

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Board of Embalmers and Funeral Directors TITLE NUMBER: 6

CITE AUTHORITY Legislative

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

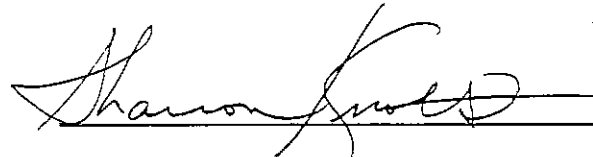
TITLE OF RULE BEING AMENDED: _____

Rules of the West Virginia Board of Embalmers and Funeral Directors

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



5.00

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**TITLE 6
LEGISLATIVE RULES
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

FILED

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**SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF
EMBALMERS AND FUNERAL DIRECTORS**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§6-1-1. General.

1.1. Scope - This rule relates to the licensing and conduct of embalmers and funeral directors.

1.2. Authority - W. Va. Code 30-6-3.

1.3. Filing date - _____.

1.4. Effective date - _____.

1.5. Repeal and replace - This rule repeals and replaces Title 6 Legislative Rules, Board of Embalmers and Funeral Directors, Series 1, Rules of the West Virginia Board of Embalmers and Funeral Directors, 6CSR1, filed June 12, 1987.

§6-1-2. Definitions.

2.1. Arrangements conference - includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning for the funeral and/or final disposition of a dead human body.

2.2. Board - means the West Virginia Board of Embalmers and Funeral Directors.

2.3. Branch establishment - means a funeral establishment which is owned by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed funeral establishment.

2.4. Embalming - the introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation and includes the disinfection, preservation and/or restoration of a dead human body.

2.5. Funeral establishment - means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies, and includes "trade service," "trade embalmer," "mortuary service" or any related term which designates

activities relating to the shelter, care, custody and preparation of a deceased human body.

2.6. Funeral service - includes the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition.

2.7. Professional services - includes embalming, funeral services and the arrangements conference.

§6-1-3. Licensing Examination.

3.1. An applicant for the state licensing examination shall remit the statutory fees for examination and shall supply the Board with the following documentation:

(a) A certified copy of a birth certificate establishing the applicant's age at eighteen (18) or over;

(b) An affidavit of United States citizenship;

(c) Two (2) letters from persons who have known the applicant for a minimum of five (5) years preceding application, who are not related to the applicant, and can attest to the applicant's moral character and temperate habits;

(d) A copy of the applicant's high school diploma or its equivalent;

(e) A transcript of grades of college-level training to be completed by a dean of academic affairs or an equivalent officer of an accredited college or university which offers an associate degree or a baccalaureate degree;

(f) A copy of a diploma of graduation from an approved school of Mortuary Science;

(g) A certificate of completion of the apprenticeship program as outlined in Section 4 of these rules; and

(h) A certificate issued by the National Conference of Funeral Service showing a passing score of its' examination of not less than seventy-five percent (75%).

3.2. Examinations - The state licensing examination shall be prepared and graded by the Conference of Funeral Service Examining Boards of the United States. A passing grade for the examination shall be a score of not less than seventy-five percent (75%).

3.3. Subjects - The state licensing examination shall include the following subjects:

(a) State laws governing the conduct and responsibilities of embalmers and funeral directors;

(b) State laws governing the preneed sale of funeral services and merchandise;

- (c) The Rules of the Board;
- (d) State laws governing sales tax;
- (e) The Federal Occupational Safety and Health Act;
- (f) The Americans with Disabilities Act;
- (g) The Federal Trade Commission, Funeral Industry Practices Rule.

3.4. Monitoring of examinations - Employees or members of the Board may monitor examinations, provided that they have no relatives or employees sitting for the examination.

3.5. Inspection of examinations - The Board shall allow any individual who fails an examination to inspect his or her examination.

3.6. Response to inquiries - To avoid inconsistency, all inquiries relating to any facet of licensing requirements shall be directed, in writing, to the full Board through its Executive Director. If any employee or member of the Board is asked to provide information or interpretations, he or she shall refrain from responding, but shall reduce the inquiry to written form and direct it to the full Board through its Executive Director.

§6-1-4. Apprenticeship.

4.1. The apprenticeship for an embalmer license and for a funeral director's license shall be served simultaneously.

4.2. The apprenticeship program is of one (1) year's duration and consists of full-time employment under the direct supervision of an embalmer and funeral director licensed by this state and actively practicing within this state. For purposes of this rule, a full-time employee is an employee working a minimum of forty (40) hours per week in a licensed funeral establishment. The apprentice has five (5) years within which to complete the apprenticeship, to graduate from a mortuary science school, and successfully complete all examinations. The Board will allow one (1) additional year of apprenticeship status upon a written application which shows good cause.

4.3. During the course of apprenticeship an apprentice shall meet the following requirements:

(a) Under the direct supervision of a licensed embalmer, he or she shall assist in the operation of embalming not less than thirty-five (35) dead human bodies.

(b) Under the direct supervision of a licensed funeral director, he or she shall assist in the conduct of not less than thirty-five (35) funeral services.

4.4. During the course of the apprenticeship program, the Board may require the submission of progress reports.

§6-1-5. Control of dead bodies.

5.1. Authority to assume control - No licensee, licensee's agent, assistants or employees shall assume control of any dead body without first gaining permission from the next of kin or their representatives, or a medical examiner, health officer or other public official lawfully entitled to give the permission.

5.2. Responsibility to honor instructions - A licensee or licensee's agents, assistants or employees who have assumed control of a dead body shall honor all instructions, from persons who have given the control, as to matters relating to the handling of the body, including all steps in preparation; autopsy; embalming; viewing; photographing; clothing; casket; box or vault; cremation; time, place and type of ceremonies; and burial or other customary disposal, insofar as considerations of public health, legal requirements and customary respectful handling of the dead will permit.

5.3. Authority to embalm - No licensee or licensee's agents, assistants or employees shall authorize the embalming of, or embalm any body without first gaining permission from the person or persons entitled to give permission, or in the event services are being rendered by virtue of reference from another funeral establishment, from a representative of the funeral establishment.

5.4. Exception - Hazard to public health. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, written certification of the condition along with a request that the body be embalmed must be obtained from a public health officer prior to embalming.

5.5. Responsibility for fees - Failure to gain authority for embalming. No person or persons entitled to give permission to embalm a body pursuant to Sections 5.3 and 5.4 of this rule, is responsible for the payment of any fee in connection with an unauthorized embalming.

§6-1-6. Health requirements.

6.1. Statutes and rules and regulations - A licensee and the licensee's agents, assistants and employees shall comply with all statutes and rules and regulations related to health.

6.2. Bodies of individuals affected with infections or contagious diseases - A licensee shall closely and personally supervise bodies affected with infections or contagious diseases. The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of the bodies across the borders of this State, whether they are transported into or out of this State, shall require, in addition to the foregoing requirement, embalming, treatment and disinfection of the body cavities and orifices.

6.3. An embalmer or funeral director shall handle body fluids, discarded sharps used in the preparation of bodies for burial, or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation in a manner which complies with the provisions of Infectious Medical Waste, 64 CSR 56 for generators

of infectious medical waste, as defined in that rule, specifically, Subsections 5.1; 5.2, except for 5.2.8 and 5.3; all of Section 6; Subsection 7.4; all of Section 8; and Subsections 12.1, 12.2, and 12.9 as though the body fluids, sharps and biological or biologically-contaminated waste materials were infectious medical waste and the embalming or funeral establishment were a small quantity generator of infectious medical waste as defined in Infectious Medical Waste, 64 CSR 56, except that any references to the secretary shall be taken as references to the Executive Director of the West Virginia Board of Embalmers and Funeral Directors.

An embalmer or funeral director shall treat body fluids, sharps, and biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation as required by Section 10 of Infectious Medical Waste, 64 CSR 56, or shall arrange for treatment and disposition of the body fluids, sharps or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation by a treatment facility appropriately licensed or otherwise authorized by the agency having lawful jurisdiction.

An embalmer or funeral director shall utilize a lawful transporter of infectious medical waste for the transport of body fluids, sharps or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation to a treatment facility or may transport the waste themselves, according to the provisions of Infectious Medical Waste, 64 CSR 56, regarding the transport of infectious medical waste by small quantity generators.

§6-1-7. Evidence of crime.

7.1. Embalming, removal and/or cremation - No licensee, or a licensee's agents, assistants or employees shall embalm, remove or cremate a body when they have information of or suspect a crime or intentional violence in connection with the cause of death, until permission is obtained from a medical examiner or other qualified official.

7.2. Information of crime - A licensee, or a licensee's agents, assistants or employees who have obtained information of a possible crime shall immediately communicate that information to a proper law enforcement officer.

7.3. Concealment of crime - No licensee, or a licensee's agents, assistants or employees shall knowingly do any act that would conceal evidence of a crime.

7.4. Use of certain materials in embalming - No licensee, or licensee's agents, assistants or employees shall use any fluid or compound which contains arsenic, lead, mercury, copper, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a body.

§6-1-8. Price Disclosure.

8.1. General Price and Information List - All funeral establishments shall comply with the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

§6-1-9. Advertising.

9.1. All advertising shall comply with the requirements set forth in W. Va. Code §30-6-5.

9.2. No licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner whatsoever.

(a) If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, then their use will be considered false and misleading by the Board.

(b) No licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall solicit business or shall offer any inducement, pecuniary or otherwise for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business. Such persons shall not call upon, telephone, write or cause, directly or indirectly, advertising literature to be sent to a sick or dying person as would tend to be considered non-general, selective or soliciting advertisements. No licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall offer or accept bribes or kickbacks, direct or indirect.

(c) All advertising copy, such as newspaper, radio, television, bill-boards, church bulletins, school publications, trade journals, stationery, contracts and other similar periodical publications have no limit as to size providing the advertising is not in any way false, misleading, untrue or deceptive. The contents of the advertising must include the name of the funeral establishment, its address and telephone number and the name of the licensed funeral director in charge. It may also include a description of the service facilities of the advertiser as well as general information pertaining to his or her business. It may also include the total cost of the minimum adult services. In all advertisements relating to the minimum cost of the adult services, the following rules must be observed and conformed to, in their entirety:

(1) Any advertised casket price will be construed to mean the cost of the casket and all necessary items for a complete funeral service. However, the cemetery costs, opening grave costs, vault costs or excess mileage costs are not considered to be necessary to constitute a complete funeral;

(2) Any funeral director advertising any merchandise used in connection with his or her business shall carry in his stock a sample of the merchandise for a period of not less than thirty (30) days after advertisement publication and must be able to meet any and all demands for such items, with no increase in price, for the stated period of not less than thirty (30) days;
and

(3) The terms "advertise" and "advertising" as used in this rule include the use of radio, television, billboards, stationery, contracts, calendars, fans and novelty advertising, or any other advertising method or medium.

§6-1-10. Confidence.

10.1. Preserving confidence - No licensee, or a licensee's agents, assistants or employees shall divulge any confidence, privacy or secrets of the domestic life in any home wherein they may be called upon to serve. This prohibition, however, shall not prevent divulging information to any person lawfully entitled or properly authorized to receive the information.

§6-1-11. Supervision required of licensee.

11.1. Licensed funeral director in charge - Each licensed funeral establishment shall have a licensed funeral director in charge of and responsible for the day-to-day operation of the establishment. The funeral director shall be a full time employee of the funeral establishment.

11.2. Branches - A licensed funeral director shall directly supervise the activities of a branch establishment at all times that professional services are being rendered at the branch.

11.3. Absence in excess of thirty (30) days - A licensed funeral establishment shall not go without the supervision of a licensed funeral director in charge for a continuous period in excess of thirty (30) days.

11.4. Funeral Directing - A funeral director, licensed by this state, shall be responsible for and supervise any funeral service conducted within the state.

11.5. Embalming - An embalmer, licensed by this state, shall be present at and supervise any embalming operation performed within the state.

11.6. Arrangements conference - A funeral director, licensed by this state, shall be responsible for and supervise any arrangements conference conducted within the state.

§6-1-12. Inspections.

12.1. Right of inspection - The Board, any of its members or any duly authorized inspector, has the right to enter, without prior notice, any licensed funeral establishment, during normal business hours, for the purpose of inspecting the establishment.

12.2. Areas of inspection - The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which will be left with the establishment at the conclusion of the inspection and a copy which will be filed in the office of the Board. Areas of inspection shall include but not be limited to:

(a) Public areas, including restrooms, lounges, parlors, casket display rooms, offices and chapels;

(b) Non-public areas, including preparation or embalming rooms, refrigeration facilities, holding areas, crematories and dressing rooms;

(c) Materials as specified in sections 6-1-8. and 6-1-9. of this rule;

(d) Medical waste disposal procedure and documents.

§6-1-13. Necessary Equipment.

13.1. A funeral establishment shall have the equipment for the conduct of embalming and funeral directing and includes but is not limited to:

(a) Embalming room facilities along with all necessary equipment, in compliance with all state and federal laws and rules, located in each funeral establishment; and

(b) Restroom facilities in compliance with all state and local health requirements located in each funeral establishment and each branch establishment.

§6-1-14. Courtesy Card.

14.1. Requirements - In order for an applicant to receive a nonrenewable, annually issued courtesy card, the applicant shall:

(a) Be a resident of a state which borders West Virginia;

(b) Be a licensed embalmer and funeral director in his or her state of residence;

(c) Complete an application, supplied by the Board; and

(d) Pay any and all statutory fees.

14.2. Rights - A courtesy card holder may conduct funerals, for an out-of-state funeral establishment, within the boundaries of the state of West Virginia.

14.3. Responsibilities - A courtesy card holder shall obey all the laws of the state of West Virginia and this rule. He or she shall not open or operate a place of business for the purpose of conducting funerals or embalmings, nor maintain an office or agency in this state. Further, he or she may not be employed by, nor contracted by, a funeral establishment licensed by this state as a licensed embalmer or funeral director.

14.4. The violation of this section will result in the immediate revocation or cancellation of the courtesy card of the violator issued by this Board.

§6-1-15. Penalties.

15.1. Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation of any license or certificate issued under the provisions of W. Va. Code, §30-6-8 and 30-6-14.

§6-1-16. Contested Case Hearing Procedures.

16.1. Definitions.

(a) Charged Party - For the purposes of this rule, the term "charged party" means an individual who holds a license to practice Embalming and/or Funeral Directing issued by the Board and who has been charged by the Board as described in these rules.

(b) Demanding Party - For the purpose of this rule, the term "demanding party" means an individual who has been denied a license to practice Embalming and Funeral Directing by the Board and who, as a result, demands that a hearing be held before the Board on the issue of denial.

(c) Licensee - For the purposes of this rule, the term "licensee" means an individual who holds a license to practice embalming and/or funeral directing.

16.2. Hearing Procedures.

(a) Any person denied a license by the Board who believes the denial was a violation of W. Va. Code §30-1-1 et seq. and/or §30-6-1 et seq. is entitled to a hearing on the action denying the license.

(b) Any person who desires a hearing for the reason described in subsection 16.2(a) of this section must present a written demand for a hearing to the Board.

(c) When the president of the Board or his or her authorized designee is presented with a demand for a hearing, he or she shall schedule a hearing within forty-five (45) days of receipt by him or her of the written demand, unless a hearing is postponed to a later date by mutual agreement.

(d) Charges may be instituted against any licensee, funeral establishment and/or branch establishment by the Board when reasonable cause exists for believing that the licensee, funeral establishment and/or branch establishment may have engaged in conduct or be in such condition that the license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code §30-6-1 et seq. or this rule. Charges may be based upon information received by a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating the complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.

(e) Charges instituted against a licensee as described in subdivision (d) of this subsection shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the State regulating the practice of Embalming and Funeral Directing. The Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the Licensee, Funeral Establishment and/or Branch Establishment involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the

Board to appoint a hearing examiner. _

(f) Upon receipt of a demand for a hearing described in subdivisions (a) and (b) of this subsection, the president or his or her designee shall provide the demanding party with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of embalming and funeral directing. The Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(g) The Board may amend the charges set forth in a Complaint and Notice of Hearing as it considers proper.

(h) A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least twenty (20) days prior to the date of the hearing.

(i) Upon written motion received by the Board no later than twenty (20) days prior to the date of the hearing, a more definite statement of the matters charged or the reasons stated for denial of licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.

(j) Hearings shall be conducted as follows:

(1) Any party to a hearing has the right to be represented by an attorney-at-law, duly qualified to practice law in the State of West Virginia.

(2) The Board may be represented by the West Virginia Attorney General's Office.

(3) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this State shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(4) The rules of privilege recognized by the law of this State shall be followed.

(5) Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

(6) Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as considered appropriate by the Board or its designated

hearing examiner; and, when appropriate, may cross-examine witnesses called by the Board in support of the charges or in defense of its decision to deny licensure.

(7) The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least twenty (20) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering the notice at his or her usual place of abode, and giving information of its purport, to the party's spouse, or to any other person found there who is a member of his or her family and above the age of sixteen years; or if neither the spouse nor any such person can be found there, and he or she cannot be found, by leaving the notice posted at the front door of such place of abode; or if he or she does not reside in this State, the notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this State; or the notice may be served by registered or certified mail to the licensee's last known address as filed with the Board.

(8) The hearing shall be open to the general public.

(9) Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, that no member of the Board who testifies at the hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he or she testified.

(10) The hearing may be conducted by one or more Board members or by a hearing examiner appointed by the Board.

(11) A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

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

(13) Where a hearing is held upon the instance if the Board after charges have been brought against a licensee pursuant to subsections 16.2(d) and 16.2(e) of this section, the Board has the burden of proof and shall present its evidence and/or testimony in support of the charges first.

(14) Where a hearing is held upon demand under the provision of subsections 16.2(a), 16.2(b), 16.2(c) and 16.2(e) of this section, the demanding party has the burden of proof and is therefore be required to present his or her evidence first.

(15) Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 16.2(j)(13) of this section, the Respondent or charged party has the right to submit his or her evidence in defense.

(16) Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 16.2(j)(14) of this section, the Board has the right to submit its evidence in defense.

(17) The Board may call witnesses to testify in support of its decision to deny licensure or in support of the charges instituted against a licensee; may present other evidence to support its position; and, may cross-examine witnesses called by the demanding party or charged party in support of his or her position.

(18) All parties have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.

(19) Hearings held by the Board as a result of charges instituted against a licensee may be continued or adjourned to a later date or a different place by the Board or its designee by appropriate notice to all parties.

(20) Motion for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days prior to the hearing date. In determining whether good cause exists, the Board will consider the ability of the party requesting the continuance to proceed effectively without a continuance. The Board shall deny a motion for a continuance filed less than seven (7) days from the date of hearing unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing may be ruled on by the Executive Director of Assistant Executive Director of the Board or designated hearing examiner. All other motions for continuance shall be ruled on by the Board member(s) or the hearing examiner presiding over the hearing.

(21) All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony. The Board member(s) or the hearing examiner presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on the motions accordingly.

16.3. Transcript of Testimony and Evidence.

(a) All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.

(b) All recorded materials shall be transcribed. The Board has the responsibility to make arrangement for the transcription of the recorded testimony and evidence.

(c) Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board or its appointed hearing examiner shall settle all differences arising as to whether the transcript truly discloses what occurred and shall

revised the transcript as appropriate so as to make it conform to the truth.

(d) A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any licensure or licensure disciplinary matter.

16.4. Submission of Proposed Findings of Fact and Conclusions of Law. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board or its duly appointed hearing examiner.

16.5. Hearing Examiner.

(a) The Board may appoint a hearing examiner who may subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary matters, hold conferences for the settlement or simplification of issues by consent of the parties, cause to be prepared a record of the hearing so that the Board is able to discharge its functions and otherwise conduct hearings as provided herein.

(b) Hearing examiners appointed by the Board are not authorized or empowered to grant, suspend, revoke or otherwise discipline any licensee.

(c) The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board. The Board may adopt, modify or reject the findings of fact and conclusions of law.

16.6. Conferences; Informal Disposition of Cases.

(a) At any time prior to the hearing or thereafter, the Board, its designee or its duly appointed hearing examiner may hold conferences for the following purposes:

(1) To dispose of procedural requests, prehearing motions or similar matters;

(2) To simplify or settle issues by consent of the parties; or

(3) To provide for the informal disposition of cases by stipulation or agreement.

(b) The Board or its appointed hearing examiner may cause the conferences to be held on its own motion or by the request of a party.

(c) The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into the stipulations and/or agreements without conference.

16.7. Depositions. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

16.8. Subpoenas.

(a) Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Board, its Executive Director, Assistant Executive Director, and by the hearing examiner appointed by the Board. The subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

(b) Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in section 16.8. of this section must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1(b).

16.9. Orders.

(a) Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of the W. Va. Code §29A-5-3 and §30-1-8(d). The 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 shall contain findings of fact and conclusions of law.

(b) The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or his attorney of record, if any, within five (5) days after entry by the Board by personal service or by registered or certified mail.

16.10. Appeal. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §29A-5-4.

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