

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

Chapter 01 Hearing Procedures

Authority: Health Occupations Article, §§7-205(1) and 7-318, Annotated Code of Maryland

10.29.01.01

.01 Scope.

This chapter applies to all formal hearings before the Maryland State Board of Morticians and Funeral Directors.

10.29.01.02

.02 Notice of Hearing.

A. All interested parties shall be afforded an opportunity to be present at formal hearings.

B. Written notice of the hearing shall be sent by the Secretary of the Board to all interested parties at least 30 days before the hearing. The notice shall state the date, time and place of the hearing. It shall also state the issues or charges involved in the proceeding. However, if by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issue is necessary, they shall be fully stated as soon as practicable.

10.29.01.03

.03 Parties and Representation.

A. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in formal hearings. Any person or agency may be admitted as a party for limited purposes.

B. All parties appearing at formal hearings shall have the right to appear in proper person or by or with counsel. All parties shall have the right to be accompanied, represented and advised by counsel.

10.29.01.04

.04 Prehearing Procedures.

A. Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

- (1) A list of witnesses to be called;
- (2) Copies of documents intended to be produced at the hearing; or
- (3) Both.

B. Mandatory Discovery.

(1) Each party shall provide to the other party not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

(a) The name and curriculum vitae of any expert witness who will testify at the hearing; and

(b) A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.

(2) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of §B of this regulation, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

(3) The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:

(a) At the prehearing conference, if scheduled; or

(b) Immediately before the scheduled hearing.

(4) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in §B of this regulation.

C. Parties are not entitled to discovery of items other than as listed in §§A and B of this regulation.

D. Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

E. Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list after:

(1) The prehearing conference, if scheduled; or

(2) 15 days before the hearing, if no prehearing conference is scheduled.

F. The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

G. Construction.

(1) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.

(2) In the event of a conflict between this regulation and COMAR 28.02.01, this regulation shall apply.

10.29.01.05

.05 Records and Transcript.

A. The Board shall prepare an official record, which shall include all pleadings, testimony, exhibits and other memoranda or material filed in the proceeding.

B. Unless waived by all parties, a stenographic record of the proceedings shall be made at the expense of the Board. The record need not be transcribed, however, unless requested by a party, or by the Board. The cost of any typewritten transcripts of any proceeding, or part thereof, shall be paid by the party requesting the transcript.

10.29.01.06

.06 Presiding Officer Duties.

Each hearing shall be held before a quorum of the Board. The president, or in his absence a member designated by him, shall be the presiding officer, and shall have complete charge of the hearing, permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time.

10.29.01.07

.07 Order of Procedure.

The order in which the parties shall present their case shall be determined by the presiding officer.

10.29.01.08

.08 Examination of Witness and Introduction of Evidence.

A. The rules of evidence in all hearings under these regulations shall be as set forth in State Government Article, §§10-208 and 10-209, Annotated Code of Maryland.

B. Any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions and motions. However, when a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions and motions shall be done and presented solely by the counsel.

C. The presiding officer, or any person designated by him for the purpose, may examine any witness called by any party. He may call as a witness any person in attendance at the hearing. Any member of the Board may examine any witness called by any party.

10.29.01.09

.09 Briefs.

Any party may submit briefs of the issues of fact and law involved in the hearing. The briefs shall be filed in the form, with the number of copies, and at the time as the presiding officer may designate.

10.29.01.10

.10 Counsel to the Board.

The presiding officer may request the Office of the Attorney General to participate in any hearing as counsel for the Board. Upon that request, the counsel shall have all of the rights with regard to the submission of evidence, examination and cross-examination.

10.29.01.11

.11 Decision and Order.

Every decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record.

10.29.01.12

.12 Rehearings.

A. Any party aggrieved by the decision and order rendered in the particular case may apply for rehearing within 10 days after service on him of the decision and order. Action on the application shall lie in the discretion of the Board.

B. Unless otherwise ordered, neither the rehearing nor the application for rehearing shall stay the enforcement of the order or excuse the persons affected by it for failure to comply with its terms.

C. The Board may, on rehearing, consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

10.29.01.9999

Administrative History

Effective date: May 14, 1968

Preface amended effective December 15, 1986 (13:25 Md. R. 2660)

Regulation .01 recodified to .01-1 and the Preface recodified to Regulation .01, July 1991

Chapter revised effective March 5, 2001 (28:4 Md. R. 418) Regulation .01 amended as an emergency provision effective November 5, 2007 (34:24 Md. R. 2154); amended permanently effective February 25, 2008 (35:4 Md. R. 514)