

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305


NOTICE OF PUBLIC HEARING

Pursuant to Section eight, Article three, Chapter twenty-nine-A of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the Regulatory Services Program of the West Virginia Department of Health shall convene a public hearing at 1:00 P.M. on Monday, December 21, 1981 in the Conference Room of the West Virginia Department of Health, Room 522, 1800 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the repeal of the following regulations:

1. Chapter 4, Article 3 of the Services of State Hygenic Laboratory Regulations titled Certificate Form Required for Applicant for a Marriage License in West Virginia.
2. Chapter 2, Article 3 of the Communicable Disease Regulations titled Option of Pamphlet of the American Public Health Association.
3. Chapter 4, Article 4 of the Services of State Hygenic Laboratory Regulations titled Use of Specimen Mailing Containers Owned by State Hygenic Laboratory Restricted.

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence to the West Virginia Department of Health, Regulatory Services Program, Room 416, 1800 Washington Street, East, Charleston, West Virginia 25305 not later than 5:00 P.M. Monday, December 21, 1981. Please state which of the above three regulations your evidence is directed.

The issues to be heard shall be limited to the actual information contained in the above mentioned regulations and their proposed repeal. Copies of the regulations and West Virginia Department of Health justification for repeal may be obtained from the Regulatory Services Program, address heretofore appearing or by telephoning 304-348-2411.


L. Clark Hansbarger, M.D.
Director

Entered November 17, 1981

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-17-81
Administrative Law Division

STAFF NOTES

SUBJECT: Justification for repeal of Chapter 4, Article 4 Services of State Hygenic Laboratory Regulations titled "Use of Specimen Mailing Containers Owned by State Hygenic Laboratory Restricted"

DATE: October 26, 1981

This one paragraph regulation states five conditions related to specimen mailing containers for bacteriological and similar laboratory examination.

1. The containers are owned by the West Virginia Department of Health.
2. They are loaned to the various users.
3. They are for sending of specimens only.
4. They must be returned to the West Virginia Department of Health.
5. Violations constitutes confiscation of government property.

These statements need not be made in regulation as they can stand on their own as department policy and operating procedures. As for statement number five: confiscation, or unlawful retention of any property not your own, is a criminal violation addressed elsewhere in the West Virginia Code. There is no distinction made between the theft of state government property and anyone else's property.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-17-81
Administrative Law Division

ARTICLE 4.

USE OF SPECIMEN MAILING CONTAINERS OWNED BY
STATE HYGIENIC LABORATORY RESTRICTED.

Specimen mailing containers (as required by Federal Postal Laws for transportation through the mails of specimens for bacteriological and similar laboratory examinations) owned by the West Virginia State Department of Health are loaned by said department to the various users of the West Virginia State Hygienic Laboratory, solely for the purpose of sending specimens to the West Virginia State Hygienic Laboratory for examination; any other use than as authorized herein, or failure to return these containers to the West Virginia State Hygienic Laboratory, constitutes confiscation of property belonging to the West Virginia State Department of Health and violators thereof may be prosecuted for confiscation of government property.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-17-81
Administrative Law Division

STAFF NOTES

SUBJECT: Justification for Repeal of Chapter 2, Article 3 of the Communicable Diseases Regulations Titled "Option of Pamphlet of the American Public Health Association"

DATE: October 26, 1981

This one paragraph regulation incorporates the 1950 publication of the American Public Health Association entitled "The Control of Communicable Diseases in Man" - Seventh Edition. This publication is currently in its 11th Edition with the 12th Edition due in the near future.

There is no copy of the 7th Edition readily available from the West Virginia Department of Health as mentioned in this regulation.

The Department of Health seeks approval to repeal Chapter 2, Article 3 on the following grounds:

1. It is unnecessary.
2. It is out of date.
3. Revision to incorporate the new edition would involve public hearings on its content, which we have no authority to alter.
4. The West Virginia Department of Health has no statutory authority to incorporate such publication into regulation.
5. It is titled as an "option." Regulations should not be options.

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ARTICLE 3.

OPTION OF PAMPHLET OF THE AMERICAN PUBLIC HEALTH ASSOCIATION.

In addition to the above regulations and information, an Official Report of the American Public Health Association, entitled, "The Control of Communicable Diseases in Man," Seventh Edition (1950) published by the American Public Health Association, was adopted by the State Board of Health at their meeting on June 8, 1950, which said official report was made a part of the minutes of the meeting of the Board, and also a part of Article 3, Chapter 2, "Communicable Diseases." As consistent with the provisions of the Code, copies of this pamphlet are filed with the Secretary of State and other copies distributed to all local health officials. There is on hand in the State Department of Health additional copies of this report for distribution.

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A. JAMES MANCHIN
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THIS DATE 11-17-81
Administrative Law Division

STAFF NOTES

SUBJECT: Justification for repeal of Chapter 4, Article 3 of the Services of State Hygenic Laboratory Regulations titled "Certificate Form Required for Applicant for a Marriage License in West Virginia"

DATE: October 26, 1981

Chapter 48-1-6 Domestic Relations: Marriage:

Before any such license is issued each applicant therefor shall file with the clerk a certificate or certificates from any physician duly licensed in the State, stating that each party thereto has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date on which such license is issued, and stating that in the opinion of the physician the person therein named either is not infected with syphilis, or if so infected, is not in the state of the disease which is or may later become communicable. Such examinations and tests as are required hereunder may be given as provided by section nineteen [§16-4-19], article four, chapter sixteen of this Code.

Chapter 16-4-19 states "Voluntary submission to examination and treatment." No mention of a certificate. However, Chapter 48-1-6b is as follows:

Chapter 48-1-66 Same -- Laboratory statement to accompany physician's statement; content and form of statements; physician to receive detailed report of laboratory test.

Each physician's statement, provided for in section six [§48-1-6], shall be accompanied by a statement from the person in charge of the laboratory making the serological test, or from some other person authorized by the person in charge of such laboratory to make such statement, setting forth the name of the test, the date it was completed, and the name and address of the person whose blood was tested, but not stating the result of the test and shall be attached to the application and forthwith filed with the licensing authority. The physician's statement and the laboratory statement shall be on the same form sheet. Upon a separate form, a detailed report of the laboratory test showing the result of the test shall be transmitted by the person in charge of the laboratory to the physician. (1939, c. 81).

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Administrative Law Division

Since the Code under §48-1-6 and 6b states what must be on the certificate, it is unnecessary to make the actual form itself a separate regulation. The form is in current use and providing the form as the only accepted one by the State Hygenic Lab is mere policy dictated by the West Virginia Code. Duplicating the Code into Regulation is unnecessary. Likewise, since a change in a regulation must go through the entire process of Chapter 29A ie., public hearings, filing, notice etc., any change in this form would be burdensome and expensive. Whereas, by placing this form or any form under the area of policy or standard operating procedure changes can be made simply, quickly and at virtually no cost outside of printing new forms. This allows far more discretion in how information is collected.

This form or any form does not need the legal weight of a regulation.

The only portion of this form that is not duplicated in the Code is the last sentence "A copy of the law and a place for the Clerk of the County Court to sign will appear on the back of the above certificate." This practice can continue as a matter of policy or standard operating procedure.

It is our opinion that Chapter 4, Article 4 is an unnecessary duplication of the West Virginia Code into regulation and serves no purpose

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-17-81

REGULATIONS

Ch. 4

ARTICLE 3.

CERTIFICATE FORM REQUIRED FOR EACH APPLICANT FOR A MARRIAGE LICENSE IN WEST VIRGINIA.

CERTIFICATE FORM REQUIRED FOR EACH APPLICANT FOR A MARRIAGE LICENSE IN WEST VIRGINIA

(To be valid must be made not more than thirty days prior to issuance of license)

RECORD OF STANDARD LABORATORY BLOOD TEST

THIS IS TO CERTIFY, that a ... test for syphilis was performed on ... on a blood specimen submitted in the name of ...

(Full Name and Complete Address of Applicant)

Signed: ... (Name of Laboratory) ... (Person authorized to sign for Laboratory)

Has this laboratory been approved by the West Virginia State Health Department for syphilis serological examinations? ... (Yes or No)

If approved, give certificate number ...

CERTIFICATE OF PHYSICIAN

THIS IS TO CERTIFY, that I have examined ... (Name of Applicant)

... and, in my opinion, this person is not infected with syphilis or is not in a stage of the disease which is or may later become communicable.

I also certify that this person submitted to a standard laboratory blood test for syphilis, a report of which I have received and examined.

(Date of Examination) (Signature of Physician)

(Address of Physician)

This is to Certify that I am the applicant referred to in the above certificate.

(To be signed by applicant in presence of examining physician)

This certificate is to be attached to the application for marriage and filed in the office of the Clerk of the County Court.

V.D. 59 A copy of the law and a place for the Clerk of the County Court to sign will appear on the back of the above certificate.

FILED IN THE OFFICE OF A. JAMES MANCHIN SECRETARY OF STATE THIS DATE 12-17-81 Administrative Law Division

STAFF NOTES

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-17-81
Administrative Law Division

SUBJECT: Justification for repeal of Chapter 4, Article 3 of the Services of State Hygenic Laboratory Regulations titled "Certificate Form Required for Applicant for a Marriage License in West Virginia"

DATE: October 26, 1981

Chapter 48-1-6 Domestic Relations: Marriage:

Before any such license is issued each applicant therefor shall file with the clerk a certificate or certificates from any physician duly licensed in the State, stating that each party thereto has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date on which such license is issued, and stating that in the opinion of the physician the person therein named either is not infected with syphilis, or if so infected, is not in the state of the disease which is or may later become communicable. Such examinations and tests as are required hereunder may be given as provided by section nineteen [§16-4-19], article four, chapter sixteen of this Code.

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Since the Code under §48-1-6 and 6b states what must be on the certificate, it is unnecessary to make the actual form itself a separate regulation. The form is in current use and providing the form as the only accepted one by the State Hygenic Lab is mere policy dictated by the West Virginia Code. Duplicating the Code into Regulation is unnecessary. Likewise, since a change in a regulation must go through the entire process of Chapter 29A i.e., public hearings, filing, notice etc., any change in this form would be burdensome and expensive. Whereas, by placing this form or any form under the area of policy or standard operating procedure changes can be made simply, quickly and at virtually no cost outside of printing new forms. This allows far more discretion in how information is collected.

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ARTICLE 3.

CERTIFICATE FORM REQUIRED FOR EACH APPLICANT FOR A MARRIAGE LICENSE IN WEST VIRGINIA.

CERTIFICATE FORM REQUIRED FOR EACH APPLICANT FOR A MARRIAGE LICENSE IN WEST VIRGINIA

(To be valid must be made not more than thirty days prior to issuance of license)

RECORD OF STANDARD LABORATORY BLOOD TEST

THIS IS TO CERTIFY, that a test for syphilis was performed on on a blood specimen submitted in the name of (Name of Test) (Date)

..... (Full Name and Complete Address of Applicant) Signed: (Name of Laboratory) (Person authorized to sign for Laboratory) Has this laboratory been approved by the West Virginia State Health Department for syphilis serological examinations? (Yes or No)

If approved, give certificate number

CERTIFICATE OF PHYSICIAN

THIS IS TO CERTIFY, that I have examined (Name of Applicant) and, in my opinion, this person is not infected with syphilis or is not in a stage of the disease which is or may later become communicable. I also certify that this person submitted to a standard laboratory blood test for syphilis, a report of which I have received and examined. (Address)

..... (Date of Examination) (Signature of Physician) (Address of Physician)

This is to Certify that I am the applicant referred to in the above certificate.

(To be signed by applicant in presence of examining physician)

This certificate is to be attached to the application for marriage and filed in the office of the Clerk of the County Court.

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