

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

Form #5

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2009 SEP 23 AM 9:51

OFFICE OF 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 Prosecuting Attorneys Institute TITLE NUMBER: 168

CITE AUTHORITY: 61-8B-18

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE N/A

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 168CSR1

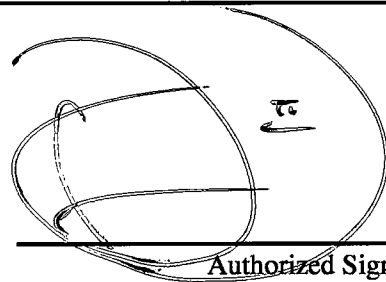
TITLE OF RULE BEING AMENDED: Payment For Costs Of Forensic Medical Examination

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: N/A

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 November 1, 2009



Authorized Signature



JOE MANCHIN, III
GOVERNOR

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DAVID SIMS

September 23, 2009

Natalie E. Tennant, Secretary of State
State of West Virginia
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Re: Final adoption of revised procedural rules for the payment of costs
of forensic medical examination (168CSR1)

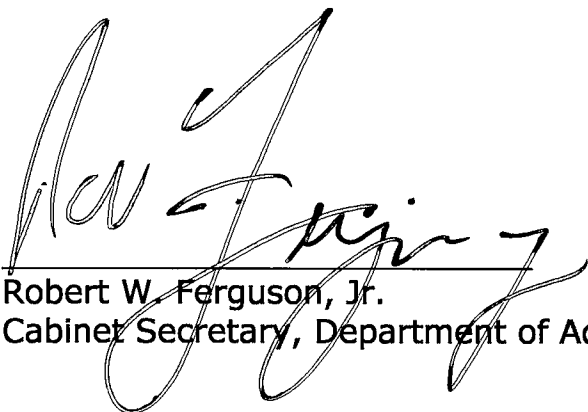
Dear Secretary Tennant,

Please be advised that, by affixing his signature below, Cabinet Secretary Ferguson approves for filing the attached final rule revising procedural rule 168CSR1 to conform to statutory changes relating to the Payment For Costs Of Forensic Medical Examination. This approval is based upon the directive of the Institute's Executive Council whose minutes are attached hereto as well.

Should there be questions please feel free to contact me and, until we speak again, I remain

Sincerely,

Philip W. Morrison, II


Robert W. Ferguson, Jr.
Cabinet Secretary, Department of Administration

WVPAI Executive Council Board Meeting
Wingate Inn, Bridgeport, WV
April 10, 2009

Members of the WVPAI Executive Council present include: Mark Sorsaia, Chris Chiles, Carl Harris and Pat Wilson.. WVPAI Staff members present include: Philip Morrison, Brian Lanham, Clyde Arline, and Amy Leslie.

Those not present include: Marcia Ashdown, David Sims, Kent Carper, Terri Tarr and Andrea Darr.

Quorum does exist.

Motion 1: Minutes approved from Winter Meeting 2009. Motion made by Carl Harris, seconded by Chris Chiles. Motion carried, unanimous.

Discussion held regarding 'what is a conflict' for special prosecutor appointment. The WVPAI will do an in-house document about what a conflict is and have it ready for distribution if-when needed.

Motion 2: The Executive Director will prepare a document regarding what is qualifies as a conflict in order for a special prosecutor to be appointed. This document will be in rough draft form for the Putnam County office to finalize. Motion made by Carl Harris, seconded by Chris Chiles. Motion carried, unanimous.

Discussion was held regarding the re-draft of SB529 in regard to the Forensic Medical Examination Fund.

Motion 3: The Executive Director will re-draft legislative rules to match Statute-SB529 - Forensic Medical Examination Fund. Motion made by Chris Chiles, seconded by Carl Harris. Motion carried, unanimous.

Discussion was held regarding the NAC initiative money which was received from the WV Attorney General's Office. This money should be spent on sending prosecutors and assistant prosecutors to the NAC on a first-come, first-serve basis. Every county should be made aware that this money is available, have access to the NAC's training schedule, reimbursement to the counties are in accordance with the State of WV travel regulations. A letter will be drafted and sent to every county from the WVPAI Executive Council. This money will be held until January 2010 and re-evaluated.

Also, the Executive Council will now have the board meetings on Wednesday evening before the regularly schedule annual meetings. There will continue to be board meetings between the Summer and Winter meetings and Winter and Summer meetings.

Discussion was held regarding the WVPAI current website. The website should be

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modern, state-of-the-art and include legal updates, jury instructions, a 'members only' secured site, each county will have a link to its own page and the WVPAA should develop its own website.

Motion 4: Pursue update of WVPAAI website. Motion made by Carl Harris, seconded by Pat Wilson. Motion carried, unanimous.

Motion 5: Meeting adjourned. Motion made by Pat Wilson, seconded by Carl Harris. Motion carried, unanimous.

Meeting adjourned

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TITLE 168
PROCEDURAL RULE
PROSECUTING ATTORNEYS INSTITUTE

OFFICE OF THE
SECRETARY OF STATE

SERIES 1
PAYMENT FOR COSTS OF FORENSIC MEDICAL EXAMINATION

§168-1-1. General.

1.1. Scope. -- This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute. This rule is not intended to set standards for the conduct of a criminal investigation or to affect in any manner the admissibility of evidence.

1.2. Authority. -- W. Va. Code §61-8b-18.

1.3. Filing Date. -- June 3, 2002.

1.4. Effective Date. -- July 3, 2002.

§168-1-2. Definitions.

2.1. Terms Defined by Statute -- Terms defined in W. Va. Code §61-8B have the same meanings when used in this rule unless the context or subject matter clearly requires a different interpretation.

2.2. Terms Defined -- As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.2.1. "Licensed health care professional" means a state-licensed health care professional licensed, registered or certified under Chapter 30 of the W. Va. Code.

2.2.2. "Licensed medical facility" or "hospital" means a hospital, critical access

hospital or other health facility licensed under W. Va. Code §16-5B, a similarly licensed out-of-state hospital that accepts West Virginia medicaid patients in a county adjacent to the West Virginia county in which venue lies, or a facility authorized and operated under W. Va. Code §16-2.

2.2.3. "Physician" means a physician licensed under W. Va. Code §§30-3 or 30-14.

2.2.4. "Sexual assault nurse examiner" or "SANE" means a registered nurse who has received at least forty (40) hours of sexual assault nurse examiner classroom training in the area of sexual assault through an accredited school of nursing or a program approved for continuing education credit by the West Virginia Board of Examiners of Registered Professional Nurses, and who has completed the associated clinical experience requirement.

§168-1-3. Responsibilities of the Licensed Medical Facility.

3.1. In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

13.1.1. Each hospital performing medical examinations must use either the WV State Police Sexual Assault Kit or kits containing, at a minimum, the items contained in the WV State Police Sexual Assault Kit. Each hospital may order sexual assault kits free of charge from the WV State Police.

3.1.2. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses to participate in an investigation of said alleged violation and if an investigating officer is not present at the time the alleged victim arrives at the hospital, a law enforcement officer should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the examining physician or SANE will explain to the alleged victim what a sexual assault examination involves and determine whether the victim wishes to participate in an investigation regarding the alleged sex crimes violation and document said decision in writing. The obtaining of additional consents included in the sexual assault kit and any additional consents which may be required by law is the responsibility of the hospital.

3.1.4. If possible, the forensic medical examination should be conducted by a physician, a sexual assault nurse examiner (SANE), a physician assistant working under the direct supervision of a physician, or an advanced practice nurse. Recognizing, however, that sensitivity to the needs of a victim of sexual assault may preclude delays in conducting the examination, payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

3.1.5. Hospital personnel should take note of any physical evidence, such as statements made by the alleged victim, as well as articles of clothing, etc. It is strongly recommended that the hospital preserve documents concerning this evidence and record the methods of collection.

3.1.6. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET

SEQ. chooses to participate in an investigation of said alleged violation, after gathering the forensic evidence, the sexual assault kit shall be sealed and turned over to the investigating officer or police agency. Any and all other evidence collected by hospital staff shall also be turned over to the investigating officer or police agency. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses not to participate in an investigation of said alleged violation hospital personnel will be responsible for preparing the forensic evidence to be transported in such a manner and to such a location as is designated in the instructions accompanying the WV State Police Sexual Assault Kits.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit a certification that such an examination was performed and may submit, within a reasonable time of the date of examination, an original invoice for the forensic medical examination to the West Virginia Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. Reimbursement from the Fund is limited to \$350.00 for the cost of a forensic medical examination or, when that sum appears to be less than all reasonable, customary and usual costs of the forensic medical examination, a greater sum determined by resolution of the Executive Counsel of the West Virginia Prosecuting Attorneys Institute after consultation with providers and consideration of the limits of available funding. A licensed medical facility may not bill the alleged victim, or the alleged victim's insurance company, of an alleged violation for costs of a forensic medical examination

§168-1-4. Responsibilities of Law Enforcement Agencies.

4.1. When contacted an investigating officer or law enforcement agency is responsible for the following duties:

4.1.1. The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay for the cost of the forensic medical examination. The investigating officer may not require an alleged victim's agreement to pursue prosecution of the case as a condition precedent to obtaining the examination. Payment from the fund may not be refused for the reason that the victim later fails or refuses to cooperate in a criminal prosecution.

4.1.2. The investigating officer is responsible for contacting the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred to alert said prosecuting attorney or assistant prosecuting attorney of the investigation.

4.1.3 Upon completion of the forensic medical exam, the investigating officer is responsible for promptly transferring all evidence to the WV State Police Crime Laboratory in South Charleston, West Virginia for evaluation.

§168-1-5. Responsibilities of Prosecuting Attorneys Institute.

5.1. Upon receipt of certification that an examination was performed and an original invoice in proper form the Prosecuting Attorneys Institute shall promptly transmit, at intervals no less often than monthly, all necessary documentation, in a form acceptable to the Auditor, to the Department of Administration for computer entry and further payment processing.

§168-1-6. Limitations on Use of Fund.

6.1. A licensed medical facility performing a forensic medical examination must conduct the exam within a reasonable time of the alleged sexual assault in order to be eligible for reimbursement from the Fund. Generally, in order to obtain usable evidence, a reasonable time is as soon as possible and should not exceed ninety-six (96) hours after the time of the alleged assault. If, however, in the judgment of the physician, sexual assault nurse examiner (SANE), physician assistant working under the direct supervision of a physician or the advanced practice nurse, special circumstances exist and the forensic examination should be conducted even after the passage of ninety-six such examination will be considered to be conducted within a reasonable time.

6.2. Medical exams are primarily restricted to the collection of forensic evidence.

6.3. The West Virginia Forensic Medical Examination Fund covers only the cost of forensic medical exams. The Fund does not cover the cost of any treatment of injuries, pregnancy prevention or additional testing for pregnancy or sexually transmitted diseases.



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September 23, 2009

Natalie E. Tennant, Secretary of State
State of West Virginia
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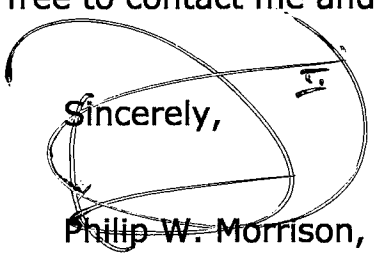
Re: Final adoption of revised procedural rules for the payment of costs
of forensic medical examination (168CSR1)

Dear Secretary Tennant,

Please be advised that the Institute held no public hearing, received no comments and therefore made no amendments to this proposed rule during this process.

Should there be questions please feel free to contact me and, until we speak again, I remain

Sincerely,



Philip W. Morrison, II