

ARTICLE XLII ADMINISTRATIVE PROCEDURE RULES

1. SCOPE

The following Rules of Procedure as contained in this ARTICLE shall apply to all pharmacists licensed by the Mississippi Board of Pharmacy and all other persons under the jurisdiction of said Board. The purpose of this ARTICLE is to implement and enforce the standards of pharmacy and pharmacy practice and conduct of all other persons under the jurisdiction of the Mississippi Board of Pharmacy as provided for in all state & federal drug laws, the Mississippi Pharmacy Practice Act and the Pharmacy Practice Regulations of the Mississippi Board of Pharmacy.

2. DEFINITIONS

For purposes of this ARTICLE the following definitions shall apply:

- A. The word "Board" shall mean the Mississippi Board of Pharmacy.
- B. The term "Investigative Staff" shall mean duly sworn Mississippi Board of Pharmacy Compliance Agents.
- C. The term "Investigations Review Committee" shall mean a committee composed of two (2) members as designated by the Board to serve on a rotating, no longer than three-consecutive-month basis along with the Board's Executive Director and counsel for the Board.
- D. The word "Respondent" shall mean a pharmacist or other person against whom a disciplinary action and proceeding has been initiated by the Mississippi Board of Pharmacy.
- E. Masculine terms, when used in the following Rules of Procedure, shall also be deemed to include the feminine.
- F. The term "Mississippi Pharmacy Practice Act" shall mean Sections 73-21-71, et. seq. of the Mississippi Code of 1972, Annotated.

3. COMPLAINTS/INVESTIGATIONS

An investigation of alleged violation(s) of the Mississippi Pharmacy Practice Act may be initiated by the investigative staff of the Board either:

- A. In response to a written complaint or adverse information received by the Board; or
- B. Based on information independently developed by the investigative staff of the Board.

Upon receipt of information indicating possible violation of the Pharmacy Practice Act, the investigative staff, with advice and consultation of members of the Investigations Review Committee, shall make an initial determination as to whether the information justifies further investigation. A case may be dismissed without further investigation based on a determination of either:

- A. Lack of jurisdiction; or
- B. No violation of the Mississippi Pharmacy Practice Act.

4. INITIATION OF DISCIPLINARY ACTION

Upon conclusion of an investigation, the investigative staff shall present the results of the investigation to the Investigations Review Committee for review and action. Disciplinary action by the Board shall require the following:

- A. A sworn affidavit filed with the Board charging a licensee, registrant or pharmacist-in-charge with an act which is grounds for discipline as provided for in Section 73-21-97, Mississippi Code of 1972, Annotated; and
- B. An order of the investigations Review Committee which shall cause the Executive Director of the Board to fix a time and place for Hearing by the Board. Such Notice of Hearing and Complaint may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known residence or business address of the licensee, registrant, or pharmacist-in-charge.

5. ADMINISTRATIVE HEARINGS

Policies for the granting of a continuance are as follows:

- A. Hearings shall be held before the Board at the time and place designated in the "Notice of Hearing and Complaint", unless a continuance is granted for just good cause by the Board. A motion for a 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; and
- B. It must be recognized that the Board consists of seven (7) practicing pharmacists representing various regions of the State. Unlike the judiciary, the Board members are not in the business of conducting hearings, therefore hearings will be held only during regularly scheduled meetings or other dates established by the Board. Attorneys representing pharmacists should take this fact into consideration. A scheduled hearing may be continued if the Respondent shows substantial, legitimate grounds for continuing the hearing, based on the balance of:
 - (1) The right of Respondent to a reasonable opportunity to prepare and present a defense; and
 - (2) The Board's responsibility to protect the public health, safety and welfare.
- C. Where the counsel for Respondent has a scheduling conflict on the initial hearing date, continuances will be liberally granted. However, Respondent's Counsel must submit written proof of the scheduling conflict fifteen (15) days prior to the scheduled hearing date. Thereafter, no further continuances will be granted based solely on scheduling conflicts; and
- D. So that counsel for the Respondent and Complaint Counsel shall be able to adequately prepare for hearing, any motion for a continuance filed within the time limitations as specified in Subsection A above, will be immediately considered by the Board's President, who shall have the authority to grant or deny said motion. If granted, the Director of

Compliance of the Board shall reschedule hearing at the earliest open date on the Board's calendar; and

- E. It is the responsibility of the Respondent to make a prompt decision as to whether to appear before the Board without counsel or to retain counsel for this purpose. Unless due to extraordinary circumstances, the Respondent's last minute decision to retain counsel will not be considered valid grounds for continuance of the matter.

6. SUBPOENAS

Policies for the issuance of subpoenas are as follows:

- A. For the purpose of disciplinary hearings, the Board acting by and through its Executive Director, may subpoena persons and papers on its own behalf and on behalf of a Respondent.
- B. Prior to the Board issuing any subpoena on behalf of a Respondent, the Respondent shall:
 - (1) File with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all individuals to be subpoenaed, along with a concise description of the records to be subpoenaed with the identity and address of the custodian of said records; and
 - (2) All subpoenas issued by the Board on behalf of Respondent shall be hand delivered or effected by registered mail; and
 - (3) All requests for issuance of subpoenas shall be filed with the Board sufficiently distant in time to allow for the preparation and mailing of said subpoenas at least ten (10) working days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of subpoenas issued after the aforementioned deadline.
- C. The Board shall charge a Respondent a reasonable fee, not to exceed \$25.00 per subpoena, for preparation and mailing of subpoenas.

7. INFORMAL SETTLEMENT, PRE-HEARING, STIPULATIONS, CONSENT ORDERS

Policies for informal settlements and consent orders are as follows:

- A. All disciplinary proceedings initiated by the Board shall be brought to a final resolution through one of three means:
 - (1) Disciplinary hearings before the Board; or
 - (2) Acceptance by the Board of a mutually agreeable Consent Order in lieu of a hearing; or
 - (3) Dismissal of the case.
- B. As to disciplinary proceedings wherein the Respondent has been duly served with a Notice of Hearing and Complaint, said Respondent and/or Respondent's Counsel may agree that an Informal Settlement Conference be held for the purpose of possible resolution of the matter or for purposes of simplifying the issues for hearing or promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

- C. The Informal Settlement Conference shall be conducted by Respondent and/or his counsel and Board Counsel. Other parties who may attend include Compliance_Agents for the Board and Board members who served on the Investigations Review Committee (IRC) that authorized that a Notice of Hearing and Complaint be issued in the matter. Other Board members may not attend or have knowledge or input into any activities of the Conference.
 - D. Discovery or exchange of information may be accomplished during the Informal Settlement Conference.
 - E. The Informal Settlement Conference may result in:
 - (1) Preparation of a proposed Consent Order as a resolution of the matter;
 - (2) Proceeding with the scheduled hearing.
 - F. Any action which the Board may take following a full disciplinary hearing may be taken in lieu thereof by Consent Order, duly executed by the Respondent. Because of the lengthy dockets before the Board, informal Settlement Conferences must be held in sufficient time to allow consummation of negotiations of a Consent Order, at least ten (10) working days prior to the scheduled hearing date. After the terms of the Consent Order have been prepared and mutually accepted by Board Counsel, the investigating Compliance Agent and the two (2) IRC Board members that originally heard the matter, all terms of the Consent Order shall be binding on the Board. Said terms of the Consent Order are not effective until Board approval. Notwithstanding, it is still the responsibility of the Respondent to personally appear before the Board on the scheduled hearing date to answer any questions which the Board may have prior to Board approval.
 - G. Failure of the Board to approve and/or ratify any Consent Order shall result in an administrative hearing before the Board as originally scheduled in order to resolve all matters as outlined in the Notice of Hearing and Complaint.
 - H. Hearings for matters in which Consent Orders are considered by the Board, shall be conducted according to the Board's Rules of Procedures for Administrative Hearings.
8. DISCOVERY
- Policies for discovery are as follows:
- A. Upon written request by a Respondent or his counsel, Complaint Counsel of the Board shall disclose and permit Respondent or his counsel to inspect, copy or photograph the following information and material, which is in the possession, custody, or control of the Board, or the existence of which is known to the Complaint Counsel:
 - (1) Names and addresses of all witnesses proposed to be called in Complaint Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.

- (2) Copies of any written or recorded statement of Respondent and the substance of any oral statement made by the Respondent.
 - (3) Copies of any criminal records of a Respondent, if proposed to be used.
 - (4) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
 - (5) All records, documents, physical evidence or photographs which may be offered as evidence.
 - (6) Any exculpatory material concerning the Respondent. The Board shall charge a Respondent a reasonable fee, not to exceed fifty cents per copy, payable in advance of delivery of copied documents.
- B. The Board may deny disclosure authorized by subsection A if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to Respondent or his counsel.
 - C. If Respondent requests discovery under this rule, Respondent shall, promptly disclose to Complaint Counsel and permit him to inspect, copy or photograph, the following information and material which is in the possession, custody, or control of Respondent or his counsel, or the existence of which is known to Respondent or his counsel:
 - (1) Names and addresses of all witnesses proposed to be called in Respondent's defense together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
 - (2) All records, documents, physical evidence, or photographs which may be offered as evidence in Respondent's defense.
 - (3) Any written reports or statements of the experts, if proposed to be offered as evidence in connection with the particular case.
 - D. No depositions shall be taken in preparation for matters to be heard before the Board.

9. POLICIES FOR ADMINISTRATIVE HEARINGS

Procedures for administrative hearings are as follows:

- A. Procedures are designed to give the accused the right to be heard in a fair and impartial hearing.
- B. The President or Vice-President or Senior Member of the Board present shall act as the presiding officer and shall rule on all objections and motions. All such rulings are subject to the full Board's approval.
- C. The Board is not bound by strict rules of evidence but all determinations must be based upon sufficient evidence.
- D. All hearings are open to the public, however, public members shall not participate nor be present during any Executive Session of the Board.
- E. The Executive Director, with the advice of the Board Counsel, will subpoena all witnesses for the Board or the defendant when requested to

do so.

- F. All charges shall be based upon affidavits sufficiently definite to constitute an allegation or specific violation of any law or regulation that governs pharmacists and the practice of pharmacy or any other person under the jurisdiction of the Board.
- G. The Respondent has the right to appear either personally, by counsel, or both; to produce witnesses, cross-examine witnesses and have subpoenas issued by the Board.
- H. A definite time and place shall be set with proper notice being given and a quorum present for all proceedings.
- I. Board members who served on the Investigations Review Committee and who reviewed the investigation of the complaint that led to the administrative hearing, shall recuse themselves and not participate in the disciplinary proceeding.
- J. All Board decisions are made in Executive Session.
- K. A copy of these Board Rules of Procedure for Administrative Hearings shall be supplied to the Respondent along with the Notice of Hearing and Complaint.

10. PROCEDURES FOR ADMINISTRATIVE HEARINGS

Procedures for the conduct of administrative hearings are as follows:

- A. The Hearing is called to order by the President or presiding officer.
- B. President requests that the Respondent/counsel be called.
- C. When Respondent appears, introductions are made and oaths administered to the Respondent and others, as may be necessary for proper conduct of the hearing.
- D. The Respondent is then asked to state his/her name, address and license number and is informed that the hearing is being recorded.
- E. If Respondent is represented by counsel, counsel name and address is entered into the record.
- F. The President then asks Board Counsel to present the charges and place said charges into the record as appropriate.
- G. Before going into the merits of the cause, evidence should be placed into the record showing that the Respondent was properly notified of the charges.
- H. The Respondent is then asked to respond to the charges.
- I. The Board Counsel may have witnesses called for the Board and shall conduct the direct examination of same.
 - (1) At the conclusion of the examination, the Respondent or Respondent's Counsel may cross-examine.
 - (2) At the conclusion of the cross-examination, the Board may question the witness.
 - (3) At the conclusion of the witness' testimony, the witness may be excused subject to recall.
- J. The Respondent may call witnesses after the Board has rested its case. The Respondent or Respondent's Counsel will conduct the direct

examination.

(1) Board Counsel may cross-examine Respondent witness.

(2) Board members may then question Respondent witness.

(3) The witness may be excused subject to recall.

K. The Board may then call rebuttal witnesses.

L. Respondent or Respondent's Counsel may make closing arguments if desired.

M. After all response has been presented by both sides, the Board by majority vote, shall enter into Executive Session to consider all evidence presented and make a final decision or ruling.

N. The Board shall make findings of fact on each charge. The Board should adjudicate each charge as presented, based on the evidence submitted.

O. The Board then determines what disciplinary action, if any, should be taken in the matter.

P. Following the Executive Session, the Respondent may or may not be informed of the Board's action. However, within thirty (30) days the Board shall reduce its decision to writing and include the Proceedings, Conclusions of Law, Findings of Fact and the Final Order of the Board. The Board shall forward an attested true copy thereof to the last known residence or business address of such licensee or permit holder by way of United States first-class, certified mail, postage prepaid.