

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

Form #5

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2011 MAR 14 AM 9:13

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Risk and Insurance Management TITLE NUMBER: 115

CITE AUTHORITY: W. Va. Code §§29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g)

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO

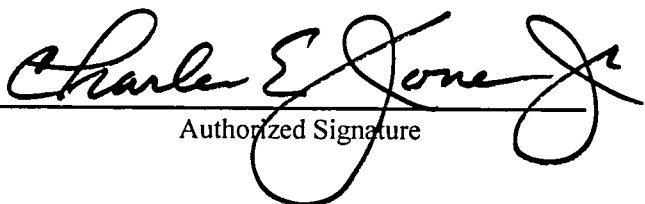
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Administration Appeal Hearing Rules for the Patient Injury Compensation Fund

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS April 14 ~~March 30~~, 2011


Authorized Signature

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
BOARD OF RISK AND INSURANCE MANAGEMENT



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Title 115
Procedural Rules
Board of Risk and Insurance Management

Series 8
Administrative Appeal Hearing Rules
for the
Patient Injury Compensation Fund

CONSENT TO FILING

I, Robert W. Ferguson, Jr., Cabinet Secretary to the Department of Administration, do hereby consent to the filing of Title 115, Series 8, titled "Administrative Appeal Hearing Rules for the Patient Injury Compensation Fund."

7-25-11

Date

Robert W. Ferguson, Jr., Cabinet Secretary
Department of Administration

FILED

**TITLE 115
PROCEDURAL RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT**

2011 MAR 14 AM 9:13

**SERIES 8
ADMINISTRATIVE APPEAL HEARING RULES
FOR THE
PATIENT INJURY COMPENSATION FUND**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§115-8-1. General.

1.1. Scope. -- These rules are established for conducting all administrative appeal hearings requested of the Patient Injury Compensation Fund (PICF).

1.2. Authority. -- W. Va. Code §§ 29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g)

1.3. Filing Date. -- February 28, 2011

1.4. Effective Date. -- March 30, 2011

1.5. Definitions. --

5.1 "BRIM" means the state board of risk and insurance management.

5.2 "Claimant" means the person submitting an application for compensation from the patient injury compensation fund created by W. Va. Code §29-12D-1(a), and is both a "patient" and a "plaintiff" as those terms are defined in the medical professional liability insurance act found in Article 7B, Chapter 55 of the Code of West Virginia of 1931 as amended.

5.3 "Economic damages" means those special damages which are reduced to an actual dollar amount that can be presented to a jury in an action brought under the medical professional liability act to compensate a plaintiff for the monetary costs of a medical injury, such as lost earning, past and future medical care and rehabilitation services. Economic damages do not include non-economic damages, such as pain and suffering, or hedonic damages, court costs, post-judgment interest, attorneys' fees, extra-contractual damages, or punitive damages.

1.6. Amendments - To Rules. -- Amendments to these rules may be made at any meeting of the Board, by vote of a majority of the quorum, provided that the requirements of W.Va. Code § 29-A-3-2 are met.

1.7. Interpretation - Of Rules. -- Interpretation of these rules is the responsibility of the Board and any necessary changes may be acted upon by amendment in accordance with Section 1.6 above.

§115-8-2. Administration

2.1. The administrative appeal hearing shall be conducted in accordance with the provisions of West Virginia Code § 29A-5-1, et seq. The hearing may be conducted by the Executive Director of BRIM or a hearing officer appointed by the Executive Director.

2.2. The Executive Director of BRIM or his designee shall provide the claimant with written notice stating the time and place of a hearing. The claimant shall appear to show cause why the claimant is entitled to his/her claims of economic damages. At the hearing, BRIM and the claimant shall be afforded an opportunity to review the evidence, to cross-examine the witnesses, and present testimony and enter evidence in support of the parties' respective position.

2.3. The Executive Director or hearing officer has the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding under this subsection and to administer oaths or affirmations in the hearing.

2.4. If the Executive Director appoints a hearing officer to conduct an administrative appeal hearing, upon conclusion of the hearing, the hearing officer shall provide a Recommended Decision of findings of fact and conclusions of law to the Executive Director. Subsequently, the Executive Director shall determine whether the claimant is entitled to his/her claims of economic damages by issuing a final order. The Executive Director may adopt, approve, modify, revise, reject, or remand the hearing examiner's Recommended Decision of findings of fact and conclusions of law. The final order shall be mailed to the claimant by certified mail, return receipt requested.

2.5. If the Executive Director conducts the administrative appeal hearing, after reviewing the record of the hearing, the Executive Director shall determine whether the claimant is entitled to his/her claims of economic damages. The Executive Director shall issue a final order setting forth findings of fact and conclusions of law in support of the decision. The final order shall be mailed to the claimant by certified mail, return receipt requested.

2.6. Any appeal by the claimant shall be brought in accordance with the provisions of West Virginia Code § 29A-5-4. The scope of the court's review of the final order shall be as provided in West Virginia Code § 29A-5-4. If the claimant does not appeal the final order within thirty days, it is final.