.

3.03. Hearing for Revocation or Suspension - Any licensee within the jurisdiction of the board shall be entitled to a hearing before the board, or hearing examiners designated thereby, upon any matter involving the revocation or suspension of a license issued by the board.

3.04. Notice of Hearing - Upon the receipt of a demand for a hearing as described in subsection 3.01 of this section, or where a hearing is required under subsection 3.03 of this section, the chairman, or secretary acting therefor, shall as soon thereafter as possible provide the party making such demand or the party charged with a violation of licensing provisions of law or regulations promulgated by the board with a notice of hearing (assuming the chairman has not entered an order denying a hearing as provided in subsection 3.02 of this section). Said notice shall contain:

- (A) The date, time and place of the hearing;
- (B) A short plain statement of the matters asserted or charged; and
- (C) A statement of intention to appoint a hearing referee or hearing examiners if one or more is to be appointed pursuant to section 6 herein; such notice shall be given at least 15 days in advance of the date of the hearing.
- (D) Said notice shall be served upon the respondent party at least 30 days prior to the hearing date.
- (E) Upon proper motion, a more definite statement of the matters asserted or charged shall be provided to the respondent party, or his counsel, at least 15 days prior to the hearing date.

3.05. 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.

3.06. 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 continuance may be granted by the chairman, or secretary acting therefor, for good cause shown. A written motion for a continuance shall be filed at least 5 days prior to the hearing date.

Section 4. Transcription of Reported Testimony and Evidence

4.01. 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.

4.02. 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 his expense.

4.03. Transcription in the Event a Hearing Examiner/Referee is Appointed - In all cases where a hearing referee or hearing examiners are appointed, all reported materials shall be transcribed and forwarded to the chairman. Parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at his expense.

4.04. Responsibility for Transcript - The 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 within a reasonable time.

4.05 Correction of Error in Transcript - Upon the motion of the board or any party assigning error or omission in any part of any transcript, the board through the chairman or his duly appointed hearing referee 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 5. Submission of Proposed Findings of Fact and Conclusions of Law

5.01. Time for Submission - The chairman, or secretary acting therefor, or the hearing examiners appointed by the board may submit 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 to all parties and to all members of the board. Transcripts of the hearing shall be provided to all members of the board for review at least 10 days before the vote on the proposed findings of fact and conclusions of law is called.

Section 6. Appointment of Hearing Examiner

6.01. Function of Hearing Referee - The chairman, with an approval of a majority of the board, may appoint a hearing referee 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 3 herein. If a hearing referee is appointed under this section he shall not make recommended findings of fact and conclusions of law.

6.02. Appointment of Hearing Examiner - The chairman, with approval of a majority of the board may appoint one or more members of the board as hearing examiners for the purpose of conducting any hearing on behalf of the board.

Section 7. Conferences; Informal Disposition of Cases

7.01. Conferences - At any time prior to the hearing or thereafter, the chairman, or secretary acting therefor, or his duly appointed hearing referee 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 chairman, or secretary acting therefor, or his duly appointed hearing referee may cause such conferences to be held on his own motion or by the request of a party.

Section 8. Depositions

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

Section 9. Subpoenas

9.01. How Issued - In accordance with any statutory provision of the West Virginia Code, authorizing the chairman to issue subpoenas or subpoenas duces tecum, the chairman, or the secretary acting therefor, shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provision set forth in Chapter 29A, Article 5, Section 1 (b), of the West Virginia Code of 1931, as amended.

9.02. Time for Requesting the Issuance of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 9.01 of this section shall be made no later than 10 days before a scheduled hearing.

Section 10. Orders

10.01. Content - Any final order entered by the chairman, or secretary acting therefor, 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 45 days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and shall contain proposed findings of fact and conclusions of law.

The proposed findings of fact and conclusions of law must be approved by a majority of the board, either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the board shall be served upon the respondent within 5 days after entry by the board by means of registered mail to the party or his counsel.

Section 11. Appeal

An appeal from any final order entered in accordance with these regulations shall comply with the provisions of West Virginia Code, Chapter 29A, Article 5, Section 4.

Rule No. 12 SEVERABILITY

The sections and subsections of these rules of procedure shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional, or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and all other sections shall remain in full force and effect, provided such remaining portions are not determined to be inseparable, and to this end these rules are declared separable.