

**BOARD OF MEDICINE PROPOSED RULE MAKING – Chapters 1 & 4**  
**September 2011**  
Proposed changes in ~~strikethrough~~ and underscore

**CHAPTER 1**  
**LICENSE ELIGIBILITY, APPLICATION AND INTERVIEWS**

Section 4. **Eligibility for licensure.**

(a) General requirements.

(i) Form. To be eligible for consideration for licensure, an applicant shall submit an application on the form or forms supplied or approved in advance by the board.

(ii) Payment of fee. Any application, to be eligible for consideration, shall be accompanied by the required fee in immediately negotiable funds.

(iii) Completeness. For an application to be considered complete, all documents, reports and related materials must be received in the board's office and meet all requirements set forth in the Act and the rules adopted by the board.

(iv) References. References shall be submitted on a form approved, and contain information as specified, by the board.

(A) Three (3) original references from physicians are required including at least two (2) from physicians with whom the applicant has practiced medicine within the past three (3) years. In exceptional circumstances the board may waive one (1) or more of the required reference letters. References from physicians with whom the applicant has a current or prospective financial, business or family relationship are not acceptable.

(B) All references shall be on a form prescribed by the board, dated within six (6) months of the application date and signed by the referring physician.

(C) If a submitted reference is incomplete or otherwise fails to provide sufficient information about the applicant, an applicant may be required to submit one or more references in addition to those required in subparagraph (A).

(v) Time of submission. An application, to be considered, shall be complete in all respects no later than fifteen (15) business days prior to the licensure interview date, should a licensure interview be required by these rules.

(vi) Notification of ineligibility. The board shall issue a written notice of ineligibility to any applicant who does not meet the eligibility requirements, or has otherwise failed to submit an application which meets the requirements, of the act or these rules.

(vii) Applications shall remain on active status for six (6) calendar months from

the date the application document is received in the board office. The applicant is eligible for a licensure interview with the board, if one is required by these rules, at any time within the six (6) month period following the date the application is complete pursuant to Ch. 1, Section 4(a)(iii) of these rules.

(viii) Proof of legal presence. Pursuant to 8 U.S.C. 1621, any applicant for licensure as a physician or physician assistant shall verify his or her lawful presence in the United States on a form approved or prescribed by the board.

(ix) Social Security number. Any applicant for licensure or renewal of licensure as a physician or physician assistant shall, pursuant to W.S. 33-1-114, provide his or her Social Security number as part of any application for licensure.

(b) Statutory requirements. To be eligible for consideration for licensure, an applicant shall demonstrate in his or her application that he or she meets each and all of the requirements of the act including, but not limited to, those requirements set forth in W.S. 33-26-303, and these rules.

(c) Credentials service required. An applicant who graduated from a school of medicine not accredited by the LCME or AOA shall apply only through the Federation of State Medical Boards Credentials Verification Service (FCVS) and supply additional information as requested by the Board. All applicants whose applications are received by the Board on or after October 1, 2009, shall apply only through the Federation of State Medical Boards Credentials Verification Service and supply additional information as requested by the Board.

(d) A person who has pled guilty or nolo contendere to or has been convicted of a felony or any crime that is a felony under Wyoming law in any state or federal court or in any court of similar jurisdiction in another country may apply for licensure, however, the board may deny licensure based solely upon such plea or conviction.

(e) No exemption from licensure for out-of-state physicians. Any physician rendering medical diagnosis and/or treatment to a person physically present in this state must have a license issued by the board when such diagnosis/treatment is rendered, regardless of the physician's location and regardless of the means by which such diagnosis/treatment is rendered. This requirement shall not apply to an out-of-state physician who consults by telephone, electronic or any other means with an attending physician licensed by this board or to an out-of-state physician who is specifically exempt from licensure pursuant to W.S. 33-26-103.

(f) A person whose medical license has been revoked, suspended, restricted, had conditions placed on it or been voluntarily or involuntarily relinquished or surrendered, by or to another state medical or licensing board, or has a disciplinary action pending before another state medical or licensed board, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, relinquishment, surrender of license or pending disciplinary action alone.

(g) A person whose clinical privileges at a health care facility have been revoked,

suspended, restricted, had conditions placed upon them or been voluntarily or involuntarily resigned, or against whom a clinical privilege action is pending at a health care facility, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, resignation of privileges or pending clinical privilege action alone.

(h) All applicants for licensure whose applications are received on or after July 1, 2009, and who have taken the USMLE or COMLEX, shall have completed all three parts of the examination in a period of not more than seven years (eight years for applicants who have been in a combined D.O. or M.D./Ph.D. program), and shall have taken the three parts of the examination a total of not more than seven times. Persons who have taken the three parts of the examination more than a total of seven times or who have taken more than seven years (eight years for applicants who have been in a combined D.O. or M.D./Ph.D. program) to pass all three parts of the examination shall not be eligible for licensure unless and until they successfully complete either one (1) year of post graduate training in addition to that required in W.S. 33-26-303(a)(iv) **and subsection (j) of this section**, or one (1) or more other comprehensive and suitably-rigorous assessment, training and evaluation programs after passage of all parts of the examination.

(i) Reserved.

(j) Postgraduate (Residency) Training. All applicants for licensure other than a training license must demonstrate one (1) or more of the following:

(A) Successful completion of not less than two (2) years of postgraduate training in an A.C.G.M.E., A.O.A. or R.C.P.S.C. accredited program; or,

(B) Successful completion of not less than one (1) year of postgraduate training in an A.C.G.M.E., A.O.A. or R.C.P.S.C. accredited program and:

(1) Current certification by a medical specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification; or

(2) Continuous full and unrestricted medical licensure in good standing in one or more states and/or the District of Columbia for the preceding five (5) years.

Section 5. **Licensure.** Pursuant to statute, the board may issue the following:

(a) Licenses to practice medicine.

(i) A license to practice medicine, subject to annual renewal.

(ii) A temporary license to practice medicine pursuant to W.S. 33-26-304(a).

(iii) A restricted or conditional license to practice medicine.

(iv) An inactive license. Inactive licenses are available for **currently-licensed Wyoming residents physicians** who do not intend to practice medicine, write prescriptions or engage in clinical activity. The Board may grant an inactive license to practice medicine if, in addition to meeting all eligibility requirements of W.S. 33-26-303, the applicant files a verified affidavit with the board attesting that: (1) he/she shall not see patients or perform procedures in a clinical or office setting for any type of remuneration, (2) he/she shall not in any way hold himself/herself out as actively engaged in the active practice of medicine, and (3) he/she shall submit written confirmation to the board on an annual basis confirming that such inactive status is ongoing. An inactive license exempts the licensee from continuing medical education requirements described in Chapter 3, Sec. 7 of these rules. A holder of an inactive license may not prescribe medications. Licensees claiming inactive status who receive remuneration for providing clinical services, or who prescribe any medication, may be subject to discipline pursuant to W.S. 33-26-402(a)(xxvii).

(v) An emeritus license. Emeritus licenses are available for retired physicians who hold a current Wyoming license to practice medicine, ~~reside in Wyoming~~, and wish to provide clinical care in Wyoming without remuneration **or for nominal remuneration in a non-profit facility**. Such license may issue to an applicant who provides proof that he/she is retired from the active practice of medicine, provides proof that he/she has maintained a license in good standing in Wyoming or another jurisdiction of the United States or Canada for a period of not less than ten (10) years prior to applying for the emeritus license, and signs a notarized statement he/she will not accept any form of remuneration for medical services rendered in Wyoming while in the possession of an emeritus license **or that he/she is receiving only nominal remuneration for providing care in a non-profit facility**. As part of the application process, an applicant for an emeritus medical license who does not hold a current Wyoming license shall complete all requirements for issuance of a Wyoming medical license set forth in W.S. 33-26-303. If a licensure interview is required pursuant to subsection (b) of this rule, such interview may be conducted by one (1) board member and, if deemed appropriate by the board officers, may be conducted by telephonic means.

(A) Physicians possessing an emeritus medical license shall:

(I) Annually sign an affidavit affirming that their medical practice continues to be without remuneration **or is for nominal remuneration in a non-profit facility**; and

(II) Even though physicians holding an emeritus license are not engaged in active clinical practice, the Board expects that they will engage in life-long learning activities to maintain a base of medical knowledge and skills. Therefore, the requirements for continuing medical education noted in Ch. 3, sec. 7 of these rules apply to emeritus licenses. Continuing medical education may also be satisfied by documented emeritus clinical service in a non-profit health care facility, such clinical service to be credited at one (1) hour of continuing medical education credit for every five (5) hours of clinical service, up to a maximum of ten (10) hours of continuing medical education credit per calendar year.

(B) The board shall require no fees for the application for, or renewal of, an emeritus medical license.

**(C) As used in this section, “nominal remuneration” means monetary compensation of not more than one thousand dollars (\$1,000.00) in a calendar year.**

(b) Licensure Application Processing, Review and Interviews.

(i) When an applicant’s core application documents have been received by the Board and are deemed to be satisfactory, the executive director or his designee will review the application and supporting materials to determine whether a licensure interview of the applicant will be required pursuant to this rule. If the executive director or his designee determines that ~~the applicant will not, in all likelihood, be required to have a licensure interview pursuant to this chapter,~~ the applicant has been continually licensed in good standing (not including training licenses) for the preceding three (3) years in one or more states and/or the District of Columbia~~;~~, and the applicant has a clean application as defined in this chapter, the executive director may, acting on behalf of the Board, issue a temporary license to the applicant pursuant and subject to Chapter 1, Section 6 of these rules, including the requirement for a complete application set forth therein. **In no event shall a temporary license issued under this paragraph (b)(i) be valid more than 180 days from the original date of issuance.**

(ii) If an applicant is not issued a temporary license pursuant to paragraph (b)(i) of this rule, when the application is deemed complete pursuant to Section 4 of this chapter, the executive director or his designee shall review the application and supporting materials ~~to determine whether a licensure interview of the applicant will be required pursuant to this rule. If the executive director or his designee determines that the applicant will not, in all likelihood, be required to have a licensure interview, the executive director and~~ may, acting on behalf of the Board, issue a temporary license to the applicant pursuant and subject to Chapter 1, Section 6 of these rules. If the executive director or his designee **declines to issue a temporary license to the applicant is unable to make the determination, pursuant to paragraph (b)(i) of this section, that an applicant will not, in all likelihood, be required to have a licensure interview,** the applicant’s file shall be presented to the board officers for their review. The board officers may take one (1) of the following actions:

(A) If a majority of the board officers agree, they may:

(1) Issue a temporary license to the applicant, pursuant to Chapter 1, Section 6 of these rules;

(2) Issue a temporary license to the applicant, pursuant to Chapter 1, Section 6 of these rules, subject to the requirement that the applicant appear for a licensure interview;

(3) Defer action on the application until the applicant appears

for a licensure interview.

(B) If a majority of the board officers are unable to agree on one of the options in subparagraph (A), above, then action on the application will be deferred until the applicant appears for a licensure interview.

(vi) Training license. A medical training license issued pursuant to W.S. 33-26-304(c) to an applicant who meets all of the requirements of such statute and these rules.

(A) First-year training license (“T-1”). An applicant who is in the first year of enrollment in an A.C.G.M.E. or A.O.A. accredited residency program located in this state may be issued a first-year training license (“T-1” license). The holder of a T-1 license may not practice medicine outside of the duties assigned as part, and under the supervision of the faculty, of the residency program (i.e. “moonlight”). The holder of a T-1 license may not independently prescribe any legend drugs or medications, and may only prescribe legend drugs or medications with the co-signature of a physician holding an active license in good standing in this state. The prohibition on prescribing does not apply to orders written under the supervision of a licensed attending physician for patients receiving inpatient care. The T-1 license expires on June 30<sup>th</sup> of each year, and may not be renewed.

(B) Second-year training license (“T-2”). An applicant who has successfully completed not less than one (1) year in an A.C.G.M.E. accredited residency program and is enrolled in an A.C.G.M.E. or A.O.A. accredited residency program located in this state as a second- or third-year resident may be issued a second-year training license (“T-2” license). The holder of a T-2 license may not practice medicine outside of the duties assigned as part, and under the supervision of the faculty, of the residency program (i.e., “moonlight”) except as specified in paragraph (H) below. The holder of a T-2 license may independently prescribe legend drugs and medications, subject to all applicable laws and regulations. The T-2 license expires on June 30<sup>th</sup> of each year, and may be renewed only one (1) time upon applicant’s successful completion of the second year of the residency program. If the applicant meets all requirements for issuance of a regular medical license under W.S. 33-26-301(b)(i) and W.S. 33-26-303, the T-2 license may not be renewed.

(C) To qualify for a training license (T-1 or T-2), an applicant must submit the following:

I. Evidence that the applicant has graduated from a school of medicine accredited by the L.C.M.E., a school of osteopathy accredited by the A.O.A., or a Canadian-accredited school of medicine, or that the applicant has been certified by the E.C.F.M.G.;

II. Evidence that the applicant has passed steps one (1) and two (2) of the U.S.M.L.E. or the COMLEX with a two-digit score of not less than 75 on each part;

III. A copy of the applicant’s signed contract then in force with an A.C.G.M.E., or A.O.A. accredited residency program located in this state (copy of the

contract must be submitted with the application);

IV. A recommendation form, as provided by the Board, signed by the director of the residency program, or his or her designee, stating that the applicant is under the supervision of the faculty of the residency program;

V. A completed application on a form provided or approved by the Board; and,

VI. The requisite fee(s) in accordance with this chapter.

(D) Applicants for a second-year (T-2) training license shall be subject to these additional requirements:

I. The applicant will use the Federation Credentials Verification Service and have his or her packet submitted to the board at the applicant's expense;

II. The board shall query the National Practitioner Data Bank, Healthcare Integrity and Protection Data Bank, and Federation of State Medical Boards' board action data bank regarding the applicant; and,

III. The applicant will submit documentation that he or she has successfully completed not less than one (1) year in an A.C.G.M.E. or A.O.A. accredited residency program and is enrolled in an A.C.G.M.E. or A.O.A. accredited residency program located in this state as a second- or third-year resident.

(E) When the application for a training license is complete, the Board's executive director shall review the application, and may take the following action:

I. Issue the training license; or

II. Refer the application to the board officers for review. The board officers may issue the training license, issue the training license subject to conditions and/or restrictions agreed upon in writing by the applicant, or deny the application for the training license. If the board officers deny the training license, the applicant may appeal that decision to the full board, which shall review the application *de novo*, and which may require the applicant and/or the director of the residency program to appear for an interview. The board may issue the training license, issue the training license subject to conditions and/or restrictions agreed upon in writing by the applicant, or deny the application for a training license. If the board denies the application, it shall issue an order to that effect, which shall be appealable to the district court pursuant to the Act and these RULES AND REGULATIONS.

(F) Renewal of T-2 license. To renew a T-2 license, the applicant must provide documentation of the following:

I. Successful completion of the second year of an A.C.G.M.E. or A.O.A. accredited residency program;

II. A copy of the applicant's signed contract then in force with an A.C.G.M.E. or A.O.A. accredited residency program located in this state (copy of the contract must be submitted with the renewal application);

III. A recommendation form, as provided by the Board, signed by the director of the residency program, or his or her designee, stating that the applicant is under the supervision of the faculty of the residency program;

IV. A completed renewal application on a form provided or approved by the Board; and,

V. The requisite fee(s) in accordance with this chapter.

(G) Automatic termination of training license. Issuance of a training license is subject to the applicant's current enrollment in an A.C.G.M.E. or A.O.A. accredited residency program located in this state. If for any reason the holder of a training license resigns or is dismissed from, or otherwise is no longer currently enrolled in, an A.C.G.M.E. or A.O.A. accredited residency program located in this state, the training license shall immediately expire and be deemed automatically terminated without additional action by the Board.

(H) A holder of a T-2 license may practice medicine outside of the duties assigned as part of the residency program in which he or she is enrolled (i.e., "moonlight") only if these following conditions are met:

I. The holder of the T-2 license has passed Step 3 of the USMLE or COMLEX with a two-digit score of not less than 75;

II. The holder of the T-2 license receives advance written approval from the residency program director for his or her proposed "moonlighting"; and,

III. The residency program director notifies the Board in advance and in writing of the approved "moonlighting" arrangement.

(vi) Volunteer license. The board may issue a license to a physician who is in good standing in at least one (1) jurisdiction other than the state of Wyoming for the purpose of providing medical treatment as a volunteer, without compensation. An applicant for a volunteer license must complete and submit a form and documentation prescribed by the board, meet the requirements of W.S. 33-26-303, agree to comply with the Act and these rules, agree to be subject to the jurisdiction of the board, provide proof of licensure in good standing in at least one (1) jurisdiction other than the state of Wyoming, and pay the fee set by the board. A licensure interview is not required for issuance of a volunteer license. A volunteer license shall be valid for not more than twenty-one (21) consecutive days in any calendar year, and may not be renewed.

(vii) Administrative medicine license. The board may issue an administrative medicine license to a physician who meets all qualifications for licensure in the state, including payment of a fee set by the board, but who does not intend to provide medical or clinical services

to or for patients while in possession of an administrative medicine license and signs a notarized statement to that effect. An administrative medicine license is subject to annual renewal.

(b) Licensure Application Processing, Review and Interviews.

(i) When an applicant's core application documents have been received by the Board and are deemed to be satisfactory, the executive director or his designee will review the application and supporting materials to determine whether a licensure interview of the applicant will be required pursuant to this rule. If the executive director or his designee determines that the applicant will not, in all likelihood, be required to have a licensure interview pursuant to this chapter, the applicant has been continually licensed in good standing (not including training licenses) for the preceding three (3) years in one or more states and/or the District of Columbia; and the applicant has a clean application as defined in this chapter, the executive director may, acting on behalf of the Board, issue a temporary license to the applicant pursuant and subject to Chapter 1, Section 6 of these rules, including the requirement for a complete application set forth therein.

(ii) If an applicant is not issued a temporary license pursuant to paragraph (b)(i) of this rule, when the application is deemed complete pursuant to Section 4 of this chapter, the executive director or his designee shall review the application and supporting materials to determine whether a licensure interview of the applicant will be required pursuant to this rule. If the executive director or his designee determines that the applicant will not, in all likelihood, be required to have a licensure interview, the executive director may, acting on behalf of the Board, issue a temporary license to the applicant pursuant and subject to Chapter 1, Section 6 of these rules. If the executive director or his designee is unable to make the determination, pursuant to paragraph (b)(i) of this section, that an applicant will not, in all likelihood, be required to have a licensure interview, the applicant's file shall be presented to the board officers for their review. The board officers may take one (1) of the following actions:

(A) If a majority of the board officers agree, they may:

(1) Issue a temporary license to the applicant, pursuant to Chapter 1, Section 6 of these rules;

(2) Issue a temporary license to the applicant, pursuant to Chapter 1, Section 6 of these rules, subject to the requirement that the applicant appear for a licensure interview;

(3) Defer action on the application until the applicant appears for a licensure interview.

(B) If a majority of the board officers are unable to agree on one of the options in subparagraph (A), above, then action on the application will be deferred until the applicant appears for a licensure interview.

(iii) A summary of each applicant's licensure file and application will be sent

to all members of the Board prior to the next regularly-scheduled board meeting, and any board member may request that the applicant appear for a licensure interview.

(iv) Licensure interviews. If an application or any information received by the Board demonstrates that an applicant is of a status or possesses one or more of the following characteristics, or if any Board member believes a licensure interview is necessary given the information contained on the application, the applicant may be required to submit to a licensure interview before a panel of not less than three (3) board members:

- (A) Is seventy (70) years old or older;
- (B) Has been licensed as a physician for more than thirty-five (35) years;
- (C) Has been named as a responsible party in a professional liability suit;
- (D) Has answered “Yes” to one or more questions on the application form regarding physical or mental impairment, substance or alcohol abuse, criminal convictions, prior disciplinary actions, restrictions or conditions on medical licensure, including relinquishment or surrender of a medical license, or restriction, suspension, or resignation while under investigation, of hospital privileges;
- (E) The application or other information acquired or received by the board appears to indicate that the applicant may not possess sufficient medical training and experience appropriate for the applicant’s intended practice in this state;
- (F) The applicant’s education and/or training verification documents indicate an unexplained delay in completion of his or her medical education and/or postgraduate training;
- (G) The applicant’s verification documents indicate more than one attempt at passage of any examination necessary to obtain initial licensure or to maintain ongoing licensure;
- (H) The applicant’s verification documents indicate failure to pass board specialty recertification examinations;
- (I) One or more board member(s) determine that there are issues raised by the application and/or any supporting or verification documents that should be addressed and ruled on by a panel of board members;
- (J) Whose temporary license was deferred by the board officers;
- (K) The applicant has not previously engaged in the active practice of medicine for a period of at least twelve (12) continuous months;

(L) The applicant has been convicted of or pled guilty or nolo contendere to a charge of driving while under the influence of an intoxicant within five (5) years of the date of his/her application;

(M) The applicant has not been engaged in the active practice of medicine in the immediately-preceding two (2) year period;

(N) Failure to fully and completely answer one or more questions on the application form or failing to answer one or more questions truthfully; or,

(O) The applicant's post graduate work and/or employment history indicate an unexplained gap.

(v) Licensure interviews shall be conducted in person (unless otherwise specifically permitted by these rules) and shall consist of oral questions by the panel of board members and oral responses by the applicant. By his or her responses to questions posed in the licensure interview, the applicant must demonstrate to the satisfaction of a majority of the board that he or she is qualified to practice medicine in this state, that (1) he or she possesses a minimum fund of general and identified scope of practice medical knowledge appropriate for the applicant's intended practice in this state, (2) he or she possesses sufficient medical training and medical experience appropriate for the applicant's intended practice in this state, (3) he or she possesses personal and professional character and integrity befitting the practice of medicine, and (4) that there are no other factors contained in the application or disclosed in the licensure interview that would demonstrate that the applicant would be unable to practice medicine in a safe and competent manner.

(vi) Following a licensure interview, the board, shall, by a recorded vote of the board members present:

(A) Grant a license;

(B) Deny the application upon stated reasons;

(C) Allow the applicant to withdraw the application;

(D) Agree in writing signed by the applicant, to the issuance of a license subject to restrictions and/or conditions; or

(E) Defer action pending successful completion by the applicant of a medical competence examination such as the special purpose examination (SPEX) and/or such other examination, review, evaluation or course of study designated by the board and/or the board's receipt, review and approval of other information requested during the interview.

(vii) If an applicant does not have a licensure interview, a full unrestricted license may be issued to the applicant only upon a majority vote of the board. The board may

conduct this vote by voice vote, and may do so using a consent list showing applicants for approval.

(viii) Failure to appear for a licensure interview, regardless of whether a temporary license was issued to the applicant, may result in denial by the board of the application for licensure pursuant to W.S. 33-26-202(b)(i).

**Section 6. Temporary license.**

(a) Temporary license to practice medicine means a license to practice medicine for a limited duration issued pursuant to Ch. 1, Section 5(b) of these rules after application, verification and review for eligibility by the board. A temporary license is effective from the date of issuance until the later of a vote of board members on the application pursuant to these rules, or 8:00 a.m. on first day of the next regularly-scheduled board meeting. **Except as otherwise provided in this chapter, Temporary licenses issued less than fifteen (15) business days prior to the next regularly-scheduled board meeting will be valid until the later of a vote of board members on the application pursuant to these rules, or 8:00 a.m. on first day of the second regularly-scheduled board meeting after issuance.**

(b) Upon written request received from the holder of a temporary license not less than seven (7) days before expiration of the temporary license the executive director may extend a temporary license for an additional term no longer than the later of a vote of board members on the application pursuant to these rules, or the date of the next regularly-scheduled board meeting after extension of the temporary license. The holder of a temporary license may request no more than one (1) extension of the temporary license under this subsection.

(c) If upon review of the application of a person who is granted a temporary license under Section 5(b)(i) or 5(b)(ii)(A)(1) of this chapter one or more board members request that the holder of the temporary license appear for a licensure interview, the executive director may extend the temporary license held by that person until 8:00 a.m. on the first day of the second regularly-scheduled board meeting after issuance of the temporary license. **In no event, however, shall a temporary license issued under Section 5(b)(i) of this chapter be extended to be valid more than 180 days from the original date of issuance.**

(d) All applicants who are granted a temporary license under Section 5(b)(i) of this chapter are required to submit all documentation and materials necessary to ensure that their license application is complete in accordance with Section 4 of this chapter. Failure to have a complete license application within 180 days of issuance of a temporary license may result in denial by the board of the application for licensure pursuant to W.S. 33-26-202(b)(i).

**CHAPTER 4  
RULES OF PRACTICE AND PROCEDURE FOR DISCIPLINARY COMPLAINTS  
AGAINST PHYSICIANS**

**Section 4. Disciplinary proceedings.**

(a) Commencement of disciplinary proceedings.

(i) Proceedings under these rules shall commence when a complainant, who may be a member of the board, notifies the board in writing of conduct which falls within the board's jurisdiction and which, if proven, would constitute a violation of W.S. 33-26-402. Said complaint shall clearly identify the complainant by name, address and telephone number (if any).

(ii) On receipt of a complaint, the executive director shall file stamp the complaint and enter the date of the complaint on the docket and ledger.

(iii) All complaints shall be deemed received on the date of actual receipt by the executive director.

(iv) A copy of every written complaint and every writing in the general nature of a complaint as well as a report of every oral communication in the nature of a complaint received by the board shall be filed and maintained in the board's permanent files and docket.

(v) A copy of every written complaint and every writing in the nature of a complaint as well as a report of every oral communication in the nature of a complaint received by the board shall, upon receipt, be sent to the board's attorney.

(vi) Within thirty (30) days after receipt of a complaint, a majority of the board officers shall screen the complaint and, if they determine that the complaint alleges conduct by a licensee which falls within the board's jurisdiction and which, if proven, would constitute a violation of W.S. 33-26-402, shall appoint two members of the board as interviewers or take other appropriate action as necessary. Nothing herein precludes the appointment of the president, vice president or secretary as a petitioner in any case that they have screened. Whenever reasonably possible the interviewers shall include at least one (1) lay board member. If such inclusion is not reasonably possible, the executive director shall note that finding in the docket together with the grounds and reasons for said finding. If the majority of the board officers cannot determine whether the complaint alleges conduct by a licensee which falls within the board's jurisdiction and/or which, if proven, would constitute a violation of W.S. 33-26-402, they may authorize and direct the board's agents and/or employees to investigate the complaint to provide sufficient information for them to complete the screening process.

(b) Notice to the complainant.

(i) Immediately upon receipt of a complaint, the executive director shall notify the complainant in writing of said receipt.

(ii) The notification of the complainant required by this section shall clearly advise the complainant as follows:

(A) Pursuant to W.S. 33-26-408(a)(ii), the complainant and the complainant's witnesses incur no civil liability for information provided to the board in good faith, without malice, and in reasonable belief that the information is accurate.

(B) Any effort by the licensee named in the complaint to discourage, intimidate, or otherwise impede a full and vigorous pursuit of the complaint constitutes, under board rules, a separate and distinct reportable instance of unprofessional conduct.

(c) Notice to the respondent.

(i) Within fifteen (15) working days after the board officers have appointed interviewers, notice shall be sent to the respondent.

(ii) The notification of respondent required by this section shall clearly advise the respondent as follows:

(A) The nature and particular subject matter of the complaint, when it was filed, the board's appointment of interviewers;

(B) A date by which the respondent is requested to submit a written response to the allegations in the complaint.

(C) Notice to the respondent shall advise that counsel may be present at the informal interview, describe the interview process, and enumerate a range of potential sanctions that may be available to the board as a result of the interviewers' recommendations.

(D) That any effort by the licensee named in the complaint to discourage, intimidate or otherwise impede a full and vigorous pursuit of the complaint constitutes, under board rules, a separate and reportable instance of unprofessional conduct.

(E) If the majority of the board officers determine that the name of the complainant should not be disclosed to the respondent or if the complainant requests that his or her identity not be revealed to the respondent, the notice provided for in this subsection shall not identify the complainant. In such case the board officers may, however, approve disclosure of the particular patient care in question, including the name of the patient, to the respondent.

(F) The notice described herein shall also be sent to the complainant.

(d) Emergency suspension. In cases where the board determines that emergency action is required for the protection of the public health, safety or welfare, the president may call a special meeting of the board which shall occur as soon as possible after receipt of the complaint and appropriate supporting evidence. Prior to convening such special meeting, the majority of the board officers shall review the complaint and/or any additional information to determine whether such special meeting is appropriate. If deemed appropriate for emergency suspension, a copy of the complaint and any additional evidence shall be made available to each member of the board prior to the special meeting. Such meeting may occur via telephone conference call, when necessary. If temporary emergency suspension pursuant to W.S. 33-26-404(c) is indicated, the board may so order, pursuant to the requirements of W.S. 16-3-113(c).

(e) Interviews.

(i) The interviewers shall investigate the allegations of errant conduct against the respondent and if circumstances warrant, conduct an informal interview.

(ii) The informal interviewers may, at their discretion, conduct the interview without assistance of board counsel and/or by telephone. If the interviewee notifies the board of

representation by counsel, board counsel shall participate in the interview. Notice by the interviewee of intent to be represented by counsel shall be sent to the board, in writing, not later than fourteen (14) days prior to the interview.

(iii) The interviewers are the duly appointed agents and representatives of the board. After the informal interview and at other appropriate points in the proceedings their recommendation shall be considered by the board officers.

(iv) No part or aspect of the interviewers' investigation or recommendation shall be divulged to another member of the board prior to a contested case hearing, except as may be otherwise required by these rules. However, final board orders shall be disseminated to board members and board counsel by the executive director on a routine basis. This shall include private reprimands, censures and other actions that may not be subject to public disclosure.

(v) At any time after their appointment by the majority of the board officers, the interviewers may seek to use or employ investigators, the offices of the attorney general, the state division of criminal investigation or any other investigatory or fact finding agency they deem necessary. The interviewers may employ, at their discretion, medical specialty consultants to assist them in the investigation and evaluation of the complaint. Pursuant to W.S. 33-26-408(a), these individuals shall be deemed agents of the board and there shall be no liability on the part of and no action for damages based on their actions and conduct relevant and/or material to the conduct of the investigation undertaken at the direction of the board.

(f) The informal interview.

(i) Following notification to the complainant and the respondent of the board's appointment of the interviewers, and where circumstances warrant, the interviewers shall conduct the informal interview.

(ii) The purpose of the informal interview is to determine whether the allegations, if proven, would constitute a violation of W.S. 33-26-402, whether a mental or physical examination of the respondent is warranted, whether a further investigation is warranted, pursuant to W.S. 33-26-403, whether additional charges should be brought, whether there exists a possibility of resolution of the complaint without further proceedings and whether a contested case disciplinary hearing should be pursued.

(iii) Review of the complaint by the interviewers may include, but is not limited to:

(A) Determination of the respondent's licensing status;

(B) Whether the alleged violation includes a fee dispute;

(C) The duration of time in which the acts or omissions occurred;

(D) Whether there appears a likelihood that the facts and circumstances alleged, if proven, would constitute a violation of W.S. 33-26-402;

- (E) The factual basis for the complainant's allegations;
- (F) Whether the matter is outside the board's jurisdiction and should be referred to another state agency;
- (G) Notice of the informal interview shall be given to respondent and contain time, date and location of the interview and a statement of the action the interviewers and board are authorized to take following such interview;
- (H) The interviewers shall make every reasonable attempt to conduct the informal interview within forty-five (45) days after their appointment or as soon thereafter as practicable. If special circumstances prevent the conduct of the informal interview by such date, the informal interview may proceed at the earliest possible date;
- (I) The informal interview may be conducted by conference telephone call if the interviewers determine that the purpose of the interview can be achieved in such manner;
- (J) The interviewers may request that the respondent submit documents and/or a written narrative response to the allegations of the complaint prior to the informal interview if they determine that such information would assist them in their investigation and in their conduct of the informal interview;
- (K) The interviewers, board counsel, respondent and/or respondent's counsel may discuss stipulation, dismissal, consent decrees, restrictions or any other pertinent procedural or substantive information;
- (L) An electronic or stenographic record may be made and shall, if made, become part of the permanent confidential files of the board;
- (M) An informal interview is not subject to strict legal procedural or evidentiary rules. Informal interviews are not open to the public nor is their occurrence a matter of public record;
- (N) After reviewing their own findings based upon the investigation and the record made of the informal interview, the interviewers shall report, in writing, to the board officers. Such report shall be made within thirty (30) days after completion of the investigation or as soon thereafter as practicable;
- (O) The interviewers shall recommend dismissal of the case, continuation of the investigation, that a medical, mental or physical examination be ordered for the respondent or the placing of restrictions or conditions on the respondent's license or suspension or voluntary relinquishment or any other combination of acts designed to specifically redress the complaint or to proceed with a contested case;
- (P) The board officers shall accept the interviewers' recommendations on behalf of the board. This determination shall occur within thirty (30) working days of receipt by the board officers of the interviewers' report or as soon thereafter as practicable;

(Q) The executive director of the board shall then note the date and disposition on the ledger, and the date, disposition and the written findings and basis therefore in the docket and notify all board members and counsel of the disposition of the matter.

(R) The board shall notify the complainant and the respondent of its actions and in a statement in concise and plain language note the reasons and basis therefore.

(iv) Investigation and examination of physicians.

(A) Following the informal interview and before reporting to the board officers, the interviewers may further investigate the complaint in order to more fully inform themselves about the allegations contained in the complaint;

(B) The investigation may include the taking of depositions as authorized in W.S. 33-26-401(c), interviews with witnesses, and such other investigation as the interviewers deem necessary.

(C) As a part of their investigation, or at any time after their appointment, the interviewers with the prior approval of a majority of the board officers may order a mental, physical or medical competency exam of the respondent pursuant to W.S. 33-26-403.

(D) Notice of the interviewers' order requiring respondent to submit to a medical, mental or physical examination shall include notice of a respondent's right to designate another physician to be present at the examination and make an independent report to the board.

(E) The interviewers shall also notify the respondent that he may request a mental, physical or medical examination for himself, pursuant to the terms of W.S. 33-26-403(a-d).

(F) The interviewers shall consider the recommendation of the examination committee and shall consider the substantive findings of the committee.

(G) The results of any board ordered mental, physical competency or medical competency examination shall be provided to the respondent and the interviewers prior to any further board action.

(g) Waiver of informal interview.

(i) Following notice by the board of its intent to conduct an informal interview pursuant to section 4(e), respondent may, at any time, waive the right to an informal interview and proceed directly to a contested case proceeding pursuant to section 4(i).

(ii) Waiver of the informal interview process must be made in writing, signed by the respondent and sent to the board of medicine.

(iii) Respondent's waiver of the informal interview process shall not, in and of

itself, constitute grounds for additional charges of unprofessional conduct pursuant to W.S. 33-26-402(a)(xxvii).

(h) Settlement or stipulation.

(i) Nothing in these rules shall preclude the respondent and the board from entering into a consent decree, nor shall these rules preclude a voluntary request by the respondent for the suspension, relinquishment or restriction of respondent's license, provided, however, that the board may, but is not required to accept or reject such a request.

(ii) The reasons, grounds, conditions and other provisions of any such consent decree, voluntary relinquishment, suspension or restriction or other board action taken in lieu of a contested case hearing shall be recorded on the docket and become a permanent part of the board's confidential files.

(iii) Such consent decree or other action may occur at any time prior to the announcement of a final decision after a contested case hearing.

(iv) In the case of a stipulation, relinquishment or consent decree, the public ledger shall note only the disciplinary action taken and the date.

(v) The complainant and respondent shall not enter into settlement negotiations or exchange of offers of settlement or compromise without the express written permission of the board.

(i) Contested case.

(i) Any contested case before the board in a disciplinary action or denial appeal shall be conducted pursuant to these rules and the Wyoming Administrative Procedure Act (W.S. 16-3-101, et. seq.).

(ii) Disciplinary actions shall be initiated by a petition by the board related by the complainant or by the interviewers, as petitioners, against the licensee, as respondent.

(A) At least ten (10) days prior to service of petition, written communication shall be sent to respondent requiring indication whether respondent will accept service of the petition by United States certified mail, return receipt requested, or if respondent desires personal service at his place of business. Failure to return written election of choice of service to the board within ten (10) days of receipt shall mandate personal service.

(B) The petition shall contain the following information:

(I) The respondent's name and address;

(II) The time, manner and place of the hearing. The board shall notify the respondent at least forty-five (45) days before holding a contested case hearing. The board and respondent may waive this requirement by written agreement entered into the record.

(III) The docket number assigned to the case;

(IV) The legal authority and jurisdiction under which the hearing is to be held;

(V) The particular sections of the statutes and rules involved;

and

(VI) A statement in ordinary and concise language setting forth the grounds for the petition. If the board is unable to state the matters in detail at the time the petition is served, the petition may be limited to a statement of issues involved. Within thirty (30) days after a respondent's request, the board shall amend the petition to provide a more definite and detailed statement. The hearing officer shall allow amendment of the petition upon a showing of good cause and lack of prejudice to the respondent.

(iii) Answer. The respondent ~~shall~~ **may** file an answer within ~~thirty~~ **twenty** (20 ~~30~~) days after receiving the petition.

(iv) Informal disposition. Subject to board approval, a disciplinary proceeding may be resolved by mutual agreement at any time prior to the hearing. In addition, the board may, on its own motion, dismiss a disciplinary proceeding or petition. All settlements, agreements, or stipulations, dismissals, and consent decrees shall be in writing and entered into record. Following such a resolution, the board shall issue findings and a final order dismissing the case unless the board, by specific action, finds that a final order should not be issued in the case. Any such finding shall be reduced to writing and set forth the specific reasons for not issuing a final order. A copy of such writing shall be placed and retained in the respondent's file maintained by the board.

(v) Hearing officer.

(A) The board shall appoint a hearing officer to preside over each contested case. The appointed hearing officer shall not have participated in the preliminary investigation or case preparation.

(B) The hearing officer shall withdraw from the case if he or she deems himself or herself to be disqualified. The hearing officer shall provide a written explanation of such withdrawal to the board before withdrawing.

(C) A party may make a written request for the removal of a hearing officer. The request shall be made as soon as possible after the party has reasonable grounds to believe that the hearing officer is subject to disqualification. The written request shall explain the reasons for the requested disqualification and shall be accompanied by affidavits. If the hearing officer denies the request, he or she shall issue a written explanation of such denial and enter the explanation into the record. If the hearing officer grants the request, the board shall appoint a new hearing officer as soon as possible.

(vi) Duties and powers of hearing officer. The hearing officer shall have those powers set forth in W.S. 16-3-112(b) and all such other powers as may be necessary to conduct a

fair and impartial contested case hearing, including, but not limited to, the power to provide for and determine the scope of discovery and assist the board in the development of proposed findings of fact and conclusions of law.

(vii) Discovery. Discovery in a board disciplinary proceeding shall be governed by W.S. 16-3-107. All records of discovery shall be filed with the board or its hearing officer.

(viii) Subpoenas. Pursuant to W.S. 16-3-107, the board or its hearing officer, at the request of a party, may order by subpoena the attendance of witnesses or require the production of books, papers or other evidence. A respondent may apply for a subpoena; however, pursuant to W.S. 33-26-408 (f), a respondent may not discover board records other than final orders nor may a respondent seek discovery from any member, employee or agent of the board.

(ix) Pre-hearing conference.

(A) Upon request of either respondent or board, and at any time before the hearing date, the hearing officer may hold a pre-hearing conference to consider simplifying the issues, amending the pleadings, clarifying or limiting the evidence, formulating procedures to govern the hearing and any other matters which will aid in the disposition of the case.

(B) An order reflecting the action taken at the pre-hearing conference shall be written and entered into the record. The pre-hearing order shall control the course of the hearing unless modified to prevent manifest injustice. A party may request a modified order if the order is ambiguous or does not fully cover the issues presented at the pre-hearing conference.

(x) Evidence and testimony.

(A) Admissibility of evidence. Admissibility is governed by W.S. 16-3-108. Parties shall have the right to present evidence, submit rebuttal evidence, and conduct cross examinations. Irrelevant, immaterial, and unduly repetitious information shall be excluded. All documentary or physical evidence shall be marked as exhibits. The board's exhibits shall be marked by letters of the alphabet beginning with "A". The respondent's exhibits shall be marked with numbers beginning with "1".

(B) Objections. The grounds for objections to evidentiary rulings shall be briefly stated. All objections and rulings shall be entered into the record.

(C) Witnesses. A testifying witness shall identify himself by stating his name and address. All witnesses shall stand and be administered the following oath: "Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth."

(D) Privileged and confidential information. The hearing officer shall recognize any privilege at law.

(E) Official notice. Official notice may be taken of any information in the nature of traditional matters of judicial notice or within the board's special technical

knowledge or files.

(xi) Representation. All parties have a right to represent themselves or be represented by counsel at every stage of any disciplinary proceeding including the informal interview.

(xii) Order of procedure.

(A) To the extent practicable, contested case hearings shall be conducted in accordance with the following procedure:

(I) The hearing officer shall conduct the hearing in closed session pursuant to W.S. 16-4-405(a)(ii) and (a)(ix), unless the respondent requests a public hearing. The hearing officer may sequester witnesses upon appropriate request by any party.

(II) The hearing officer shall commence the hearing by calling the docket number and title of the case to be heard. The hearing officer shall ask if the parties are ready to proceed. The hearing officer may also allow the parties to dispose of preliminary matters. The hearing officer shall allow the parties a reasonable time to voir dire the hearing panel on the grounds that a hearing panel member has a conflict of interest or is biased.

(III) If the respondent or his or her representative fails to appear, the hearing panel may:

(1.) Grant a continuance;

(2.) Conduct the proceeding in the absence of the respondent or his or her representative; or,

(3.) Declare the respondent in default and accept all matters in the complaint as true. In such event, the hearing officer shall conduct the proceeding with the presentation of evidence by the Petitioners only. Following the close of such evidence, the hearing panel shall issue its recommended findings of fact, conclusions of law and order for submission to the board for approval.

(IV) The hearing officer shall administer the oath to all witnesses at the beginning of the hearing or before each witness testifies.

(V) The hearing officer may allow all parties to give an opening statement to briefly explain their position and outline the evidence they propose to offer.

(VI) The hearing officer may recess the proceedings as appropriate.

(VII) The board shall present its evidence first, followed by the respondent. The board may submit rebuttal evidence. Witnesses may be cross-examined by an opposing party or by the board.

(VIII) No testimony shall be received unless given under oath or affirmation.

(IX) Closing statements shall be made after all evidence has been received with the board going first followed by the respondent.

(X) Following the closing statements, the hearing officer may dismiss and excuse all witnesses and declare the hearing closed.

(XI) No evidence shall be taken after the hearing is closed unless requested and upon a showing of good cause.

(XII) All parties may submit legal briefs and proposed findings of fact and conclusions of law within thirty (30) days after the transcript is made available. The time limit may be extended upon agreement between the parties and with the approval of the hearing officer.

(B) All hearings shall be recorded verbatim, stenographically, or by other appropriate means. Within ten (10) days after the transcript is available, the hearing officer may allow all parties to submit written proposed corrections of the transcript pointing out errors that have been made in transcribing the testimony.

(xiii) Decision.

(A) After consulting with the hearing panel, Board counsel shall assist the hearing panel in drafting findings of fact and conclusions of law within thirty (30) days after receiving proposed findings from the petitioners and the respondent. Such findings of fact, conclusions of law and proposed order shall be submitted to the board for approval and adoption.

(B) The board shall serve a copy of the decision upon all parties. The decision shall include:

(I) A statement of the findings of fact and conclusions of law, separately stated and supported by concise and explicit statements.

(II) An order setting forth the action taken, including costs, if any, assessed against respondent.

(xiv) Record. The record in contested cases shall consist of those items set forth in W.S. 16-3-107(o) and the transcript of all recorded proceedings if one is prepared.

(xv) Appeal. Pursuant to W.S. 16-3-114 the board's final decision may be appealed to the district court.

(xvi) Transcript in case of appeal. If the board's decision is appealed to the district court, the appealing party shall pay the costs of copying the transcripts and duplicating the record for submission to the court and the parties to the appeal.