

Title 30: Professions and Occupations

Part 3002: Mississippi Board of Pharmacy Administrative Rules

Part 3002 Chapter 1: Oral Proceedings On Proposed Regulations

Rule 1.1 Application of Chapter.

This chapter applies to all oral proceedings held for the purpose of providing the public an opportunity to make oral presentations or written input on proposed new rules or regulations, amendments to rules or regulations and proposed repeal of existing rules or regulations before the Board pursuant to the Administrative Procedures Act.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 1.2 When Oral Proceedings will be Scheduled on Proposed Regulations.

The Board will conduct an oral proceeding on a proposed regulation or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed regulation.

- A. Each request must be submitted on 8-1/2" x 11" white paper or electronically in a standard letter format, i.e., MS Word, PDF, WordPerfect or other similar format and must be typewritten or printed in legible handwriting.
- B. The request may be in the form of a letter addressed to the Board.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann.* §§ 25-43-2.104, 25-43-3.104

Rule 1.3 Notification of Oral Proceeding.

The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

Source: *Miss. Code Ann.* §§ 25-43-2.104, 25-43-3.104

Rule 1.4 Presiding Officer.

The Board President or his designee, who is familiar with the substance of the proposed regulation, shall preside at the oral proceeding on a proposed regulation.

Source: *Miss. Code Ann.* § 25-43-2.104

Rule 1.5 Public Presentations and Participation.

- A. At an oral proceeding on a proposed regulation, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed regulation.
- B. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least

one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.

- C. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- D. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- E. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- F. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

Source: *Miss. Code Ann.* § 25-43-2.104

Rule 1.6 Conduct of Oral Proceeding.

- A. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall:
 - 1. call proceeding to order;
 - 2. give a brief synopsis of the proposed regulation, a statement of the statutory authority for the proposed regulation, and the reasons provided by the Board for the proposed regulation;
 - 3. call on those individuals who have contacted the Board about speaking on or against the proposed regulation;
 - 4. allow for rebuttal statements following all participant's comments;
 - 5. adjourn the proceeding.
- B. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that regulation-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- C. Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.
- D. The Board may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann.* § 25-43-2.104

Part 3002 Chapter 2: Declaratory Opinions

Rule 2.1 Application of Chapter.

This chapter sets forth the Board's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Board's procedures regarding the disposition of requests as required by Mississippi Code § 25- 43-2.103.

Source: *Miss. Code Ann.* § 25-43-2.104

Rule 2.2 Scope of Declaratory Opinions.

The Board will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Board;
- B. a rule or regulation promulgated by the Board, or
- C. an order issued by the Board.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 2.3 Scope of Declaratory Opinion Request.

A declaratory opinion request must be limited to a single transaction, occurrence or issue.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 2.4 Persons Who May Request Declaratory Opinions.

Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board. “Substantial interest in the subject matter” means: an individual, business, group or other entity that is directly affected by the Board’s administration of the laws within its primary jurisdiction. “Primary jurisdiction of the Board” means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Rule 2.5 How to Submit Requests for Declaratory Opinions.

When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the person must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2” x 11” white paper or electronically in a standard letter format, i.e., MS Word, PDF, WordPerfect or other similar format.
- B. The request may be in the form of a letter addressed to the Board or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- E. Each request must clearly state that it is a request for a declaratory opinion.
- F. All requests must be mailed, emailed, delivered or transmitted via facsimile to the Board. No oral or telephone requests will be accepted for official declaratory opinions.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 2.6 Signature Attestation.

Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 2.7 Content of Request.

Each request must contain the following:

- A. A clear identification of the statute, rule, or order at issue;
- B. The question for the declaratory opinion;
- C. A clear and concise statement of all facts relevant to the question presented;
- D. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number;
- E. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request;
- F. A suggested proposed opinion, stating the answers desired by requestor and a summary of the reasons in support of those answers;

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Rule 2.8 Reasons for Refusal to Issue a Declaratory Opinion Upon a Request.

The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- A. The matter is outside the primary jurisdiction of the Board;
- B. Lack of clarity concerning the question presented;
- C. There is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- D. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- E. The facts presented in the request are not sufficient to answer the question presented;
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- G. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;
- J. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- N. The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- O. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or
- P. The question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency and there is a statutory or regulatory application process by which eligibility

for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Rule 2.9 Agency Response.

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

- A. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
- B. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or
- C. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by the Board.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Rule 2.10 Availability of Declaratory Opinions and Requests for Opinions.

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by requestor's name, subject and date of issuance. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Rule 2.11 Notice by Board to third parties.

The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

Source: *Miss. Code Ann.* § 25-43-2.104.

Rule 2.12 Effect of a Declaratory Opinion.

The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.104.

Part 3002 Chapter 3: Public Records

Rule 3.1 Public Record Requests Procedures.

This rule establishes procedures and fees associated with all public requests for copies and/or inspection of public documents.

A. Submission of Requests.

1. All requests for information should be submitted to the Mississippi Board of Pharmacy either in writing or via email.
2. No verbal or telephone requests can be accepted.
3. The request should specifically outline the records that are being requested.

B. Timetable for processing.

All document requests will be approved or denied within seven (7) business days after the request is received. In the event of a denial for all or part of the request, the Board will provide an explanation of the denial to the requestor in writing. If the requested information is unable to be produced by the seventh day after the request is made, the Board will provide a written explanation regarding why the document cannot be produced during that timeframe. Unless there is a mutual agreement of the parties, in no case shall the production of the requested records, after timely payment and unless otherwise exempt, be any later than fourteen (14) working days from the receipt of the request.

C. Exempt Documents.

Some documents are exempt from publication such as personnel records, attorney communications and work products of attorneys.

D. Third Party Information.

Records furnished to the Board by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until the third party has been advised that the documents will be released. Further, no third-party information will be released if a third party obtains a court order prohibiting the same. The requestor will be notified of any court orders that prohibit the release of the requested information.

E. Assessment of costs to the Requestor.

Payment for information requested must be made in advance of receipt of documents and must be sufficient to cover the actual costs for the Board to furnish the information. Such costs include, but are not limited to, staff time: to evaluate the request, to retrieve any relevant files, to organize the information, to notify any Third Parties, to develop a cost estimate and schedule, to reproduce the material, and to deliver the information requested.

1. No cash, credit or debit cards, or personal checks can be accepted. Money orders, certified checks, or corporate checks are accepted.
2. An estimated cost will be provided to the requestor based on the volume of information, the format in which the information is stored and requested, and whether or not third-party information has been requested. The requestor may submit payment for processing of the request, amend the request or withdraw the request. The requestor should submit written notice of his/her intent to either proceed or withdraw the request.
3. If no response is given by the requestor within thirty (30) days of the estimated cost notification being sent, the Board will proceed no further with the request. If at a later date, the requestor decides to proceed with the request, he/she should submit a new request.
4. Timely payment under paragraph B. means payment received by the next business day after the estimated cost notification is provided to the requestor. By delaying the payment of the estimated fee past the next business day, the requestor acknowledges there may be a delay in the delivery of the requested documents. No request will be processed until payment is received.
5. The decision to charge for public records is at the discretion of the Board.

F. Requests for Document Inspections.

The requestor will be billed for the total amount of time expended by employees of the Board assisting with the inspection of documents. Additional fees incident to document production may be assessed.

G. Public Information via the Internet.

Some information pertaining to the Mississippi Board of Pharmacy is available free of charge on the internet at www.mbp.state.ms.us.

Source: *Miss. Code Ann.* §§ 25-61-1 et seq., 73-21-81

Rule 3.2 Licensure Applications Exempt from Public Access.

All applications for licensure in the possession of the Board are exempt from the provisions of the Mississippi Public Records Act of 1983 pursuant to Mississippi Code Annotated Section 73-52-1.

Source: *Miss. Code Ann.* § 73-52-1.

Part 3002 Chapter 4: Background Checks

Rule 4.1 Background Check Procedures.

The Board shall conduct background checks on any individual who applies for a license, registration or permit as required by law. Background checks shall include, but not be limited to, a criminal history records check requiring the applicant to be fingerprinted.

Source: *Miss. Code Ann.* §§ 73-21-81, 73-21-85, 73-21-111, 73-21-126.

Rule 4.2 Petition for Determination.

An individual may petition the Board for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license, registration or permit. The determination petition shall be filed on a form supplied by the Board and accompanied by a fee of Twenty-Five Dollars (\$25.00).

Source: *Miss. Code Ann.* § 73-77-9.

Rule 4.3 Determination Factors.

The following factors shall be used to determine if an applicant with a disqualifying criminal conviction will be denied a license:

- A. The nature and seriousness of the crime for which the individual was convicted;
- B. The passage of time since the commission of the crime;
- C. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation; and
- D. Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against a direct relation.

Source: *Miss. Code Ann.* § 73-77-7.

Rule 4.4 Disqualifying Determination Notification

If the Board denies an individual a license, registration or permit solely or in part because of the individual's prior conviction of a crime, the Board shall notify the individual in writing of the following:

- A. The grounds and reasons for the denial or disqualification;

- B. That the individual has the right to a hearing to challenge the Board's decision;
- C. The earliest date the person may reapply for a license, registration or permit; and
- D. That the evidence of rehabilitation may be considered upon reapplication.

Source: *Miss. Code Ann.* § 73-77-9.

Rule 4.5 Disqualifying Crimes

An individual may be denied a license, registration or permit based on a conviction, guilty plea and/or a plea of nolo contendere to a felony, which includes, but is not limited to, any of the following:

- A. Any controlled substance violation;
- B. Embezzlement
- C. Shoplifting
- D. Theft
- E. Forgery
- F. Burglary
- G. Identity theft

In addition, the accumulation of multiple convictions, including misdemeanor convictions, and pending unresolved charges may be used to determine if an individual shall be denied a license, registration or permit.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 4.6 Mitigating Factors

Notwithstanding Rule 4.5, any criminal conviction, other than a criminal conviction involving controlled substances, beyond ten (10) years prior to the application shall not disqualify an individual unless extenuating circumstances exist. Those extenuating circumstances shall be enumerated in the disqualifying determination notification. Other mitigating factors to be considered in determining whether the individual's criminal record will disqualify the individual from obtaining a license, registration or permit may include, but need not be limited to:

- A. age at which the crime was committed;
- B. circumstances surrounding the crime;
- C. length of time since the conviction and criminal history since the conviction;
- D. work history;
- E. current employment and character references; and
- F. other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the public.

Source: *Miss. Code Ann.* § 73-21-81.

Part 3002 Chapter 5: Disciplinary Actions

Rule 5.1 Grounds for Disciplinary Actions.

- A. The Board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license, registration or permit of any person upon one or more of the provisions listed in Mississippi Code Annotated Section 73-21-97.
- B. Unprofessional conduct. Unprofessional conduct shall include, but not be limited to:
 - 1. The publication or circulation of false, misleading, or otherwise deceptive statements

- concerning the practice of pharmacy;
- 2. Attempting to circumvent the patient counseling requirements, or discouraging the patient from receiving patient counseling concerning their prescription drug orders;
- 3. The illegal use or disclosure of Protected Health Information (PHI) or other confidential patient information; failure to maintain adequate records, systems, and security to protect against the illegal use or disclosure of PHI or other confidential patient information; or failure to maintain adequate records to account for disclosures of PHI;
- 4. Dispensing, selling, bartering, receiving or maintaining drugs or devices which are known or should have been known to have been stolen or diverted from the purpose for which they were distributed by a legitimate source;
- 5. Engaging in conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from the standards of care ordinarily exercised by a pharmacist, with proof of actual injury not having to be established;
- 6. Selling a drug for which a prescription drug order from a practitioner is required, without having received a valid prescription drug order for the drug;
- 7. Failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with the Federal laws and regulations and State laws, rules and regulations;
- 8. Failure to report fraudulent prescription activity to the Board or other appropriate authorities;
- 9. Obtaining any remuneration by fraud, misrepresentation, or deception, including, but not limited to, receiving remuneration for amending or modifying, or attempting to amend or modify, a patient's pharmacist care services, absent a clear benefit to the patient;
- 10. Filing a claim or assisting in the filing of a claim for reimbursement for drugs or professional services which were not provided, or which were not authorized to be provided;
- 11. Condoning or assisting in the dispensing, promotion, or distribution of drugs which do not meet the standards required by law, or which the pharmacist knows, or should know, are not obtained for legitimate medical need;
- 12. Destruction or alteration of any records such as prescriptions, profiles, purchase invoices, third-party vouchers, and receipts required to be kept;
- 13. Selling or bartering a prescription drug sample;
- 14. Practicing in a location which is not properly permitted or registered by the Mississippi Board of Pharmacy;
- C. Physical or mental incapacity of a nature that prevents a pharmacist, a pharmacy intern/extern, or a pharmacy technician from engaging in the practice of pharmacy or assisting in the practice of pharmacy with reasonable skill, confidence and safety to the public;
- D. Violation of pharmacy or drug laws of any other state or the federal government or the rules/regulations pertaining thereto;
- E. Violation of any of the provisions of the Mississippi Uniform Controlled Substances Law;
- F. Failing to report to the Board within thirty (30) days any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court that would constitute grounds for action;
- G. Failure to immediately report directly to the Board, losses or suspected losses of controlled substances or prescription drugs;
- H. Knowing or suspecting that a Pharmacist or Pharmacy Intern is incapable of engaging in the Practice of Pharmacy or that a Pharmacy Technician is incapable of assisting in the practice of pharmacy, with safety to the public, due to diversion or abuse of controlled substances or prescription drugs and failing to report such relevant information to the Board;

- I. Theft or embezzlement of prescription drugs, controlled substances, medical devices, funds or anything of value;
- J. Termination of employees suspected of theft of pharmaceuticals, merchandise or anything of value without contacting the Board prior to termination;
- K. Addiction to or dependence on alcohol, controlled substances or other habit-forming legend drugs or the unauthorized use, possession or theft of controlled substances or other habit-forming legend drugs;
- L. Failure of a pharmacist licensed by the Mississippi Board of Pharmacy to register as a user of the Prescription Monitoring Program (PMP);
- M. The unlawful disclosure of information from the PMP or using information obtained from the PMP for unlawful or unethical purposes;
- N. Receiving, dispensing, selling, bartering or maintaining a prescription drug sample unless the pharmacy is owned by a charitable organization and is not operated for profit and has prior approval in writing by the Board. Institutional pharmacies may receive, dispense and maintain prescription drug samples that are provided by a practitioner and intended solely for administration to his/her patients confined to the institution provided no charge is made to the patient by the institution for the sample;
- O. No pharmacist shall have possession of a prescription drug sample unless such sample is for treatment of a diagnosed personal medical condition;
- P. Jeopardizing, compromising, interfering or failing to cooperate with any investigation conducted by the Board or any state or federal regulatory or law enforcement agency;
- Q. Failure to furnish the Board, its agents or representatives any information requested by the Board, or retaliation for providing information to the Board;
- R. Destruction, removal or tampering with any prescription drug, controlled substance, or medical device placed under seal, embargoed, or quarantined by the Board or any representative of the Board;
- S. Any act by any person which subverts the authority of the pharmacist-in-charge by impeding the management of the prescription department or the practice of pharmacy in the compliance with federal and state drug or pharmacy laws and regulations;
- T. Retaliation against a pharmacist for practicing or attempting to practice pharmacy in compliance with federal and state drug or pharmacy laws and regulations;
- U. Retaliation against pharmacy employees for providing information to the Board;
- V. Hindering, interfering with, or restricting the reporting of suspected unlawful activity to the appropriate authorities;
- W. Failure to produce evidence of continuing education credits as required by regulation;
- X. Failure by any representative of a permitted facility to acknowledge completion of an inspection by placement of a signature on the inspection form;
- Y. Failure to comply with a subpoena issued by the Board.

Source: *Miss. Code Ann.* §§ 73-21-81, 73-21-97

Part 3002 Chapter 6: Disciplinary Proceedings

Rule 6.1 Disciplinary Resolutions.

All disciplinary proceedings initiated by the Board shall be brought to a final resolution through one of the following means:

- A. Formal Disciplinary hearing before the Board;
- B. Acceptance by the Board of a mutually agreeable Settlement Order in lieu of a hearing;

- C. Issuance of an Administrative Citation by the Investigations Review Committee (IRC) and payment of a fine by the Respondent in lieu of a hearing; or
- D. Dismissal of the case.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.2 Issuance of Subpoenas.

The Board, acting by and through its executive director, is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at a hearing. Process issued by the Board shall extend to all parts of the state and shall be served by any person designated by the Board for such service. Where any witness fails or refuses to attend upon a subpoena issued by the Board, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

- A. All requests for subpoenas shall be submitted at least fifteen (15) days prior to the scheduled hearing.
- B. The request must contain the identity and address of the individual to be subpoenaed.
- C. If the subpoena is for records or documents, the request must include the identity and address of the custodian of such records, along with a concise description of the records to be subpoenaed.
- D. The Board will serve all subpoenas by registered mail, return receipt requested or by hand delivery.
- E. The Board shall charge a reasonable fee for each subpoena, not to exceed thirty-five dollars (\$35.00), for preparation and service of each subpoena.

Source: *Miss. Code Ann.* §§ 73-21-99, 73-21-81.

Rule 6.3 Prehearing Motions.

All prehearing motions must be filed with the Board at least fifteen (15) days prior to the scheduled hearing. The Board President or Executive Director shall have the authority to rule on motions that are filed pursuant to this Rule. The Respondent and the Board counsel will be notified of the ruling on the motion promptly. The ruling of the Board President or Executive Director will be entered into the record at the scheduled hearing date. Motions for continuances shall be handled pursuant to Rule 6.4.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.4 Hearing Continuances.

A motion for continuance must be filed with the Board at least fifteen (15) days prior to the scheduled hearing, or upon a showing of good cause, at any time prior to the hearing. A scheduling conflict on behalf of the Respondent or Respondent's counsel shall be considered good cause, and will be liberally granted, if written proof of the scheduling conflict is submitted to the Board at least fifteen (15) days prior to the scheduled hearing. A second continuance based on scheduling conflicts shall not be granted by the Board. Failure to retain counsel in a timely manner on the part of the Respondent shall not be considered good cause. The Board President or Executive Director shall have the authority to rule on motions for continuance that are filed pursuant to this Rule. The Respondent and the Board counsel will be notified of the ruling on the motion promptly. The ruling of the Board President or Executive

Director will be entered into the record at the scheduled hearing date and the rescheduled hearing date will be set if the motion for continuance is granted.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.5 Hearing Procedures.

- A. All hearings shall be conducted by the Board, which shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings.
- B. The hearing shall be held at the time and place as specified in the Notice of Hearing and Complaint unless continued for good cause.
- C. All hearings are open to the public, subject to the Board entering executive session, which shall be closed to the public.
- D. The Board President, Vice-President or senior member of the Board will preside over the hearing.
- E. The Board may be assisted by a hearing officer who shall advise the Board on matters of law and procedure and rule on all objections and motions. The hearing officer's rulings on matters of law and procedure are advisory.
- F. Any Board members that participated in the IRC for the matter before the Board will recuse themselves and not participate in the hearing.
- G. All hearings shall be recorded and the Board, or court reporter, shall administer oaths as may be necessary for the proper conduct of the hearing.
- H. The Respondent may retain legal counsel or may represent themselves.
- I. Upon direction from the Presiding Officer, the Board counsel shall present evidence and call witnesses to support the charges filed in the Notice of Hearing and Complaint.
- J. The Respondent or Respondent's counsel may present evidence or call witnesses to answer the charges filed in the Notice of Hearing and Complaint.
- K. The Board shall not hear evidence nor make findings on any violations that were not part of the Notice of Hearing and Complaint.
- L. All witnesses at the hearing shall be subject to direct examination, cross examination and questions by the Board. Re-direct and re-cross examinations shall be at the discretion of the Board.
- M. The Board should adjudicate each charge and make findings of fact on each charge as presented in the Notice of Hearing and Complaint. Any determination by the Board shall be based upon sufficient evidence to sustain it.
- N. The Board shall, within thirty (30) days after the conclusion of the hearing, reduce its decision to writing and forward an attested true copy to the last-known residence or business address of the licensee or permit holder by way of United States first-class, certified mail, postage prepaid. Notice of the Order of the Board occurs on the date the Order of the Board is mailed via certified mail to, or personally served upon, the Respondent.

Source: *Miss. Code Ann.* §§ 73-21-99; 73-21-81.

Rule 6.6 Settlement Negotiations and Agreed Settlement Orders.

When the Respondent has been duly served with a Notice of Hearing and Complaint, the Respondent and/or Respondent's counsel may request Settlement negotiations for the purpose of possible resolution

of the matter or for purpose of simplifying the issues for hearing or promoting stipulations as to the facts and proposed evidentiary offerings which will not be disputed at hearing.

- A. The Respondent and/or his counsel and Board Counsel shall participate in the settlement negotiations. Board members who served on the Investigations Review Committee (IRC) for the matter and compliance agents who investigated the matter shall be consulted during the settlement negotiations. Other Board members may not participate nor have knowledge or input into any of the settlement negotiations.
- B. Informal Discovery or exchange of information may be accomplished during the settlement negotiations.
- C. Any action which the Board may take following a full disciplinary hearing may be taken by Agreed Settlement Order.
- D. Any proposed Agreed Settlement Order must be approved by both Board members who served on the Investigations Review Committee (IRC) for the matter. The proposed Agreed Settlement Order shall be presented to the Board at the scheduled Hearing date and time. The terms of the Agreed Settlement Order are not effective until approved by the Board.
- E. The Respondent has the obligation to personally appear before the Board on the scheduled hearing date to answer any questions which the Board may have prior to approving the proposed Agreed Settlement Order.
- F. Failure of the Board to approve the proposed Agreed Settlement Order shall result in a formal disciplinary hearing before the Board on a rescheduled hearing date.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.7 Administrative Citations.

The IRC may include an Administrative Citation with the Notice of Hearing and Complaint. In lieu of a formal disciplinary hearing, the Respondent has the option to settle the matter through the payment of a fine and compliance with imposed conditions. If the Respondent does not accept the fine and conditions or respond to the Administrative Citation instructions within the time specified in the Notice, the matter shall proceed to a formal disciplinary hearing before the Board.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.8 Additional Conditions for Administrative Citations.

In addition to any fine imposed, an Administrative Citation may include corrective action or additional conditions imposed by the IRC through a Memorandum of Agreement (MOA) that must be acknowledged and agreed to by the Respondent. Failure to take corrective action or comply with the terms of an MOA shall be cause to bring the original charges for a hearing before the full Board.

Source: *Miss. Code Ann.* § 73-21-81.

Rule 6.9 Petition for Relief

Any person whose license, registration and/or permit has been denied, suspended, revoked or restricted, whether voluntarily or by action of the Board, shall have the right to petition the Board at reasonable intervals for relief from such action. The Board shall not consider a petition for relief from such action unless an interval of at least one (1) year has passed since the imposition of the penalty or the last Board review. Notice of a Petition Order of the Board occurs on the date the Order of the Board is mailed via certified mail to, or personally served upon, the Petitioner. The Board will not entertain a petition for relief if the matter is under appeal.

Source: *Miss. Code Ann.* § 73-21-103.

Part 3002 Chapter 7: Penalties

Rule 7.1 Uniform Penalty Policy

Any penalty imposed by Board pursuant to a violation of any statute, rule or regulation within the jurisdiction of the Board shall be not less than the minimum nor more than the maximum penalty allowed by Mississippi Code Annotated Sections 73-21-103, 73-21-161, 73-21-191 or any other statute that allows the Board to impose a penalty.

Source: *Miss. Code Ann.* §§ 73-21-81; 73-21-103; 73-21-163; 73-21-191.