

Chapter XI
RULES OF PRACTICE AND PROCEDURE
FOR ADMINISTRATIVE HEARINGS

Section 1. **Authority and Construction.** These rules are promulgated under the authority of W.S. 33-12-123 and 134 and the Administrative Procedure Act, W.S. 16-3-101 through 115. They are to be liberally construed to provide just, speedy, and inexpensive determination of the issues presented to the Board concerning the suspension, revocation or refusal to renew a license.. These procedures may be utilized for hearings on other matters.

Section 2. **Service of Notice and Opportunity to Show Compliance**

- (a) Prior to commencement of formal proceedings by petition, the licensee shall be given notice by mail of the facts or conduct which warrant the intended action. The notice shall allow the licensee ten (10) days from the date of notice to show compliance with all lawful requirements for retention of the license.

Section 3. **Commencement of Action.**

(a) Upon an appropriate showing of violation of W.S. 33-12-119 through 140 or these rules, proceedings to make or suspend a license may be commenced or an order to Show Cause, maybe ordered. the licensee shall be notified of :

- (i) Time, place and nature of the hearing
 - (ii) The legal authority and jurisdictional basis under which the hearing is to be held.
 - (iii) The particular sections of the statutes and/or rules involved.
 - (iv) A short and plain statement of the violations alleged.
- (b) No answer is required, and at the hearing the licensee may appear and show cause why his license should not be suspended or revoked.

Section 4. **Time and Place of Hearing.**

(a) The hearing may be held no less than twenty (20) days after service of the Petition or Order to Show Cause upon the licensee. Upon motion and for good cause, the hearing may be Continued to another date.

(b) Hearings shall be conducted in Cheyenne unless the licensee requests it in the county where he/she does business.

Section 5. **Service and Filing.**

(a) The Petition or Order to Show Cause shall be served personally or by certified mail, return receipt requested, addressed to the place of business or the most recent residence address of the licensee on file with the Board. Service of other documents shall be made to all parties or their counsel by mail, and be shown on a certificate of service for each document, and service is completed upon mailing.

(b) The original of all documents filed for inclusion in the record shall be filed with the Executive Director of the Board who shall note the date of receipt on each. Copies will immediately be forwarded to the hearing officer if not previously reviewed.

(c) The Executive Director of the Board shall assign each contested case a docket number and keep a docket entry sheet, listing all documents filed in connection with the case and the date each was received.

Section 6. **Default.** In the event a licensee fails to appear at hearing after service has been made as required above, he/she will be in default, the allegations of the petition will be taken as true and an appropriate order entered.

Section 7. **Hearing Officer.**

(a) The Board shall designate a member of the Wyoming State Bar who does not regularly represent the Board, to conduct the hearing.

(b) The licensee may move to disqualify a hearing officer by filing a written motion and supporting

affidavits of personal bias with the Board. After careful consideration of the evidence presented the Board shall decide the motion.

(c) The hearing officer may withdraw whenever he deems himself disqualified because of personal bias or other substantial reason.

Section 8. **Authority of Hearing Officers.** In accordance with W.S. 16-3-112, hearing officers have the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Rule on offers of proof and objections, and receive relevant admissible evidence.
- (d) Take or cause depositions to be taken in accordance with the provisions of the Administrative Procedure Act, W.S. 16-3-101 through 115;
- (e) Regulate the course of the hearing.
- (f) Hold conferences for the settlement or simplification of issues;
- (g) Dispose of procedural requests or similar matters;
- (h) Make recommended decisions when directed to do so by the Board.
- (i) Take any other action authorized by the Board rules, statutes or the Administrative Procedure Act, W.S.3-101 through 115.

Section 9. **Counsel.** All parties may appear at the hearing with or without counsel, council must be licensed to practice law in Wyoming.

Section 10. **Inspection of File.** Each party or his counsel is permitted to inspect and copy all documents permitted contained in the Board's files related to the licensee. Copy cost shall be paid by the person requesting the information.

Section 11. **Record of Proceedings.** The hearing shall be recorded verbatim, stenographically or by any other appropriate means chosen by the Board or hearing officer. A copy will be furnished to any party upon written request to the Board and payment of a reasonable fee. If a party desires to have the hearing transcribed by a certified court reporter, he must make the necessary arrangements and bear the cost.

Section 12. **Order of Procedure at Hearing.** Hearing shall be conducted substantially as follows:

- (a) The hearing officer shall announce that the hearing is called to order and announce the matter to be heard, briefly summarizing the case and the issues.
- (b) The hearing officer shall take up any preliminary motions or matters to be discussed.
- (c) The counsel or representative of the Investigating Board Member may present a brief opening statement of the charges, explain the theory of the case and what the evidence will show.
- (d) The licensee may present his opening statement in the same manner.
- (e) The counsel or representative of the Investigating Board Member shall then present evidence, subject to cross examination by the licensee, the hearing officer and the Board.
- (f) The licensee shall present his evidence, subject to cross examination by the Investigating Board Member or counsel, the hearing officer and the Board. The counsel or representative of the Board may follow with rebuttal evidence.
- (g) Closing statements may be made at the conclusion of the evidence by both parties. These statements may include summaries of the evidence and legal arguments. The Investigating Board Member or his/her representative shall precede the licensee and may also briefly rebut licensee's closing statement.
- (h) The hearing officer may ask for proposed findings of fact, and conclusions of law from both parties, to be submitted within a reasonable time.
- (i) After all proceedings have been concluded the hearing officer shall dismiss and excuse all witnesses not already excused and declare the case taken under advisement and the hearing closed.

Section 13. **Decision of the Board.**

(a) Upon motion of a party or request of the Board and in the discretion of the hearing officer, the parties may be required to submit proposed findings of facts and conclusions of law. At the request of the Board, the hearing officer will prepare a recommended decision and order including proposed findings of fact and conclusions of law.

(b) The decision and order of the Board shall contain findings of fact and conclusions of law based on the evidence the record and the facts officially noticed upon which decision is based. The recommended decision of the hearing officer is not binding upon the Board.

(c) The decision and order of the Board shall be filed with the Executive Director of the Board, and become final when so filed. Copies shall be mailed to all parties or their attorneys .

Section 14. **Appeal to District Court and Supreme Court.** Appeal to the district court is governed by W.S. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

Section 15. **Applicability of Rules of Administrative Procedure and Civil Procedure Act.** When applicable, the Administrative Procedure Act and the Rules of Civil Procedure shall apply to contested case hearings before the Board. In the event of conflict, the statutes and rules relating to the practice of cosmetology and disciplinary proceedings thereunder shall take precedence.