

## BOARD PROTOCOLS DURING COVID-19 EMERGENCY

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*The following are the Board's current protocols and are subject to adjustment as circumstances may warrant.*

### A. Scheduling Hearings

1. The Board will consider holding hearings in person, by videoconference, or by telephone conference. It may be possible to mix these methods in a particular case.
2. The presiding judge will schedule a conference call among the parties before scheduling a hearing to discuss hearing options.
3. The judge will hold a prehearing conference approximately one to two weeks before the hearing to work out hearing logistics. The Secretary to the Board, Christine Walker, will participate in the prehearing conferences. If the hearing is to be by videoconference, the prehearing conference should also be by videoconferencing.
4. The judge will attempt to accommodate the parties' preferences. The parties will be required to acknowledge their consent on the hearing record to proceeding in the manner selected, or if the matter proceeds in a certain way over objection, to state the objection on the record.
5. Under normal circumstances, Board hearings are open to the public. The Board will make efforts if possible to provide a means for the public to access a livestream of proceedings online to the extent it does not interfere with conducting the hearing.

### B. In-Person Hearings

1. There is no Board policy against holding traditional, in-person hearings.
2. However, live hearings may be severely limited because they can only be held if it is possible to do so in full compliance with the Governor's orders, CDC and Department of Health guidelines, and any and all other applicable governmental rules and regulations.
3. Without limiting the foregoing, the judge may need to restrict the number of persons allowed in the hearing room.

### C. Videoconference Hearings

1. Videoconference hearings are preferred over telephone conference hearings.

2. Videoconference hearings will be held using a Commonwealth-approved application.
3. Christine Walker will schedule all videoconference hearings and participate during the entire hearing. She will be in charge of managing technology issues throughout the hearing. All counsel will be able to consult with Christine during the proceeding as technological issues arise.
4. Christine will prepare standard instructions to be distributed to counsel in advance of the hearing on how to use the application.
5. The Board may provide additional public notice of hearings, such as notice on its website or on social media.
6. At the beginning of the hearing, the judge will read a standard admonishment into the record. (Exhibit A.) The judge will conduct a colloquy to obtain the parties' consent to proceeding by videoconference, or if there is an objection, having the objecting party state its objection on the record.
7. The judge will also provide an instruction to each witness before they begin testifying and ask that the witness confirm their understanding of the expectations of them during a videoconference hearing. (Exhibit B.)
8. Although all parties and the Board may have initially agreed that a videoconference hearing could be held, it should be recognized and acknowledged that it may prove to be too difficult, in which case proceedings may need to be postponed.
9. The judge will encourage more than usual stipulations and joint exhibits (distributed in advance) and prohibit more than usual surprise witnesses and exhibits.

D. Telephone Conference Hearings

1. Telephone conference hearings will only be held as a last resort.
2. Items 5, 6, 7, 8, and 9 above related to videoconference hearings also apply to telephone conference hearings.

## EXHIBIT A: ATTORNEY ADMONITION – CONDUCTING A REMOTE HEARING

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### Hearing over WebEx:

Judge:

Due to the extraordinary circumstances caused by the global spread of COVID-19, we have opted to conduct our hearing remotely over WebEx. Additionally, we will provide a livestream of this proceeding online to the extent it does not interfere with conducting the hearing. Our goal is to have this remote hearing function as much as a traditional hearing as possible. As such, only counsel of record, clients, testifying experts, and testifying witnesses will be permitted in the WebEx hearing. The livestream, if feasible, will be available to the general public who, under normal circumstances, would be able to attend in person.

All of the rules that traditionally apply to our hearings under ordinary circumstances remain in effect. No individual, either in the WebEx meeting or watching a livestream, is authorized to record the proceeding. A court reporter is in attendance and will be transcribing today's hearing. This transcription is the official record of this proceeding. Sequestered witnesses are prohibited from watching a livestream of the proceedings prior to their entrance into, and after their exit from, this WebEx proceeding. Attorneys are allowed to communicate with their clients and witnesses to the extent they normally would but are prohibited from additional communication made possible by the remote format. This means attorneys may not contact witnesses off the record while they are testifying, via text, email, WebEx chat, or otherwise. Witnesses are expected to be alone in their remote location while providing testimony and, if any adult is present with the witness at this time, that person's identity shall be stated for the record. Recognizing that, traditionally, attorneys would be able to speak to or "slip notes" to clients during a hearing, attorneys are permitted to use WebEx's private chat feature, in addition to any other means of communication, to communicate with their client.

The remote format presents a few logistical issues not present in a traditional hearing and the following procedures for today's hearing are designed to ensure an orderly operation. Parties who are not speaking shall mute their microphones, and may have their microphones muted by a Hearing Board staff member to help improve the quality of the audio. While counsel will not be muted by Board staff, they will try as best they can to speak one at a time and to wait for someone to finish speaking before lodging an objection.

Department, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

Appellant, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

**[if 3<sup>rd</sup> party appeal]** Permittee, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

Thank you for your understanding and cooperation, let us proceed...

### **Hearing over Telephone:**

Judge:

Due to the extraordinary circumstances caused by the global spread of COVID-19, we have opted to conduct our hearing remotely over telephone. Our goal is to have this remote hearing function as much as a traditional hearing as possible. As such, only counsel of record, clients, testifying experts, and testifying witnesses will be on the telephone conference line.

All of the rules that traditionally apply to our hearings under ordinary circumstances remain in effect. No individual is authorized to record the proceeding. A court reporter is in attendance and will be transcribing today's hearing. This transcription is the official and solely permitted record of this proceeding. Sequestered witnesses are prohibited from entering the conference line prior to being called in to testify. Attorneys are allowed to communicate with their clients and witnesses to the extent they normally would but are prohibited from additional communication made possible by the remote format. This means attorneys may not contact witnesses off the record while they are testifying, via text, email, or otherwise. Witnesses are expected to be alone in their remote location while providing testimony and, if any adult is present with the witness at this time, that person's identity shall be stated for the record.

The remote format presents a few logistical issues not present in a traditional hearing and the following procedures for today's hearing are designed to ensure an orderly operation. Parties who are not speaking shall mute their microphones, and may have their microphones muted by a Hearing Board staff member to help improve the quality of the audio. While counsel will not be muted by Board staff, they will try as best they can to speak one at a time and to wait for someone to finish speaking before lodging an objection.

Department, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

Appellant, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

**[if 3<sup>rd</sup> party appeal]** Permittee, do you have any objection to the admonition presented today? Do you agree that the Board's remote format provides you with sufficient means to adequately litigate the appeal before us?

Thank you for your understanding and cooperation, let us proceed...

**EXHIBIT B: WITNESS INSTRUCTION FOR A REMOTE HEARING**

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Judge:

Good Morning/Afternoon Mr./Ms. \_\_\_\_\_,

Before you testify today, I would like to make sure you are aware that, despite the remote format of this hearing, witnesses are still prohibited from communicating off the record while testifying. When counsel asks you a question, you are expected to answer the question without assistance from an attorney or any other individual. This means you are prohibited from communicating with anyone, through any means, prior to answering a question posed to you by an attorney.

Do you understand your obligations as a witness in today's proceeding? Do you have any questions for me before we begin?