

Chapter DE 2

PLEADINGS, PRACTICE AND PROCEDURE

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Note: Chapter DE 2 as it existed on May 31, 1975 was replaced with a new Chapter DE 2. Former DE 2.01 was renumbered DE 3.05, DE 2.03 was renumbered DE 5.01 and DE 2.02 was repealed.

DE 2.01 Definitions. For the purpose of these rules:

(1) "Applicant" means one seeking a determination of his rights, duties or privileges under chapter 447, Wis. Stats., or the rules promulgated pursuant to it.

(2) "Board" means the Wisconsin dentistry examining board.

(3) "Board representative" means an attorney retained or employed by the board to represent the board's statutory responsibilities in contested cases.

(4) "Contested case" means a proceeding before this board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a board hearing.

(5) "Disciplinary action" includes issuance of cease and desist orders, the limitation, suspension, or revocation of a license or certificate.

(6) "Party" includes only the applicant or respondent, and the board representative. A complainant is not a part to any disciplinary action.

(7) "Respondent" means the person complained against in a formal complaint.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.02 Initiating a contested case. (1) **APPLICATION.** Any person authorized by law to apply to this board for a determination of his rights, privileges, or duties may initiate a contested case before this board by making application. An application shall contain:

- (a) The name and address of the applicant;
- (b) A statement of the nature of the determination requested and the reasons therefor; and
- (c) The verified signature of the applicant.

(2) **FORMAL COMPLAINT.** Disciplinary actions may be initiated upon the filing of a complaint in writing, duly signed, and verified by the

complainant or upon the motion of any board member. If the proceeding is brought on the motion of a board member, such member shall not participate in the adjudication of the matter. A complaint to initiate a disciplinary action shall contain:

(a) The name and address of the complaining party, as well as the name and address of the licensee or certificate holder complained against;

(b) A plain and concise statement of allegations set forth with particularity as to time, place, and factual circumstances;

(c) The statute or rule claimed to have been violated by the licensee or certificate holder;

(d) A demand in essentially the following form: "Wherefore, complainant demands that the Dentistry Examining Board hear evidence relevant to matters herein recited and determine whether the respondent should be subjected to disciplinary action."

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.03 Form of pleadings. All pleadings, notices, orders, and other papers before the board shall be captioned "Before the Dentistry Examining Board of the State of Wisconsin" and be entitled "In the Matter of the License (for a dentist) or Certificate (for a dental hygienist) of _____, Respondent (Applicant)."

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.04 Right to counsel. Any part may be represented by counsel throughout a contested case before the board.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.05 Notice of hearing. Notices of hearing shall be issued by the board to the parties and to the complainant and shall specify the time and place of the hearing, the purpose of the hearing, and the time for filing an answer if applicable. The hearing shall be set within 30 days of the initiation of the contested case.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.06 Service. (1) Unless otherwise provided by law, all notices, pleadings, orders, and other papers may be served by first class or certified mail. Service of all such documents shall be on the dentistry examining board, the parties, and the complainant. In addition, if the applicant or respondent appears by an attorney, service must also be made on the attorney.

(2) The formal complaint in any disciplinary action shall be served simultaneously with the notice of hearing.

History: Cr. Registry, May, 1975, No. 233, eff. 6-1-75.

DE 2.07 Answer. A written answer shall be filed to a formal complaint. The time for making answer to the charges alleged in the formal complaint shall be within 10 days after service. The answer must be filed with the board and also served upon the board representative and the complainant. The board or examiner may for cause shown grant extensions of time to answer.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.08 Defaults. When respondent fails to file a written answer within the time provided in the notice of hearing, or any extension thereof, or respondent files a written answer within such time but fails to appear at the hearing, respondent is in default, the charges specified may be taken as true, and the board may make findings and enter its order without further notice of hearing. But the board may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend in the proceeding at any time before the board enters its order or within 30 days thereafter.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.09 Hearing examiners. (1) The board may designate an individual from its staff, or borrowed from another agency pursuant to chapter 16, as a hearing examiner, to preside over any proceeding. The hearing examiner shall be an attorney admitted to practice law in this state. Upon the initiation of a contested case, the board may designate a hearing examiner to preside over the matter. An examiner presiding may:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on offers of proof and all evidentiary questions;
- (d) Regulate the course of the hearing;
- (e) Hold pre-hearing conferences for the settlement of simplification of the issues by consent of the parties;
- (f) Dispose of procedural requests or similar matters;
- (g) Make or recommend findings of fact, conclusions of law and decisions to the extent permitted by law;
- (h) Order the exchange of witness lists prior to hearing;
- (i) Take other action authorized by agency rule consistent with this chapter.

(2) The board may direct the examiner presiding at the hearing to 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.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.10 Motions and procedural orders. (1) Motions other than those made orally at a hearing shall be in writing and scheduled for hearings on notice by the board or examiner.

(2) The board or examiner may refuse to hear any motion which is frivolous or made solely for the purpose of delay.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.11 Discover. The applicant or respondent, and board representative shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in chapter 887, Wis. Stats., and make demand to admit documents or facts as provided by section

889.22, Wis. Stats. The failure to answer interrogatories without cause shown shall constitute a violation of these rules.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.12 Amendments. The board or 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, May, 1975, No. 233, eff. 6-1-75.

DE 2.13 Subpoenas. Any party may request the board or examiner to compel the attendance of witnesses.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.14 Briefs. The board or examiner may require written briefs and shall indicate the dates by which, and the manner and order in which they shall be submitted or exchanged.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.15 Pre-hearing conferences. The board or 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 may expedite or aid in the disposition of the proceedings. The board or 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 board or examiner may issue such orders as necessary to reflect actions taken or agreements entered into at the conference and which will control subsequent proceedings.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.16 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, May, 1975, No. 233, eff. 6-1-75.

DE 2.17 The hearing. (1) **WITNESSES.** (a) Any party may be a witness or may present witnesses on his behalf at a hearing;

(b) All testimony at a hearing shall be under oath; and

(c) Every party shall have the right of cross examination of witnesses who testify.

(2) **RULES OF EVIDENCE.** The board shall not be bound by common law or statutory rules of evidence, but the Wisconsin rules of evidence may be used as guidelines in proceedings. The board shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony.

(3) **THE RECORD.** (a) The board shall prepare an official record in each contested case;

(b) The record in a contested case shall contain:

1. All pleadings, motions, intermediate rulings;

2. Evidence received or considered;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the hearing examiner.

(c) A verbatim record of the hearing in a contested case shall be taken by court reporter or recording equipment. The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the board may require the requesting party to pay the reasonable cost of preparing a transcript.

(4) HEARING PROCEDURE. The hearing examiner shall take no part in the preliminary investigation, nor shall he communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. The hearing shall be conducted in the following manner:

(a) After the opening of the hearing, the hearing examiner shall indicate the following procedural rules:

1. All parties may present evidence and argument with respect to the issue;

2. All witnesses must be sworn and are subject to cross examination by all parties;

3. The rules of evidence as outlined in section DE 2.17 (2);

4. All parties interested in introducing written matter may do so by having it marked as an exhibit and introduced for the record;

(b) The board representative shall introduce exhibits on behalf of the board. They shall be as follows:

1. Notice of hearing, formal complaint, supporting documents if any, and affidavits of service;

2. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing.

(c) The party who initiated the contested case shall begin the presentation of evidence. He shall be followed by the other parties in an order to be set by the board or hearing examiner.

(d) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the board or hearing examiner.

(e) After final argument, the hearing shall be closed or continued at the discretion of the board or hearing examiner. If continued, it shall be continued to a certain time and date, if possible.

(5) ADVERSE WITNESSES. (a) Any party or any of his agents, officers or employees 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. Testimony taken shall not be binding on or conclude the examining party and may be rebutted or impeached.

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

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.18 The board decision. (1) **BASIS FOR DETERMINATION.** No factual information or evidence which is not part of the official record in a contested case shall be considered by the board in its determination of a case.

(2) **DECISIONS AND ORDERS.** (a) Every decision and order rendered by the board in a contested case shall be in writing accompanied by findings of fact and conclusions of law.

(b) The decision or order shall be served upon all parties and complainants in the case. It shall contain:

1. A copy of the decision or order in the case;
2. The findings of fact and conclusions of law; and
3. An affidavit of service.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.

DE 2.19 Disciplinary action. If it be found that a respondent has engaged in conduct unbecoming a professional person, the board may:

- (1) Issue cease and desist orders;
- (2) Limit a respondent's practice;

(a) For the purposes of this chapter, "to limit" a license or certificate granted or issued by the examining board is to impose such conditions and requirements upon the holder thereof, and to restrict the scope of his practice for a period of time not in excess of five years, that the examining board in its sound discretion determines to be reasonably justified under any of the provisions of this chapter.

(b) A person whose license or certificate is limited shall be permitted to continue his practice upon condition that he will cease, desist, and refrain from engaging in unprofessional practices, and appear before the examining board or an officer or agent thereof, at such times and places as may be designated by the examining board from time to time, and fully disclose to the examining board or its officer or agent the nature of his practice and conduct, and render himself amenable to the examining board during the entire period of limitation.

(3) Suspend a respondent's license or certificate to practice.

(4) Revoke a respondent's license or certificate to practice.

DE 2.20 Relicensure after revocation. A person whose license or certificate has been revoked may, upon the expiration of one year after revocation, file an application for relicensure or recertification pursuant to these rules. The applicant, upon passage of an examination or examinations prescribed by the board and upon showing that he will take sufficient measure to prevent recurrence of

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those practices for which his license or certificate was revoked, shall be relicensed or recertified.

History: Cr. Register, May, 1975, No. 233, eff. 6-1-75.