CHAPTER V

ADMINISTRATIVE APPEALS OF COMMISSIONER'S ORDERS OR DECISIONS

A. REQUEST FOR HEARING

The applicant or licensee adversely affected by an order made and entered by the commissioner may request a hearing by filing a written notice with the commissioner in person or certified mail, return receipt requested. Such request must be made within thirty [30] days after the date on which said order is received.

B. CONTENTS OF NOTICE

The notice requesting a hearing shall contain the following information:

1. A description of the order upon which a hearing is requested; and

2. The grounds upon which it is asserted that said order should be vacated or modified.

C. NOTICE OF HEARING

Within ten [10] days after receipt of a notice requesting a hearing, the commissioner shall cause a notice of hearing to be served upon the party requesting the hearing by certified mail, return receipt requested. Such notice shall specify the time, date, and place of the hearing and shall contain a statement of the issues to be considered at the hearing. All parties shall be afforded at least ten [10] days notice of the hearing.

D. FAILURE OF PERSON REQUESTING HEARING TO APPEAR

The failure of a person requesting a hearing to appear without first obtaining a continuance shall result in an automatic reinstatement of the commissioner's order.

E. REQUEST FOR CONTINUANCE

The person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the commissioner at least five [5] days prior to the scheduled hearing date. Such request will be granted if good cause is shown. Good cause shall include such reasons as serious illness, medical appointments, court appearances, or religious holidays of either the person requesting the hearing or their attorney.

F. CONTINUANCE ON THE MOTION OF THE COMMISSIONER

The commissioner may postpone or continue a hearing on his or her own motion. The commissioner may also grant a continuance on less than five [5] days notice in the circumstances of unexpected personal emergencies.

G. SUBPOENAS

Any party may request the issuance of subpoenas or subpoenas duces tecum by the commissioner. The authority for the issuance of subpoenas or subpoenas duces tecum is contained in §17A-2-18 of the code. All of the provisions relating to subpoenas and subpoenas duces tecum set forth in paragraph [b] of §29A-5-1 of the code shall be followed.

H. **STAYS**

The filing of a notice requesting a hearing shall operate to automatically stay or suspend execution of any order which is the subject matter of said hearing except for an order suspending a license certificate in accordance with the provisions of §17A-6-18[b] of the code which provides for immediate suspension for failure to maintain the required bond or liability insurance.

I. **DESIGNATION OF HEARING OFFICER**

The commissioner may appoint a hearing examiner to conduct hearings and to recommend findings of fact and conclusions of the law to the commissioner. Such appointee shall have had no contact or involvement with the investigation which resulted in the order that is being contested. Hearing examiners may exercise all the powers listed in §29A-5-1[d] of the code.

J. **REPRESENTATION**

The party who has requested a hearing may represent himself or be represented by an attorney licensed to practice law in the state of West Virginia. The division shall be represented by the office of the attorney general.

K. **RULES OF EVIDENCE**

The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed.

When necessary to ascertain facts not reasonably susceptible to proof under the 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.

The rules of privilege recognized by law shall be followed.

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

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

The division has the burden of sustaining the commissioner's order, and therefore, shall make the initial presentation of evidence. At the conclusion of the division's presentation the party requesting the hearing shall have an opportunity to present evidence. The division shall have the right of rebuttal. All parties have the right to cross-examine witnesses.

L. **CONTINUATION AND ADJOURNMENT**

Hearings may be continued from one day to another or adjourned to a later date or a different place by the hearing examiner by making an announcement at the hearing or by appropriate notice to all parties.

M. **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 other mechanical means.

N. **TRANSCRIPTION OF REPORTED EVIDENCE**

Upon the request to the division by any party to the hearing, all reported materials shall be transcribed and a copy furnished to such party at their expense. The commissioner shall collect a fee of one dollar and fifty cents [$1.50] for each page transcribed.

O. **RESPONSIBILITY FOR TRANSCRIPT**

The division shall have the responsibility for making arrangements for the transcription of reported testimony and evidence. In the event transcription is required, it shall be accomplished with all dispatch. The rules of privilege recognized by law shall be followed.

P. **CORRECTION OF ERROR IN TRANSCRIPT**

Upon the motion of the division or any party assigning error or omission in any part of the transcript, the division through the commissioner or any duly appointed hearing examiner, shall settle all differences arising as to whether such transcript truly disclosed what occurred at the hearing and shall direct that the transcript be corrected and revised in the respect designated so as to make it conform to the whole truth.

Q. **CONTENT**

Every final order entered by the commissioner following a hearing shall be made in accordance with the provisions of §29A-5-3 of the code.