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CHAPTER 2

HEARINGS

Section 1. Hearings Generally.

In any case where the Commissioner, or his designee shall hold a hearing on the issuance, amendment, or repeal of rules pursuant to the Act, the procedures for such hearing and accompanying proceedings shall be governed generally by the rule making procedures set forth in the Wyoming Administrative Procedure Act

Section 2. Burden of Proof.

At any hearing held under the provisions of the Act, the proponent for the issuance, amendment, or repeal of any rule or regulation shall have the burden of proof.

Section 3. Control Required by Statute.

(a) In the event that the Bureau has published in the Federal Register a final order designating, rescheduling, or deleting any substance as a controlled substance under the Federal Controlled Substances Act (21 U. S. C., 811), the Commissioner, pursuant to Section 11(d) of the Act may either:

(i) Within thirty (30) days after the publication of the final order in the Federal Register, object to designating, rescheduling, or deleting the substance in the same manner under the Act, or

(ii) After thirty (30) days following the publication of the final order in the Federal Register, issue a final order designating, rescheduling, or deleting the substance in the same manner without regard to findings required under Section 11(b) of the Act.

(b) In the event that the Commissioner objects to designating, rescheduling, or deleting the substance in the same manner as the Bureau, the Commissioner shall promptly notify all persons who have previously requested in writing, notification of such action. Such notice shall contain the reasons for the objection. Thereafter, the Commissioner shall hold a hearing as required by Section 11(d) of the Act. Such hearing shall conform as nearly as practicable to the provisions of the Wyoming Administrative Procedure Act regulating the adoption, amendment, or repeal of rules.

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.

(a) 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.

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

(c) 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.