

## Chapter RL 2

## PROCEDURES FOR PLEADING AND HEARINGS

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**RL 2.01 Authorization.** The following rules and regulations are adopted pursuant to s. 440.03 (1), Stats.

*History:* Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.02 Scope; kinds of proceedings.** The rules in this chapter govern procedure in disciplinary proceedings against licensees before the board of nursing and all examining boards attached to the department of regulation and licensing.

*History:* Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.03 Definitions.** In this chapter: (1) "Board" means the board of nursing and any examining board attached to the department of regulation and licensing.

(2) "Complainant" means the person who signs a complaint.

(3) "Complaint" means a document which meets the requirements of sections RL 2.05 and 2.06, Wis. Adm. Code.

(4) "Department" means the department of regulation and licensing.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a board may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(6) "Division" means the division of consumer complaints in the department of regulation and licensing.

(7) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration issued by a board or having any right to renew a license, permit, certificate or registration issued by a board.

(8) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

*History:* Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.04 Commencement of disciplinary proceedings.** Disciplinary proceedings are commenced when a notice of hearing is filed in the board office or with a designated hearing examiner.

*History:* Cr. Register, February, 1979, No. 278, eff. 3-1-79.

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**RL 2.05 Pleadings to be captioned.** All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE \_\_\_\_\_" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST \_\_\_\_\_, RESPONDENT."

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.06 Complaint.** A complaint must contain: (1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the board hear evidence relevant to matters recited herein, determine, and impose the discipline warranted;" and,

(4) The signature of the complainant which shall be made upon oath and may be made on information and belief. A complaint filed by a board on its own motion and signed by a board member need not be verified.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.07 Notice of hearing.** (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, except in the case of an emergency.

(2) A notice of hearing to the respondent shall be substantially in the following form and signed by a board member or attorney in the division:

Please take notice that a hearing constituting a class 2 proceeding as defined in sec. 227.01 (2) (b), Wis. Stats., will be held on the \_\_\_ day of \_\_\_, 19\_\_\_, at \_\_\_ o'clock \_\_\_.m., or as soon thereafter as the matter may be reached, at (street address), (city) \_\_\_, Wisconsin, on the question of whether the license heretofore issued to the above named respondent pursuant to sec. \_\_\_\_\_, Stats., should be suspended or revoked, the above named respondent should be reprimanded or whether such license should be limited. The legal authority and jurisdiction under which the hearing is to be held is set forth in \_\_\_\_\_. The matters asserted and the charges then and there to be considered are as set forth in the attached complaint to which you are required to make answer in writing within 20 days from the date of service of the complaint. [If a hearing examiner has been designated to preside over the matter pursuant to s. 227.09, Wis. Stats. and s. RL 2.10, the Notice of Hearing shall so indicate and identify the name and address of hearing examiner.]

Dated at \_\_\_\_\_, Wisconsin this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3-1-79.

**RL 2.08 Service and filing of complaint, notice of hearing and other papers.** (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a

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copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a board may be mailed to the board office or, if a hearing examiner has been designated to preside in the matter, to the hearing examiner and shall be deemed filed on receipt at the board office or by the hearing examiner.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.09 Answer.** (1) An answer to a complaint shall be verified by the respondent and state in short and plain terms the defenses to each cause asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. The respondent shall make denials as specific denials of designated averments or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Averments in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint must be filed within 20 days after the complaint has been served on the respondent.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (4), Register, February, 1979, No. 278, eff. 3-1-79.

**RL 2.10 Hearing examiner.** (1) **DESIGNATION.** In any disciplinary proceeding a board may, and in proceedings commenced as the result of a decision made by one or more officials of a board, a board must, designate that the proceeding be presided over by a hearing examiner. Unless the board designates a board member as examiner, the examiner shall be the general counsel for the department unless unavailable in which case the examiner shall be an attorney in the department designated by the department secretary, an employe borrowed from another agency pursuant to s. 16.24 or 20.001 [20.901], Stats., or a person employed as a special project or limited term employe by the department, but the examiner shall not be an employe in the division.

(2) **AUTHORITY OF HEARING EXAMINERS.** A hearing examiner designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.09 (1), Stats. Unless otherwise directed by a board pursuant to s. 227.09 (3), Stats., a hearing examiner presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) Unless otherwise directed by a board, the proposed decision shall be served by the examiner on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the board objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall

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have at least 10 days from the date of service of the proposed decision to file objections and argument.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.11 Prehearing conference.** In any matter pending before the board the complainant and the respondent, or their attorneys, may be directed by the board or hearing examiner to appear at a conference to consider the simplification of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.12 Settlements.** Any stipulation or settlement agreement between the person prosecuting the complaint and the respondent shall not be effective or binding in any respect until approved by the board.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.13 Discovery.** The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.14 Default.** If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the board may make findings and enter an order on the basis of the complaint and other evidence. The board may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the board enters an order or within a reasonable time thereafter.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.15 Conduct of hearing.** (1) **PRESIDING OFFICER.** The hearing shall be presided over by a member of the board or a hearing examiner designated pursuant to s. RL 2.10.

(2) **RECORD.** A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) **EVIDENCE.** The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) **BRIEFS.** The presiding officer may require the filing of briefs.

(5) **MOTIONS.** All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the person prosecuting the complaint or the respondent not later than 5 days before the time specified for hearing the motion.

(6) **ADJOURNMENTS.** The presiding officer may grant continuances, adjournments and extensions of time for reasons and according to conditions deemed appropriate by the presiding officer.

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(7) **SUBPOENAS.** (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.16 Witness fees and costs.** Witnesses subpoenaed at the request of the division or the board shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.

**RL 2.17 Transcription of record; fees for copies.** (1) On the written request of any person filed with board, the record of any board proceeding will be transcribed into a written transcript and a copy furnished to the person making such request. The fee charged to the person making the request shall be computed on the following basis:

(a) Where the person making the request requires the transcript for the purpose of appeal or judicial review and desires a copy prepared by the person transcribing the record, then the person shall be charged in the amount charged to the board for a copy of the transcript by the person preparing the transcript; the fee for a copy of such a transcript made by department employees is 10¢ per page.

(b) Where the person making the request requires the transcript for a purpose other than appeal or judicial review and the record has not been transcribed, the person shall be charged for the copy in the amount charged to the board for transcribing the record into a written transcript by the person preparing the transcript. If the record has been transcribed, then the fee for a copy of such transcription made by department employees is 10¢ per page.

(2) Parties who are impecunious who require a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a verified petition showing that they are without means to purchase a transcript.

**History:** Cr. Register, October, 1978, No. 274, eff. 11-1-78.