

**Emergency Administrative Rules for
Remote Hearings for the Board of Medical Practice**

1-0 Authority and Scope

1-1 Pursuant to the authority of 3 V.S.A. § 831(d) and 26 V.S.A. § 1351(e), the Commissioner of Health is issuing these Emergency Administrative Rules for Remote Hearings (“Emergency Rules”) for the Vermont Board of Medical Practice (“Board”). These Emergency Rules require that all hearings be conducted by telephone, video, or other electronic means (“Remote Hearings”), unless the Executive Director of the Board orders otherwise. These Emergency Rules also set forth Rules establishing procedures for conducting Remote Hearings.

1-2 All provisions of the Rules of the Board of Medical Practice (“Rules”) not modified herein continue to apply. In the case where a standard set forth in these Emergency Rules conflicts with a standard set forth in the Board Rules, these Emergency Rules shall govern.

2-0 Pre-Hearing Administration

2-1 Remote Hearings Hearings may be held remotely by telephone, video, or other electronic means for the duration of these Emergency Rules, unless otherwise ordered by the Executive Director of the Board.

2-2 Hearing Notice

2-2.1 In addition to the other information required to be included in a notice of a hearing pursuant to 3 V.S.A. § 809 and 26 V.S.A. § 1372(b)(2) the notice of a remote hearing shall contain instructions and information, including phone numbers and website links and addresses, for participating in the remote hearing by web-based visual and audio communication or by telephone. If the telephone numbers and or website links and addresses for remote participation are not established at the time a notice is issued, the notice may instead state that the hearing will be held by remote means, that the telephone numbers and or website information will be provided to parties no later than seven days prior to the hearing, and that the information will be publicly posted on the Board’s website no less than seven days prior to the hearing.

- 2-2.2 The notice of a remote hearing shall contain contact information for the Docket Clerk or another Board staff member who can be contacted during the hearing if a party encounters any difficulties with remote participation.
- 2-2.3 The notice shall instruct a party how to contact the Docket Clerk if the party is unable to participate in the hearing remotely.
- 2-2.4 A party may request a continuance in accordance with Rule 39.2.2 if the party is unable to participate remotely in the hearing. The Board, hearing panel, or presiding officer shall determine whether to grant the motion for a continuance consistent with Rule 39.2.2.
- 2-2.5 If a party needs a modification or an accommodation to be made to participate in the hearing remotely, the party may file a request. The non-requesting party shall be notified of the request for an accommodation or modification. If a requested accommodation or modification will substantially adversely affect the rights of the non-requesting party, the hearing panel shall determine whether to permit the accommodation or modification. For requested accommodations and modifications that will not adversely affect the rights on the non-requesting party, the Docket Clerk may approve accommodations or modifications after providing notice of the request to the non-requesting party.

2-3 Filings

2-3.1 Pre-Hearing Filings

- 2-3.1.1 Prior to the beginning of a hearing, documents may be filed by sending the filing to the Docket Clerk as an attachment to an email, by regular mail, or by facsimile. Regardless of the method of delivery, documents are only deemed filed upon receipt by the Docket Clerk.
- 2-3.1.2 Unless a different discovery and hearing schedule is issued by a hearing officer, filings submitted prior to a hearing must be received by the Docket Clerk no later than noon on the last business day prior to the scheduled hearing. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be introduced at the hearing in accordance with Emergency Rule 3-2.2.
- 2-3.1.3 Objections to the admissibility of pre-filed exhibits and responses to motions may be made at the scheduled hearing unless a discovery and

hearing schedule issued by a hearing officer requires objections and responses to be filed by an earlier date. Objections to the admissibility of the pre-filed exhibit and responses to motions may also be made in writing by submitting a written objection or response to the Docket Clerk by noon on the last business day prior to the scheduled hearing.

2-3.1.4 Filings submitted prior to a hearing shall be served on the other party on the same day the filing is submitted to the Docket Clerk and using the same method of delivery unless otherwise agreed by the parties.

2-3.1.5 The procedures regarding electronic introduction of filings at a hearing set forth in Emergency Rule 3-2.2 shall then be followed.

2-3.2 Service.

2-3.2.1 Except for filings that are required to be served by certified mail, filings may be served on the other party via email, rather than by regular mail or personal service. Service by regular mail and personal service remain acceptable means of service. The filing shall be served on the other party using the same method of delivery that is used to submit the filing to the Docket Clerk unless otherwise agreed by the parties.

2-3.2.2 Filings that are required by statute or the Rules to be served by certified mail must continue to be served by certified mail.

2-3.3 Form.

2-3.3.1 The subject line of the email containing a filing as an attachment shall indicate the name of the respondent.

2-3.3.2 A signature block containing the submitting party's typed-in name preceded by "/s/," or an electronic facsimile of the submitting party's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.

2-3.3.3 Exhibits submitted for use during a hearing shall be marked for identification by the party submitting the exhibit. The respondent shall

mark exhibits using letters and the State shall mark exhibits using numbers.

2-3.4 Timing.

2-3.4.1 Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.

2-3.4.2 Nothing in these Emergency Rules extends filing deadlines.

3-0 Hearings Before a Hearing Panel

3-1 Hearing Procedures

3-1.1 Prior to Hearing.

3-1.1.1 Prior to the scheduled hearing, the Docket Clerk shall send the parties an email with all the filings in the pending matter attached, including, but not limited to, the specification of charges, the hearing notice, any filings submitted in the case and an agenda for the meeting at which the hearing will be held.

3-1.1.2 By noon on the last business day prior to the scheduled hearing, the parties and the members of the hearing panel shall provide the Docket Clerk with a phone number and email address at which the party can be reached in the event of a malfunction during the remote hearing.

3-1.2 Commencement of Hearing.

3-1.2.1 A party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or through the telephone, at a minimum. Unless otherwise ordered by the hearing officer, the use of video communication shall be required only in extraordinary circumstances.

3-1.2.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

- 3-1.2.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

3-1.3 Hearing Conduct.

- 3-1.3.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5, as modified by Act 92 (2020).
- 3-1.3.2 At the beginning of the hearing, upon request from the hearing officer, each party shall state their full name for the record.
- 3-1.3.3 The parties shall keep the audio connection, through which the party is participating in the hearing, muted while not speaking.
- 3-1.3.4 If a party is not able to hear the hearing officer, hearing panel, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.
- 3-1.3.5 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

3-1.4 Hearing Panel Members.

- 3-1.4.1 When participating in a hearing remotely, hearing panel members shall comply with the requirements of 26 V.S.A. § 1318, and, where applicable, the Rules and these Emergency Rules.
- 3-1.4.2 By noon on the day prior to the scheduled hearing, each hearing panel member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.
- 3-1.4.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the hearing panel members at the email address provided to the Docket Clerk.

- 3-1.4.4 During a scheduled hearing, hearing panel members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

3-2 Record

- 3-2.1 Recording and Transcript. The hearing shall be recorded. Transcripts will be available after the hearing. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Office the estimated cost of producing a copy of the transcript.

3-2.2 Introduction of Documents During Hearing

- 3-2.2.1 All filings to be considered by the hearing panel during a hearing shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Emergency Rule 2-3.2.1, or during the hearing in accordance with the procedures set forth in this subsection 3-2.2. Filings that are not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

3-2.2.2 Exhibits

- 3-2.2.2.1 Exhibits proffered during a hearing that a party wishes to offer to be admitted as evidence shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements set forth in Emergency Rule 2-3.4.

- 3-2.2.2.2 Once the proffered exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and the other, non-filing party.

- 3-2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

- 3-2.2.2.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit.
- 3-2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Rule 39.4 and 3 V.S.A. § 810.
- 3-2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to all members of the hearing panel.
- 3-2.2.2.7 Members of the hearing panel shall not retain any copies, including electronic or physical copies, of the exhibit after the conclusion of the hearing.

3-2.2.3 Motions

- 3-2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.
- 3-2.2.3.2 A written motion shall be signed in accordance with Emergency Rule 2-3.4.2.
- 3-2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the hearing officer and hearing panel members.
- 3-2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.
- 3-2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

3-3 Witnesses

- 3-3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.
- 3-3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses and website addresses. It is the

responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.

- 3-3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

3-4 Deliberative Session

- 3-4.1 The hearing panel shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the hearing panel may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).
- 3-4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the hearing panel members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.
- 3-4.3 After the hearing panel votes to enter into a deliberative session, the hearing panel members shall exit the audio and visual communication system or end the telephone call through which the hearing panel member is participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The hearing panel members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.
- 3-4.4 At the conclusion of the deliberative session, the hearing panel members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume.

- 3-5 Hearing Panel Report** The hearing officer shall prepare a report of the hearing panel's findings of fact and recommendations to the Board in accordance with 26 V.S.A. § 1372(c) and Rule 39.5. The Docket Clerk shall serve the report on the parties by sending

it as an attachment to an email. The Docket Clerk shall send the report to other individuals on request.

4.0 Hearing Before the Board

4-1 Hearing Procedures

4-1.1 **Applicability** This Part of the Emergency Rules applies in full to contested hearings before the Board. With regard to hearings before the Board for the purpose of consideration and approval of a stipulation and consent order, only Part 1 applies.

4-1.2 Prior to Hearing.

4-1.2.1 Prior to the scheduled hearing, the Docket Clerk shall send the parties an email with all the filings in the pending matter attached, including, but not limited to, the specification of charges, the hearing notice, any filings submitted in the case and an agenda for the meeting at which the hearing will be held.

4-1.2.2 By noon on the last business day prior to the scheduled hearing, the parties shall provide the Docket Clerk with a phone number and email address at which the party can be reached in the event of a malfunction during the remote hearing.

4-1.3 Commencement of Hearing.

4-1.3.1 A party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or through the telephone, at a minimum. Unless otherwise ordered by the hearing officer, the use of video communication shall be required only in extraordinary circumstances.

4-1.3.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

4-1.3.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

4-1.4 Hearing Conduct.

4-1.4.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5, as modified by Act 92 (2020).

4-1.4.2 At the beginning of the hearing, upon request from the hearing officer, each party shall state their full name for the record.

4-1.4.3 The parties shall keep the audio connection, through which the party is participating in the hearing, muted while not speaking.

4-1.4.4 If a party is not able to hear the hearing officer, a Board member, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.

4-1.4.5 The hearing officer shall identify the Board members who are eligible and participating in the hearing on the record.

4-1.4.6 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

4-1.5 Board Members Hearing the Case.

4-1.5.1 When participating in a hearing remotely, Board members shall comply with the requirements of 26 V.S.A. § 1318, and, where applicable, the Rules and these Emergency Rules.

4-1.5.2 By noon on the day prior to the scheduled hearing, each Board member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.

- 4-1.5.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the participating Board members at the email address provided to the Docket Clerk.
- 4-1.5.4 During a scheduled hearing, participating Board members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

4-2 Record

4-2.1 Recording and Transcript. The hearing shall be recorded. Transcripts will be available after the hearing. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Office the estimated cost of producing a copy of the transcript.

4-2.2 Introduction of Documents During Hearing

4-2.2.1 All filings to be considered by the Board during a hearing that are not already a part of the record shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Emergency Rule 2-3.2.1, or during the hearing in accordance with the procedures set forth in this subsection 4-2.2. Filings that are not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

4-2.2.2 Exhibits

4-2.2.2.1 Exhibits submitted during a hearing shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements set forth in Emergency Rule 2-3.4.

4-2.2.2.2 Once the exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and the other, non-filing party.

4-2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-

filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

4-2.2.2.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit.

4-2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Rule 39.4 and 3 V.S.A. § 810.

4-2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to members of the Board who are hearing the case.

4-2.2.2.7 Members shall not retain any copies, including electronic or physical copies, of the exhibits after the conclusion of the hearing.

4-2.2.3 Motions

4-2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.

4-2.2.3.2 A written motion shall be signed in accordance with Emergency Rule 2-3.4.2.

4-2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the Board members hearing the case.

4-2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.

4-2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

4-3 Witnesses

4-3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.

- 4-3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.
- 4-3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

4-4 Deliberative Session

- 4-4.1 The participating Board members shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the participating Board members may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).
- 4-4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the participating Board members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.
- 4-4.3 After the participating Board members vote to enter into a deliberative session, the members shall exit the audio and visual communication system or end the telephone call through which members are participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The participating Board members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.
- 4-4.4 At the conclusion of the deliberative session, the participating Board members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume.

4-5 Board Decision The Board shall issue a written decision of its findings and conclusions in accordance with 26 V.S.A. § 1374. The Board may have the assistance of the hearing officer in preparing its written decision. 26 V.S.A. § 1353(2).

4-6 Appeals

4-6.1 A party may appeal a decision of the Board in accordance with 26 V.S.A. 1367 and Rule 40.3.

4-6.2 Parties may submit written notices and filings to the Docket Clerk, and other parties by email, mail or facsimile.