

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

Form #2

Do Not Mark In This Box

FILE

2011 JAN 11 PM 3:19

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Risk and Insurance Management TITLE NUMBER: 115

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code §§29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

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: Administrative Appeal Hearing Rules for the Patient Injury Compensation Fund

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Feb. 11, 2011 AT 9:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

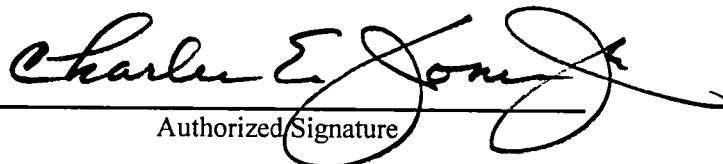
WV Board of Risk and Insurance Management

90 MacCorkle Avenue, S.W., Suite 203

South Charleston, West Virginia 25303

Attention: Charles E. Jones, Jr., Executive Director

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 115
PROCEDURAL RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT**

**SERIES 8
ADMINISTRATIVE APPEAL HEARING RULES
FOR THE
PATIENT INJURY COMPENSATION FUND**

BRIEF SUMMARY OF PROPOSED RULE

The purpose of this rule is to establish procedures to be used in administrative appeals filed with the Patient Injury Compensation Fund. This rule is intended to provide supplemental guidance beyond that provided in Title 115, Series 7 and does not in any way alter or revise Title 115, Series 7.

**TITLE 115
PROCEDURAL RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT**

**SERIES 8
ADMINISTRATIVE APPEAL HEARING RULES
FOR THE
PATIENT INJURY COMPENSATION FUND**

STATEMENT OF CIRCUMSTANCE REQUIRING THIS RULE

The West Virginia Legislature, in 2004, recognized the statewide concern over the rising cost of medical malpractice insurance and the difficulty that health care practitioners had in locating affordable medical malpractice insurance. As a result, modifications were made to this code which placed limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards set forth in article seven-b, chapter fifty-five of this code.

In response to the limitations on recovery which were implemented, the Legislature created the Patient Injury Compensation Fund to reimburse claimants in medical malpractice actions for any portion of economic damages awarded which are uncollectible based on the aforementioned statutory limitations.

Title 115, Series 7 was promulgated to deal with the administration of the Patient Injury Compensation Fund. Series 7, however, did not deal with administrative appeals from the decisions of the fund. This procedural rule is being promulgated to establish the rules for dealing with such appeals.

**TITLE 115
PROCEDURAL RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT**

**SERIES 8
ADMINISTRATIVE APPEAL HEARING RULES
FOR THE
PATIENT INJURY COMPENSATION FUND**

§115-8-1. General.

1.1. Scope. -- These rules are established for conducting all administrative appeal hearings requested of the Patient Injury Compensation Fund (PICF).

1.2. Authority. -- W. Va. Code §§ 29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g)

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Definitions. --

5.1 “BRIM” means the state board of risk and insurance management.

5.2 “Claimant” means the person submitting an application for compensation from the patient injury compensation fund created by W. Va. Code §29-12D-1(a), and is both a “patient” and a “plaintiff” as those terms are defined in the medical professional liability insurance act found in Article 7B, Chapter 55 of the Code of West Virginia of 1931 as amended.

5.3 “Economic damages” means those special damages which are reduced to an actual dollar amount that can be presented to a jury in an action brought under the medical professional liability act to compensate a plaintiff for the monetary costs of a medical injury, such as lost earning, past and future medical care and rehabilitation services. Economic damages do not include non-economic damages, such as pain and suffering, or hedonic damages, court costs, post-judgment interest, attorneys’ fees, extra-contractual damages, or punitive damages.

1.6. Amendments - To Rules. -- Amendments to these rules may be made at any meeting of the Board, by vote of a majority of the quorum, provided that the requirements of W.Va. Code § 29-A-3-2 are met.

1.7. Interpretation - Of Rules. -- Interpretation of these rules is the responsibility of the Board and any necessary changes may be acted upon by amendment in accordance with Section 1.6 above.

§115-8-2. Administration

2.1. The administrative appeal hearing shall be conducted in accordance with the provisions of West Virginia Code § 29A-5-1, et seq. The hearing may be conducted by the Executive Director of BRIM or a hearing officer appointed by the Executive Director.

2.2. The Executive Director of BRIM or his designee shall provide the claimant with written notice stating the time and place of a hearing. The claimant shall appear to show cause why the claimant is entitled to his/her claims of economic damages. At the hearing, BRIM and the claimant shall be afforded an opportunity to review the evidence, to cross-examine the witnesses, and present testimony and enter evidence in support of the parties' respective position.

2.3. The Executive Director or hearing officer has the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding under this subsection and to administer oaths or affirmations in the hearing.

2.4. If the Executive Director appoints a hearing officer to conduct an administrative appeal hearing, upon conclusion of the hearing, the hearing officer shall provide a Recommended Decision of findings of fact and conclusions of law to the Executive Director. Subsequently, the Executive Director shall determine whether the claimant is entitled to his/her claims of economic damages by issuing a final order. The Executive Director may adopt, approve, modify, revise, reject, or remand the hearing examiner's Recommended Decision of findings of fact and conclusions of law. The final order shall be mailed to the claimant by certified mail, return receipt requested.

2.5. If the Executive Director conducts the administrative appeal hearing, after reviewing the record of the hearing, the Executive Director shall determine whether the claimant is entitled to his/her claims of economic damages. The Executive Director shall issue a final order setting forth findings of fact and conclusions of law in support of the decision. The final order shall be mailed to the claimant by certified mail, return receipt requested.

2.6. Any appeal by the claimant shall be brought in accordance with the provisions of West Virginia Code § 29A-5-4. The scope of the court's review of the final order shall be as provided in West Virginia Code § 29A-5-4. If the claimant does not appeal the final order within thirty days, it is final.

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
BOARD OF RISK AND INSURANCE MANAGEMENT



90 MACCORKLE AVENUE SW, Suite 203
SOUTH CHARLESTON, WV 25303

(304) 766-2646 ADMINISTRATION
(304) 744-7120 FAX
(800) 345-4669 TOLL FREE WV
www.state.wv.us/brim

Earl Ray Tomblin
Governor

Robert Ferguson, Jr.
Cabinet Secretary

Charles E. Jones, Jr.
Executive Director
charles.e.jones@wv.gov

Title 115
Procedural Rules
Board of Risk and Insurance Management

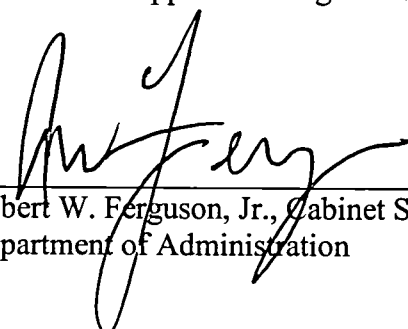
Series 8
Administrative Appeal Hearing Rules
for the
Patient Injury Compensation Fund

CONSENT TO FILING

I, Robert W. Ferguson, Jr., Cabinet Secretary to the Department of Administration, do hereby consent to the filing of Title 115, Series 8, titled "Administrative Appeal Hearing Rules for the Patient Injury Compensation Fund."

1-7-11

Date


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