

## Chapter Med 12

## PROCEDURES FOR INVESTIGATION AND HEARING

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**Note:** Chapter Med 12 as it existed on October 31, 1976 was repealed and a new chapter Med 12 was created effective November 1, 1976.

**Med 12.01 Authority and purpose.** The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by sections 15.08 (5), 227.08, 448.02 (3), and 448.40, Wis. Stats., and govern the investigative and hearing procedures of the board.

**History:** Cr. Register, October, 1976, No. 260, eff. 11-1-76.

**Med 12.02 Definitions.** For the purposes of these rules: (1) "Board" means the medical examining board.

(2) "Licensee" means a person who holds any license, permit, certificate, or registration issued by the board.

(3) "Respondent" means the licensee served with a complaint under these rules.

**History:** Cr. Register, October, 1976, No. 260, eff. 11-1-76.

**Med 12.03 Investigation and institution of proceedings.** Upon receipt by the secretary of the board of information alleging unprofessional conduct on the part of a licensee, the secretary shall cause an investigation to be made by an agent or agents of the board to ascertain the probable facts of the matter. Each such investigation shall be under the general supervision and direction of the secretary or another member of the board who may be designated for that purpose by the secretary or chairman of the board. Whichever member of the board supervises and directs a particular investigation may in the course thereof exercise the full authority of the board as set out in section 15.08 (5), Wis. Stats., and shall not participate in any adjudicatory function of the board regarding matters arising out of that particular investigation. Whichever member of the board supervises and directs a particular investigation shall either file and serve complaint and notice of hearing whenever he finds probable cause therefor, or lay the results of that investigation before the plenary board for determination of further process.

**History:** Cr. Register, October, 1976, No. 260, eff. 11-1-76.

**Med 12.04 Complaint.** Complaint shall be in written form, and separate allegations shall be stated in separate paragraphs and numbered consecutively. The complaint shall be set forth with particularity as to time, place, and factual circumstances. The complaint shall also include the statute or rule alleged to have been violated.

**History:** Cr. Register, October, 1976, No. 260, eff. 11-1-76.

Register, April, 1978, No. 268

**Med 12.05 Notice of hearing.** Notice of hearing shall specify the time and place of hearing and the time for filing an answer.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.06 Service of complaint and notice of hearing.** The complaint and notice of hearing may be served as prescribed in section 262.06, [801.11] Wis. Stats., or may be served by certified mail addressed to the respondent at his last known office address as it appears in the files of the board. The complaint and notice of hearing shall be served simultaneously. Service is complete upon mailing. Service may be proved by affidavit.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.07 Filings.** All communications and papers to be filed shall be directed to the board at its office.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.08 Answer and default.** The answer to a complaint shall be in written form and shall be verified by the respondent. Allegations charged in the complaint but not denied in the answer shall be construed as admitted by the respondent. The time for making answer to the complaint shall be as specified in the notice of hearing, but not less than 10 days after service of the complaint and notice of hearing. Failure of respondent to make answer within such time or any extension thereof, or failure of respondent to appear at either a hearing or a pre-hearing conference shall constitute default on the part of respondent. Upon such default the allegations of the complaint may be taken as true, and the board may enter order without further notice or hearing.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.09 Hearings.** (1) Upon issuing complaint and notice of hearing, the board shall designate a hearing examiner to preside over the matter who may be an individual from its staff or borrowed from another agency pursuant to chapter 16, Wis. Stats. The hearing examiner shall be an attorney admitted to practice law in this state. The board may direct the examiner presiding at the hearing to prepare proposed findings of fact, conclusions of law, order, and opinion in a form that may be adopted by the board as the final decision in the case. The board, however, is not required to accept the findings of fact, conclusions of law and order of the presiding examiner.

(2) (a) Stenographic, electronic or other record of Class 2 and Class 3 hearings shall be made.

(b) Persons requesting transcripts for appeal or for other reasonable purpose as determined by the board shall compensate the board at the rate of 10 cents per page. If such persons are impecunious, they shall be furnished a transcript at board expense upon establishing to the satisfaction of the board by verified petition that they are without means to purchase a transcript.

(3) The respondent shall have the right to appear at such hearing in person or by counsel, to call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence. The board shall not be bound by common law or statutory rules of evidence except as set forth in chapter 905, Wis. Stats., but the Wisconsin rules of evidence may be used as guidelines in the proceedings. The board shall

admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Objections to evidentiary offers, and offers of proof of evidence that are not admitted, may be made and shall be noted in the record.

(4) The examiner presiding at the hearing may provide for the service and filing of briefs.

(5) All motions, except those made at the hearing, shall be filed in writing with the board and a copy served upon the person prosecuting the complaint, or the respondent.

(6) The examiner presiding at the hearing may grant continuances and adjournments.

(7) The examiner may at any state of a proceeding direct or permit the amendment or correction of any process, pleading, or other defect in the proceedings, on such terms as may be fair and just.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (2), Register, January, 1977, No. 253, eff. 2-1-77.

**Med 12.10 Discovery.** The parties shall have the right, prior to the date set for hearing, to take depositions and preserve evidence as provided by chapter 887, Wis. Stats., for the purpose set forth therein, and to make demands to admit documents or facts as provided by section 889.22, Wis. Stats.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.11 Subpoenas.** Subpoenas shall be furnished by the board on request of the parties and shall be issued as provided in section 885.01, Wis. Stats., and shall be served and fees paid as provided in sections 885.03, 885.05, and 885.06, Wis. Stats.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.12 Pre-hearing conference.** The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the simplification of issues or consideration of other matters which expedite or aid in the disposition of the proceedings. The examiner shall keep and preserve as part of the official record of the case a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. The examiner may issue such orders as necessary to reflect actions taken or agreements entered into at the conference and which will control subsequent hearings.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.13 Pre-hearing settlement.** Informal disposition may be made of any proceeding before hearing by stipulation or agreed settlement. The terms of such settlement shall be subject to board approval.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Med 12.14 Adverse witnesses.** (1) Any party or any agents, officers, or employes with knowledge of material facts relevant to the matter being heard may be examined by any other party adverse in interest at a hearing as if under cross-examination without making such person his own witness. The testimony taken shall not be binding on or conclude the examining party and may be rebutted or impeached.

(2) Any witness who is hostile, unwilling, adverse, or evasive may with permission of the examiner be interrogated by leading questions and impeached by the party calling him.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.