

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

Form #3

Do Not Mark In This Box

FILED

2010 JUL 29 AM 11:34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DHHR/BPH on behalf of THE STATE BOARD OF SANITARIANS TITLE NUMBER: 20

CITE AUTHORITY: §§29A-4-1, 29A-5-1(a) and 30-17-6.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 01

TITLE OF RULE BEING AMENDED: This proposal changes an existing PROCEDURAL rule into a LEGISLATIVE rule, with the title: RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS AND DECLARATORY RULINGS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Patsy A. Hardy
Authorized Signature

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

July 30, 2010

Agency

Department of Health and Human Resources

Authorized Representative

Patsy A. Hardy

Patsy A. Hardy
Cabinet Secretary

State Board of Sanitarians
20CSR01, RULES OF PROCEDURE FOR CONTESTED
CASE HEARING AND DECLARATORY RULINGS
Office of Environmental Health Services
Bureau for Public Health
Department of Health and Human Resources

BRIEF SUMMARY

This current Procedural Rule is being amended and refilled as a Legislative rule to comply with the changes made by the 2010 Legislature to WV Code §30-17, governing the State Board of Sanitarians. The Board name has also been changed from the WV Board of Registration for Sanitarians to the State Board of Sanitarians.

STATEMENT OF CIRCUMSTANCES

Professional Boards are required to have rules as a means to address Administrative Due Process. This rule specifies the procedure for this process.

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: July 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Ann A. Goldberg
Bureau for Public Health
350 Capitol Street, Rm. 702
Charleston, WV 25301
304 558-2971

LEGISLATIVE RULE TITLE: _____
RULES OF PROCEDURE FOR CONTESTED CASE
HEARINGS AND DECLARATORY RULINGS 20CSR01

1. Authorizing statute(s) citation _____
WV Code §§29A-4-1, 29A-5-1(a) and 30-17-6.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 23 2010

b. What other notice, including advertising, did you give of the hearing?
N/A

c. ~~Date of Public Hearing(s)~~ or Public Comment Period ended:
July 23, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

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

N/A

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

Ann Goldberg, Director,
Public Health Regulations
350 Capitol Street, Rm. 702
Charleston, WV 25301
304 558-0035 - phone
~~304 559-1035 - fax~~
ann.a.goldberg@wv.gov

- 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)

Brad Cochran, Director, Public Health Sanitation
Office of Environmental Health Services
Bureau for Public Health
350 Capitol Street
Charleston, WV 25301
~~304 558-2984 phone~~
304 558-1071 fax
brad.j.cochran@wv.gov

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.

n/a

b. Date of hearing or comment period:

From June 23 2010 to July 23 2010

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

n/a

d. Attach findings and determinations and reasons:

Attached n/a

FILED

TITLE 20

2010 JUL 29 AM 11:34

PROCEDURAL LEGISLATIVE RULE OFFICE WEST VIRGINIA
STATE BOARD OF REGISTRATION FOR SANITARIANS SECRETARY OF STATE

SERIES 1

**RULES OF PROCEDURE FOR CONTESTED CASE
 HEARING AND DECLARATORY RULINGS**

§20-1-1. General.

1.1. Scope. -- ~~These procedural rules~~ This rule establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings in accordance with ~~section one, article four, chapter twenty-nine a of the West Virginia Code of 1931, as amended~~ WV Code §29A-4-1.

1.2. Authority. -- W.Va. Code §~~29A-4-1, §29A-5-1a and §30-17-1~~ 29A-5-1(a) and 30-17-6.

1.3. Filing Date. -- ~~April 5, 1982~~

1.4. Effective Date. -- ~~May 6, 1982~~

§20-1-2. Application.

1.5. Applicability. -- ~~These procedural rules~~ This rule shall apply to any person affected by any rules, regulations or statutes enforceable by the ~~West Virginia State Board of Registration for Sanitarians.~~

§20-1-3. §20-1-2. Definitions.

3.1. 2.1. "Board" - means the ~~West Virginia State Board of Registration for Sanitarians.~~

3.5. 2.2. "Certificates of Registration" - means a document issued as evidence of ~~registration and qualifications to practice as a sanitarian or a sanitarian in training and bearing the designation "Registered Sanitarian" or "Sanitarian In Training" and showing the name of the person, date of issue, serial number, seal and signatures of the members of the Board hereby authorized to grant such certificates public health sanitation under provisions of~~ WV Code §30-17-1.

2.3. License - means a document issued as evidence of knowledge and the qualification to practice environmental health science under provisions of WV Code §30-17-1.

2.4. Permit - means a document issued as evidence of qualification to practice as a sanitarian-in-training under provisions of WV Code §30-17-1.

~~3.3~~ 2.5. "Registered Sanitarian" - means a ~~sanitarian registered in accordance with the provisions of section one, article seventeen, chapter thirty, et seq. of the West Virginia Code.~~ person who is licensed under the provisions of WV Code §30-17-1, et seq. and possesses the educational qualifications, experience requirements and who has successfully passed a national examination.

~~3.2.~~ 2.6. "Sanitarian" - means a ~~public health professional qualified~~ person certified by the board being uniquely qualified by education in the arts and sciences, specialized training and credible field experience to assist in the enforcement of public health laws and environmental ~~health and~~ sanitation regulations and to effectively plan, organize, manage, evaluate and execute one (1) or more of the many diverse disciplines comprising the field of public ~~and environmental~~ health sanitation.

~~3.4.~~ 2.7. "Sanitarian-In-Training" - means a person who possesses the necessary educational qualifications as ~~prescribed in section one, article seventeen, chapter thirty of the West Virginia Code, et seq.~~ for registration certificate as a ~~professional~~ sanitarian, but who has not completed the experience requirements in the fields of ~~environmental~~ public health sanitation as required for registration certification.

~~§20-1-4.~~ §20-1-3. **Hearings.**

~~4.1.~~ 3.1 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.

~~4.2.~~ 3.2. Hearing on written demand. -- When the Board is presented with a demand for a hearing as described in Subsection 4.1 of this Section he shall conduct a hearing with forty-five (45) days of receipt by the Board of such written demand, unless postponed to a later date by mutual agreement. However, if the Board shall determine that the hearing demanded:

3.2.(a). Would involve an exercise of authority in excess of that available to the Board under law; or,

3.2.(b). Would serve no useful purpose, the Board shall, within twenty (20) days of the receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein the reason for such refusal. Appeal may be taken from such order as provided in ~~section four, article five, chapter twenty nine a of the West Virginia Code of 1931, as amended~~ WV Code §29A-5-4.

~~4.3.~~ 3.3. Notice of hearing. -- Upon the receipt of a demand for a hearing as described in Subsection ~~4.1~~ 3.1. of this Section, the Board shall within twenty (20) days provide the party making such demand with a notice of hearing: Provided, That, ~~(assuming~~ the Board has not entered an order denying a hearing as provided in Subsection ~~4.2.~~ 3.2. of this Section. Said notice shall contain:

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

3.3.(b). A statement of the matters asserted; and

3.3.(c). A statement of intention to appoint a hearing examiner if one (1) is to be appointed pursuant to Section ~~7 herein~~ 6 of this rule; such notice shall be given not less than ten (10) days in advance of the date of the hearing.

~~4.4.~~ 3.4. How hearings conducted. -- Hearings shall be conducted as follows:

3.4.(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;

3.4.(b). The Board may be represented by the Office of the Attorney General;

3.4.(c). The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed;

3.4.(d). When necessary to ascertain facts not reasonably susceptible to proof under said rule of evidence, evidence not admissible there under 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;

3.4.(e). The Board shall be bound by the rules of privilege recognized by law;

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

3.4.(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;

3.4.(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;

3.4.(i). The Board shall have the right to cross-examine witnesses providing rebuttal testimony; and

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

~~4.5.~~ 3.5. Continuation and adjournment. -- Hearings may be continued from one (1) day to another or adjourned to a later date or a different place by announcement thereof of the hearing examiner or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date.

~~§20-1-5.~~ §20-1-4. **Transcription Of Reported Testimony And Evidence.**

~~5.1.~~ 4.1. 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.

~~5.2.~~ 4.2. 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 their expense.

~~5.3.~~ 4.3. Transcription in the event a hearing examiner is appointed. -- In all cases where a hearing examiner is appointed, all reported materials shall be transcribed and forwarded to the Board. Parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at their expense.

~~5.4.~~ 4.4. Responsibility for transcript. -- This 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 with all dispatch.

~~5.5.~~ 4.5. Correction of error in transcript. -- Upon the motion of the Board of any party assigning error or omission in any part of any transcript, the Board 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.

~~§20-1-6.~~ §20-1-5. Submission Of Proposed Findings Of Fact And Conclusions Of Law.

~~6.1.~~ Time for submission. -- Any party may submit to the Board proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing, or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

~~§20-1-7.~~ §20-1-6. Appointment Of Hearing Examiner or Administrative Law Judge.

~~7.1.~~ Function of hearing examiner or administrative law judge. -- The Board may appoint a hearing examiner or an administrative law judge 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 ~~4 herein~~ 3 of this rule. If a hearing examiner or an administrative law judge is appointed under this section he or she may make recommended findings of fact and conclusions of law to the Board.

~~§20-1-8.~~ §20-1-7. Conferences; Informal Disposition Of Cases.

~~8.1.~~ 7.1. Conferences. -- At any time prior to the hearing or thereafter, the Board or its duly appointed hearing examiner or administrative law judge may hold conferences:

7.1.(a). To dispose of procedural requests or similar matters;

7.1.(b). To simplify or settle issues by consent of the parties; or

7.1.(c). To provide for the informal disposition of cases by stipulation, agreed settlement or consent order.

7.2. The Board or its duly appointed hearing examiner or administrative law judge may cause such conferences to be held on their own motion or by the request of a party.

~~§20-1-9.~~ §20-1-8. Depositions.

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

~~§20-1-10.~~ §20-1-9. Subpoenas.

~~10-1.~~ 9.1. Where permitted by chapter thirty. -- In accordance with any provision contained in chapter thirty of the West Virginia Code of 1931, ~~as amended~~ authorizing the Board to issue subpoenas or subpoenas duces tecum, the Board or his duly appointed hearing examiner or administrative law judge shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in ~~subsection (b), section one, article five, chapter twenty-nine a of the West Virginia Code of 1931, as amended~~ WV Code §29A-5-1(b).

~~10-2.~~ 9.2. Time for requesting the issuances of subpoenas. -- Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection ~~10-1~~ 9.1 of this Section shall be made no later than ten (10) days of a scheduled hearing.

~~§20-1-11.~~ §20-1-10. Orders.

~~11-1.~~ Content. -- Every final order entered by the Board, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of ~~section three, article five, chapter twenty-nine a of the West Virginia Code of 1931, as amended~~ WV 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 proposed findings of fact and conclusions of law.

~~§20-1-12.~~ §20-1-11. Principal Office.

~~12-1.~~ The principal office of the Board shall be the West Virginia ~~State Department of Health, State Office Building No. 3, 1800 Washington Street, East~~ Bureau for Public Health, Office of Environmental Health Services, 350 Capitol Street, Charleston, West Virginia 25305 25301, County of Kanawha, State of West Virginia. The Board may have such other offices as may from time to

time be designated by the Board.

~~§20-1-13.~~ §20-1-12. Declaratory Ruling - Procedures.

~~13.1.~~ 12.1. On petition of any interested person, the Board may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule, ~~regulation~~ or statute enforceable by the ~~Department of~~ WV Bureau for Public Health.

~~13.2.~~ 12.2. Any interested person may petition the Board in writing, stating the issues upon which the declaratory ruling is requested.

~~13.3.~~ 12.3. Upon receipt of such petition, the Board may cause a hearing to be held for the presentation of arguments and evidence within thirty (30) days of receipt of such petition. The Board shall notify the parties thereto and set a time, a place and a date for such hearing.

~~13.4.~~ 12.4. A declaratory ruling issued after argument and stated to be binding shall be binding between the Board and the petitioner on the state of facts alleged, unless altered or set aside by a court in accordance with ~~section two, article four, chapter twenty-nine-a of the West Virginia Code of 1931, as amended~~ WV Code §29A-4-2. Furthermore, such declaratory ruling shall not be binding on any other person.

~~13.5.~~ 12.5. A declaratory ruling issued upon petition, proper notice and argument shall not preclude the petitioner from seeking a contested case hearing in accordance with the provisions of the Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain the applicability to any person, property or state of facts or any rule or statute enforceable by the Board.

~~§20-1-14.~~ §20-1-13. Appeal.

An appeal from any final order or ruling entered in accordance with these rules shall be in accordance with the provisions of ~~section four, article five, chapter twenty-nine-a of the West Virginia Code of 1931, as amended~~ WV Code §29A-5-4.

~~§20-1-15.~~ Severability.

~~If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these rules which can be given effect without the invalid provision or application and to this end the provision of these rules are declared to be severable.~~