

CHAPTER 1  
RULES OF PRACTICE AND PROCEDURE  
OF THE  
WYOMING STATE BOARD OF PHARMACY

Section 1. Authority. These rules are promulgated as authorized by the Act, and pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-101, et. seq.

Section 2. Definitions. For the purposes of these regulations, and the Wyoming Pharmacy Act the following definitions shall prevail.

(a) "Act" means the Wyoming Pharmacy Act, W.S. 33-24-101, et. seq., and the Wyoming Pharmacy Technician Act, W.S. 33-24-301, et. seq.

(b) "Board" means the Wyoming State Board of Pharmacy.

(c) "Contestee" means the person, persons, firm or corporations who are licensees by law under the jurisdiction of said Board against whom a proceeding by petition, verified complaint in writing or formal notice, alleging violation directly or indirectly of any of the terms and provisions of the Act or of the lawful Rules and Regulations of the Board or any related acts and resulting lawful rules and regulations (i.e. Controlled Substances Act, 1971).

(d) "Contested Case" means any proceeding including, but not restricted to, any licensing requirements in which legal rights, duties or privileges of a party are required by law to be determined by the Board after an opportunity for hearing.

(e) "Dangerous Substance" means pursuant to § 33-24-127, the Board adopts the most recent edition and its supplements of section 3.1 "Prescription Drug Product List' of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, (The Orange Book) as the official listing of Dangerous Substances for the State of Wyoming. (moved from Chapter 11)

(e f) "Executive Director" means the Executive Director of the Board.

(f g) "License" means the whole or part of any Board permit, certificate, approval, registration charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

(g h) "Licensing" means the Board process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

(h i) "Rule" or "Regulation" means any Board statement of general applicability that implements, interprets and prescribes law or policy.

~~(i j)~~ "Staff" means the personnel of the Board or Executive Director.

~~(j k)~~ "State" means the State of Wyoming.

~~Section 3. Contests. The Executive Director shall cause a full and complete investigation of all complaints of alleged violations of such gravity as would warrant formal action by the Board, if probable cause is found as to the existence of such violations.~~

~~Upon the completion of such investigation, which shall be conducted without participation by any Board member, the Executive Director shall file a formal action complaint if deemed appropriate. The complaint shall set forth in writing the alleged acts or omissions of acts in violation of the Act of any rules, regulations or orders promulgated thereunder and by authority thereof.~~

~~The person designated by the Office of the Attorney General as attorney for the Board shall assist in the preparation of the complaint and notice as provided for under these Rules.~~

~~Section 4. Notice and Complaint. When the Executive Director desires to file a formal complaint, it shall be prepared and filed with the Board, verified in writing, setting forth:~~

~~(a) The name and address of each contestee.~~

~~(b) The time, place and nature of the hearing.~~

~~(c) The legal authority under which the hearing is to be held.~~

~~(d) A statement, in ordinary and concise language, of the facts upon which the complaint is based, including, when applicable, particular reference to the statutes and rules, regulations or orders that have allegedly been violated.~~

~~(e) At any time prior to the date set for hearing, the Executive Director may amend the original complaint to include a more definite and detailed statement of the facts and matter asserted.~~

~~Section 5. Service of Notice. Notice shall be served by mail at least twenty (20) days prior to the date set for hearing. Notice shall be sent by certified or registered mail with return receipt thereof to the contestees' last known address.~~

~~Section 6. Docket. A contested case shall be assigned a number when a complaint is filed by the Executive Director. The Executive Director shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits.~~

~~Section 7. Answer or Appearance. The contestee shall file with the Board an answer to the complaint within thirty days of mailing of the complaint. In this answer, the contestee shall state the portions of the complaint, which he admits, and the portions of the complaint, which he denies, and shall set forth any defenses or other challenges to the complaint he may have. Any portions of the complaint, the contestee has not denied in his answer, shall be deemed admitted. Any defense or challenge not raised in the answer shall be deemed waived.~~

~~Section 8. Default in Answering or Appearing. In the event of the failure of any contestee to answer or otherwise appear within the time allowed, a default may be entered against him and the allegations as set forth in the Notice and Complaint shall be taken as true and an Order of the Board entered accordingly.~~

~~Section 9. Subpoenas. Subpoenas for appearance and to produce testimony, books, papers, documents or exhibits may be issued by the Board or Executive Director, as its agent, on behalf of any party to the contested case.~~

~~Section 10. Hearing. All issues and matters set forth in the notice and complaint shall be presented by the Executive Director, Staff or agents and the contestee to the Board. Any contestee may be represented personally or by counsel, provided that such counsel be duly authorized to practice law in this State or is otherwise associated at the hearing with an attorney authorized to practice law in this State. Provided that, when the contestee has made timely and sufficient application for the renewal of a license or a new license to refer to any activity of a continuing nature, the existing license does not expire until the application has been determined by the Board. If, however, the Executive Director alleges that public health, safety or welfare imperatively requires emergency action by the Board summary suspension of a license may be ordered pending proceedings before the Board.~~

~~Section 11. Order of Procedure at Hearing. As nearly as may be, hearings shall be conducted in accordance with the following order or procedure:~~

~~(a) The Board or hearing officer shall announce that the hearing is convened upon the call of the docket number and title of the matter and case to be heard, and thereupon the Board or hearing officer shall incorporate all pleadings into the record together with the appearance by any contestee and shall note for the record all subpoenas issued and all appearances of record, including contestee and their counsels of record.~~

~~(b) The agent, counsel or representative of the Executive Director and Staff shall thereupon proceed to present the Staff's evidence. Witnesses may be cross-examined by contestee.~~

~~(c) The contestee shall be heard in the same manner as the Staff's evidence, witnesses and exhibits have been heard and presented.~~

~~(d) No opening statement shall be made, but each of the parties may offer rebuttal evidence within the discretion of the Board who shall preside.~~

~~—(e)— Closing statements, at the conclusion of the presentation of evidence, may be made by the parties or counsel. No rebuttal statement may be made by any of the parties to the proceeding. The time for oral argument may be limited by the Board.~~

~~—(f)— After all proceedings have been concluded, the Board or hearing officer shall dismiss and excuse all witnesses and declare the hearing closed. Any party who may wish or desire to tender written briefs of law unto the Board may do so. The Board may take the case under advisement and shall declare unto each of the parties that the decision of the Board shall be announced within due and proper time following consideration of all of the matters presented at the hearing.~~

~~—Section 12.— Witnesses to be Sworn.— All persons testifying at any hearing before the Board shall be administered the following oath by the Board or designated hearing officer:~~

~~—“Do you swear or affirm to tell the truth, the whole truth and nothing but the truth in this hearing? So help you God.”~~

~~—Section 13.— Applicable Rules of Civil Procedure to Apply.— The rules of practice and procedure contained in the Wyoming Rules of Civil Procedure insofar as the same may be applicable and not inconsistent with the matters before the Board and applicable to the rules, orders and regulations promulgated by the Board shall apply.~~

~~—Section 14.— Attorneys.— The filing of an answer or other appearance by an attorney constitutes his appearance for the party for whom the pleading is filed. The Board and all parties shall be notified in writing of his withdrawal from any hearing. Any person appearing before the Board at a hearing in a representative capacity shall be precluded from examining or cross-examining any witness unless such person shall be an attorney licensed to practice law in this State, or a non-resident attorney associated with an attorney qualified to practice law in this State. This rule shall not be construed to prohibit any person from representing himself in any hearing before the Board, but any such person appearing on his own behalf shall not be relieved of abiding by all rules established for the proceedings herein.~~

~~—Section 15.— Attorney General to be Present.— In all hearings held upon formal action brought on before the Board, a representative of the Office of the Attorney General of Wyoming shall appear on behalf of the Executive Director or Staff, and shall present all evidence, testimony and legal authority in support of the notice and complaint to be considered by the Board.~~

~~—In addition, the Office of the Attorney General of Wyoming shall provide an additional representative to appear at the hearing designated as hearing officer and be present to assist and advise the Board in the conduct of the hearing and in the preparation of findings of fact, conclusions of law and recommendations of the Board.~~

~~—Section 16.— Record of Proceedings.— When the denial, revocation or suspension of any license is the subject for hearing, it shall be regarded as a contested case and the proceedings, including all testimony, shall be reported verbatim by a court reporter.~~

~~Section 17. Depositions. In all contested cases coming before the Board, the taking of depositions and discovery shall be available to the parties.~~

~~Section 18. Decision, Findings of Fact and Conclusions of Law and Order. The Board shall, with the assistance of the hearing officer, following the full and complete hearing, make and enter a written decision and order containing Findings of Fact and Conclusions of Law. Such decision and order shall be filed with the Board and shall, without further action, become the decision and order as a result of the hearing. No officer, staff or agent of the Board who participated or advised in the investigation or presentation of evidence at the hearing shall participate or advise in the decision. Upon entry and filing, the Board shall mail copies thereof to each contestee and attorney of record.~~

~~Section 19. Appeals to District Court. Appeals from Board decisions shall be taken to the district court having jurisdiction and proper venue in accordance with applicable statutes and the Wyoming Rules of Appellate Procedure.~~

~~Section 20. Transcript in Case of Appeal. In the case of an appeal to the district court, the appellant shall cause the transcript of the testimony and all other evidence offered at the hearing, to be filed. The transcript shall be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for preparing the transcript of the testimony and all other costs of appeal shall be paid by the appellant.~~

~~Section 21. Rules Not Applicable to Investigations. Nothing contained in these rules shall be applicable to investigations which may be carried on and conducted by the Board or its agents under the provisions of the Act.~~

### **Section 3. Application Review Process.**

~~(a) Upon receipt of a completed application, the Board Office shall review the application and if it is complete and, if there are no known grounds for denial of the license requested, issue the license. If there are known grounds for denial, the Board Office shall forward the application to the Application Review Committee (ARC).~~

~~(b) The ARC shall review the application and all other information available and following the review may:~~

~~(i) Approve the application if the applicant meets all requirements; or~~

~~(ii) If there are questions as to whether denial is appropriate, forward the application and an ARC report to the Assistant Attorney General assigned to the Board for prosecution to review.~~

(c) If, after review, the ARC and Assistant Attorney General recommend denial of an application:

(i) A preliminary denial letter shall be sent to applicant. The letter shall:

(A) State the basis for the denial including relevant statutes and rules; and

(B) Advise the applicant of the right to request reconsideration.

(ii) If the applicant fails to request reconsideration in writing within 30 days of the date of the preliminary denial letter, the preliminary denial becomes final.

(iii) If the applicant requests reconsideration within thirty (30) days, a reconsideration conference shall be held with the ARC, the Assistant Attorney General, and the applicant.

(iv) Following a reconsideration conference, the ARC shall either approve or deny the application.

(v) If denied, the applicant must submit a written request for a hearing within thirty (30) days of the date of the denial letter.

(d) Application denial hearings

(i) An application denial hearing is a formal contested case hearing conducted pursuant to the Wyoming Administrative Procedure Act.

(ii) The applicant has the burden of proving that he/she meets all requirements for the license requested.

(e) The ARC may attend hearings, but shall not take part in the consideration of any contested case.

#### **Section 4. Complaints.**

(a) A disciplinary action is initiated against a license holder by submitting a written complaint to the Board office. A complaint concerning an alleged violation of the Act or Board Rules may be submitted by any person or entity, a Board member, or a Board staff member. The written complaint should provide as much of the following information as may be available and applicable:

(i) The name and address of the complainant;

(ii) The name, address, place of employment, and telephone number of the license holder against whom the charges are made;

(iii) The specific conduct alleged to constitute the violation;

(iv) The name and address of any other witnesses; and

(v) The signature of the complainant.

#### **Section 5. Review of Written Complaint.**

(a) Written complaints shall be referred to the Board staff Compliance Officer/Investigator or to an Investigative Board Member (IBM) selected by Board staff from a rotating schedule. License holders against whom charges are made will be advised of the investigation and the nature of the complaint.

(i) The IBM shall not take part in the consideration of any contested case.

(ii) The IBM shall not, by this rule, be barred from attending any disciplinary hearing.

**Section 6. Investigations and Board Action.** Board staff shall investigate those written complaints received which merit further investigation.

(a) Upon completion of the investigation the Executive Director shall:

(i) Dismiss the complaint if no evidence of violation of the Act or Board rules is found; or

(ii) Prepare an investigative report which shall include:

(A) The findings;

(B) A list of statutes and/or Board rules believed to have been violated; and

(C) Any relevant additional information.

(b) The Executive Director shall forward the report and his/her recommendations to the Assistant Attorney General assigned to the Board for prosecution, and consult with the Assistant Attorney General.

(c) Following consultation with the Assistant Attorney General, the Executive Director may:

(i) Send the notice required by Section 5;

(ii) Prepare and file a formal petition and notice of hearing setting the matter for a contested case hearing before the Board;

(iii) Recommend the Board accept an offer of conditional terms for settlement, which may include educational courses;

(iv) Recommend the Board dismiss the complaint.

(d) The Board may resolve a complaint at any time by:

(i) Accepting a voluntary surrender of a license;

(ii) Accepting conditional terms for settlement;

(iii) Dismissal.

### **Section 7. Service of Notice and Opportunity to Show Compliance.**

Prior to commencement of a formal hearing, the ~~IBM~~ Executive Director shall give notice by mail to the license holder of the facts or conduct which warrant his/her intended action. The notice shall give the license holder an opportunity to show compliance with all lawful requirements for retention of the license within twenty (20) days of the mailing of the notice. Such notice shall be sent to the license holder's last known address ~~both~~ by certified mail ~~with return receipt requested and by first class mail.~~

### **Section 8. Formal Hearing Procedures Prerequisites.**

(a) Formal proceedings for a hearing before the Board regarding action against a license holder shall be commenced by petition and notice of hearing, served in person, or by ~~both~~ certified mail ~~and first class mail~~ sent to the address last known by the Board at least thirty (30) days prior to the date set for the hearing. The petition and notice shall contain at least:

(i) The name and address of the license holder;

(ii) A statement, in ordinary and concise language, of the nature of the complaint filed with the Board, the facts upon which the complaint is based, as well as the specific statute(s) or Board rules and regulations alleged to have been violated;

(iii) The time, place, and nature of the hearing;

(iv) That the hearing is being held pursuant to the authority provided by W.S. § 33-24-101 through 33-24-301.

(v) The license holder shall file an Answer or Notice of Appearance, which must be received by the Board at least ten (10) working days prior to the date set for hearing, or the license holder will be in default.

**Section 9. Default.** The Board may enter an order based on the allegations in a petition in any case where the applicant or license holder has not answered or appeared in writing ten (10)



working days before the hearing, or in any case in which the applicant or license holder or his/her representative has not appeared at a scheduled hearing for which they had notice.

**Section 10. Contested Case Hearings.** The Office of Administrative Hearings shall act as the hearing officer and shall preside over the formal contested case hearing which shall be conducted pursuant to the Wyoming Administrative Procedure Act and the Office of Administrative Hearings' rules concerning contested case proceedings.

(b) At the Board's discretion, contested case hearings shall either be conducted in the presence of a quorum of Board Members or a committee of one (1) or more Board Members.

(c) During the formal contested case hearing, Board Members may ask questions of the witnesses and/or the parties including their attorneys.

(d) A court reporter shall be present during the hearing and report the entire proceeding.

**Section 11. Decisions.**

(a) Proposed Decisions:

(i) At the discretion and direction of the Board hearing officer, the parties may file proposed findings of fact, conclusions of law, and order after the hearing and before the deadline announced in the hearing's closing announcements.

(ii) At the discretion and direction of the Board, the hearing officer or the Assistant Attorney General assigned to advise the Board shall prepare proposed findings of fact, conclusions of law, and order following deliberations by the Board or its committee.

(b) Final Decisions. Proposed decisions will be given consideration but are not binding upon the Board. All final decisions will be issued by the Board and shall be based exclusively upon the evidence in the record and matters officially noticed. All final decisions issued by the Board shall be served to all parties by first class mail sent to their last known address.

**Section 12. Appeals.** A Petition for Judicial Review of the Board decision may be filed in the district court in accordance with the Wyoming Rules of Appellate Procedure.

**Section 13. Transcripts.** If a Petition for Judicial Review is filed in the district court, the petitioner shall either arrange the preparation and pay for the transcript of the testimony, or reimburse the Board for the cost of the transcript if previously prepared at Board expense.