

**DECEMBER** 7

Sunday, December 7, 2008

4:00 p.m. to 6:00 p.m.

Legislative Rule-Making  
Review Committee  
(Code §29A-3-10)

Earl Ray Tomblin  
ex officio nonvoting member

Richard Thompson  
ex officio nonvoting member

**Senate**

**House**

Minard, Chairman  
Fanning, Vice Chair  
Prezioso  
Unger Absent  
Boley  
Facemyer

Brown, Chairman  
Miley, Vice Chair  
Burdiss  
Talbot  
Overington  
Sobonya

The meeting was called to order by Ms. Brown, Co-Chair.

The minutes of the November 16<sup>th</sup> and 17<sup>th</sup>, 2008, meetings were approved.

The rule proposed by the **WV Contractor Licensing Board, West Virginia Contractor Licensing Act, 28CSR2**, was withdrawn.

Brian Skinner, Associate Counsel, explained his abstract on the rule proposed by the **WV Department of Administration, Committee for the Purchase of Commodities and Services from the Handicapped, Rules and Regulations for Fair Market Price Determination, 186CSR1**, and stated that the Department has agreed to technical modifications.

Ms. Sobonya moved that the proposed rule lay over until the January Interims. The motion was denied.

Mr. Minard moved that items b., c. and d. on the agenda be moved to the foot of the agenda. The motion was adopted.

Brian Skinner, Associate Counsel reviewed his abstract on the rule proposed by the **WV Board of Dental Examiners, Formation and Approval of Dental Corporations, 5CSR6**, and stated that the Board has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Chief Counsel explained her abstract on the rule proposed by the **Department of Health and Human Resources, Licensure of Medical Adult Day Care Centers, 64CSR2**, and stated that the Department has agreed to technical modifications

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Division of Motor Vehicles, Denial Suspension, Restriction or NonRenewal of Driving Privileges, 91CSR5**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Steve O. Dale with the Division of Motor Vehicles responded to questions from the Committee.

Charles Huss from Dunbar, WV, addressed the Committee and responded to questions.

Nancy Tonkin, Executive Director for the WV Academy of Optometry, addressed the Committee

Debra Lovely, Director of Rehabilitation Services, addressed the Committee

Mr. Minard moved that the proposed rule be approved as modified.

Ms. Facemyer moved that the proposed rule be laid over. The motion was adopted.

Mr. Minard moved that the proposed rule by the **WV Board of Examiners for Registered Professional Nurses, Limited Prescriptive Authority for Nurses in Advanced Practice, 19CSR8**, be laid over. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV Division of Rehabilitation Services, Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program, 130CSR3**, and stated that the Division has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified.

Mr. Minard moved that the proposed rule be laid over. The motion was adopted.

Ms. Graham explained her abstract on the rule proposed by the **State Treasurer's Office, Selection of State Depositories for Receipt Accounts, 112CSR7**, stated that the Office has agreed to technical modifications and responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Jay Lazell, Associate Counsel, reviewed his abstract on the rule proposed by the **Office of Water Resources, Environmental Laboratories Certification and Standards of Performance, 47CSR32**, and stated that the Office has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Minard moved that the proposed rule by the **Office of Air Quality, Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, 45CSR13**, be laid over. The motion was adopted.

Mr. Minard moved to reconsider the proposed rule by the **West Virginia Board of Medicine, Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radio Frequency Devices, 11CSR10**. The motion was adopted.

Mr. Roskovensky explained the changes.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Minard moved to reconsider the proposed rule by the **Office of Water Resources, Assessment of Civil Administrative Penalties, 47CSR56**. The motion was adopted.

Mr. Lazell explained the changes.

Mr. Minard moved to withdraw the amendment. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Minard moved to reconsider the proposed rule by the **Division of Water and Waste Management, Assessment of Civil Administrative Penalties, 33CSR22**. The motion was adopted.

Mr. Lazell explained the changes.

Mr. Minard moved to withdraw the amendment. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Brown moved to adjourn. The motion was adopted.

**DECEMBER INTERIM ATTENDANCE**  
**Legislative Interim Meetings**  
**December 7, 8 and 9, 2008**

**Sunday, December 7, 2008**

4:00 pm - 6:00 pm

**Legislative Rule-Making Review Committee**

Earl Ray Tomblin, ex  
officio nonvoting member

Thompson, ex  
officio nonvoting member

Senate

Minard, Chair  
Fanning, Vice Chair  
Prezioso  
Unger  
Boley  
Faccmyer

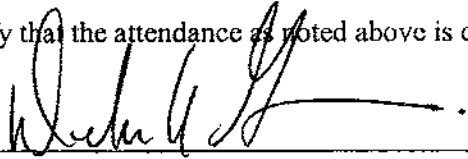
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House

Brown, Chair  
Miley, Vice Chair  
Poling, Daniel  
Talbot  
Overington  
Sobonya

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I certify that the attendance as noted above is correct.

  
\_\_\_\_\_  
Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Sunday, December 7, 2008**  
**4:00 p.m. to 6:00 p.m.**  
**Senate Judiciary Committee Room**

1. **Approval of Minutes** - Meetings of November 16 & 17, 2008.
2. **Review of Legislative Rules:**
  - a. **Contractor Licensing Board, WV**  
*West Virginia Contractor Licensing Act*  
28CSR2
    - Laid Over
    - Approve as Modified
  - b. **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules and Regulations for Fair Market Price Determination*  
186CSR1
    - Laid Over
    - Approve as Modified
  - c. **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules and Regulations Statewide Contracts*  
186CSR3
    - Laid Over
    - Approve as Modified
  - d. **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules for Qualifications for Participation*  
186CSR4
    - Laid Over
    - Approve as Modified
  - e. **Dental Examiners, WV Board of**  
*Formation and Approval of Dental Corporations*  
5CSR6
    - Approve as Modified

- f. **Health and Human Resources, Department of**  
*Licensure of Medical Adult Day Care Centers*  
64CSR2
- Approve as Modified
- g. **Motor Vehicles, Division of**  
*Denial Suspension, Restriction or NonRenewal of Driving Privileges*  
91CSR5
- Approve as Modified
- h. **Registered Professional Nurses, WV Board of Examiners for**  
*Limited Prescriptive Authority for Nurses in Advanced Practice*  
19CSR8
- Approve as Modified
- i. **Rehabilitation Services, WV Division of**  
*Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program*  
130CSR3
- Approve as Modified
- j. **State Treasurer's Office**  
*Selection of State Depositories for Receipt Accounts*  
112CSR7
- Approve as Modified
- k. **Water Resources, Office of - DEP**  
*Environmental Laboratories Certification and Standards of Performance*  
47CSR32
- Approve as Modified
- l. **Air Quality, Office of - DEP**  
*Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation*  
45CSR13
- Approve

3. **Other Business**

**Medicine, West Virginia Board of**

Definition of Surgery to Include the Use of Lasers, Ionizing  
Radiation, Pulsed Light and Radio Frequency Devices  
11CSR10

- Motion to Reconsider
- Approve as Modified

**Water Resources, Office of - DEP**

Assessment of Civil Administrative Penalties  
47CSR56

- Motion to Reconsider
- Approve as Modified

**Water and Waste Management, Division of - DEP**

Assessment of Civil Administrative Penalties  
33CSR22

- Motion to Reconsider
- Approve as Modified



DECEMBER INTERIM ATTENDANCE  
Legislative Interim Meetings  
December 7, 8 & 9, 2008

Sunday, December 7, 2008

12:00 p.m. - 2:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex  
officio nonvoting member

Richard Thompson, ex  
officio nonvoting member

Senate

House

Minard, Chair ✓  
Fanning, Vice Chair ✓  
Prezioso ✓  
Unger ✓  
Boley ✓  
Facemyer ✓

Brown, Chair ✓  
Miley, Vice Chair ✓  
Burdiss Poling ✓  
Talbot ✓  
Overington ✓  
Sobonya ✓

- Brown called meeting to order
- Minutes approved
- Contractor Lic 28CSR2  
withdrawn
- Admin 186CSR1  
Brown explained  
Sobonya moved to lay over  
Minard amended motion to move  
b, c, and d. to front of agenda  
motion adopted

- Dental 5CSR6  
Charlie explained  
Minard moved as modified  
Motion adopted

- DHHR 64CSR2  
Debra explained  
Minard moved rule as modified  
Motion adopted

- Motor Vehicles 9CSR5  
Debra explained and responded to ?'s  
Steve Dale w/DMV responded to ?'s  
Jacemeyer moved to lay over  
Charles Huss from Dunbar, WV addressed  
the Committee and responded to ?'s  
Nancy Tonkin, Ex Dir, WV Academy of Optometry  
addressed the Committee  
Debra Lovely Dir of Rehabilitation Services, addressed  
the Committee  
Minard moved rule as modified  
Motion adopted - laid over

- Reg Pro Nurses 19CSR8  
~~laid over until January~~  
~~laid over until January~~

- Rehab 130CSR3

Charlie

Minard moved rule as modified

Minard moved to lay over  
MOTION adopted

- Treasurer 112CSR7

Debra explained & responded to ?'s

Minard moved rule as modified  
MOTION adopted

- Water 47CSR32

Jay explained

Minard moved rule as modified  
MOTION adopted

- Air 45CSR13

laid over

- Medicine 11CSR10

~~Minard~~ Minard moved to reconsider  
MOTION adopted

Charlie explained

Minard moved to approve as modified  
MOTION adopted

- Water 47CSR56

Minaud moved to Reconsider the rule:

MOTION adopted

Jay explained

~~Minaud moved to withdraw amendment~~

Minaud <sup>now</sup> to withdraw amendment

MOTION adopted

Minaud moved as modified

MOTION adopted

- Water 33CSR22

Minaud moved to Reconsider rule

MOTION adopted

Jay explained

Minaud moved to withdraw amendment

MOTION adopted

Minaud moved Rule as modified

MOTION adopted

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*West Virginia Contractor Licensing Act*  
28CSR2 *\*withdrawn\**
    - Laid Over
    - Approve as Modified
  - b. *Foot* **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules and Regulations for Fair Market Price Determination*  
186CSR1
    - Laid Over
    - Approve as Modified
  - c. *Foot* **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules and Regulations Statewide Contracts*  
186CSR3
    - Laid Over
    - Approve as Modified
  - d. *Foot* **Administration, WV Department of**  
**Committee for the Purchase of Commodities and Services from**  
**the Handicapped**  
*Rules for Qualifications for Participation*  
186CSR4
    - Laid Over
    - Approve as Modified
  - e. **Dental Examiners, WV Board of**  
*Formation and Approval of Dental Corporations*  
5CSR6
    - ✓ Approve as Modified

f. **Health and Human Resources, Department of**  
*Licensure of Medical Adult Day Care Centers*  
64CSR2

✓ Approve as Modified

g. **Motor Vehicles, Division of**  
*Denial Suspension, Restriction or NonRenewal of Driving Privileges*  
91CSR5

• Approve as Modified

h. **Registered Professional Nurses, WV Board of Examiners for**  
*Limited Prescriptive Authority for Nurses in Advanced Practice*  
19CSR8

• Approve as Modified

i. **Rehabilitation Services, WV Division of**  
*Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program*  
130CSR3

• Approve as Modified

j. **State Treasurer's Office**  
*Selection of State Depositories for Receipt Accounts*  
112CSR7

✓ Approve as Modified

k. **Water Resources, Office of - DEP**  
*Environmental Laboratories Certification and Standards of Performance*  
47CSR32

✓ Approve as Modified

l. **Air Quality, Office of - DEP**  
*Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation*  
45CSR13

• Approve

3. Other Business

**Medicine, West Virginia Board of**

Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radio Frequency Devices  
11CSR10

- Motion to Reconsider
- ✓ Approve as Modified

**Water Resources, Office of - DEP**

Environmental Laboratories Certification and Standards of Performance

47CSR32

56

ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES

- Motion to Reconsider
- ✓ Approve as Modified

**Water and Waste Management, Division of - DEP**

Assessment of Civil Administrative Penalties

33CSR22

- Motion to Reconsider
- ✓ Approve as Modified

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**Legislative Interim Meetings**  
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House

Minard, Chair \_\_\_\_\_  
 Fanning, Vice Chair \_\_\_\_\_  
 Prezioso \_\_\_\_\_  
 Unger \_\_\_\_\_  
 Boley \_\_\_\_\_  
 Facemyer \_\_\_\_\_

Brown, Chair \_\_\_\_\_  
 Miley, Vice Chair \_\_\_\_\_  
~~Burdiss~~ *Boling* \_\_\_\_\_  
 Talbott \_\_\_\_\_  
 Overington \_\_\_\_\_  
 Sobonya \_\_\_\_\_

*Brown chaired  
 Minutes approved*

Contractors

*Charlie - they are withdrawing the rule*

*Admin - Purchase of Commodities - Fair MET  
 Brian explained*

*Admin - Statewide K's  
 Admin - Qualification*

*DMU*

*3.5.d.1 - improved acuity to 20/40 rather than 2/40  
 w/any strength of telescopic device.*

*WV Academy of Optometrists*

*Sobonya  
 Foot of agenda*

*Claire  
 Huss*

*Nancy  
 Rankin*



Stick w/ 20/40

Faceways lay over to Trees

Bound of RW's

Treasures

How to recall a rule to committee and change amendment to modification. All of these motions have to be made for each rule.

Under old business

1. CHAIRMAN: I recognize Delegate Brown for a motion.
2. DELEGATE BROWN, having voted on the prevailing side, I move to **reconsider the action by which** 33 CSR 22 <sup>(1)</sup> (47 CSR 56) <sup>(2)</sup>, as modified and amended, was reported out of committee with the recommendation that it do pass.

EXPLANATION: DEP has reviewed the rule and the law and determined that it should have agreed to the modification proposed by counsel to remove the 30 day provision. They have requested that we recall the rule and pass the rule with the agreed to modification rather than as an amendment. The provision in question related to the amount of time the agency has to issue a notice of violation.

SOMEONE SHOULD SECOND THE MOTION

VOICE VOTE

3. DELEGATE BROWN: Having voted in the affirmative, I move to **reconsider the action by which** 33 CSR 22 <sup>(1)</sup> (47 CSR 56) <sup>(2)</sup> was amended.

SOMEONE SHOULD SECOND THE MOTION

VOICE VOTE

4. CHAIRMAN: The rule as amended is before us. I recognize Delegate Brown for a motion.

5. DELEGATE BROWN: Having voted in the affirmative, I move to withdraw the amendment.

SOMEONE SHOULD SECOND THE MOTION

VOICE VOTE

6. CHAIRMAN: The rule is now before us as explained by counsel. I recognize Delegate Brown for a motion.

7. DELEGATE BROWN: I move that 33 CSR 22 (47 CSR 56) be reported out with a recommendation that it do pass as modified.

SOMEONE SHOULD SECOND THE MOTION

VOICE VOTE

SERIES 10

Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radiofrequency Devices

11-10-1. General

- 1.1. Scope.- Due to technological developments in surgery over the last twenty-five years, it is necessary for the health and welfare of the citizens of the state and in the public interest to clarify that the use of lasers, ionizing radiation, pulsed light and radio-frequency devices constitute surgery.
- 1.2. Authority.- W. Va. Code 30-3-4(3) defines the practice of medicine and surgery as the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition. W. Va. Code 30-3-7(a)(1) permits the Board of Medicine to adopt such regulations as are necessary to carry out the purposes of the article, which W. Va. Code 30-3-2 states in pertinent part is to provide for the licensure and professional discipline of physicians and podiatrists and to provide a professional environment that encourages the delivery of quality medical services within the state.
- 1.3. Filing date.-
- 1.4. Effective date.-

11-10-2. Definitions.

2.1. For purposes of this rule, the following words and terms mean the following:

- a. "Ablative treatment" means surgery that is expected to excise, burn, destroy or vaporize the skin below the stratum corneum.
- b. "Appropriate professional standards" means comprehensive surgical training and experience, including the management of complications, and the acquisition of certification in the appropriate surgical specialties by a member board of the American Board of Medical Specialties (ABMS) and credentials in the use of lasers, pulsed light and radiofrequency devices, ionizing radiation, or other similar techniques.
- c. "Appropriately educated and trained" means completion of training for a device and the maintenance of competency to perform procedures that may alter, transpose or damage live human skin, through documented training and experience regarding the appropriate standard of care; the fundamentals of laser operation; the physics and safety of light based medical devices; bio-effects of laser radiation on the ~~eye and~~ skin; significance of specular and diffuse reflections; non-beam hazards of lasers; non-ionizing radiation hazards; laser and laser systems classifications; and control measures.

- d. "Credentials" means a minimum of sixteen hours of basic training devoted to the principles of lasers, pulsed light devices and thermal, radiofrequency and other non-ablative devices, their instrumentation, physiological effects and safety requirements, including clinical applications of various wavelengths and hands-on practical sessions with devices and their appropriate surgical or therapeutic delivery systems.
- e. "Deep ablative treatment" means treatment below the dermo-epidermal junction.
- f. "Dermis" means that layer of skin which provides nutrient delivery and waste disposal via diffusion through the dermo-epidermal junction.
- g. "Dermo-epidermal junction" means the undulating basement membrane that adheres the epidermis to the dermis.
- h. "Epidermis" means the layer of skin which is sustained and supported by the dermis.
- i. "Direct Supervision" means the opportunity and ability of the supervising physician to exercise continuous control and direction over the services of a practitioner and requires the supervising physician to be physically present within the office suite and immediately available at all times to the practitioner throughout the performance of a procedure.
- j. "Non-ablative treatment" means a surgery by any laser or intense pulsed light treatment or other energy source, chemical or modality that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including treatments related to laser hair removal.
- k. "Personal supervision" means the supervising physician must be physically present in the room throughout the performance of the procedure by a practitioner.
- l. "Stratum corneum" means the outermost layer of the epidermis.
- m. "Supervising physician" means a physician licensed under article, three chapter thirty and meets the appropriate professional standards.
- n. "Written protocols" means the supervising physician's order, standing delegation order, standing medical order, or other written order that is maintained on site.

11-10-3. Practice of Medicine and Surgery.

The practice of medicine and surgery for the purposes of this rule, as defined in section four, article three, chapter thirty includes the following:

1. Deep ablative, ablative and non-ablative treatments.
2. The use of lasers, ionizing radiation, pulsed light and radiofrequency devices.
3. The alteration of the tissue by any mechanical, thermal, light based, electromagnetic, or chemical means.

11-10-4. Practitioner qualifications.

4.1 A practitioner shall meet and practice under the following conditions:

- a. Be licensed as an aesthetician by the Board of Barbers and Cosmetologists, a person licensed by the Board of Examiners for Registered Professional Nurses or a person licensed by the Board of Examiners for Licensed Practical Nurses; ~~or a person licensed by the Board of Optometry;~~
- b. Be appropriately educated and trained;
- c. Perform within his or her scope of practice;
- d. Work within established written protocols.

11-10-5. Supervision of practitioners for deep ablative surgery.

- 5.1 A supervising physician may delegate the performance of deep ablative surgery to a practitioner.
- 5.2 The practitioner shall perform deep ablative surgery under the personal supervision of the supervising physician.
- 5.3 The supervising physician shall confirm that practitioner meets the requirements in section 4.
- 5.4 The supervising physician is responsible for the patient's examination and treatment plan which shall be recorded in the patient's medical record prior to any treatment.

11-10-6. Supervision of a practitioner for ablative surgery and non-ablative surgery.

- 6.1 A supervising physician may delegate the performance of ablative and non-ablative surgery to a practitioner.

- 6.2 The practitioner shall perform ablative and non-ablative surgery under the direct supervision of the supervising physician.
- 6.3 The supervising physician shall confirm that practitioner meets the requirements in section 4.
- 6.4 The supervising physician is responsible for the examination of the patient and for authorizing the treatment plan, and the same is to be recorded in the patient's medical record prior to any treatment.

11-10-7. Utilization of a practitioner as an assistant during a procedure utilizing lasers, pulsed light and radiofrequency devices, chemicals, or ionizing radiation.

- 7.1 A physician may utilize a practitioner during the performance of a deep ablative, ablative or non-ablative surgery involving lasers, pulsed light devices, radiofrequency devices, chemicals, or ionizing radiation.
- 7.2 The supervising physician shall confirm that practitioner meets the requirements in section 4 to assist the physician in such surgery.

11-10-8. Written protocols.

- 8.1 A written protocol must provide, at a minimum:
  - a. A statement identifying the physician authorized to utilize the specific device and responsible for the delegation of the performance of the specified surgery;
  - b. A statement of the activities, decision criteria, and the practitioner shall follow when performing delegated procedures;
  - c. Selection criteria to screen patients for the appropriateness of non-ablative treatments;
  - d. Identification of devices and settings to be used for patients who meet selection criteria;
  - e. Methods by which the specified device is to be operated;
  - f. A description of appropriate care and follow-up for common complications, serious injury, or emergencies as a result of the non-ablative treatment; ~~and~~

g. Documentation of decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made shall be recorded in the patient's chart pre-operatively; and,

h. Documentation of a post-operative note shall be recorded within 24 hours after each treatment in the patient's medical record.

11-10-9. Equipment Safety and Registration.

9.1 Equipment used for the purposes stated in this rule shall be inspected, calibrated and certified as safe to use according to the manufacturer's specifications and in compliance with applicable federal law.

11-10-10. Responsibility of Supervising Physician.

10.1 The supervising physician maintains full responsibility to patients and the Board of Medicine for the manner and results of all treatment rendered.

11-10-11. Applicability of Rule.

11.1 This rule does not apply to:

a. Hospitals, as defined in West Virginia Code 16-29B-3(e);

b. Clinics, organized in whole or in part for the delivery of health services to needy and indigent patients without charge;

c. Advanced practice nurses, advanced nurse practitioners, or certified nurse midwives, acting pursuant to a collaborative agreement with a licensed physician; and,

d. Licensed physician assistants acting pursuant to job descriptions approved by the Board of Medicine, supervised by a supervising physician(s).





July 24, 2008

Penny A. Hall, Chairperson  
Committee for the Purchase of Commodities and Services from the Handicapped  
Department of Administration  
1900 Kanawha Blvd., East  
State Capitol Room E-119  
Charleston, West Virginia 25305

RE: Public Comment Period – Committee for the Purchase of Commodities and Services from the Handicapped (186 CSR 1, 186 CSR 3 and 186 CSR 4)

Dear Ms. Hall,

Upon review of the proposed revisions to the Committee for the Purchase of Commodities and Services from the Handicapped (the committee) rules, I appreciate the committee's attempt to change and provide some clarification and transparency to small businesses, but I believe more should be done.

I was adversely affected by this process, and it has taken too much time to understand the process and the result which occurred. I own a small business, White Way Inc., in Huntington, WV. Last year, I lost my contract to provide laundry/linen service for Mildred Mitchell Bateman Hospital (MMBH) in Huntington when the committee and the Central Nonprofit agency (CNA) added laundry to the state-wide contract last year. I was shocked when I discovered that the CNA would be taking over our account with MMBH without having had an opportunity to bid on renewing that account. For the last ten years, we have bid on that account according to the state government's bidding process. We have been fortunate to win that account through the bidding process the last seven years. This year there was no such opportunity. The CNA presented a proposal to the committee that was accepted on the basis that it was fair and competitive and I was not given any opportunity to argue my case, nor was MMBH given an option on its chosen provider. Now, the laundry at MMBH is shipped to Hancock County.



Generally speaking, I believe the CNA was originally established to provide jobs and have a positive effect on business in West Virginia; it seems to me that the CNA, currently the largest vendor in the state, is enjoying an unfair advantage over older businesses. It does not appear that there is a consistent system under which the CNA operates and no one to whom the agency is responsible regarding business practices as well as budgets and policies.

If other businesses in our state are to continue to compete and, hopefully thrive, it seems to me that they need to be on a level playing field with all other state contract competitors, including the CNA. Businesses need to be aware of the CNA operation as well as have an opportunity to bid against CNA in an effort to keep operating costs down and services provided at the highest levels of efficiency and quality for our citizens.

The taxpayers of West Virginia deserve the most return for their money, especially during these hard economic times. Financial waste must be avoided in every possible area in order to keep taxpayer's confidence high and, in many cases, to restore their confidence in government. Developing open rules of operation and public policies of which businesses and public officials are aware would be a positive step toward creating a more business friendly environment in which the CNA and other businesses could coexist within our state.

Please consider the following:

186 CSR 1 2.8 – the term "severely disabled persons" is used. "Workers with disabilities" is the term used in 186 CSR4. Which term is correct? If it is severely disabled person that term should be defined.

186 CSR 1 – 3.1.4 – Requires the payment of minimum wage. The use of the prevailing wage was removed in this rule. The prevailing wage should be the standard. Contractors let by the state require payment of the prevailing wage; this should be a consistent policy. If I could offer only minimum wage to my employees. I would have no one working for me. Wages should be competitive and should be included in determining the fair market price.

186 CSR 1 – 3.1.5 Permits that fair market price may include a reasonable charge for overhead and profit. An independent financial audit should be required and submitted to the committee from each non-profit workshop and from the CNA. This will assist the committee in determining the fair market value and will help the committee and the legislature assess this process. The committee should cap the amount the CNA may receive for services charges. The CNA is not here to make a profit. It was established to maintain communication between the qualified vendor, the spending unit and the committee.



186 CSR 1 – 3.6 – The fair market price subcommittee is removed. This committee should be reinstated. This subcommittee is very important because it wades through a lot of the information and eventually determines the fair market price. Whether or not a service or commodity can be provided at a comparable rate is a huge factor in whether it is placed on the state-wide contract. Much due diligence should occur in this determination.

186 CSR 1 – 4.1c This sections should reference the modification process provided in section 6 of this rule.

186 CSR 1 – 5.1.4 – CAN should be CNA.

186 CSR 3 – 3.1.2 – This section is a welcome addition, but 33% should be reduced to 10% and the term "small business" should be defined. When a small business loses any state contract it affects its bottom line. This could result in tough business decisions which could involve workers being laid off. The loss of the laundry contract necessitated my eliminating several employee positions. Explaining to those whose jobs had to be eliminated was difficult to say the least. I understand the policy behind the statute and the rule; however, I believe the committee needs to consider the impact upon small businesses when a service or commodity is placed on the state-wide contract.

186 CSR 3 – 3.12a – This is important and will provide notice to any current vendor, about the possible inclusion of a commodity or service on the state-wide contract.

186 CSR 3 – 3.42 – This section is exactly the same as 186 CSR 1 – 7.1.

186 CSR 3 4.33 – The rule references in this section don't make any sense. Does state spending unit use the processes in 4.31 and 4.32?

186 CSR 3 5.2 – This section discusses an assignment policy. This policy should be in the rule. The committee does not have the statutory authority to approve a policy.

186 CSR 3 – 6.1.2 This section is not fair to small businesses and to state spending units. The service or commodity is either on the state-wide contract or it is not. It is unfair of the committee to expect the state spending unit to delay an already long process to find out if a qualified vendor is capable of producing a particular service or commodity?

186 CSR 3 – 9 The committee and the Legislature should review this section for effectiveness. The term "value added" should be defined.



186 CSR 4 – 3.29 The exemption was established by the legislature to assist in providing employment opportunities for persons with disabilities. This section should be changed to assure more employment for those persons by requiring that 75% of workers with disabilities should work on each state-wide contract.

I am very willing to meet with anyone, individual, government official, staff member, or committee, regarding this situation and the far reaching effect it can have on any business in our state. It is my most sincere hope that adjustments in policies that are more taxpayer and business friendly can be developed which will benefit all of us. I appreciate your consideration of my concerns and suggestions and look forward to hearing from you.

Sincerely,

Staige Davis  
1001 Sixteenth Street  
Huntington, WV 25701  
304-523-0184 304-544-5885  
Fax 304-523-0175  
[staigedavis@wvdsi.net](mailto:staigedavis@wvdsi.net)

Cc:

The Honorable:

Joe Minard ✓

Donna Boley ✓

Karen Facemye ✓

Roman Prezioso ✓

John Unger ✓

John Pat Fanning ✓

Bonnie Brown ✓

Mike Burdiss ✓

John Overington ✓

Kelli Sobonya ✓

Joe Talbot ✓

Tim Miley ✓

Evan Jenkins ✓

Robert Plymale ✓

Kevin Craig ✓

Jim Morgan ✓

Carol Miller ✓

Doug Reynolds ✓

Dale Stephens ✓

REGISTRATION OF PUBLIC  
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Dec. 7, 2008

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement
<del>DEAN CORDLE</del>	<del>P.O. Box 335 MARTIN, WV 25143</del>	<del>ACS, Inc</del>	<del>48 CSR 22</del>	
Don Michael	Rt. 1 Box 21-A RAVENSWOOD, WV 26164	WV Farm Bureau	28 CSR 2	X
Chuck Huss	1332 W. VA. AVE. DUNKER, WV	SELF	91 CSR 5 130 CSR 3	

Tuesday, December 9, 2008

10:00 a.m. to 11:00 a.m.

Legislative Rule-Making  
Review Committee  
(Code §29A-3-10)

Earl Ray Tomblin  
ex officio nonvoting member

Richard Thompson  
ex officio nonvoting member

**Senate**

**House**

Minard, Chairman  
Fanning, Vice Chair  
Prezioso  
Unger  
Boley  
Facemyer

Absent  
Absent

Brown, Chairman  
Miley, Vice Chair  
Burdiss  
Talbott  
Overington  
Sobonya

The meeting was called to order by Mr. Minard, Co-Chair.

The rules proposed by the **Division of Motor Vehicles, Denial Suspension, Restriction or NonRenewal of Driving Privileges, 91CSR5**, and the **WV Division of Rehabilitation Services, Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program, 130CSR3**, were moved to the foot of the agenda.

Brian Skinner, Associate Counsel, explained his abstract on the rule proposed by the **WV Department of Administration, Committee for the Purchase of Commodities and Services from the Handicapped, Rules and Regulations for Fair Market Price Determination, 186CSR1**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Ms. Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner, reviewed his abstract on the rule proposed by the **WV Department of Administration, Committee for the Purchase of Commodities and Services from the Handicapped, Rules and Regulations Statewide Contracts, 186CSR3**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Ms. Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner, reviewed his abstract on the rule proposed by the **WV Department of Administration, Committee for the Purchase of Commodities and Services from the Handicapped, Rules for**

*Qualifications for Participation, 186CSR4*, and stated that the Department has agreed to technical modifications.

Ms. Brown moved that the proposed rule be approved as modified. The motion was adopted.

Jay Lazell, Associate Counsel, reviewed his abstract on the rule proposed by the Office of Air Quality, *Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, 45CSR13*, stated that the Office has agreed to technical modifications and responded to questions from the Committee.

Beth McKoone, NSR Program Manager with the Office of Air Quality, responded to questions from the Committee.

Tom Boggs with the West Virginia Chamber of Commerce addressed the Committee and responded to questions.

Kristin Boggs, Associate Counsel with the Department of Environmental Protection, addressed the Committee and responded to questions.

Ann Blankenship, Counsel for the WVMA and WVONGA, addressed the Committee and responded to questions.

Ms. Boley moved to amend the proposed rule by removing the words operate and operating throughout except in the new language. The motion was denied.

Ms. Brown moved that the proposed rule be approved. The motion was adopted.

Ms. Sobonya moved to adjourn. The motion was adopted.

**DECEMBER 9**



DECEMBER INTERIM ATTENDANCE  
Legislative Interim Meetings  
December 7, 8 and 9, 2008

Tuesday, December 9, 2008

10:00 am - 11:00 am

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex  
officio nonvoting member

Thompson, ex  
officio nonvoting member

Senate

Minard, Chair  
Fanning, Vice Chair  
Prezioso  
Unger  
Boley  
Facemyer

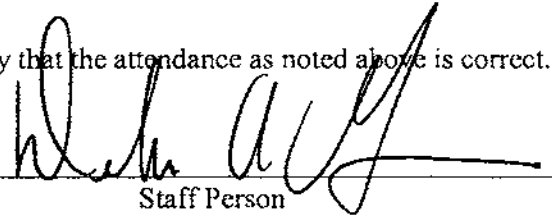
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✓  
✓  
✓

House

Brown, Chair  
Miley, Vice Chair  
Poling, Daniel  
Talbot  
Overington  
Sobonya

\_\_\_\_\_  
✓  
✓  
✓  
✓  
✓  
✓

I certify that the attendance as noted above is correct.

  
\_\_\_\_\_  
Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Tuesday, December 9, 2008**  
**10:00 a.m. to 11:00 a.m.**  
**Senate Judiciary Committee Room**

1. **Review of Legislative Rules:**

- a. **Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped**  
*Rules and Regulations for Fair Market Price Determination*  
186CSR1
- Laid Over
  - Approve as Modified
- b. **Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped**  
*Rules and Regulations Statewide Contracts*  
186CSR3
- Laid Over
  - Approve as Modified
- c. **Administration, WV Department of  
Committee for the Purchase of Commodities and Services from  
the Handicapped**  
*Rules for Qualifications for Participation*  
186CSR4
- Laid Over
  - Approve as Modified
- d. **Motor Vehicles, Division of  
Denial Suspension, Restriction or NonRenewal of Driving  
Privileges**  
91CSR5
- Laid Over
  - Approve as Modified

e. **Rehabilitation Services, WV Division of**  
*Establishment of the criteria and curriculum requirements for  
the Low Vision Driver Training Program*  
130CSR3

- Laid Over
- Approve as Modified

f. **Air Quality, Office of - DEP**  
*Permits for Construction, Modification, Relocation and  
Operation of Stationary Sources of Air Pollutants,  
Notification Requirements, Administrative Updates, Temporary  
Permits, General Permits, and Procedures for Evaluation*  
45CSR13

- Laid Over
- Approve

2. **Other Business**

DECEMBER INTERIM ATTENDANCE  
Legislative Interim Meetings  
December 7, 8 & 9, 2008

Tuesday, December 9, 2008

10:00 a.m. - 11:00 a.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex  
officio nonvoting member

Richard Thompson, ex  
officio nonvoting member

Senate

House

Minard, Chair

✓  
✓

Fanning, Vice Chair

Prezioso

Unger

Boley

Facemyer

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\_\_\_\_\_  
\_\_\_\_\_  
✓  
✓

Brown, Chair

Miley, Vice Chair

Poling

Talbott

Overington

Sobonya

✓  
✓  
✓  
✓  
✓  
✓

- Minard called meeting to order

- Motor Vehicles <sup>(11CS25)</sup> and Rehab <sup>(130CS23)</sup> moved to foot of agenda

- Admin 181CSR1

Brian explained and responded to ?'s  
Brown moved rule as modified  
Motion adopted

- Admin 181CSR3

Brian explained and responded to ?'s  
Brown moved rule as modified  
Motion adopted

- Admin 186CSR4

Brian explained

Brown moved rule as modified  
Motion adopted

- Air 45CSR13

Jay explained and responded to ?'s

Beth McKone, <sup>NSR Program</sup> <sub>Manager</sub> w/ Air Quality responded to  
?'s from the Committee

Tom Boggs w/ West Virginia Chamber of  
Commerce <sup>addressed the Committee</sup> and responded to ?'s from the Committee

~~\_\_\_\_\_~~ Kristin Boggs, Assoc. Gen. Counsel, w/ ~~\_\_\_\_\_~~  
addressed the Committee and responded to ?'s

Ann Blankenship, ~~\_\_\_\_\_~~ Counsel for WVMA & WVONGA  
addressed the Committee and responded to ?'s

Brown moved rule

Boley moved to amend by removing operate  
and operating throughout except new language  
Motion denied

Motion adopted

Subcommittee  
moved

Meeting adjourned

Debra

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
 Tuesday, December 9, 2008  
 10:00 a.m. to 11:00 a.m.  
 Senate Judiciary Committee Room

1. Review of Legislative Rules:

*Approved as modified*

Administration, WV Department of  
 Committee for the Purchase of Commodities and Services from  
 the Handicapped  
 Rules and Regulations for Fair Market Price Determination  
 186CSR1

- Laid Over
- Approve as Modified

*Approved as modified*

Administration, WV Department of  
 Committee for the Purchase of Commodities and Services from  
 the Handicapped  
 Rules and Regulations Statewide Contracts  
 186CSR3

- Laid Over
- Approve as Modified

*Approved as modified*

Administration, WV Department of  
 Committee for the Purchase of Commodities and Services from  
 the Handicapped  
 Rules for Qualifications for Participation  
 186CSR4

- Laid Over
- Approve as Modified

*Foot of Agenda*

d. Motor Vehicles, Division of  
 Denial Suspension, Restriction or NonRenewal of Driving  
 Privileges  
 91CSR5

- Laid Over
- Approve as Modified

*Foot  
of  
Agenda* e.

**Rehabilitation Services, WV Division of**  
Establishment of the criteria and curriculum requirements for  
the Low Vision Driver Training Program  
130CSR3

- Laid Over
- Approve as Modified.

*Approved*

**Air Quality, Office of - DEP**  
Permits for Construction, Modification, Relocation and  
Operation of Stationary Sources of Air Pollutants,  
Notification Requirements, Administrative Updates, Temporary  
Permits, General Permits, and Procedures for Evaluation  
45CSR13

- Laid Over
- Approve

**2. Other Business**

REGISTRATION OF PUBLIC  
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Dec. 9, 2008

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Chuck Huss, COMS Consultant - Bioptic Drivng	1332 West Virginia Ave. Dunbar, WV 25044	SELF	91CSR 5 130 CSR 3	X X