



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Contractor Licensing Board TITLE-SERIES: 28-01
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Board Organization and Meeting Procedures,
Hearing Procedures
CITE STATUTORY AUTHORITY: §30-1-8, §30-42-5, §29A-3-3, and §29A-5-1 et seq.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/16/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Brooke M. Farber
ADDRESS: 1900 Kanawha Boulevard East, State Capitol Complex
Building 3, Room 200, Charleston, WV 25305
EMAIL: brooke.m.farber@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The proposed rule establishes meeting procedures and hearing procedures of the West Virginia Contractor Licensing Board and governs Board organization and the conduct of business that comes before the Board.

The proposed procedural rule includes a definition section; a section on Board organization, conduct of meetings, and conflicts of interest; sections on regular, special, and emergency meetings; a section on notices and agendas for open meetings; a section on Board quorums; a section on Board meeting minutes; and a section on service of notices of hearing, cease and desist order hearings, disciplinary hearings, contested case hearings, and appeals.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

HB 2006, passed during the 2021 Regular Legislative Session and effective June 15, 2021, transferred administration and enforcement of the West Virginia Contractor Licensing Act from the Division of Labor to regulation under the provisions of professions and occupations in W. Va. Code Chapter 30, and created a new article, §30-42-1 et seq.

To incorporate the changes effected by passage of HB 2006 into the proposed rule, references to the repealed statutory code citations under Chapter 21 have been replaced with current statutory code citations under Chapter 30. Other changes, consistent with HB 2006, include technical corrections due to grammatical errors and reformatting, redundant language as contained in HB 2006 has been struck, and other language that is inconsistent with HB 2006 has been struck.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule has no economic impact on the revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule has no economic impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed rule has no economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 28
PROCEDURAL RULES RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 1
BOARD ORGANIZATION AND MEETING ~~PROCEDURE~~ PROCEDURES; ~~ADMINISTRATIVE HEARING~~
PROCEDURE PROCEDURES

§28-1-1. General.

1.1. Scope. -- ~~These procedural rules govern all regularly scheduled meetings and special meetings of the West Virginia Contractor Licensing Board, and establish procedures for the Board's adjudication of administrative hearings~~ This procedural rule governs the West Virginia Contractor Licensing Board's regular meetings, special meetings, and emergency meetings, establishes procedures for disciplinary hearings conducted by the Board, and establishes procedures for an appeal by any person adversely affected by a decision of the Board.

1.2. Authority. -- W. Va. Code ~~§21-11-5~~ §30-1-8, §30-42-5, §29A-3-3, and §29A-5-1 *et seq.*

1.3. Filing Date. -- ~~January 23, 1992.~~

1.4. Effective Date. -- ~~February 22, 1992.~~

§28-1-2. Application and Enforcement.

2.1. Application. -- ~~These procedural rules apply to the Board, to any and all persons desiring to attend or to address the Board, and to all persons involved in administrative hearings conducted by the Board~~ This procedural rule applies to the Board, to the Board's licensees, to any person desiring to attend a Board meeting or to address the Board, and to any person adversely affected by a decision of the Board.

2.2. Enforcement. -- ~~The enforcement of these rules shall be vested in the Board~~ this rule is vested in the Board.

§28-1-3. Definitions.

3.1. "Act" means the West Virginia Contractor Licensing Act, W. Va. Code §30-42-1 *et seq.*

~~3.1.~~ 3.2. "Board" means the West Virginia Contractor Licensing Board and its authorized representatives.

3.3. "Business entity" or "entity" means a corporation, general partnership, limited liability company, limited liability partnership, limited partnership, sole proprietorship, or any other form of business organization permitted by law.

~~3.2. "Commissioner" means the Commissioner of the West Virginia Division of Labor.~~

~~3.3. "Administrative hearing" means the procedural rights guaranteed to any person adversely affected by a decision of the Board as delineated in these rules and at W. Va. Code §29A-5-1 et seq.~~

3.4. "Person" means any individual, trust, estate, partnership, corporation, association, or any other legal entity recognized by the State of West Virginia, including any state or political subdivision.

3.4. "Cease and desist order" means an order issued by the Board pursuant to the provisions of the Act and 28 CSR 2 to an unlicensed person who performs work for which a license is required or to a licensee who performs work outside of the license's classifications.

3.5. "Chair" means the individual elected by the Board to be its President.

3.6. "Classification" or "class" means a contractor's scope of work as defined in the Act and 28 CSR 2 and includes any work incidental to the work being performed.

3.7. "Conflict of interest" means a circumstance or matter in which a Board member's personal or business interests may influence, or give the appearance of influencing, his or her responsibilities as a Board member to act with impartiality.

3.8. "Contested case hearing" means an administrative evidentiary hearing before the Board in which a licensee's rights, interests, privileges, or obligations are determined in accordance with W. Va. Code §29A-5-1 et seq.

3.9. "Days" means business days unless otherwise stated.

3.10. "Disciplinary hearing" or "hearing" means a proceeding in which the Board considers a person's alleged conduct, as set forth in W. Va. Code §30-42-14 or §30-42-15(g), and, based upon findings of fact and conclusions of law, for which the Board may impose a penalty permitted by W. Va. Code §30-42-14(a) or disciplinary action permitted by W. Va. Code §30-42-15(a).

3.11. "Emergency meeting" means a meeting convened by the Board for the limited purpose of addressing an unexpected event, circumstance, or situation that requires immediate attention because it poses an imminent threat to public health or safety, an imminent threat of damage to public or private property, or an imminent threat of material financial loss or other imminent substantial harm to a public agency, its employees, or the members of the public which it serves.

3.12. "Executive session" means a Board meeting, or part of a Board meeting, that is closed to the public and is held in accordance with the provisions of the Open Governmental Proceedings Act, W. Va. Code §6-9A-1 et seq.

3.13. "Hearing examiner" means an individual or attorney at law appointed by the Board to conduct a disciplinary or contested case hearing.

3.14. "Immediate family" means a person's parents, spouse, sibling, child or guardian, or their spouses.

3.15. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in the Act or 28 CSR 2.

3.16. "Licensee" means the person to whom a license is issued.

3.17. "Meeting" means the convening of the Board for which a quorum is required in order to make a decision, or to deliberate toward a decision, on any matter which results in an official Board action.

3.18. "Official action" means an action taken by the Board pursuant to its authority in the Act, this rule, or 28 CSR 2.

3.19. "Open Governmental Proceedings Act" means and includes the provisions of W. Va. Code §6-9A-1 et seq.

3.20. "Regular meeting" means a general meeting held by the Board at least once annually, or more frequently as needed, to consider all matters that may properly come before the Board, to conduct its business, and to attend to its responsibilities as set forth in the Act.

3.21. "Special meeting" means a meeting convened by the Board for the consideration of only those matters designated by a Board member or members requesting the meeting unless the agenda is otherwise changed by a majority vote of the Board.

3.22. "Unlicensed person" means a person or entity performing contracting work for which a license is required but who does not possess a valid license.

3.23. "Valid license" means a current license issued by the Board to a person or entity to perform specified contracting work in this state as set forth in the Act and 28 CSR 2.

3.24. "Vice-Chair" means the individual elected by the Board to be its Secretary.

§28-1-8. §28-1-4. Board Membership Organization; How Meetings Are Conducted; Conflict of Interest.

~~8.1.~~ 4.1. Members of the Board shall be appointed and serve as provided by W. Va. Code §21-11-14
Board members shall be appointed by the Governor and serve as provided by W. Va. Code §30-42-4.

~~8.2. The Board shall elect a Chair from among the voting members who shall serve for a term of two years and nothing shall prohibit successive terms. The election of the chair shall be conducted at the annual meeting as defined in Section 4 of this rule.~~

4.2. The Board's voting members shall elect a Chair and a Vice-Chair who shall serve for a term of one year.

4.2.1. The Chair and Vice-Chair may serve successive terms.

4.2.2. The incumbent Chair and Vice-Chair shall continue to serve until their replacements have been elected.

4.2.3. The Board's voting members shall fill a vacancy by electing a new Chair or Vice-Chair.

4.3. The Chair and Vice-Chair have the same rights and privileges as other Board members.

~~8.3.~~ 4.4. The Chair or Vice-Chair shall preserve order and conduct all proceedings according to accepted parliamentary procedure and demand conformity thereto on the part of the members. The

~~Chair shall appoint all committees as from time to time shall be deemed necessary or expedient by the Board, and shall sign his or her name to all official papers and actions involving the Board.~~

4.5. Board members may participate in regular, special, or emergency meetings by telephone or other electronic or telephonic means that permit voice or video identification of the member.

4.6. The Chair or Vice-Chair may appoint subcommittees as needed from the Board's voting members.

4.7. The Chair or Vice-Chair shall sign his or her name to the Board's official papers and actions.

~~8.4. 4.8. No Board member shall participate in any matter pending before the Board involving any person in which he or she is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member, or stockholder, or in which his or her spouse or unemancipated minor child or children is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member, or stockholder. In all such cases, the Board member in question shall disqualify himself or herself from any participation in the matter, including all discussion and votes. A record of such disqualification shall be noted in the minutes of the meeting. A Board member may not participate in any matter pending before the Board in which he or she, or a member of his or her immediate family, is or was either a director, officer, owner, partner, employee, member, or stockholder in the preceding 12 months in any activity regulated by the Board.~~

4.8.1. When a Board member has a conflict of interest, he or she must disqualify or recuse himself or herself from any participation in the matter, including all discussion and votes.

4.8.2. A record of such the Board member's disqualification or recusal shall will be noted in the minutes of the meeting meeting minutes.

~~§28-1-4.~~ §28-1-5. Regular Meetings.

~~4.1. The Board shall meet at least once annually on the last Monday of July, provided, that when such date falls upon a legal holiday, the Board may designate another date for the regular meeting.~~

~~4.2.~~ 5.1. The Board shall commence all regular meetings at ~~11:00~~ 9:00 a.m. unless the time is otherwise changed by ~~resolution~~ a majority vote of the Board.

~~4.3. All regular meetings shall be conducted in the offices provided by the Commissioner unless changed by resolution of the Board.~~

~~4.4. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before the Board.~~

~~4.5.~~ 5.2. The Board shall notify ~~the Commissioner and Board Members~~ members of meeting dates, places, and agenda items at least five ~~working~~ days prior to regular meetings.

~~§28-1-5.~~ §28-1-6. Special meetings Meetings; Emergency Meetings.

~~5.1. The Board shall convene special meetings as called by the Chair or upon the written demand of a majority of the members of the Board. The Board may convene special meetings or emergency meetings when called by the Chair or Vice-Chair or upon the written request of a majority of Board members.~~

~~5.2. Special meetings shall be for the consideration of only those matters designated by the Board member or members requesting the meeting, unless otherwise changed by resolution of the Board.~~

~~§28-1-6. §28-1-7. Open Proceedings Meetings; Notice of the Meeting; Agenda.~~

~~6.1. 7.1. All Board meetings of the Board shall be open to the public, except for such executive sessions as permitted by W. Va. Code §6-9A-4 of the Open Governmental Proceedings Act.~~

~~6.2. 7.2. Any person who desires to address the Board at a regular or special during a meeting may do so provided that such the person registers his or her intent to address the Board at least fifteen (15) minutes prior to the time the meeting is scheduled to commence.~~

~~6.3. 7.3. The Board may cause the removal from a meeting of any person, other than a Board member, who is disrupting it to the extent that orderly conduct of the meeting is compromised. A determination to remove any person shall be vested in the sole discretion of the Chair. The Chair or Vice-Chair, in his or her sole discretion, may cause a person to be removed from a meeting who is disruptive or otherwise interferes with the orderly conduct of the meeting.~~

~~6.4. 7.4. Except in the event of an emergency requiring immediate official action, notice of any regular or special meeting shall be filed in a manner to allow it to appear in the State Register Published by the West Virginia Secretary of State at least five (5) days prior to the date of the meeting. Each notice shall state the time, place, and purpose of the meeting. This notice shall be made similarly available to the news media. Except in the event of an emergency meeting requiring immediate official action, the Board shall electronically file a notice of every regular or special meeting with the Secretary of State for publication in the State Register at least five days prior to the date of the meeting, as required by W. Va. Code §6-9A-3(e). Each notice will state the time, place, and purpose of the meeting.~~

~~7.5. The Board will post the agenda of a regular or special meeting on the Board's website at least five days before the meeting.~~

~~6.5. 7.6. In the event of an emergency requiring immediate official action, the Board may file a notice with the Secretary of State at any time prior to the meeting, provided that all Board members have been notified of such meeting in writing or by telephone at least twenty four (24) hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State in such an emergency shall state the time, place, and purpose of the meeting, and the facts which constitute the emergency. This notice shall be made similarly available to the news media. In the event of an emergency meeting requiring immediate official action, as required by W. Va. Code §6-9A-3(h), the Board shall electronically file a notice with the Secretary of State as soon as practicable prior to the meeting, provided that all Board members have been notified of the meeting by email or telephone at least 24 hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State will state the time, place, and purpose of the meeting, and the facts and circumstances of the emergency.~~

~~§28-1-11. §28-1-8. Quorum; Board Administrative Actions Action Vote Required; Board Disciplinary Action Vote Required; Vote By Proxy Prohibited.~~

~~11.1. 8.1. A majority of the voting members appointed to the Board shall constitute a quorum. A majority of the voting appointed Board members present at a meeting constitutes a quorum.~~

~~11.2. 8.2.~~ A majority vote of the members of the Board present at any regular or special meeting shall constitute an official Board action, provided a quorum is present. Except that no disciplinary action shall be taken by the Board except on the affirmative vote of at least six (6) voting members appointed to the Board. A majority vote of Board members present at a meeting constitutes an official Board action for administrative matters, provided a quorum is present.

8.3. An affirmative vote of at least six Board members present at a meeting constitutes an official Board action for disciplinary matters.

~~11.3. 8.4.~~ Absent Board members shall not be permitted to vote by proxy. Absent Board members are not permitted to vote by proxy.

~~§28-1-7.~~ §28-1-9. Minutes.

~~7.1. 9.1.~~ The Board shall provide for the preparation of written minutes of all its meetings. All minutes shall specify the following:

9.2. The minutes must include the following information:

~~7.1.1. 9.2.1.~~ The date, time, and place of the meeting;

~~7.1.2. 9.2.2.~~ The name of each Board member present and absent;

~~7.1.3. 9.2.3.~~ All motions, proposals, resolutions, and orders, and measures proposed, the name of the Board member proposing and seconding the same, and their disposition;

9.2.4. The name of any Board member who disqualifies or recuses himself or herself from participation in a matter before the Board due to a conflict of interest; and

~~7.1.4. 9.2.5.~~ The results of all votes and, upon the request of a Board member, the vote of each member, by name.

~~7.2. 9.3.~~ All minutes shall be available to the public after they have been approved by the Board at any regular or special meeting. The minutes of each meeting will be posted on the Board's website after they have been approved by the Board.

9.4. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with W. Va. Code §6-9A-4. The minutes of an executive session will be limited to the disclosure of material that is not inconsistent with W. Va. Code §6-9A-4.

~~§28-1-9. Reimbursement of Board Members.~~

~~9.1.~~ Each member shall be reimbursed for all actual expenses incurred incident to his or her duties as a Board member.

~~§28-1-10. Board Staff and Offices.~~

~~10.1. The Commissioner shall make available all necessary office space, secretarial assistance, and other personnel, equipment, and supplies as the Board may reasonably require in the performance of its duties and functions.~~

~~10.2. The Commissioner may employ a secretary who shall work with the Board in administering the Board's day to day activities, and employ additional help when needed.~~

~~10.3. In providing for the material and human resource needs of the Board, the Commissioner shall have access to the special account established pursuant to W. Va. Code §21-11-17(a).~~

~~§28-1-12, §28-1-10. Administrative Hearings Notices of Hearing; Service of Notices of Hearing; Cease and Desist Order Hearings; Disciplinary Hearings; Contested Case Hearings; Appeals.~~

~~12.1. Any person entitled to an administrative hearing under the laws and rules of the Board shall be entitled to each of the following:~~

~~12.1.1. written notice at least ten (10) days in advance which sets forth the date, time, and place of the hearing, as well as a short and plain statement of the matters in issue;~~

~~12.1.2. an opportunity at the hearing to present testimony, other evidence, and argument with respect to the matters and issues involved;~~

~~12.1.3. an opportunity at the hearing to cross-examine any witness providing testimony, and to present rebuttal evidence; and~~

~~12.1.4. the assistance of an attorney duly qualified to practice in the State of West Virginia.~~

~~12.2. All testimony at an administrative hearing shall be reported by stenographic notes and characters or by other mechanical or electrical means. The Board shall prepare an official record, which shall include a transcript of the testimony and all exhibits admitted into evidence. Any person participating in the hearing shall be entitled to a copy of the record, including the transcript, at his or her own expense.~~

~~12.3. Administrative hearings may be conducted as part of any regular or special meeting of the Board. Alternatively, at the Board's discretion, a hearing examiner may be appointed by the Board to preside at an administrative hearing. A hearing examiner shall be empowered to 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 Board and the persons participating in the administrative hearing, and to otherwise conduct hearings as provided for herein. The function of the hearing examiner is to preside at the hearing and to cause a record to be prepared so that the Board can discharge its functions. The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board.~~

~~12.4. The rules of evidence as applied in civil cases in the circuit courts of West Virginia shall be followed.~~

~~12.5. Administrative hearings may be continued from one day to another upon a showing of good cause. The Board shall rule on all such motions for a continuance.~~

~~12.6. Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of West Virginia.~~

~~12.7. Any person participating in an administrative hearing may submit proposed findings of fact and conclusions of law within twenty (20) days of the conclusion of such hearing, or from the date the final transcript is available, whichever is later.~~

~~12.8. A final order adjudicating an administrative hearing shall be issued in writing by the Board within forty five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, proposed or recommended findings of fact, and proposed or recommended conclusions of law. The final order shall be accompanied by the Board's findings of fact and conclusions of law.~~

~~12.9. At all administrative hearings, the Board shall be deemed a participant and shall have the right to be represented by an attorney duly qualified to practice in the State West Virginia, to present testimony and other evidence, and to exercise all other rights granted herein. Members of the Board and its officers, agents, and employees shall be competent to testify at an administrative hearing; provided, that no Board member, officer, or agent who testifies at a hearing shall thereafter participate in deliberations or decisions of the Board with respect to the case in which he or she so testified.~~

~~12.10. The requirements and procedures outlined in W. Va. Code §29A-5-1, §29A-5-2, and §29A-5-3 shall at all times govern the Board's administrative hearings.~~

10.1. The Board shall hold a hearing during its regularly scheduled meeting, or during a special or an emergency meeting, on all cease and desist orders issued by the Board, shall vote on whether to affirm or rescind the cease and desist order, and shall vote on the amount of the penalty to be imposed, if any.

10.1.1. The Board shall issue a written notice of hearing to each person who has been issued a cease and desist order at least 10 days prior to the date of the hearing.

10.1.2. The Board shall cause the notice of hearing to be served by certified mail, by email, delivery receipt requested, or by personal service.

10.1.2.a. When the notice of hearing is mailed by certified mail, verification of delivery to the employer through the United States Postal Service website constitutes proper notice.

10.1.2.b. When the notice of hearing is transmitted to the employer by email, documentation of the email's delivery receipt constitutes proper notice.

10.1.2.c. When the notice of hearing is by personal delivery to the employer, an affidavit of service completed by the individual making the delivery constitutes proper notice. The affidavit of service shall be signed by the individual making the delivery, shall identify by name the person to whom the notice was given, and shall state the time and place where notice was given.

10.1.3. Upon receipt of a notice of hearing, a person may request a continuance in writing prior to the scheduled time and date of the hearing and must state the reason for the requested continuance. The Board may grant the continuance for good cause shown and shall provide the person with a written or verbal decision regarding the requested continuance.

10.1.4. A person who has been issued a cease and desist order has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration.

10.1.5. Provided that the person to whom a cease and desist order has been issued receives proper notice of the hearing, the person's failure to attend the hearing does not preclude the Board from taking action on the cease and desist order.

10.1.6. After a hearing on a cease and desist order, the Board may issue an advisory letter or may assess a monetary penalty.

10.1.7. In considering whether to assess a monetary penalty and the amount of the penalty, the Board may consider whether a person has been previously issued a cease and desist order, whether the cease and desist order was issued based on a complaint from a consumer, or any other facts and circumstances that the Board considers relevant.

10.1.8. The Board shall issue a written order setting forth its decision on the cease and desist order.

10.1.9. Within 30 days of receipt of the Board's order, a person adversely affected by the order may file an appeal to the Circuit Court of Kanawha County or in the circuit court of the county in which the person resides or does business.

10.2. When a licensee is alleged to have engaged in conduct that is a ground for discipline as set forth in W. Va. Code §30-42-15(g), the Board shall hold a disciplinary hearing during its regularly scheduled meeting, or during a special or an emergency meeting.

10.2.1. The Board shall issue a written notice of hearing to a licensee who is alleged to have engaged in one or more of the Act's grounds for discipline at least 10 days prior to the date of the hearing.

10.2.2. The Board shall cause the notice of hearing to be served on the licensee by certified mail, by email, delivery receipt requested, or by personal service.

10.2.3. Upon receipt of a notice of hearing, a person may request a continuance and the Board may grant the continuance for good cause shown.

10.2.4. A licensee has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration and may offer testimony and submit relevant factual information.

10.2.5. Provided that the licensee receives proper notice of the hearing, the licensee's failure to attend the hearing does not preclude the Board from taking action against the licensee.

10.2.6. The Board shall consider the facts and circumstances of the licensee's conduct and any other information that the Board considers relevant, including the licensee's previous history, if any, with the Board.

10.2.7. If the Board finds that the licensee has engaged in the prohibited conduct, the Board shall vote on the disciplinary action to be imposed on the licensee.

10.2.8. The Board shall issue a written order to the licensee, setting forth its decision on the disciplinary action to be imposed.

10.3. Within 60 days of receipt of the Board's disciplinary order, a licensee may submit a written appeal to the Board, stating the reasons or grounds for contesting the Board's order.

10.3.1. The Board may conduct the appeal hearing or may appoint a hearing examiner to conduct the appeal hearing.

10.3.2. The Board or hearing examiner shall conduct the hearing pursuant to the provisions of W. Va. Code §29A-5-1 et seq.

10.3.3. The Board or hearing examiner shall provide a written notice of hearing to the licensee, setting forth the date, time, and place of the hearing.

10.3.4. The Board shall cause the notice of hearing to be served on the licensee by certified mail, by email, delivery receipt requested, or by personal service.

10.3.5. The hearing shall take place within 30 days of receipt of the licensee's appeal unless the time frame is waived by agreement of the parties.

10.3.6. The Board shall be responsible for the preparation of an official record of the hearing, which shall include all testimony and exhibits.

10.3.6.a. The Board may engage a court reporter to make a record of the hearing.

10.3.6.b. Upon request to the Board by any party involved in the hearing, a copy of the transcript and exhibits will be furnished to the requesting party at the requesting party's expense.

10.3.7. The Board and the licensee may be represented by an attorney at law licensed to practice in West Virginia and may offer testimony and exhibits.

10.3.8. The Board shall issue a final order to the licensee concerning the appeal.

10.3.9. Within 30 days of receipt of the Board's order, a person adversely affected may file an appeal in the Circuit Court of Kanawha County or in the circuit court of the county where the person resides or does business.

~~§28-1-13. Appeals.~~

~~13.1. An appeal from any final order entered by the Board in accordance with these rules shall be governed by the provisions of W. Va. Code §29A-5-4 and §29A-6-1.~~

~~§28-1-14. Severability.~~

~~14.1. If any provisions of these rules or their application to any person be held invalid, such invalidity shall not affect the provisions or application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.~~