

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2007 NOV 28 AM 10:50

CLERK
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 RESPIRATORY CARE TITLE NUMBER: 30

CITE AUTHORITY: 30-34-1 AND 6-9a-1 THRU 12

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

29A-3-8

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: PROCEDURE FOR OPEN MEETINGS

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

EFFECTIVE DATE OF THIS RULE IS DECEMBER 28, 2007 December 28, 2007


Authorized Signature

**PROCEDURAL RULE
WEST VIRGINIA BOARD OF RESPIRATORY CARE
PROCEDURAL RULE - SERIES 8
OPEN MEETINGS**

FILED
2007 NOV 28 AM 10:50
DEPT. OF STATE

§30-8-1. General

1.1 Scope – As required in W.VA Code §6-9A-3, this rule sets forth the means by which the time, place, and agenda of all regular and special meetings are made available in advance to the public and the news media, except in the event of an emergency requiring immediate official action.

1.2. Authority – WV Code §30-34-4 and §6-9A-1 through 12.

1.3 Filing Date –

1.4 Effective Date –

§30-8-2. Application and Enforcement

This rule applies to the board and any and all individuals desiring to attend or to address the West Virginia Board of Respiratory Care.

§30-8-3. Definitions

3.1 Board – The West Virginia Board of Respiratory.

3.2 Meeting – the convening of the governing body of the West Virginia Board of Respiratory Care for which a quorum is required.

3.3 Quorum – a simple majority of the constituent membership of the board.

3.4 Decision – any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

3.5 Governing body - means the members of the board having the authority to make decisions

for or recommendations on policy or administration.

3.6 Executive session – means any meeting or part of a meeting of a governing body which is closed to the public.

§30-8-4. Regular Meetings

4.1 The board meets in regular session during the months of April and October. The length of the meeting is determined by the amount of business to be addressed by the board.

4.2 Meeting dates are determined for one (1) year in advance beginning July 1, and ending on June 30. A majority of the board members shall agree upon specific meeting dates.

4.3 The executive secretary shall provide written notice of the date, time, location and purpose of each regular meeting to appropriate professional associations, and state agencies, as well as persons and organizations who have requested notification, and to the Secretary of State to permit the publication of the notice in the State Register a minimum of five (5) calendar days (not counting the day of the meeting, Saturdays, Sundays, or legal holidays) before the regular meeting.

4.4 The board shall convene all regular meetings at 11:00 o'clock a.m. unless otherwise changed by a majority vote of those members present and voting.

4.5 The board shall convene all regular meetings at the board office unless otherwise changed by a majority vote of those board members present and voting.

4.6 In the event the meeting room cannot accommodate all members of the public who wish to attend, the board may move the meeting to another location, provided another suitable location is readily available, and the public arriving at the original meeting location are given appropriate directions to the new meeting location.

4.7 The board shall issue a meeting agenda no later than three business days, not counting Saturdays, Sundays, legal holidays or the day of the meeting. The meeting agenda shall be posted or otherwise readily available to the public during regular business hours at the board office. After an agenda has been issued, it can only be amended to add additional items of business up to two business days in advance of the meeting, unless the additional agenda item involves an emergency requiring immediate official action by the board. In case of emergency the amended agenda is to explain the nature of the emergency which caused the board to add the item to the agenda and this explanation is to be included in the meeting minutes.

4.8 Board members may submit agenda items at any time prior to mailing of the agenda.

4.9 Individuals may submit items for board consideration. The items should be submitted not less than thirty (30) days prior to the date of the regularly scheduled meeting. The Chairperson makes the final determination on whether an item submitted less than thirty (30) days in advance shall be considered.

4.10 The Chairperson may cancel a meeting if a quorum cannot be convened or if there are no items of business to be conducted by the board.

4.11 Individuals who desire to address the board during a regularly scheduled meeting may do so by making their wish known to the Chairperson at any time prior to the call to order.

§ 30-8-5. Special Meetings

5.1 The Chairperson, the Secretary, or any two (2) members of the board may call a special meeting.

5.2 The executive secretary shall provide written notice of the date, time, location and purpose of each special meeting to appropriate professional associations, and state agencies, as well as persons and organizations who have requested notification, and to the Secretary of State to permit the publication of the notice in the State Register a minimum of five (5) calendar days (not counting the day of the meeting, Saturdays, Sundays, or legal holidays) before the special meeting.

5.3 The board shall issue a meeting agenda no later than two business days, not counting Saturdays, Sundays, legal holidays, or the day of the meeting. The meeting agenda shall be posted or otherwise readily available to the public during regular business hours at the board office. If an emergency arises which requires immediate official board action, then the amended agenda is to explain the nature of the emergency which caused the board to add the item to the agenda and this explanation is to be included in the meeting minutes.

§30-8-6. Emergency Meetings

6.1 The Chairperson may call a meeting in the event of an emergency requiring immediate official action by the board.

6.2 The executive secretary shall notify members by telephone or other expedient method.

6.3 The executive secretary shall file a written explanation containing the time, place, purpose of the meeting, facts, and circumstances of the emergency prior to the meeting, with the Secretary of State and such explanation is to be included in the minutes of the emergency meeting.

§30-8-7 Exceptions

7.1 The governing body of the West Virginia Board of Respiratory Care may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the board shall identify the authorization under this section for holding the executive session and present it to the members of the board and to the public.

7.2 An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

- a. To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;
- b. To consider personnel or employee matters;
- c. To issue, effect, deny, suspend or revoke a license, under the laws of this state or any political subdivision, unless the person seeking the license, whose license was denied, suspended, or revoked requests an open meeting;
- d. To consider the physical or mental health of any person, unless the person requests an open meeting;
- e. To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;
- f. To plan or consider an official investigation or matter relating to crime prevention or law enforcement;
- g. To development security personnel or devices;
- h. To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public might adversely affect the financial or other interest of the state or any political subdivision;
- i. To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

- j. Nothing in this article permits the board to close a meeting that otherwise would be open merely because an agency attorney is a participant. If the board has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the board and entered into its minutes within a reasonable time after the settlement is concluded.
- k. To discuss any matter which, by express provision of federal law or state statute or rule of the court is rendered confidential, or which is not considered a public record within the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

7.3 No decision or vote may be made during an executive or closed session.

§30-8-9. Minutes

9.1 The board shall provide written minutes of all of its meetings. Subject to the exceptions for executive session set forth in section four (§6-9A-4) of this article, minutes of all meetings except minutes of executive sessions, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- a. The date, time and place of the meeting
- b. The name of each member of the board present and absent;
- c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition;
- d. The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the board for recording roll call votes, the vote of each member, by name.

§30-8-9. Meetings by Conference Call.

9.1 Occasions may arise when one or more board members are not available to attend a meeting in person. On such occasions, members may attend and participate in the meeting by telephone or video teleconference to the same extent as if physically present. A speakerphone or other audio/video device shall be used at the meeting site to enable those present, including the public, to hear/see the members who are attending and participating by telephone or video/ teleconference.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 8 - Procedure for Open Meetings

Type of Rule: ☐ Legislative ☐ Interpretive ☒ Procedural

Agency: WV Board of Respiratory Care

Address: 106 Dee Drive, Suite 1
Charleston, WV 25311

Phone Number: 304-558-1382 Email: massen@wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure should not have any costs and revenue of state government as this rule is to make record of procedures already being practiced by this board. Compliance with 6-9A-1 thru 12 of the WV State Code.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title:

Procedure For Open Meetings

Rule Title:

Series 8: Procedure for Open Meetings

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 6/25/07

Signature of Agency Head or Authorized Representative

Karen J. Stuart

Jack E. Wilson

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 25, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Respiratory Care
106 Dee Drive, Suite 1
Charleston, WV 25311
304-558-1382

LEGISLATIVE RULE TITLE: Series 8 - Procedure for Open Meetings

1. Authorizing statute(s) citation 30-34-1 and 6-9A-1 thru 12

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 25, 2007

b. What other notice, including advertising, did you give of the hearing?
Posting to Board's Web Site
Sent notice via e-mail and US Mail to Health Care Providers on record

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 26, 2007 9:00AM

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received ✓

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Jack E. Wilson

~~Karen J. Stewart or Nancy J. Massey~~

WV Board of Respiratory Care

106 Dee Drive Suite 1

Charleston, WV 25311

304-558-1382 Phone, 304-558-1382 Fax, massen@wvnet.edu Email

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Jack E. Wilson

~~Karen J. Stewart, Chairperson (Advice received from Ethics Commission & AG)~~

WV Board of Respiratory Care

106 Dee Drive, Suite 1

Charleston, WV 25311

304-558-1382

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing or comment period:

Comment Period: June 26, 2007 - July 26, 2007

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached _____