

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2010 MAY 10 PM 12:56

WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY: West Virginia Code §6-9A-3; §29-A-5-1; §30-3-7

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Board Organization and Meeting Procedure; Complaint and Contested

Case Hearing Procedures

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS May 12, 2010


Authorized Signature



State of West Virginia ***Board of Medicine***

JOHN A. WADE, JR., MD
PRESIDENT

CATHERINE SLEMP, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084
www.wvbom.wv.gov

J. DAVID LYNCH, JR., MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

MEMORANDUM

TO: West Virginia Secretary of State, Administrative Law Division

FROM: Robert C. Knittle 

DATE: May 10, 2010

RE: Adoption of Amendment to Procedural Rule - Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures

Please be advised that the above proposed Amendment has been available to the public on the Board's website www.wvbom.wv.gov for more than thirty (30) days since on or about March 8, 2010, with a Notice of Comment Period on a Proposed Rule Notice stating that written comments would be received until April 15, 2010 at 4:30 p.m. No comments have been received.

Form #2

2018 MAR -6 PM 1:28

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

SUMMARY

The amendments proposed are for the Board of Medicine's procedural rule which was last amended in 2001. The amendments update and modernize the language to conform with the Medical Practice Act, including a change in the Medical Practice Act which clarified that the Board is autonomous.

**TITLE 11
PROCEDURAL RULE
WEST VIRGINIA BOARD OF MEDICINE**

FILED
2010 MAY 10 PM 12:57

**SERIES 3
BOARD ORGANIZATION AND MEETING PROCEDURE; COMPLAINT AND
CONTESTED CASE HEARING PROCEDURES**

OFFICE OF THE
SECRETARY OF STATE

§11-3-1. General.

1.1. Scope. -- This procedural rule governs all regularly scheduled meetings and special meetings of the West Virginia Board of Medicine (the "Board") and establishes procedures for Complaints and for the adjudication of formal contested case hearings, except those hearings held under the provisions of Chapter 30, Article 3, Section 14 (k) where action is taken by the Board on a temporary basis prior to a hearing.

1.2. Authority. -- W. Va. Code §§6-9A-3 and 29A-5-1, §30-3-7.

1.3. Filing Date. -- May 10, 2010.

1.4. Effective Date. -- May 12, 2010.

§11-3-2. Definitions.

2.1. Application and enforcement. -- This procedural rules applies to the Board and to any and all individuals desiring to attend Board meetings, to complaints, and to any person involved in a contested case proceeding as defined in W. Va. Code §29a-1-2(b), 1931, as amended. The enforcement of these rules shall be vested in the Board.

§11-3-3. Regular Meetings Established; Time, Place.

3.1. The Board shall meet in regular session on the second Monday of alternate months: Provided, That when such date falls upon a legal holiday, the Board may designate another date by a majority of a quorum of the Board: Provided further, That the Board may change its regular meeting dates by resolution of a majority of its members.

3.2. The Board shall convene all regular meetings at nine a.m., unless otherwise changed by a majority vote of a quorum of the Board.

3.3. The Board shall convene all regular meetings at the Offices of the West Virginia Board of Medicine, Dee Drive, Charleston, West Virginia 25311, unless otherwise changed by a majority vote of a quorum of the Board.

3.4. The Board may, without notice, move the location of the meeting to accommodate members of the public who wish to attend such meeting, in the event the meeting room is too small to accommodate such attendance.

3.5. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before the Board.

3.6. The date, time, place and agenda of all regularly scheduled meetings shall be made available to the public and news media prior to the meeting.

§11-3-4. Special Meetings; Notice Required, Time, Place And Purpose.

4.1. The Board may convene special meetings in accordance with the procedures established herein.

4.2. Special meetings of the Board may be called by the joint action of the President and Vice-President, or by any three (3) members of the Board, upon seven (7) days' prior written notice by mail postage prepaid, or electronic means, or in case of emergency, on two (2) days' notice by telephone and electronic means.

4.3. The Board shall send to all members in advance of a special meeting a written notice setting forth the time and place of such special meeting and the matters to be considered at such special meeting: Provided, That such written notice is not required if the time, place and matter for consideration have been fixed in a regular meeting or if the emergency nature of a special meeting precludes other than notice by telephone or personal contact.

4.4. The Board shall cause by electronic means notification of the public and the news media by issuing a public notice of such special meeting as expeditiously as possible. The public notice shall contain the date, time, place and purpose of the meeting. A copy of the public notice shall be filed with the office of the Secretary of State.

4.5. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Board. An emergency meeting notice may be filed at any time prior to the emergency meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

4.6. Meetings may be held by telephone conference or other electronic means.

§11-3-5. Proceedings To Be Open; Exceptions; Executive Session Permitted; Broadcasting and Recording.

All meetings of the Board shall be open to the public, except as otherwise provided in W. Va. Code §§6-9A-4 and 30-3-6. Except as otherwise provided in W. Va. Code §6-9A-9, the Board shall permit any radio or television station to broadcast all or any part of a meeting required to be open.

§11-3-6. Minutes.

The Board shall provide for the preparation of written minutes of all of its meetings. All minutes of open meetings shall be available to the public within a reasonable time after such meetings and shall include the following information:

- (a) The date, time and place of the meeting;
- (b) The name of each Board member present or absent;
- (c) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the persons proposing the same and their disposition;
- (d) The results of all votes, and upon the request of a member, the vote of each member, by name; and
- (e) Minutes of executive sessions, if any are taken, may be limited to material which is not inconsistent with the provisions of W. Va. Code §6-9A-4.

§11-3-7. Quorum; Majority Open Vote Required; Vote By Proxy Prohibited.

A majority of the members of the Board shall constitute a quorum for the transaction of business, and business shall be transacted by majority of a quorum except that votes on disciplinary actions shall require an affirmative vote of five (5) members or a majority vote, whichever is greater. Proxy voting or voting by secret or written ballot, are prohibited.

§11-3-8. Records Of The Board – Public Documents.

All records of open proceedings of the Board are public records and shall be available to the public during the usual and customary business hours of the Board.

§11-3-9. Board Membership And Organization.

9.1. Members of the Board shall be appointed and serve as provided by W. Va. Code §30-3-5.

9.2. Every two (2) years, the Board shall elect from its members a President and Vice-President. The State Health Officer or his or her designee shall serve as Secretary of the Board. The Board may elect such other officers as it deems necessary to perform its duties.

9.3. The President shall preserve order and conduct all proceedings according to and by parliamentary rules, and demand conformity thereto on the part of the members. The President shall appoint all committees, unless otherwise ordered by the Board or specifically provided by law, and notify any appointee of his or her appointment and he or she shall sign his or her name as President to the certificates and licenses authorized to be signed by the President.

9.4. The Vice-President shall act as President in the absence of the President.

9.5. The Board shall keep true records of all general and special acts of the Board and all papers of value and shall preserve a record of all individuals licensed or disciplined by the Board. The Secretary shall sign certificates and licenses authorized to be issued by the Board and shall perform all such duties as naturally pertain to his or her office.

9.6. The Board may employ an Executive Director who shall work under the immediate supervision of the President and Secretary in administering the day-to-day activities of the Board.

9.7. The Board may appoint, employ or contract with duly licensed physicians, or podiatrists, or physician assistants, as appropriate, to serve as medical or podiatric consultants to the Board on a part-time basis. A medical or podiatric consultant shall be vested with the following powers and shall perform the following duties:

(a) Review matters requiring medical expertise for decision to come to the attention of the Board;

(b) Provide medical advice to the Executive Director and the investigative staff in all matters requiring pertinent medical knowledge; and

(c) Medically evaluate investigative reports, when necessary, and assist in the preparation of matters to be heard by the Board or any matter in which the Board is involved.

The authority so delegated is not intended to divest the Board of the power to elect to perform any such function at any regular or special meeting of the Board, but is a delegation to enable the performance of these Board functions at such times as the Board is not in session, and to assist the Board in the more efficient and lawful handling of its affairs.

9.8. The order of business during any regular or special meeting of the Board shall be governed by the Sturgis Rules of Order.

9.9. Permanent committees are as follows:

(a) The executive/management committee shall consist of the officers of the Board plus one other member of the Board, as appointed by the President. The President shall serve as chair of the committee. The committee shall oversee the day-to-day operation of the Board and shall be responsible for all financial matters with the exception of the setting of fees which, where discretionary under the law, shall be the responsibility of the entire Board.

(b) The licensure committee shall consist of three (3) or more members appointed by the President. The President shall designate one (1) member to be chair of the committee. The committee shall consider all matters relating to applicants for, and renewal of, physician and podiatric licensure. The licensure committee may request the Board to issue subpoenas and subpoenas duces tecum as required to carry out its purposes and responsibilities.

(c) The legislative committee shall consist of three (3) or more members appointed by the President. The President shall designate one (1) member to be chair of the committee. The committee shall consider all questions bearing upon state and national legislation and shall recommend from time to time such changes in the law as it may deem advisable and, at the direction of the Board, shall take such steps as may further the desire of the Board in matters of legislation. Proposed changes in the rules shall be presented by the legislative committee, in writing, to all Board members.

(d) The complaint committee shall consist of three (3) or more members of the Board appointed by the President. The President shall designate one (1) member to be chair of the committee. Upon receipt of a complaint submitted to the Board, the matter shall be referred to the complaint committee for further disposition.

(e) The Board may create such additional permanent committees as it deems necessary to carry out its purposes and duties.

9.10. The President may appoint such temporary committees as are necessary to assist the Board in the performance of its duties and responsibilities and shall empower each such committee with a delegation of such Board authority as is necessary to accomplish the purpose of such temporary committees.

§11-3-10. Reports And Complaints.

10.1. Any person, medical peer review committee, firm, corporation, member of the Board or public officer may make a complaint to the Board which charges a physician, podiatrist, or physician assistant with a violation of the West Virginia Medical Practice Act or of the Rules of the Board. The Board shall provide a form for such purpose. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain the following:

- a. The name and address of the individual(s) against whom the complaint is lodged;
- b. The date of care;
- c. The name(s) of individual(s) who may have treated the patient after the alleged incident; and
- d. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

10.2. Reports submitted by a medical or podiatric peer review committee, a physician, a podiatrist, the chief executive officer of a hospital, a professional society, an insurer or any other person, in compliance with the provisions of W. Va. Code §30-3-14(b) may result in the initiation of its own complaint by the Board or its complaint committee.

- a. The Board may prepare forms for filing required reports and make them available upon request.
- b. Any individual or any medical or podiatric entity having reason to believe that the conduct of a physician, podiatrist, or physician assistant amounts to professional malpractice or professional incompetence may report such information to the Board.
- c. Information received by the Board under the provisions of W. Va. Code §§30-3-10, 30-3-14(c) and under 11 CSR 1A may be used by the Board or its complaint committee in its determination as to whether to deny an application for a license or to initiate disciplinary action against a physician, podiatrist or physician assistant licensed in this State, and such information may be submitted into evidence notwithstanding its prior use in any administrative, civil or criminal hearing involving such applicant physician, podiatrist, or physician assistant.

10.3. All communications with the Board charging a physician, podiatrist, or physician assistant with violations of the Medical Practice Act and or 11 CSR 1A or 11 CSR 1B are conditionally privileged and a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.

10.4. A complaint log shall be maintained which records the receipt of each complaint, its nature and its disposition.

10.5. An individual making a complaint will receive one of the following acknowledgments:

- a. That the matter will be reviewed by Board members;
- b. That the complaint is outside of the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or

c. That more information will be required in order to adequately review the individual complaint.

10.6. A separate investigative or complaint folder shall be maintained on each case reviewed, and each folder shall have a case number assigned to it.

10.7. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of Subdivision 10.5.b of this rule, the complaint committee of the Board established by the Board under this rule shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and validity of the allegations set forth in the complaint. The complaint committee shall provide reports to the Board on the number, nature, procedure and handling of the complaints received.

10.8. A complaint against an individual must allege that in his or her professional capacity he or she is acting in violation of the law, rules or good and accepted medical or podiatric practice and may be founded on any violation enumerated in W. Va. Code §30-3-14(c) or Subsections 12.1 or 12.2 of Board rule 11 CSR 1A, or Subsection 10 of Board rule 11 CSR 1B, or any rule hereinafter promulgated by the Board.

10.9. The complaint committee may request the Board to issue subpoenas and subpoenas duces tecum as required to complete its investigation and may utilize the Board investigator to conduct whatever investigations are necessary to determine the truth and validity, or lack thereof, of complaints. In the event the Board or its complaint committee initiates its own complaint, it may utilize subpoenas, subpoenas duces tecum and its investigators as it determines necessary to gather facts and evidence.

10.10. To facilitate disposition of a complaint, the complaint committee may request any person to attend an informal conference, at any time prior to the commencement of an adjudicatory proceeding. The Board or complaint committee shall give fifteen (15) days' notice of the conference, which notice shall include a statement of the issues to be informally discussed. Statements made at a conference may not be introduced at any hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

10.11. If it is determined that a complaint complies substantially with subsection 10.8 of this rule and that it relates to matters set forth in W. Va. Code §30-3-14(c) or subsections 12.1 or 12.2 of 11 CSR 1A, or Subsection 10 of 11 CSR 1B, the individual complained of (hereinafter referred to as the "Respondent") may respond in writing to the complaint within thirty (30) days. A copy of the complaint shall be attached to the request for response. A respondent may respond either personally or through his or her attorney, but the response must address the substantive allegations set forth in the complaint or request.

10.12. Upon receipt of the respondent's response or at any point in the course of investigation or inquiry into a complaint, the complaint committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a

licensee may be sanctioned by the Board. In that event, the complaint committee shall dismiss the complaint. It is the complaint committee's responsibility to retain a file of all complaints and to review this file periodically.

10.13. At any point in its investigation of a complaint, the complaint committee may assign the matter to one of its medical or podiatric consultants for review. The report of the medical or podiatric consultant shall contain a statement of the allegations, the facts, analysis of the complaint and care provided, a brief description of the records reviewed and a recommendation and finding. The medical or podiatric consultant shall, upon request, be afforded an opportunity to have an investigation interview with the physician or podiatrist in question or other involved parties, a report of which shall be placed in the investigative file.

10.14. If the complaint committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a licensee may be sanctioned by the Board, the complaint committee shall find probable cause to believe there is a violation of the law.

10.15. A hearing is required if it is determined that there is probable cause to believe that acts alleged occurred and may constitute a violation of any provision of law. The complaint committee may take such action as it determines a complaint warrants.

10.16. The Board may take summary action pending a hearing, if the health, safety or welfare of the public necessitates such summary action. The Board shall provide a hearing on the necessity for the summary action within fifteen (15) days after the summary action. The Board shall render its decision within five (5) days of the conclusion of a hearing under this section.

10.17. W. Va. Code §30-3-9(a) requires the Board to maintain a permanent file on each physician, podiatrist, and physician assistant, licensed or otherwise lawfully practicing in this State and of all persons applying to be licensed. This file shall include an individual historical record of each physician, podiatrist, and physician assistant, which shall include all reports and information furnished to the Board pursuant to applicable law. In the event an investigative or complaint file is opened, a record shall be made of the file. The Board shall provide a licensee written notice of the substance of any record placed in his or her historical file, and the licensee will be permitted thirty (30) days in which to file a written statement regarding the record; the statement shall always accompany that part of the record in contention. A physician, podiatrist, or physician assistant may examine his or her historical file during regular office hours of the Board or may designate his or her attorney to do so. A request for photocopies of his or her historical file may be made by a physician, podiatrist, or physician assistant and it shall be processed by the Board on the basis of staff availability. The cost of the request shall be paid by the requesting physician, podiatrist, or physician assistant. All matters in an historical file are strictly confidential, except as exempted by W. Va. Code §30-3-9. Except for information enumerated in W. Va. Code §30-3-9(f), the Board shall expunge any matter in an historical file which is not involved in a proceeding for a hearing regarding the physician, podiatrist, or physician assistant concerned within two (2) years from its placement into the file. If the investigative or complaint file is closed on the basis that

the individual physician, podiatrist, or physician assistant concerned is not guilty of any misconduct or wrongdoing, the Board shall remove all information relating to that investigation from his or her historical file.

10.18. A physician, podiatrist, or physician assistant shall respond within thirty (30) days to a written communication from the Board, the complaint committee or other designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about his or her professional conduct. The thirty (30) day period commences on the date the communication is sent by registered or certified mail with return receipt requested to his or her last known address.

§11-3-11. Hearings.

11.1. 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 basis for the relief requested.

11.2. When the President or his or her authorized designee is presented with a demand for a hearing as described in Subsection 11.1 of this section, he or she shall schedule a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the President or his or her designee shall determine that the hearing demanded would either involve an exercise of authority in excess of that available to him or her under law, or would serve no useful purpose, the President shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein the reason(s) for such refusal. Appeal may be taken from such order as provided in W. Va. Code §29A-5-4.

11.3. Charges may be instituted in a complaint against any physician, podiatrist, or physician assistant by the Board and shall be noted in the official minutes of the Board. Charges may be based upon information indicating that there is probable cause for believing that said physician, podiatrist, or physician assistant may have engaged in such conduct or be in such condition that his or her license may be disciplined for one or more grounds set forth in the Medical Practice Act or its implementing rules.

11.4. Upon the receipt of a demand for a hearing as described in Subsection 11.1 of this section, or where a hearing is otherwise required, the President or his or her designee shall as soon thereafter as possible provide the party making such demand and the party charged with a violation of licensing provisions of the law or rules promulgated by the Board, with a notice of hearing (assuming the President has not entered an order denying a hearing as provided in Subsection 11.2 of this section.) Said notice shall be served upon the respondent at least thirty (30) days prior to the hearing date. Said notice shall contain the following information:

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

- (b) A short plain statement of the matters asserted or charged, as set forth in the complaint; and
- (c) A statement of intention to appoint a hearing examiner.

Where charges are instituted, the complaint shall be issued in the name of the Board as an agency of the state and designate the Board as "Petitioner" and shall designate the physician, podiatrist, or physician assistant being proceeded against as "Respondent." The petitioner shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the respondent of the nature, time and place of the conduct or condition complained of therein. The Board may amend the complaint as it deems proper.

Upon proper motion, a more definite statement of the matters asserted or charged shall be provided to the respondent or his or her counsel, at least fifteen (15) days prior to the hearing date.

11.5. Hearings shall be conducted as follows:

- (a) Any party to a hearing 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) Hearings conducted by the Board or by a hearing examiner appointed by the Board, upon a complaint issued by the Board, are a continuance of the investigation designed to enable the Board to properly discharge its administrative functions and authority. The purpose of such hearing is to afford the respondent an opportunity, in person or by counsel or other representative, to respond to the complaint, to present his or her position, to present evidence in support of his or her contention, to examine and cross-examine evidence and witnesses produced in support of the complaint and to argue orally at the hearing.
- (e) The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days' written notice thereof has been served upon the respondent in person or by registered or certified mail.
- (f) The hearing shall be open to the general public.
- (g) The purpose of the hearing shall be to further inquire into the matters set forth in the complaint or any amended complaint, and to record evidence and arguments in support of same and in opposition thereto, so that the Board may determine all issues. Members of the Board and its officers, agents and employees shall be competent to testify at the hearing, as to material and relevant matters: Provided, That no member of the Board who testifies at such hearing shall thereafter participate in the

deliberations or decisions of the Board with respect to the case in which he or she so testified.

(h) The hearing may be conducted by a Board member, or by a hearing examiner appointed by the Board.

(i) A record of the hearing (including the complaint and amended complaint, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing) shall be prepared under the supervision of the Board, if the hearing is conducted by it, or by a hearing examiner who conducts the hearing on behalf of the Board.

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

(k) Initially, the Board shall be given an opportunity to present evidence, including testimony, papers, electronic and other records, agency staff memoranda and documents in the possession of the Board, in support of its position, except where a hearing has been demanded under the provisions of subsection 11.1 of this section, in which case initially the party demanding the hearing shall present his or her evidence.

(l) 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.

(m) The Board shall have the right to cross-examine witnesses providing rebuttal testimony and shall have the right to submit rebuttal evidence.

(n) Following the presentation of all evidence, every party, including the Board, shall have the right to offer argument, not to exceed ten (10) minutes for each presentation.

(o) The state or local organization which represents the profession to which the respondent belongs may seek to intervene in any hearing for the purpose of assisting in the prosecution of the complaint, or may, with the consent of the respondent, seek to intervene for the purpose of assisting the respondent in contesting the complaint.

(p) Hearing examiners are not authorized or empowered to suspend or revoke any license or to place any licensee on probation or to discipline any licensee. The function of a hearing examiner is to preside at the hearing and to cause to be prepared a record of the hearing, as described above, so that the Board is able to discharge its functions. The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board.

(q) Summons and subpoenas may be issued by the President or Secretary of the Board and by hearing examiners appointed by the Board.

(r) The Board or its hearing examiner may institute proceedings in circuit courts to punish persons for contemptuous or contumacious conduct directed to the Board or to its hearing examiner in the course of hearings.

(s) The respondent shall serve his or her answer within thirty (30) days after service of the complaint upon him or her. Upon failure of the respondent to respond to the complaint as required herein, all of the allegations set out therein as to conduct or conditions of the respondent may be taken by the Board as confessed by the respondent.

11.6. Hearings may be continued from one day to another, or adjourned to a later date or a different place, by announcement thereof or by appropriate notice to all parties.

A continuance may be granted by the President or his or her designee for good cause shown. A written notice of a continuance shall be filed at least five (5) days prior to the hearing date.

§11-3-12. Transcription Of Reported Testimony And Evidence.

12.1. 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.

12.2. Upon request to the Board by any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his or her expense.

12.3. In all cases where a hearing examiner is appointed, all reported materials shall be transcribed and forwarded to Board members. A party who requests a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at his or her expense.

12.4. The Board shall have the responsibility to make 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.

12.5. Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board, through the President 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.

§11-3-13. Submission Of Proposed Findings Of Fact And Conclusions of Law.

13.1. Any party may submit proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing, or within twenty (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 members of

the Board for review at least ten (10) days before the vote on the proposed findings of fact and conclusions of law is called.

§11-3-14. Hearing Examiner.

14.1. The President, with the approval of a majority of the Board, may appoint hearing examiners on an annual basis who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary questions, hold conferences for the settlement or simplification of issues by consent of the parties and otherwise conduct hearings as provided in Section 11.5 herein. If a hearing examiner is appointed under this section, he or she shall make proposed findings of fact and conclusions of law.

14.2. The President, with the approval of a majority of the Board, may appoint one or more members of the Board to serve as hearing examiner(s) for the purpose of conducting any hearing on behalf of the Board.

14.3. The hearing examiner shall submit written findings of fact and conclusions of law to the Board pursuant to W. Va. Code §29A-5-3, and the Board may adopt, modify or reject such findings of fact and conclusions of law.

§11-3-15. Conferences; Disposition of Cases.

15.1. At any time prior to the hearing or thereafter, the President, his or her designee or his or her duly appointed hearing examiner may hold conferences for the following purposes:

- (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 disposition of cases by stipulation, agreed settlement or consent order.

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

§11-3-16. Depositions.

Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this State.

§11-3-17. Subpoenas.

17.1. The President or his or her designee shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in W. Va. Code §29A-5-1(b).

17.2. Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 17.1 of this rule shall be made no later than ten (10) days before a scheduled hearing.

§11-3-18. Orders.

18.1. Any final order entered by the President or his or her designee following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of W. Va. Code §29A-5-3. 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 shall contain findings of fact and conclusions of law.

18.2. The 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 or special 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 five (5) days after entry by the Board, in person or by means of registered or certified mail sent to the party and his or her counsel.

§11-3-19. Appeal.

An appeal from any final order entered in accordance with this rule shall comply with the provisions of W. Va. Code §29A-5-4.