

Title 30: Professions and Occupations

Part 2825: RULES OF PROCEDURE

Part 2825, Chapter 1: Disciplinary Proceedings

Rule 1.1 Scope. The following Rules of Procedure apply to all Registered Nurses (RNs), Licensed Practical Nurses (LPNs), Advanced Practice Registered Nurses (APRNs), and all other persons under jurisdiction of the Mississippi Board of Nursing.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.2 Definitions. For Part 2825, Chapter 1 only, the following terms have the meanings indicated:

- A. Allegation: a claim or accusation of a violation of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- B. Appellant: a Respondent who makes an appeal to the Full Membership of the Board, to a chancery court, or to a higher court.
- C. Board: the Mississippi Board of Nursing, including its members and employees acting on its members' behalf.
- D. Board Hearing Panel: the three-member panel of the Board designated to hear disciplinary proceedings, pursuant to Miss. Code Ann. Section 73-15-31. Members of the Board shall be designated to sit on a Board Hearing Panel on a rotating basis.
- E. Case Review Committee: an inter-departmental committee of Board staff, assembled for the purpose of reviewing allegations of violations of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- F. Complaint Counsel: the attorney retained by the Board to prosecute licensees pursuant to the Mississippi Nursing Practice Law.
- G. Executive Director: the chief executive officer or other designee employed by the Board to run the day to day operations of the Board.
- H. Formal Complaint: a formal document publicly charging a Respondent with a violation of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- I. Informal Proceedings: an informal review or meeting, occurring at any time prior to the Board entering any order with respect to the allegation, between the Case Review Committee, Board, and/or Board Hearing Panel and the Respondent or legal representative to fully explore the issues involved in the allegation and to facilitate the disposition of the allegation.
- J. Licensee: any individual licensed to practice by the Board as a Registered Nurse, Licensed Practical Nurse, or Advanced Practice Registered Nurse in the State of Mississippi.

- K. Mississippi Nursing Practice Law: Sections 73-15-1, *et seq.*, of the Mississippi Code of 1972, Annotated.
- L. Respondent: a licensee or applicant against whom the Board has initiated a formal or informal action.
- M. Time Period: unless indicated otherwise, when the period is stated in days or a longer unit of time:
 - 1) In computing any period of time prescribed or allowed by these rules, the day of the event that triggers the period shall not be included.
 - 2) Every day, including intermediate Saturdays, Sundays, and legal holidays shall be included.
 - 3) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as set forth in Mississippi statute. In such case, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.3 Investigations.

- A. All complaints made to the board will be investigated. A case may be dismissed without further investigation based on a determination of either:
 - 1) Lack of jurisdiction; or
 - 2) No violation of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- B. The Board may initiate an investigation either:
 - 1) In response to a written complaint or adverse information received by the Board; or
 - 2) Based on information independently developed by the investigative staff of the Board.
- C. During an investigation, the investigative staff may interview and take the statements of witnesses and licensees. During the 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 provided that:
 - 1) Any identifying information of any patient shall be removed, and
 - 2) the complainant shall remain anonymous;

- 3) Disclosure of the complaint may not impair, impede, or compromise the efficacy or integrity of the investigation of the complaint.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.4 Results of Formal Investigation.

- A. Upon completion of the formal investigation, the Case Review Committee shall determine whether there is reasonable cause to believe that a violation exists of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
 - 1) Upon a determination of reasonable cause to believe that a violation exists of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing, the Case Review Committee shall make a recommendation for resolution of the allegation.
 - 2) Upon a determination of no reasonable cause to believe that a violation exists of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing, the Board:
 - (a) Shall dismiss the allegation; and
 - (b) May notify the Complainant and Respondent of the decision.
- B. An allegation may be resolved by an administrative affidavit, an agreed settlement proposal or other informal disposition and/or Formal Complaint.
- C. If an investigation results in an administrative affidavit, processing fees may be charged and the application for a nursing license or privilege will not go forward until all fees associated with the administrative affidavit are paid to the Board.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.5 Informal Proceedings.

- A. At any time, any matter before the Board may be resolved through informal proceedings by stipulation, agreed settlement proposal, or agreed order of dismissal. Any agreed settlement proposal must be approved by the Board Hearing Panel upon a majority vote of those qualified to vote and must be approved further by the Respondent, upon a knowing and intentional waiver by the Respondent of his or her right to a hearing. This process may occur at any time prior to the Board or its Hearing Panel entering any order with respect to the allegation.
- B. Respondent and Board Participation in the informal proceedings is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. The parties may agree in writing by stipulation of the following:
 - 1) Any undisputed claims, facts, testimony, documents, or issues; and
 - 2) Evidence to be introduced without objection.
- C. No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case or action based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending allegation or disciplinary or licensure action.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.6 Commencement of Disciplinary Proceedings.

- A. If an allegation is not resolved informally or the Board determines that an allegation warrants the issuance of a Formal Complaint, Board staff may commence disciplinary proceedings by issuing a Formal Complaint. Electronic signatures shall be permissible on a Formal Complaint.
- B. The Respondent shall be notified of the hearing at least fifteen (15) days in advance of the date set for the hearing. The Complaint shall set forth the charges and allegations against Respondent in sufficient detail so as to provide full disclosure and notice of all violations of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- C. The Board's staff shall serve the Formal Complaint and Notice of Hearing on Respondent by:
 - 1) Certified mail, postage pre-paid, to the last known address of the Respondent;
 - 2) Personal Delivery, or
 - 3) When service of process by certified mail or personal delivery cannot be effected, by publication of a Notice of Hearing for three (3) successive weeks in the newspaper published in the county in which the Respondent last practiced or in the county in which the Respondent last resided according to the records of the Board, the date of hearing to be no less than ten (10) days after the last date of the published notice.
- D. The Respondent may file a response to the Notice of Hearing but is not required to do so. Any written response to the charges must be filed with the Board ten (10) days in advance of the date set for the hearing on the complaint.
- E. The Respondent may waive notice of a Formal Hearing. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Board.
- F. A Formal Complaint may be resolved by agreement of the parties at any time.
- G. 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 the Board or by certified mail to the office of the Board.
- H. Following service of a Formal Complaint and Notice of Hearing pursuant to this Rule, a Respondent who is represented by legal counsel with respect to the disciplinary 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 proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the withdrawal of counsel is filed with the Board.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.7 Pre-Hearing Procedures.

A. Continuances.

- 1) Hearings shall be held before the Board Hearing Panel at the time and place designated in the Formal Complaint and Notice of Hearing unless the Board grants a continuance.
 - (a) A motion for a continuance must be filed with the Board at least ten (10) days prior to the scheduled hearing. A request for continuance, including to retain counsel, submitted less than ten (10) days prior to the hearing may be made only under unusual circumstances. In such event, a request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby
 - (b) No more than one (1) continuance of the hearing will be granted without the approval of the Board or Board's designee for good cause.

B. Subpoenas.

- 1) For the purpose of disciplinary hearings, the Board acting by and through its legal staff may subpoena persons and papers on its own behalf and on behalf of a Respondent.
- 2) Before the Board will issue any subpoena on behalf of a Respondent, the Respondent shall file with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all persons to be subpoenaed and/or a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.
- 3) All requests for the issuance of subpoenas shall be filed with the Board at least ten (10) days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of said subpoenas issued after the deadline.
- 4) All subpoenas issued by the Board either on its own behalf or on behalf of a Respondent shall be effected by certified mail or by personal delivery.
- 5) All subpoenas issued by the Board shall be returnable within ten (10) days to either the Board or other location as specified in the subpoena.
- 6) The Board shall charge a Respondent a reasonable fee, not to exceed \$25.00 per subpoena, for preparation and mailing of subpoenas. Payment must be made by cashier's check, money order, or Board-accepted electronic method.

C. Disclosure.

- 1) No depositions shall be taken in preparation for matters to be heard before the Board or its Hearing Panel.
- 2) Requests for disclosure under this rule shall have standing effect until resolution of the case.
- 3) Parties shall comply with disclosure as requested within ten (10) days of the day the request was made or within ten (10) days of which the information or material was acquired by possession, custody, control or became within the knowledge of party. Both parties shall make every effort to facilitate disclosure in a timely

manner prior to a scheduled matter before the Board.

- 4) Upon written request by a Respondent or his or her counsel, Complaint Counsel of the Board shall disclose and permit Respondent or his or her counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Board or the existence of which is known to the Complaint Counsel:
 - (a) Names and addresses of all witnesses proposed to be called in Complaint Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
 - (b) Copies of any written or recorded statement of Respondent and the substance of any oral statement made by Respondent.
 - (c) Copies of any public criminal record of Respondent, if proposed to be used.
 - (d) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
 - (e) All records, documents, physical evidence, or photographs which may be offered as evidence.
 - (f) Any exculpatory material concerning the Respondent.
- 5) The Board shall charge a Respondent a reasonable fee, not to exceed fifty cents (\$0.50) per page, payable in advance of delivery of copied documents. Payment must be made by Board-accepted electronic method.
- 6) The Board may deny disclosure authorized by this Rule:
 - (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 or her counsel.
 - (b) In accordance with applicable statutory and regulatory provisions providing exemptions, including but not limited to:
 1. Miss. Code Ann. Section 25-61-12 and
 2. Miss. Code Ann. Section 73-52-1.
- 7) Upon written request by Complaint Counsel, Respondent or his or her counsel shall promptly disclose and permit Complaint Counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Respondent or his or her counsel or the existence of which is known to the Respondent or his or her counsel:
 - (a) 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.
 - (b) All records, documents, physical evidence, or photographs which may or shall be offered as evidence in Respondent's defense.
 - (c) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.

D. Exhibits

- 1) Respondent or his or her counsel shall produce to the Board copies of all exhibits he or she intends to introduce as evidence in a Formal Hearing at least five (5) business days prior to the date of the Formal Hearing.
 - (a) This provision shall be satisfied if Respondent or his or her counsel previously provided disclosure under Rule 1.7 C to Complaint Counsel and the disclosure contained no changes from that to be offered into evidence as exhibits.
 - (b) Respondent or his or her counsel shall produce at least five (5) physical copies of exhibits at the Formal Hearing, for review by the Board Hearing Panel, Complaint Counsel, and the Hearing Officer.
- 2) Upon written request of Respondent or his or her counsel, Complaint Counsel shall permit inspection of or produce to the Respondent or his or her counsel copies of all exhibits he or she intends to introduce as evidence in a Formal Hearing.
 - (a) This provision shall be satisfied if Complaint Counsel previously provided disclosure under Rule 1.7 C to Respondent or his or her counsel and the disclosure contained no changes from that to be offered into evidence as exhibits.
 - (b) Complaint Counsel shall not be obligated to fulfill requests made by Respondent within (5) business days of the date of the Formal Hearing.

E. Failure to Comply.

- 1) In case of the failure of any person to comply with a timely request for disclosure and/or production of exhibits, the Board Hearing Panel shall either:
 - (a) Enter an Order prohibiting the noncompliant party from introducing the designated records, or
 - (b) Enter an Order continuing the matter until the next scheduled Formal Hearing time and, if the Respondent is the noncomplying party, temporarily suspending Respondent's license.

F. Amendment of Pleadings.

- 1) Complaint Counsel may amend a Formal Complaint and Notice of Hearing that has been duly served upon Respondent at any time prior to or during the scheduled hearing, provided the amendment is for the purpose of correcting a clerical error or clarifying facts set forth in the Formal Complaint and Notice of Hearing.
- 2) Complaint Counsel may amend a Formal Complaint and Notice of Hearing to add additional charges or counts provided the amended Formal Complaint and Notice of Hearing is served upon Respondent not less than fifteen (15) days before the scheduled hearing date or by mutual agreement of the parties.

G. Pre-Hearing Motions.

- 1) All pre-hearing motions shall be filed not later than ten (10) days prior to the scheduled hearing. Said motion shall be accompanied by a memorandum setting forth a succinct explanation of the grounds on which relief is sought. Any such memorandum may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or Board designee.

- 2) Affidavits may accompany a motion as necessary to establish facts alleged in support of the motion.
- 3) All memorandums filed by opposing counsel in opposition to the initial motion shall be filed not later than five (5) days prior to the scheduled hearing. Any such memorandum in opposition may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or designee.

H. Procedural Decisions.

- 1) The Attorney General and/or a designee thereof will be fully authorized to make all necessary procedural decisions on behalf of the Board, including, but not limited to, matters related to continuances, time extensions, amendments, pre-hearing conferences.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.8 Formal Hearing.

- A. Formal Hearings are conducted pursuant to Miss. Code Ann. Section 73-15-31 before a Board Hearing Panel that consists of three (3) Board members, an alternate Board member, and a representative of the Mississippi Attorney General's Office who serves as the Hearing Officer for each hearing. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Board.
- B. At a Formal Hearing, Complaint Counsel and Respondent and/or Respondent's counsel shall have opportunity to present evidence on all issues of fact and argument on all issues of law, 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.
- C. The Board Hearing Panel is not bound by strict rules of evidence, but all determinations made by the Board Hearing Panel must be based upon clear and convincing evidence. The representative of the Mississippi Attorney General's Office, in his or her capacity as Hearing Officer of the Board Hearing Panel, shall rule on all evidentiary issues.
- D. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, Miss. Code Ann. Section § 25-41-1, et seq. In all disciplinary hearings before the Board Hearing Panel, the record of the case shall include:
 - 1) The Formal Complaint and Notice of Hearing;
 - 2) All pleadings, motions, and rulings issued;
 - 3) Evidence received or considered at the hearing;
 - 4) Offers of proof, objections, and rulings thereon; and
 - 5) The Board's Order or other disposition made by the Board.
- E. Formal Hearings before the Board shall be conducted in the following order:
 - 1) Opening statements
 - 2) Complaint Counsel's case in chief
 - 3) Respondent's case in chief
 - 4) Complaint Counsel's rebuttal
 - 5) Closing statements

- F. Questioning of witnesses shall be conducted in the following order:
 - 1) Direct examination
 - 2) Cross examination
 - 3) Redirect examination
- G. The Hearing Officer shall have the authority to preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process.
- H. The Board Hearing Panel shall render its Order, setting forth Findings of Fact and Conclusions of Law. Although the Board Hearing Panel's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order, but no later than forty-five (45) days after the formal hearing. A copy of such order shall be sent to Respondent via certified mail at his or her last known address or served personally upon Respondent.
 - 1) The decision of the Board Hearing Panel revoking, suspending, or otherwise disciplining Respondent's license shall become reportable immediately after the Executive Director signs the Final Order.
 - 2) The decision of the Board Hearing Panel revoking, suspending, or otherwise disciplining Respondent's license shall become final thirty (30) days after the Executive Director signs the Final Order of the Board Panel unless within said period the Respondent appeals the decision to the Full Membership of the Board as provided by Rule 1.10.
 - 3) Appeals do not stay the discipline ordered by the Board of Nursing.
- I. In compliance with Mississippi Public Records Act of 1983, all action by the Board Hearing Panel is public. In compliance with 45 CFR Part 60, and the Social Security Act Section 1128E and Section 1921, all disciplinary action by the Board Hearing Panel is reportable.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.9 Appeal of Administrative Denial.

- A. The procedural requirements enumerated in Rules 1.1 through 1.11 shall also apply to an appeal of an Administrative Denial of Licensure put forth by any applicant for licensure as a RN, LPN, or APRN.
- B. Any applicant who wishes to appeal an Administrative Denial of Licensure shall deliver a Notice of Appeal of Administrative Denial to the Board either personally at or via certified mail to the Board's office. The applicant must file his or her Notice of Appeal of Administrative Denial in writing along with a fifty-dollar (\$50.00) appeal fee within thirty (30) days of notice of Board-ratification of the Administrative Denial. Payment must be made by Board-accepted electronic method.
- C. Any appeal of an Administrative Denial of Licensure will be set for hearing before a Board Hearing Panel at the next available hearing date on the Board's calendar after the Board receives the applicant's Notice of Appeal of Administrative Denial.
- D. Administrative Denial of Licensure appeal hearings before the Board shall be conducted

in the following order:

- 1) Opening statements
 - 2) Applicant's case in chief
 - 3) Complaint Counsel's rebuttal
 - 4) Closing statements
- E. Questioning of witnesses shall be conducted in the following order:
- 1) Direct examination
 - 2) Cross examination
 - 3) Redirect examination
- F. The Hearing Officer shall have the authority to preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process.
- G. In all Administrative Denial of Licensure appeal proceedings, the applicant has the burden of proof to show any and all evidence indicating why the Administrative Denial should be overturned.
- H. Application for a nursing license or privilege to practice that has been denied may be made twelve (12) months from the effective date the denial becomes final. The Final Order denying the license may include stipulations that must be complied with before an application for a nursing license or privilege will be reviewed.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.10 Appeal of Board Hearing Panel Decision to Full Membership of the Board. Appeals from any decision of a Board Hearing Panel shall be made to the Full Membership of the Board, pursuant to Miss. Code Ann. Section 73-15-31, except as set forth in Miss. Code Ann. Sections 93-11-153, 93-11-163, and 37-101-291.

- A. Procedures for Appeal of Board Hearing Panel Decision:
- 1) Any Respondent who appeals a decision of the Board Hearing Panel must file his or her Notice of Appeal of the Board Hearing Panel's decision in writing along with a fifty-dollar (\$50.00) appeal fee within thirty (30) days after notice of the action of the Board Hearing Panel denying, revoking, suspending, or refusing to renew the license, or revoking or suspending the privilege to practice, fining or otherwise disciplining the person. Payment must be made by Board-accepted electronic method.
 - 2) Notice of the Hearing Panel's decision occurs on the date the order of the Board Hearing Panel is mailed via certified mail to or personally served upon the Respondent.
 - 3) Within seven (7) days after filing his or her Notice of Appeal, the Respondent/Appellant shall serve on the court reporter a written request for the transcript of the hearing that resulted in the appealed decision. If such request is not made within seven (7) days, the Board may dismiss the Appeal.

Respondent/Appellant shall be responsible for the cost of the preparation of said transcript. In his or her request for the transcript, Respondent/Appellant shall request that the court reporter notify the Board's legal staff when the transcript has been completed. Upon receipt of the invoice from the court reporter, Appellant shall timely pay the invoice. Failure to pay the invoice within three (3) days after receipt, may result in dismissal of the Appeal by the Board. Respondent/Appellant shall simultaneously file with the Board a copy of the written request for said transcript. Any such appeal will not stay the discipline ordered by the Board Hearing Panel against a licensee.

- 4) Within sixty (60) days after the court reporter mails a copy of the transcript to Respondent/Appellant, Respondent/Appellant shall file with the Board by mail or in person one (1) copy of a written brief specifying the issues being appealed and including supporting rationale. Briefs shall be submitted on 8 ½ by 11-inch paper and shall not exceed ten (10) typed double-spaced pages.
 - 5) Within sixty (60) days after receipt of Respondent/Appellant's brief, the staff of the Board, as Appellee, shall submit a written brief in response to the brief of Respondent/Appellant.
 - 6) Upon written request, the Board, in its discretion for good cause shown, may grant an extension of the time. However, the Board shall not enlarge the time for filing notice of appeal.
 - 7) If a Respondent/Appellant fails to file his or her brief within the time provided by this Rule or within the time as extended, the appeal may be dismissed on motion of the Appellee or upon the Board's own initiative. If the Appellee fails to file its brief as required, such brief if later filed may be stricken from the record on motion of Respondent/Appellant or by a motion of the Board. If the Appellee fails to file a brief, it will not be heard at oral argument except by permission of the Board. Both parties shall be responsible for providing at least ten (10) copies of their respective briefs at the oral argument before the full board.
 - 8) Appeals of Board Hearing Panel decisions shall be scheduled for hearing by the Full Membership of the Board at the first available Board meeting following timely submission of the Appellant's and Appellee's briefs.
- B. Appeal Hearing before the Full Membership of the Board.
- 1) Appeals of a decision of the Board Hearing Panel shall be heard before at least a quorum of the Full Membership of the Board – seven (7) members of the Board, including at least three (3) RNs and two (2) LPNs.
 - 2) Appeals before the Full Membership of the Board shall be limited to the record of the hearing before the Board Hearing Panel. The Full Membership of the Board shall not retry the appealed case. Arguments shall be directed solely to issues from the record of the transcript that results in the appealed decision and shall not include new evidence, testimony, or witnesses.
 - 3) Respondent/Appellant and Appellee shall each be allotted twenty (20) minutes to

present arguments why the decision of the Board Hearing Panel should be overturned or affirmed, unless otherwise ordered by the Board. Respondent/Appellant may reserve a portion of his or her allotted time for rebuttal. A party is not obligated to use all the time allotted, and the Board may terminate the argument when in its judgment further argument is unnecessary.

- 4) Respondent/Appellant is entitled to open and conclude the argument.
- 5) Parties will not be permitted to read at length from briefs or records.
- 6) The Full Membership of the Board may, in its discretion, advise the parties of points upon which it desires to hear argument.
- 7) Members of the Full Membership of the Board participating in the appeal hearing may ask questions of either party related to issues identified in the appeal.
- 8) Board members who participated in the Board Hearing Panel shall recuse themselves from participation in the appeal hearing of that matter.

C. Board Decision.

- 1) Although the Full Membership of the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order, but no later than forty-five (45) days after oral argument. A copy of such order shall be sent to Respondent/Appellant via certified mail at his or her last known address or served personally upon Respondent.
- 2) The decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent shall become final thirty (30) days after signed by the Executive Director. Final orders of the full membership of the Board may be appealed to the Chancery Court as provided by law. Notice of the decision of the Full Membership of the Board occurs on the date the order of the Full Membership of the Board is mailed via certified mail to or personally served upon the Respondent/Appellant.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.11 Appeal of Decision of Full Membership of the Board. An appeal from a decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent/Appellant be in accordance with Miss. Code Ann. Section 73-15-31 (10) and local Chancery Court Rules in the county in which Respondent/Appellant resides.

Source: Miss. Code Ann. § 73-15-17 (1972, as amended).

Rule 1.12 Application for Restoration of License/Privilege.

- A. The nurse whose Mississippi nursing license or privilege to practice has been revoked, surrendered, or suspended may petition the Board for restoration of said license or

privilege.

- 1) Application for restoration of a revoked, surrendered, or suspended Mississippi nursing license or privilege to practice may be made twelve (12) months from the effective date of revocation, surrender, suspension, or previous denial of application for restoration, unless otherwise stipulated by Order of the Board.
 - 2) An application for restoration shall be made in writing and on forms prescribed by the Board.
 - 3) A restoration applicant shall submit five (5) supporting affidavits in writing on a form prescribed by the Board. At least three (3) of the supporting affidavits shall be by licensees in good standing of the same profession.
 - 4) A restoration applicant shall complete and submit all information requested on the Board's prescribed forms, along with all information required by these rules.
 - 5) The Board may not consider incomplete applications.
 - 6) The procedure for the restoration of a license that is suspended for being out of compliance with an order for support, as defined in Miss. Code Ann. Section 93-11-153, shall be governed by Miss. Code Ann. Section 93-11-157 or 93-11-163, as the case may be.
 - 7) The procedure for the restoration of a license that is revoked for failure to meet the terms of an educational loan contract shall be governed by Miss. Code Ann. Section 37-101-291.
- B. Board investigation into the application for restoration shall require the restoration applicant to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database.
- 1) Each restoration applicant shall submit a full set of petitioner's fingerprints in a form and manner as prescribed by the Board, which shall be forwarded to the Mississippi Department of Public Safety and the Federal Bureau of Investigation Identification Division for this purpose.
 - 2) The Board shall provide to the Mississippi Department of Public Safety the fingerprints of the petitioner, any additional information that may be required by the Department, and a form signed by petitioner consenting to the check of criminal records and to use of fingerprints and other identifying information required by state or national repositories.
 - 3) Any and all state or national criminal history records information obtained by the Board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the Board, its members, officers, investigators, agents and attorneys in evaluating the petitioner's eligibility or disqualification for licensure and shall be exempt from the Mississippi Public Records Act of 1983.
 - 4) Except when introduced into evidence in a hearing before the Board to determine licensure, no such information or records related thereto shall, except with written consent of the restoration applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the Board to any other person or agency.
 - 5) The Board shall charge and collect from the restoration applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the Board in

requesting and obtaining state and national criminal history records information on petitioner.

C. Upon confirmation by the Board of receipt of all required materials for application of restoration, the restoration applicant may request a hearing before the Board Hearing Panel for determination on the application for restoration.

- 1) The Board Hearing Panel may hear the application at the next available Board Hearing date. The Board shall notify the applicant for restoration of the time and place for the hearing.
- 2) Applications for restoration may not be considered while the restoration applicant is under sentence or agreed disposition for any felony conviction or guilty plea to a felony charge, regardless if entered or withheld by the court.
- 3) Applications for restoration may not be considered while the restoration applicant is under any disciplinary order or other conditions of licensure by any other licensure board.

D. Restoration Hearing

- 1) Restoration hearings are conducted pursuant to Miss. Code Ann. Section 73-15-31 before a Board Hearing Panel that consists of three (3) Board members, an alternate Board member, and a representative of the Mississippi Attorney General's Office who serves as the Hearing Officer for each hearing. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Board.
- 2) Restoration hearings before the Board shall be conducted in the following order:
 - (a) Opening statements
 - (b) Restoration applicant's case in chief
 - (c) Complaint Counsel's rebuttal
 - (d) Closing statements
- 3) Questioning of witnesses shall be conducted in the following order:
 - (a) Direct examination
 - (b) Cross examination
 - (c) Redirect examination
- 4) The Hearing Officer shall have the authority to preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process.
- 5) In all restoration proceedings, the restoration applicant has the burden of proof to show any and all evidence indicating why the restoration applicant's license or privilege should be restored.
- 6) In considering restoration of a revoked, surrendered, or suspended license, the Board Hearing Panel may evaluate factors that include, but are not limited to:
 - (a) Severity of the act(s) that resulted in revocation, surrender, or suspension of license;
 - (b) Conduct of the restoration applicant subsequent to the revocation, surrender, or suspension of license;
 - (c) Compliance with all restoration requirements;
 - (d) Whether petitioner is in violation of any applicable statute, Board Order, or rule or regulation of the Board;
 - (e) Evidence of the restoration applicant's rehabilitation efforts;

- (f) Evidence of the restoration applicant's nursing competency;
 - (g) Evidence of the restoration applicant's ability to safely practice nursing.
- E. The Board Hearing Panel may take the following action regarding an applicant for restoration:
- 1) Grant restoration of a Mississippi nursing license or privilege to practice;
 - 2) Grant restoration of a Mississippi nursing license or privilege to practice with conditions;
 - 3) Deny restoration of a Mississippi nursing license or privilege to practice;
 - 4) Deny restoration of a Mississippi nursing license or privilege to practice and provide recommended stipulations.
 - 5) In such cases in which the nursing license or privilege was revoked or denied due to drug/substance abuse, misuse, or appropriation, twelve (12) months of drug testing is required before restoration of the nursing license or privilege will be considered.
- F. The Board Hearing Panel shall render its Order, setting forth Findings of Fact and Conclusions of Law. Although the Board Hearing Panel's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order, not to exceed forty-five (45) days after the hearing. A copy of such order shall be sent to Respondent via certified mail at his or her last known address or served personally upon Respondent. The decision of the Board Hearing Panel granting, granting with conditions, denying, or denying with recommendations the restoration applicant's license shall become final thirty (30) days after the Executive Director signs the Final Order of the Board Panel unless within said period the Respondent appeals the decision to the Full Membership of the Board as provided by Rule 1.10.