

ALABAMA STATE BOARD OF OCCUPATIONAL THERAPY
ADMINISTRATIVE CODE

CHAPTER 625-X-11
ADMINISTRATIVE HEARINGS

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625-X-11-.01 Administrative Hearings.

(1) Conduct of Hearing.

(a) Hearing Examiner. The Board may, in its discretion, appoint some person to act as hearing examiner at disciplinary hearings. In the event a hearing examiner is appointed, he/she shall preside at the hearing and shall rule on all questions of evidence and procedure notwithstanding any other provisions of these rules to the contrary, with the exception of any pre-hearing motions which may be filed.

(b) Plea. The respondent shall plea either "guilty" or "not guilty" to the charges set forth in the complaint.

(c) Opening Statement. Each side shall be permitted to make a short opening statement.

(d) The state shall present its evidence followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:

1. Direct examination
2. Cross examination
3. Examination by Board
4. Re-direct examination
5. Re-cross examination
6. Re-examination by Board

(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within 7 days for the Board's consideration a proposed order of the Board including findings of fact, official notice and conclusion of law. Underlying facts of record which support findings shall be cited.

(g) Order. The Board shall issue an order within 30 days of the date of the final hearing, which shall include findings of fact, official notice taken, and conclusions of law, stated separately. Respondent shall be delivered a copy of the order by certified mail return receipt requested, and a copy shall be mailed first class to each attorney of record.

(2) Evidence. Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Section 13. The probable cause note and any attachments thereto shall be admitted into evidence as a portion of the complaint without further authentication.

(3) Emergencies. The Board may in an emergency situation, when danger to the public health, safety and welfare requires, suspend a license without hearing or with an abbreviated hearing in accordance with the Alabama Administrative Procedure Act.

(4) Other. The hearing shall otherwise be conducted in compliance with the provisions of the Alabama Administrative Procedure Act.

Author: Cynthia G. Powell, O.T.

Statutory Authority: Code of Ala. 1975, §§34-39-7, 34-39-16.

History: Filed January 7, 1992.

625-X-11-.02 Discipline.

(1) Revocation or Suspension of License. Upon a finding that respondent has violated any enumerated statutory provision or any rule or regulation adopted pursuant thereto, the Board may revoke or suspend any license or permit heretofore issued by the Board and/or impose a civil penalty in accordance with applicable statute(s) or rule(s) or regulation(s).

(2) Stay of Execution of Order. The Board may, in its discretion, permanently or temporarily stay the execution of any order issued pursuant to subsection (1). The stay may be conditioned on any provision the Board deems appropriate under all the circumstances of a particular case.

(3) Considerations. In determining whether a license should be revoked or suspended, and whether execution of the order should be stayed, and upon what conditions, the Commission shall consider all relevant factors, including, but not limited to the following:

- (a) the severity of the offense;
- (b) the danger to the public;
- (c) the number of repetitions of offenses;
- (d) the length of time since the date of violation;
- (e) the number of complaints filed against the licensee;
- (f) the length of time the licensee has practiced;
- (g) the actual damage, physical or otherwise, to the patient;
- (h) the deterrent effect of the penalty imposed;
- (i) the effect of the penalty, upon the licensee's livelihood;
- (j) any efforts of rehabilitation; and
- (k) any other mitigating or aggravating circumstances.

Author: Cynthia G. Powell, O.T.

Statutory Authority: Code of Ala. 1975, §§34-39-7, 34-39-16.

History: Filed January 7, 1992.

625-X-11-.03 **Costs**.

(1) The following costs may in the Board's discretion be taxed against any person who is subject to the regulatory authority of the Board pursuant to statute or rule or regulation:

- (a) Preparation of Complaint
- (b) Service of Complaint
- (c) Witness Subpoena Fee, for each subpoena for a witness or production of a document. Additional charges will be made for any actual expense incurred for any actual subpoena.
- (d) Discovery Costs. Actual expense incurred by Board in pre-hearing discovery.
- (e) Attendance Fee. Per diem charge for each Board member in attendance at a hearing (one day minimum).

(f) Expert Witness Fees. All fees and expenses charged by any expert witness whose services are reasonably necessary in the opinion of the Board for the prosecution of the case who appears at a hearing or whose deposition is taken or whose services are otherwise utilized.

(g) Travel Costs. Aggregate mileage incurred by all Board members in attending hearing at state approved reimbursement rates.

(h) Reporter Appearance Fees. Actual cost.

(i) Hearing Room Fee. Actual cost, if any, incurred for hearing room.

(j) Appeal Transmission. Actual fee plus per page copying charge.

(k) Cancellation of Revoked License.

(2) As used in this rule, the term "Board Member" shall mean any employee or agent of the state of Alabama who appears at a hearing, including but not limited to Board members, the Executive Director, attorneys for the Board, investigators and security officers.

Author: Cynthia G. Powell, O.T.

Statutory Authority: Code of Ala. 1975, §§34-39-7, 34-39-16.

History: Filed January 7, 1992.

625-X-11-.04 Reinstatement Of License.

(1) Application for Reinstatement. Any person whose license or permit of any kind has been revoked may apply to the Board for reinstatement of the license or permit at anytime after one year of the revocation. In his/her application for reinstatement, the applicant should state why he/she feels the license or permit should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement. Applicant must include in his/her application evidence that he/she meets the current requirements for licensure or for a permit.

(2) Board Action. Upon receipt of such application the Commission may grant applicant a hearing on reinstatement, at which time applicant may appeal to the Board to reinstate his/her license.

Author: Cynthia G. Powell, O.T.

Statutory Authority: Code of Ala. 1975, §§34-39-7, 34-39-16.

History: Filed January 7, 1992.

625-X-11-.05 Conflict And Bias.

(1) No Board member shall be entitled to vote in any disciplinary matter if the Board member is personally biased against the Respondent or when such voting would violate the provisions of the Alabama Procedure Act 18(1), (Code of Ala. 1975, §41-22-18).

(2) Any respondent in a disciplinary action who wishes to assert bias or conflict may do so by filing with the Board at least three days before the scheduled disciplinary hearing an affidavit asserting the disqualification together with the underlying factual bias for the assertion.

(3) The Board shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Author: Cynthia G. Powell, O.T.

Statutory Authority: Code of Ala. 1975, §§34-39-7, 34-39-16.

History: Filed January 7, 1992.

Code of Alabama 1975, § 34-39-16 and pertinent parts of § 34-39-7, provide for promulgation of regulations governing the conduct of administrative hearings authorized by the Act. This regulation sets forth the procedure by which such hearings are to be conducted.