

Chapter Phar 4

PLEADING, PRACTICE AND PROCEDURE

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**Phar 4.01 Definitions.** As used in these rules, "license" means any license, permit, certificate of registration or other grant of authority, issued or subject to suspension or revocation by the board; "board" means the Wisconsin State Board of Pharmacy; "hearing" includes a joint hearing by the board and any other administrative agency; "revocation or suspension" of license includes refusal to renew the same.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.02 How proceedings initiated.** Proceedings to revoke or suspend licenses may be initiated in one of 2 ways, except insofar as any order of suspension or revocation may issue pursuant to a statute not requiring hearing, in which event the provisions of section Phar 4.17 shall govern.

(a) On a verified complaint by an individual or an officer required by law to enforce the law in question, filed in triplicate (original and 2 copies) with the state board of pharmacy;

(b) By the board on its own motion whenever its investigation discloses probable grounds for disciplinary action. Any member may act for the board in initiating proceedings under this section.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.03 Style of pleadings, etc.** All pleadings, notices, orders, and other papers filed in such proceedings shall be captioned "BEFORE THE PHARMACY EXAMINING BOARD", and shall be entitled "IN THE MATTER OF THE REVOCATION (OR SUSPENSION) OF THE \_\_\_\_\_

License, Permit or Certificate of Registration

OF \_\_\_\_\_ RESPONDENT." The party whose license is involved shall be known and designated as the "Respondent".

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, March, 1968, No. 147, eff. 4-1-68.

Register, March, 1968, No. 147

**Phar 4.04 Form of charges.** If the alleged offense is a continuing one, its general nature and the approximate time covered shall be stated in the complaint or notice of hearing; if a specific incident is relied on, it shall be alleged with such particularity as to time, place and circumstances, as may be necessary to enable the respondent to prepare his defense; and in either case the offense may be alleged in the language of the statute or rule claimed to have been violated, and shall conclude: "contrary to Sec. \_\_\_\_ of the Statutes," or "contrary to Rule \_\_\_\_ of the Rules and Regulations of the Board governing \_\_\_\_\_," or both. Separate charges shall be stated in separate paragraphs and numbered consecutively.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.05 Complaint on board's investigation.** If the complaint is founded upon investigation made by the board, it shall be incorporated in the notice of hearing and statement of issues as prescribed by section Phar 4.07.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.06 Procedure upon filing of complaint.** Upon the filing of a complaint as prescribed by section Phar 4.02 (a), the president or secretary shall cause an investigation to be made of the matters alleged to determine whether there is a probable cause for disciplinary action and if he determines that there is such probable cause he shall order a hearing as prescribed by section Phar 4.07 and also notify the complainant thereof. If he determines that no further action is warranted he shall notify the complainant, who may appeal in writing to the board, which shall review the files of the president or secretary and may affirm his decision, order further investigation or order a hearing on the charges. Provided, that in any case where a hearing has been ordered, the respondent has no standing to attack the determination of the president or secretary of the board in ordering such hearing, but shall be required to plead to the merits.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.07 Notice of hearing and statement of issues.** Notices of hearing shall be addressed to the respondent at his last known post-office address, shall include the statement of issues and shall be in substantially the following form:

(a) If on complaint filed as provided in section Phar 4.02 (a), such complaint shall be attached to the following notice:

"To \_\_\_\_\_ Name  
 \_\_\_\_\_ Street  
 \_\_\_\_\_, Wis.  
 Respondent

"Please take notice that a hearing will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the Room No. \_\_\_\_\_ or other proper designated place of the \_\_\_\_\_ Building (or other proper designation), N. \_\_\_\_\_ St., the city of \_\_\_\_\_, Wis., at \_\_\_\_\_ o'clock \_\_\_\_M., or as soon thereafter as the matter may be reached, on the question whether the \_\_\_\_\_ (license, permit or certificate) heretofore issued to the above named Respondent pursuant to sec. \_\_\_\_\_, Stats., should be suspended or revoked. The issues involved

and the charges there to be considered are (as set forth in the attached complaint) to which you are required to make answer in writing at least ----- days before the time set for said hearing.

"Dated at Milwaukee, Wisconsin, this ---- day of -----, 19\_\_\_.  
"PHARMACY EXAMINING BOARD

By -----  
Secretary"

(b) If on only part of the charges set forth in such complaint, the form set forth in subsec. (a) shall be altered by inserting in lieu of the matter enclosed in brackets: "as set forth in paragraphs ----, ----, and ---- of the attached complaint."

(c) If initiated on the board's own motion, the form set forth in subsec. (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"the following:  
"1. -----  
"2. -----  
"3. -----"

(d) If in part on complaint and in part on charges initiated by the board on its own motion, the form set forth in subsec. (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"as set forth in the attached complaint, (or paragraphs ----, ----, ----, and ---- of the attached complaint), together with the following additional issues and charges:

"1. -----  
"2. -----  
"3. -----"

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, March, 1968, No. 147, eff. 4-1-68.

**Phar 4.08 Answer.** A written answer shall be required in all cases involving revocation or suspension of licenses. Where required, the answer shall be verified, unless an admission of the allegations might subject the party to prosecution for a felony, and shall be filed with the secretary in triplicate (original and 2 copies) within at least one-half the time intervening between the notice of hearing and the time set for said hearing, and such time for answer shall be stated in said notice as required by section Phar 4.07. The answer must contain:

(a) A specific denial of each material allegation of the charges controverted by the respondent.

(b) A statement of any new matter constituting a defense or mitigating the offense charged which the respondent wishes to have considered.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.09 Admission by not denying.** Every material allegation of the charges not controverted as prescribed shall be taken as a verity, but new matter in the answer shall be deemed controverted without any reply being served or filed.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.10 Default; relief therefrom.** In case the respondent fails to submit an answer as required by section Phar 4.08, or fails to appear at the hearing at the time fixed therefor, the charges specified

may be taken as true and the board may make findings and enter its order on the basis of the facts revealed by its investigation. But the president or the board may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend the proceeding at any time before the board enters its order or within 60 days thereafter.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.11 Service and filing of papers.** Unless otherwise provided by law, all orders, notices and other papers may be served by the secretary or the board by first class, certified, or registered mail addressed to the party at his last known postoffice address, or to his attorney of record. Papers required to be filed with the board may be mailed to the following address: 819 North Sixth Street, Milwaukee, Wisconsin, 53203.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, March, 1968, No. 147, eff. 4-1-68.

**Phar 4.12 Conduct of hearings; continuances; appearances; examination of witnesses.** Unless otherwise ordered by the board, all hearings shall be conducted and presided over on behalf of the board by the president, who may swear all witnesses competent to take an oath; the secretary of the board may likewise administer oaths. Continuances and adjournments may be granted by the presiding officer for cause shown. The respondent may appear in person or by any regular employee or agent, or by a duly authorized attorney-at-law and if a corporation, by any of its active officers. Witnesses may be examined on behalf of the board by any member of the board or by a representative of the attorney general acting as counsel for the board. The respondent or any of its officers, agents or employees may be examined adversely as prescribed by section 325.14, Wis. Stats.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.13 Subpoenas; witness fees.** Subpoenas may be signed and issued by the president or secretary of the board or the clerk of any court of record. Witness fees and mileage of witnesses subpoenaed on behalf of the board shall be paid at the rate prescribed for witnesses in circuit court, upon filing with the board their affidavits of attendance and travel, and shall be charged to the appropriation for the administration of chapter 151, Wis. Stats.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.14 Pre-hearing conferences.** Pre-hearing conferences may be held at the convenience of the parties and shall be conducted by the president, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. Such record shall be attached to the file and constitute a part of the official record of the case.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.15 Arguments.** Except as provided in section 227.12, Wis. Stats., arguments shall be submitted to the board in writing unless otherwise ordered. Ten copies of such written arguments shall be filed with the secretary within such time as may be fixed at the hearing by the board.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

Register, March, 1968, No. 147

**Phar 4.16 Variances.** The provisions of section 263.28, Wis. Stats., with reference to variances between the allegations and the proofs, shall apply to proceedings under these rules.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Phar 4.17 Summary suspension of licenses.** Whenever provided by law, order of summary suspension of a respondent's license may issue in substantially the following form:

"Upon investigation by the Pharmacy Examining Board and the Board having good reason to believe that \_\_\_\_\_ has failed to obtain renewal of his (or her) \_\_\_\_\_ contrary to the statute in such case made and provided,

"NOW, THEREFORE, IT IS ORDERED:

"That pursuant to Sec. \_\_\_\_ (151.02 (3) or 151.02 (5) of the Wisconsin Statutes, the \_\_\_\_\_ of the said \_\_\_\_\_ be, and the same is hereby suspended (revoked), effective \_\_\_\_\_ and until the further order of this board.

"Dated at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
"PHARMACY EXAMINING BOARD

By \_\_\_\_\_  
Secretary"

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, March, 1968, No. 147, eff. 4-1-68.

**Phar 4.18 Petition for rules or declaratory rulings.** Petitions for the adoption, repeal or amendment of rules and for declaratory rulings shall be governed by the rules of procedure for the state board of health, insofar as applicable, with the following exceptions:

- (a) The petitions shall be captioned "BEFORE THE PHARMACY EXAMINING BOARD."
- (b) The duties with reference to investigation, filing of papers, giving of notices, etc., therein imposed on the state health officer shall be performed by the president.
- (c) Hearings shall be conducted by the president unless otherwise ordered by the board.
- (d) All final determinations shall be made by the board.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, March, 1968, No. 147, eff. 4-1-68.