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# RULES OF PROCEDURE ADOPTED BY THE MISSISSIPPI STATE BOARD OF DENTAL EXAMINERS

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**Authority: Chapter 9, Title 73, Miss. Code (1972) Ann.**

## I. SCOPE

The following Rules of Procedure apply to all individuals licensed to practice dentistry, and dental hygiene in the State of Mississippi.

## II. DEFINITIONS

- A. The word "complaint" as used in Miss. Code Ann. Section 73-9-63, shall mean a written complaint or oral complaint later reduced to writing.
- B. The word "Board" shall mean the Mississippi State Board of Dental Examiners.
- C. The words "Mississippi Dental Practice Act" shall mean Sections 73-9-1, et seq., pertaining to licensure and discipline of individuals practicing dentistry or dental hygiene.
- D. The words "licensee" or "dentist" or "dental hygienist" shall mean any individual licensed to practice dentistry or dental hygiene in the State of Mississippi.
- E. The word "Respondent" shall mean a dentist or dental hygienist against whom a disciplinary proceeding has been initiated.
- F. The words "Prosecutorial Counsel" shall mean the attorney retained by the Board to prosecute dentists and dental hygienists pursuant to the Mississippi Dental Practice Act.
- G. Masculine terms, when used in the following Rules of Procedure, shall also be deemed to include the feminine.

## III. INVESTIGATION/COMPLAINT

- A. A complaint, as defined herein, may be filed with the Secretary of the Board (through the Board's Executive Director) by any one or more of the following individuals:

1. Any person or patient charging a licensed dentist or dental hygienist with the commission of any of the offenses enumerated in the Mississippi Dental Practice Act,
2. Any member of the Board, or
3. An Investigator of the Board.

Upon receipt of a complaint indicating a possible violation of the Mississippi Dental Practice Act, the Board or designated member of the Board, shall review the complaint and determine if there is substantial justification to conduct an investigation. An investigation may be conducted by any member of the Board, its staff or designated representative/agent (hereinafter "Investigative Staff"). An investigation may be conducted although a formal written complaint has not been received, if the Board has received information indicating non-compliance with, or violation of the provisions of the Mississippi Dental Practice Act.

- B. If, as a result of the aforementioned investigation, substantial justification exists to believe that the accused dentist or dental hygienist has committed any of the offenses enumerated in the Mississippi Dental Practice Act, the Board may either:
1. Initiate formal disciplinary proceedings as provided in Article IV below.
  2. Resolve the matter through negotiation and execution of a consent order as provided in Article X.F. below.

If, as a result of the investigation, it is determined that insufficient cause exists to initiate disciplinary proceedings, the complaint shall be dismissed or remanded to file.

- C. During an investigation, the Investigative Staff may interview and take the statements of witnesses and licensees. Further, the Investigative Staff may inspect, copy and/or seize records, documents and other matters as authorized by Board regulation or state and federal law. During an interview of a licensee, the Investigative Staff shall inform the licensee of the nature and purpose for the investigation and, if requested, provide licensee with a copy of any written complaint which may have prompted the investigation, provided, that if a complainant has requested anonymity, all identifying data of the complainant shall be removed therefrom.

#### IV. INITIATION OF DISCIPLINARY ACTION

- A. If the Board or its designated member determines that formal disciplinary proceedings should be initiated, the Board, through its Executive Director,

shall provide adequate notice to the licensee of all complaints made. Such notification shall include:

1. A "Notice of Hearing," signed by the Board's Executive Director, setting forth:
    - a. The style of the action,
    - b. The name, address and license number of the Respondent,
    - c. The address, date, and time at which the Respondent is summoned to appear before the Board,
    - d. The specific sections of the Mississippi Dental Practice Act and/or Board Regulation which the Respondent is charged with violating,
    - e. The actions which the Board has the authority to take, including placing the dentist on probation, the terms of which may be set by the Board, suspending his right to practice dentistry for a time deemed proper by the Board, revoking his license, or taking any other action in relation to his license as the Board may deem proper under the circumstances.
  2. The Notice of Hearing or affidavit attached thereto shall set forth, in numbered paragraphs, a concise statement of the material facts and allegations to be proven, including:
    - a. facts giving rise to the Board's jurisdiction,
    - b. facts constituting legal cause for administrative action against the Respondent, and
    - c. the statutory provisions alleged to have been violated by the Respondent.
- B. The Notice of Hearing, a true copy of the complaint, and a true copy of all papers filed with the Board relating to such complaint shall be delivered to the Respondent, either through registered mail or by personal service.
- C. The Notice of Hearing shall name a date for hearing not less than thirty (30) days from the date of the mailing or service of the summons.
- D. The Notice of Hearing shall bear the name, address, and telephone number of the Board's Prosecutorial Counsel.
- E. All pleadings, motions or other papers permitted or required to be filed with the Board in connection with a pending disciplinary proceeding shall be filed

by personal delivery at or by mail to the office of the Board. A copy of all papers filed with the Board shall be delivered by registered mail or personally served on opposing counsel of record.

- F. All pleadings, motions or other papers shall be submitted on plain white, letter size (8 1/2 x 11") bond, with margins of at least one inch on all sides and text double spaced except as to quotations and other matter customarily single spaced; shall bear the style and caption of the case as it appears on the summons and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by subsection E above.
- G. The Board may refuse to accept for filing any pleading, motion or other paper not in conformity with the requirements of this rule.
- H. Within fifteen (15) days of service of the Notice of Hearing, or such longer time as the Board, on motion of the Respondent may permit, the Respondent shall answer the Notice, admitting or denying each of the separate allegations of fact and of law set forth therein. Any matters admitted by the Respondent shall be deemed proven and established for purposes of adjudication. Any matters or allegations not specifically denied are admitted for the purposes of the hearing. In the event that Respondent does not file a response to the Notice of Hearing, all matters asserted therein shall be deemed admitted.
- I. Any Respondent may be represented before the Board by an attorney-at-law who:
  - 1. is admitted to practice in the State of Mississippi, or
  - 2. has been given express permission by the Board to appear on behalf of Respondent.
- J. Upon service of a Notice of Hearing pursuant to Subsection B above, a Respondent who is represented by legal counsel with respect to the proceeding shall personally or through such counsel, give written notice to the Board of the name, address and telephone number of such counsel. Following receipt of a proper notice of representation, all further notices, complaints, subpoenas, orders or other process related to the proceeding shall be served on Respondent through the designated counsel of record.

## V. SUBPOENAS

- A. For the purpose of disciplinary hearings, the Board, acting by and through its Executive Director, may subpoena persons and papers on its own behalf and on behalf of a Respondent.

- B. Before the Board shall issue on behalf of a Respondent any subpoena for persons or papers, the Respondent shall:
1. File with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all individuals to be subpoenaed, along with a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.
  2. All subpoenas issued by the Board on behalf of a Respondent shall be effected by registered mail.
  3. All requests for the issuance of subpoenas shall be filed with the Board sufficiently distant in time to allow for the preparation and mailing of said subpoenas at least ten (10) working days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of subpoenas issued after the aforementioned deadline.
- C. The Board shall charge a Respondent a reasonable fee, not to exceed \$25.00 per subpoena, for preparation and mailing of subpoenas.

## VI. DISCOVERY

- A. Upon written request by a Respondent or his counsel, the Board's Prosecutorial Counsel shall disclose and permit Respondent or his counsel to inspect, copy or photograph the following information and material, other than the complaint and related papers submitted in compliance with Article IV.B. above, which is in the possession, custody, or control of the Board, or the existence of which is known to the Prosecutorial Counsel:
1. Names and addresses of all witnesses proposed to be called in Prosecutorial Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
  2. Copy of any written or recorded statement of Respondent and the substance of any oral statement made by the Respondent.
  3. Copy of any criminal record of a Respondent, if proposed to be used.
  4. Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
  5. All records, documents, physical evidence or photographs which may be offered as evidence in Prosecutorial Counsel's case-in-chief.
  6. Any exculpatory material concerning the Respondent.

The Board shall charge a Respondent a reasonable fee, not to exceed 50¢ per copy, payable in advance of delivery of copied documents.

- B. The Board may deny disclosure authorized by subsection A if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to Respondent or his counsel.
- C. If Respondent requests discovery under this rule, Respondent shall promptly disclose to Prosecutorial Counsel and permit him to inspect, copy or photograph the following information and material which is in the possession, custody, or control of Respondent or his counsel, or the existence of which is known to Respondent or his counsel:
  - 1. Names and addresses of all witnesses proposed to be called in Respondent's defense, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
  - 2. All records, documents, physical evidence or photographs which may be offered as evidence in Respondent's defense.
  - 3. Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
- D. No depositions shall be taken in preparation for matters to be heard before the Mississippi State Board of Dental Examiners.

## VII. AMENDMENT OF PLEADINGS

- A. The Board's Prosecutorial Counsel may amend a summons and complaint after being duly served upon Respondent at any time prior to the scheduled hearing date, provided, the amendment is for the purpose of correcting a clerical error or clarifying facts set forth in the complaint. A Notice of Hearing may be amended to add additional charges or counts provided the amended summons and complaint is served upon Respondent not less than thirty (30) days from the scheduled hearing date or by mutual agreement of the parties.
- B. A Respondent may amend his answer as a matter of course at any time before the answer is due. Otherwise, a Respondent may amend his answer only by leave of the Board. Leave shall be freely given when justice so requires.

## VIII. PRE-HEARING MOTIONS

- A. All pre-hearing motions shall be filed not later than fifteen (15) days prior to the scheduled hearing. Said motion shall include an explanation of the grounds on which relief is sought. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion.
- B. Within ten (10) days of the filing of any motion, opposing counsel may file a response in opposition to the initial motion.

## IX. CONTINUANCES

- A. Hearings shall be held before the full Board at the time and place designated in the Notice of Hearing unless a continuance is granted for just cause by the Board. A motion for a continuance must be filed with the Board at least fifteen (15) days prior to the scheduled hearing, or upon a showing of good cause, at any time prior to the hearing.
- B. It must be recognized that the Board consists of seven (7) practicing dentists representing various regions of the State and one (1) licensed dental hygienist appointed by the Governor. Unlike the judiciary, Board members are not in the business of conducting hearings; therefore, hearings will be held only during regularly scheduled meetings or other dates established by order of the Board. Attorneys representing dentists should take this fact into consideration. A scheduled hearing may be continued if the Respondent shows substantial, legitimate grounds for continuing the hearing, based on the balance of:
  - 1. The right of Respondent to a reasonable opportunity to prepare and present a defense, and
  - 2. The Board's responsibility to protect the public health, safety and welfare.
- C. Where the counsel for Respondent has a scheduling conflict on the initial hearing date, continuances will be liberally granted. However, Respondent's Counsel must submit written proof of the scheduling conflict. Thereafter, no further continuances will be granted based solely on scheduling conflicts.
- D. So that counsel for the Respondent and Prosecutorial Counsel shall be able to adequately prepare for hearing, any motion for a continuance filed within the time limitations specified at Subsection A above will be immediately considered by the Board's President, who shall have the authority to grant or deny said motion. If granted, the order will be presented to the Board at the scheduled hearing date at which time the order will be formally entered and the rescheduled hearing date set.

- E. It is the responsibility of the Respondent to make a prompt decision as to whether to appear before the Board pro se (without counsel) or retain counsel for this purpose. Unless due to extraordinary circumstances, the Board will not consider as a valid ground for continuance, the Respondent's last minute decision to retain counsel.

X. INFORMAL SETTLEMENT, PRE-HEARING STIPULATIONS, CONSENT ORDERS

- A. All disciplinary proceedings initiated by the Board shall be brought to a final resolution through one of three means:
  - 1. disciplinary hearings before the full Board,
  - 2. acceptance by the Board of a mutually agreeable Consent Order in lieu of hearing, or
  - 3. Dismissal of the case.
- B. As to disciplinary proceedings duly noticed and docketed for hearing, counsel for Respondent and Prosecutorial Counsel may agree, or the Board's President may require, that an Informal Settlement Conference be held for the purpose of possible resolution, simplifying the issues for hearing or promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.
- C. The Informal Settlement Conference shall be conducted by Respondent and/or his counsel and the Board's Prosecutorial Counsel. Other parties who may attend include the investigating officer, investigating Board member, Board's Executive Director, or any other party who may contribute to the conference. Other than the designated investigative Board member, Board members shall not participate in the Informal Settlement Conference.
- D. Discovery or exchange of information may be accomplished during the Informal Settlement Conference.
- E. The Informal Settlement Conference may result in:
  - 1. Dismissal of the case,
  - 2. Return of the case for further investigation,
  - 3. Preparation of a proposed Consent Order as a resolution of the matter, or
  - 4. Proceed with the scheduled hearing.
- F. Any action which the Board may take following a full disciplinary hearing may be taken in lieu thereof by Consent Order, duly executed by the Respondent.



Because of the lengthy dockets before the Board, Informal Settlement Conferences must be held in sufficient time to allow consummation of negotiations of a Consent Order at least five (5) working days prior to the scheduled hearing date. After the terms of a Consent Order have been prepared, the Board's President, shall have the authority to accept, reject or modify the terms of a Consent Order. The Board's President, in his discretion, may delegate the aforementioned authority to another member of the Board. When a mutually acceptable Consent Order has been accepted by the Board's President or other Board member, it shall be binding on the Board, but not effective until full Board approval. Notwithstanding, it is still the responsibility of the Respondent to personally appear before the Board on the scheduled hearing date to answer any questions which the Board may have prior to full Board approval.

- G. If the parties to the Informal Settlement Conference are unable to reach a mutually agreeable Consent Order and the matter is to proceed to a full Board hearing, the parties shall agree in writing by stipulation, to the following:
1. any undisputed claims, facts, testimony, documents or issues,
  2. evidence to be introduced without objection, and
  3. an estimate of the time required for the hearing.

## XI. FORMAL HEARING

- A. At a disciplinary hearing, opportunity shall be given to the Board's Prosecutorial Counsel and Respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the matter.
- B. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Board.
- C. During the disciplinary hearing, the Board's President, acting as the presiding officer, or his designee, shall rule on all evidentiary questions, but in his discretion may consult with the entire panel in executive session. At such hearing, the Board may be assisted by the Mississippi Attorney General, or his designee, who shall not have been involved in any way with the case otherwise. The Board's presiding officer may delegate ruling on procedural and evidentiary issues to the Attorney General or his designee.
- D. In all disciplinary hearings before the Board, the record of the case shall include:
1. the summons and allegations issued,
  2. the Respondent's answer to the summons and allegations,

3. all pleadings, motions, and rulings issued,
4. evidence received or considered at the hearing,
5. offers of proof, objections, and rulings thereon,
6. the Board's order or other disposition made by the Board.

E. Disciplinary hearings before the Board shall be conducted in the following order:

1. Opening statements,
2. Prosecutorial Counsel's case in chief,
3. Respondent's case in chief,
4. Prosecutorial Counsel's rebuttal,
5. Closing statements.

Questioning of witnesses shall be conducted in the following order:

1. Direct examination,
2. Cross-examination,
3. Redirect examination.

F. Upon conclusion of the hearing, the Board shall conduct its deliberations in Executive Session, outside the presence of the parties. The Board shall then render its determination and order, setting forth Findings of Fact, Conclusions of Law and Order. Although the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written determination and order. A copy of such determination and order shall be sent by registered mail, or served personally upon the Respondent. The decision of the Board revoking, suspending or otherwise disciplining Respondent shall become final thirty (30) days after so mailed or served unless within said period the Respondent appeals the decision to the Chancery Court. Such appeal to the Chancery Court must be made within thirty (30) days after notice of the Board's action.

## XII. REINSTATEMENT OF LICENSE

The procedural requirements enumerated above shall also apply to petitions duly filed with the Board seeking reinstatement of a license pursuant to Section 73-9-65, Miss. Code (1972).

## XIII. EFFECTIVE DATE OF REGULATIONS

- A. The above procedural rules and regulations shall become effective June 11, 1996.
- B. The above Rules of Procedure are adopted by the Board to implement its authority to investigate alleged violations of the Mississippi Dental Practice Act, conduct hearings on disciplinary matters, and consider petitions for

termination of probationary and suspended licenses and restoration of revoked licenses.

- C. The above Rules of Procedure shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law.

*Rules of Procedure adopted by the Mississippi State Board of Dental Examiners June 11, 1996; amended November 3, 2000.*