

TITLE 64  
PROCEDURAL RULES  
DEPARTMENT OF HEALTH

SERIES 1  
RULES OF PROCEDURE FOR CONTESTED CASE  
HEARINGS AND DECLARATORY RULINGS

**§64-1-1. General.**

1.1. Scope. -- These procedural rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings. The purpose of these rules is to facilitate the resolution of contested cases in a just, speedy, and inexpensive manner and to provide for declaratory rulings in accordance with Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.2. Authority. -- W. Va. Code §16-1-7, §29A-5-1(a) and §29A-4-1

1.3. Filing Date. -- October 9, 1981

1.4. Effective Date. November 10, 1981

**§64-1-2. Application.**

2.1. These procedural rules shall apply to every person, partnership, association, corporation or public corporation affected by any rules, regulations or statutes enforceable by the department of health. These rules of procedure shall not apply to contested case hearings arising under the authority of Chapter 16, Article 2D, Section 1, et seq. of the West Virginia Code of 1931, as amended.

**§64-1-3. Definitions.**

3.1. Director - shall mean the director of the West Virginia department of health.

3.2. Agency - shall mean the West Virginia department of health.

**§64-1-4. Hearings.**

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

(a) would involve an exercise of authority in excess of that available to him under law; or

(b) would serve no useful purpose, he shall, within twenty (20) days of the receipt of such demand enter an Order refusing to grant the hearing as requested, incorporating therein his reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

4.3 Notice of Hearing - Upon the receipt of a demand for a hearing as described in Subsection 4.1 of this Section, the director shall within twenty (20) days provide the party making such demand with a notice of hearing providing the director has not entered an Order denying a hearing as provided in Subsection 4.2 of this Section. Such notice shall contain:

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

(b) a short plain statement of the matters asserted; and

(c) a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 8 herein; such notice shall be given at least 10 days in advance of the date of the hearing.

4.4. How Hearings Conducted - Hearings shall be conducted as follows:

(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;

(b) the agency may be represented by the office of the attorney general;

(c) the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed;

(d) when necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder 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;

(e) the agency shall be bound by the rules of privilege recognized by law;

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

(g) initially the agency shall be given opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the agency in support of its position;

(h) every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence;

(i) the agency shall have the right to cross-examine witnesses providing rebuttal testimony; and

(j) following the presentation of all the evidence, every party, including the agency, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the director

or the hearing examiner.

#### **§64-1-5. Continuation and Adjournment.**

5.1. Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing 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.

#### **§64-1-6. Transcription of Reported Testimony and Evidence.**

6.1. 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.

6.2. Request from any Party - Upon the request to the agency from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

6.3. Transcription in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the director. Any parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at their expense.

6.4. Responsibility for Transcript - The agency 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.

6.5. Correction of Error in Transcript - Upon the motion of the agency or any party assigning error or omission in any part of any transcript, the agency through the director or his 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.

**§64-1-7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission.**

7.1. Any party, including the agency, may submit to the director 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.

**§64-1-8. Appointment of Hearing Examiner; Function of Hearing Examiner.**

8.1. The director may, in his discretion, appoint a hearing examiner 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.

**§64-1-9. Conferences; Informal Disposition of Cases.**

9.1. At any time prior to the hearing or thereafter, the director, or his duly appointed hearing examiner may hold conferences:

(a) to dispose of procedural request or similar matters;

(b) to simplify or settle issues by consent of the parties; or

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

The director, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

**§64-1-10. Dispositions Permitted.**

10.1. Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this state.

**§64-1-11. Subpoenas.**

11.1. Where Permitted by Chapter 16 - In accordance with any provision contained in Chapter 16 of the West Virginia Code of 1931, as amended, authorizing the director to issue subpoenas or subpoenas duces tecum, the director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b) of the West Virginia Code of 1931, as amended.

11.2. Time for Requesting the Issuance of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 11.1 of this Section shall be made no later than 10 days prior to a scheduled hearing.

**§64-1-12. Orders; Content.**

12.1. Every final order entered by the director, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. 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.

**§64-1-13. Declaratory Ruling - Procedures.**

13.1. On petition of any interested person, the director 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 health.

13.2. Any interested person shall petition the director in writing, succinctly stating the issues upon which the declaratory ruling is requested.

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

13.4 A declaratory ruling issued after argument and stated to be binding shall be binding between the

health department and the petitioner on the state of facts alleged, unless altered or set aside by a court in accordance with Chapter 29A, Article 4, Section 2 of the West Virginia Code of 1931, as amended. Furthermore, such declaratory ruling shall not be binding on any other person.

13.5 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 these Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain or to elucidate the applicability to any person, property, or state of facts or any rule or statute enforceable by the department of health.

**§64-1-14. Appeal.**

14.1. Appeal - an appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

**§64-1-15. Severability.**

15.1. 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 regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH  
CHARLESTON 25305

October 9, 1981

Mr. A. J. Manchin, Secretary of State  
Office of Secretary of State  
State Capitol  
Charleston, WV 25305

Dear Mr. Manchin:

Pursuant to Chapter 29A, Article 3, Section 7(a) of the West Virginia Code of 1931, as amended the attached Rules of Procedure for Contested Case Hearings and Declaratory Rulings, Chapter 16-1, Series I, 1981 are hereby submitted for filing.

These rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings pursuant to the pertinent provisions of Chapter 29A, Article 3, Section 1, et seq of the West Virginia Code of 1931, as amended. These rules supercede the Rules of Procedure for Contested Case Hearings, Chapter 16, Series I, (1979) as filed in the State Register on October 1, 1979.

Please accept our sincere appreciation for your prompt attention in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Clark Hansbarger".

L. Clark Hansbarger M.D.  
Director of Health

LCH/JER/lp

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 10-9-81  
Administrative Law Division

Rules of Procedure for Contested Case Hearings  
and Declaratory Rulings

Filing of Administrative Regulations  
Chapter 16-1  
Series I  
1981

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FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 10-9-81  
Administrative Law Division

WEST VIRGINIA RULES OF PROCEDURE  
WEST VIRGINIA BOARD OF HEALTH

Chapter 16-1  
Series I  
1981

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 10-9-81  
Administrative Law Division

Subject: Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

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Section 1. General

1.01. Scope - These rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings. The purpose of these rules is to facilitate the resolution of contested cases in a just, speedy, and inexpensive manner and to provide for declaratory rulings in accordance with Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.02. Authority - These rules are issued under the authority of Chapter 29A, Article 5, Section 1(a) and Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.03. Filing Date - These rules are promulgated on the 9th day of October, 1981, and are filed on the 9th day of October, 1981, in the Secretary of State's Office.

1.04. Effective Date - These rules become effective on the 10th day of November, 1981.

Section 2. Application - These rules shall apply to every person, partnership, association, corporation or public corporation affected by any rules, regulations or statutes enforceable by the department of health. These rules of procedure shall not apply to contested case hearings arising under the authority of Chapter 16, Article 2D, Section 1, et seq. of the West Virginia Code of 1931, as amended.

Section 3. Definitions

3.01. Director - shall mean the director of the West Virginia department of health.

3.02. Agency - shall mean the West Virginia department of health.

Section 4. Hearings

4.01. 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.

4.02. Hearing on Written Demand - When the director is presented with a demand for a hearing as described in Subsection 4.01 of this Section he shall conduct a hearing within forty-five (45) days of receipt by him of such written demand, unless postponed to a later date by mutual agreement. However, if the director shall determine that the hearing demanded:

(A) would involve an exercise of authority in excess of that available to him under law; or

(B) would serve no useful purpose, he shall, within twenty (20) days of the receipt of such demand enter an Order refusing to grant the hearing as requested, incorporating therein his reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

4.03. Notice of Hearing - Upon the receipt of a demand for a hearing as described in Subsection 4.01 of this Section, the director shall within twenty (20) days provide the party making such demand with a notice of hearing providing the director has not entered an Order denying a hearing as pro-

vided in Subsection 4.02 of this Section. Such notice shall contain:

- (A) the date, time and place of the hearing;
- (B) a short plain statement of the matters asserted; and,
- (C) a statement of intention to appoint a hearing examiner if one

is to be appointed pursuant to Section 8 herein; such notice shall be given at least 10 days in advance of the date of the hearing.

4.04. How Hearings Conducted - Hearings shall be conducted as follows:

(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;

(B) The agency may be represented by the Office of the Attorney General;

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

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder 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;

(E) The agency shall be bound by the rules of privilege recognized by law;

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

(G) Initially the agency shall be given opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the agency in support of its position;

(H) Every party shall have the right of cross-examination of witnesses

who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence;

(I) The agency shall have the right to cross-examine witnesses providing rebuttal testimony;

(J) Following the presentation of all the evidence, every party, including the agency, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the director or the hearing examiner.

Section 5. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing 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.

Section 6. Transcription of Reported Testimony and Evidence

6.01. 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.

6.02. Request from any Party - Upon the request to the agency from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

6.03. Transcription in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the director. Any parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at their expense.

6.04. Responsibility for Transcript - The agency shall have the respon-

sibility 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.

6.05. Correction of Error in Transcript - Upon the motion of the agency or any party assigning error or omission in any part of any transcript, the agency through the director or his 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.

Section 7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission - Any party, including the agency, may submit to the director 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.

Section 8. Appointment of Hearing Examiner; Function of Hearing Examiner - The director may, in his discretion, appoint a hearing examiner 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.

Section 9. Conferences; Informal Disposition of Cases - At any time prior to the hearing or thereafter, the director, or his duly appointed hearing

examiner may hold conferences:

- (A) to dispose of procedural request or similar matters;
- (B) to simplify or settle issues by consent of the parties; or
- (C) to provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

The director, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

Section 10. Depositions Permitted - Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this State.

Section 11. Subpoenas

11.01. Where Permitted by Chapter 16 - In accordance with any provision contained in Chapter 16 of the West Virginia Code of 1931, as amended authorizing the director to issue subpoenas or subpoenas duces tecum, the director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b) of the West Virginia Code of 1931, as amended.

11.02. Time for Requesting the Issuance of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 11.01 of this Section shall be made no later than 10 days prior to a scheduled hearing.

Section 12. Orders; Content - Every final order entered by the director, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. 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.

Section 13. Declaratory Ruling - Procedures

13.01. On petition of any interested person, the director 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 health.

13.02. Any interested person shall petition the director in writing, succinctly stating the issues upon which the declaratory ruling is requested.

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

13.04. A declaratory ruling issued after argument and stated to be binding shall be binding between the health department and the petitioner on the state of facts alleged, unless altered or set aside by a court in accordance with Chapter 29A, Article 4, Section 2 of the West Virginia Code of 1931, as amended. Furthermore, such declaratory ruling shall not be binding on any other person.

13.05. 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 these Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain or to elucidate the applicability to any person, property, or state of facts or any rule or statute enforceable by the department of health.

Section 14. Appeal - an appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

Section 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 regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH  
CHARLESTON 25305

October 9, 1981

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 10-9-81  
Administrative Law Division

Mr. A. J. Manchin, Secretary of State  
Office of Secretary of State  
State Capitol  
Charleston, WV 25305

Dear Mr. Manchin:

Pursuant to Chapter 29A, Article 3, Section 7(a) of the West Virginia Code of 1931, as amended the attached Rules of Procedure for Contested Case Hearings and Declaratory Rulings, Chapter 16-1, Series I, 1981 are hereby submitted for filing.

These rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings pursuant to the pertinent provisions of Chapter 29A, Article 3, Section 1, et seq of the West Virginia Code of 1931, as amended. These rules supercede the Rules of Procedure for Contested Case Hearings, Chapter 16, Series I, (1979) as filed in the State Register on October 1, 1979.

Please accept our sincere appreciation for your prompt attention in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Clark Hansbarger".

L. Clark Hansbarger M.D.  
Director of Health

LCH/JER/lp



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, George Pickett, M.D., Director,  
 Title or Position

State Health Department, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

FILED IN THE OFFICE OF  
 SECRETARY OF STATE OF  
 WEST VIRGINIA

THIS DATE 10-1-79 ).

This filing pertains to Rules of Procedure for Contested Case Hearings

Chapter 16  
 Article 1  
 Series 10  
 Section \_\_\_\_\_  
 Page No. \_\_\_\_\_

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

October 1, 1979

Date Submitted

Carl H. Hall  
 Signature of Person Authorizing  
 this Filing

WEST VIRGINIA RULES OF PROCEDURE  
West Virginia State Department of Health

Chapter 16  
Series I  
(1979)

Subject: Rules of Procedure for Contested Case Hearings.

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Section 1. General

1.01. Purpose - These rules are intended to meet the requirements of Chapter 29A, Article 5, Sections 1 et seq. of the West Virginia Code of 1931, as amended. The primary purpose of these rules is to help resolve contested cases in a just, speedy and inexpensive manner.

1.02. Authority - These rules are issued under the authority of Chapter 29A, Article 5, Section 1(a) of the West Virginia Code of 1931, as amended.

1.03. Applicability and Scope - These rules shall be applied in connection with a contested case arising under the provisions of Chapter 29A, Article 5, Sections 1 et seq. of the West Virginia Code of 1931, as amended. The rules shall not apply where rules have been adopted or will be adopted relative to contested cases arising within specific divisions of the Department of Health.

1.04. Effective Date - These rules shall be effective 30 days upon filing in the State register.

1.05. Filing Date - These rules were filed in the State register on October 1, 1979.

2.01. Director - Shall mean the Director of the West Virginia State Department of Health.

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE \_\_\_\_\_

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 10-1-79

2.02. Agency - Shall mean the West Virginia State Department of Health.

### Section 3. Hearings

3.01. 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.

3.02. Hearing on Written Demand - When the Director is presented with a demand for a hearing as described in Subsection 3.01 of this Section he shall conduct a hearing within 45 days of receipt by him of such written demand, unless postponed to a later date by mutual agreement. However, if the Director shall determine that the hearing demanded:

(A) Would involve an exercise of authority in excess of that available to him under law; or

(B) Would serve no useful purpose, he shall, within 45 days of the receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his reason for such refusal. Appeal may be taken from such order as provided in Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

3.03. Notice of Hearing - Upon the receipt of a demand for a hearing as described in Subsection 3.01 of this Section, the Director shall as soon thereafter as possible provide the party making such demand with a notice of hearing (assuming the Director

has not entered an order denying a hearing as provided in Subsection 3.02 of this Section). Said notice shall contain:

- (A) The date, time and place of the hearing;
- (B) A short plain statement of the matters asserted; and,
- (C) A statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 6 herein; such notice shall be given at least 15 days in advance of the date of the hearing.

3.04. How Hearings Conducted - Hearings shall be conducted as follows:

(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;

(B) The Agency may be represented by the Office of the Attorney General;

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

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rule of evidence, evidence not admissible thereunder 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;

(E) The Agency shall be bound by the rules of privilege recognized by law;

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

(G) Initially the Agency shall be given an opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the Agency in support of its position;

(H) Every party shall have the right of cross examination of witnesses who testify, and following the conclusion of the Agency's presentation, shall have the right to submit rebuttal evidence;

(I) The Agency shall have the right to cross examine witnesses providing rebuttal testimony;

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

3.05. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof of the hearing or by appropriate notice to all parties.

#### Section 4. Transcription of Reported Testimony and Evidence

4.01. 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.

4.02. Request from any Party - Upon the request to the Agency from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

4.03. 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 Director. Parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at his expense.

4.04. Responsibility for Transcript - The Agency 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.

4.05. Correction of Error in Transcript - Upon the motion of the Agency or any party assigning error or omission in any part of any transcript, the Agency through the Director or his 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.

Section 5. Submission of Proposed Findings of Fact and Conclusions of Law

5.01. Time for Submission - Any party, including the Agency, may submit to the Director proposed findings of fact and conclusions of law within 30 days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within 20 days from the date the final transcript is available.

Section 6. Appointment of Hearing Examiner

6.01. Function of Hearing Examiner - The Director may, in his discretion, appoint a hearing examiner 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 3 herein. If a hearing examiner is appointed under this Section he shall not make recommended findings of fact and conclusions of law.

Section 7. Conferences; Informal Disposition of Cases

7.01. Conferences - At any time prior to the hearing or thereafter, the Director, or his duly appointed hearing examiner may hold conferences:

- (A) To dispose of procedural requests or similar matters;
- (B) To simplify or settle issues by consent of the parties;

or

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

The Director, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

Section 8. Depositions

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

## Section 9. Subpoenas

9.01. Where Permitted by Chapter 16 - In accordance with any provision contained in Chapter 16 of the West Virginia Code, authorizing the Director to issue subpoenas or subpoenas duces tecum, the Director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provision set forth in Chapter 29A, Article 5, Section 1(b) of the West Virginia Code of 1931, as amended.

9.02. Time for Requesting the Issuances of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 9.01 of this Section shall be made no later than 15 days of a scheduled hearing.

## Section 10. Orders

10.01. Content - Every final order entered by the Director, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. Such orders shall be entered within 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.

WEST VIRGINIA RULES OF PROCEDURE  
West Virginia State Department of Health

Chapter 16  
Series I  
(1979)

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