

Printed Name and Title:

Michael K. Smith
Secretary
Agency of Human Services

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

Vermont Department of Health

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: David Englander

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED):*

<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Brendan Atwood

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

26 V.S.A. § 1351(e), 3 V.S.A. § 801(b)(11), and 3 V.S.A. § 831(d).

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

26 V.S.A. § 1351(E) states: "THE COMMISSIONER OF HEALTH SHALL ADOPT, AMEND, AND REPEAL RULES OF THE BOARD THAT THE COMMISSIONER DETERMINES NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CHAPTER AND CHAPTERS 7, 29, 31, AND 52 OF THIS TITLE."

8. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed rule establishes the process for the Board to conduct virtual hearings.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Due to the Covid-19 pandemic, the Board has needed to hold virtual hearings rather than in-person hearings. This rule establishes the process and conduct for such hearings. The Department has incorporated these provisions into the Board of Medical Practice Rule and expects to complete formal rulemaking in the coming weeks. However, this e-rule is needed to ensure there is no disruption to virtual hearings that will commence prior to, but may conclude after, the expiration of the current e-rule. Importantly, some of the individuals involved with the hearings are still responding to the Covid pandemic in their work on a daily basis and the convenience and risk mitigation associated with remote hearings remain important for them personally and for the larger State response.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13(A):

Without this rulemaking, the Board and the parties

involved in Board hearings will lack guidance on the procedures for virtual hearings.

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Physicians, physician assistants, physician employ and Vermonters seeking medical care.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

There is some cost savings associated with affected parties not having to travel for hearings or deliberations.

13. A HEARING IS NOT SCHEDULED.

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. EMERGENCY RULE EFFECTIVE: 01/15/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):
07/14/2022

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Board of Medical Practice
Virtual Hearing
Physicians
Doctors

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

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

2. **ADOPTING AGENCY:**

Vermont Department of Health

3. **TYPE OF FILING** (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. **LAST ADOPTED** (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

Vermont Department of Health

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Physicians, physician assistants, physician employers, and Vermonters seeking medical care: There will be a cost savings associated with their being no need to travel for hearings and deliberations.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

None.

5. *ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Without this rulemaking, the Board of Medical Practice will not be able to hold virtual hearings, which are currently a critical means for conducting the Board's responsibilities.

6. *IMPACT ON SMALL BUSINESSES:*

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

None.

7. *SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

None.

8. *COMPARISON:*

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Not applicable.

9. *SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

There will be no measurable economic impact.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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2. ADOPTING AGENCY:

Vermont Department of Health

3. **GREENHOUSE GAS:** *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
None .

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
None .

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
None .

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
None .

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
None.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
Not applicable.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
There is no data. There is a logical inference that no travel will result in less cost to participants.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

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

2. **ADOPTING AGENCY:**

Vermont Department of Health

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

The Board has incorporated these provisions into the Board of Medical Practice Rule through the regular rulemaking process, and has held a public hearing and public comment period for that rulemaking.

4. **BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

The Board of Medical Practice.

**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.