

CHAPTER 11
APPLICATIONS, COMPLAINTS,
and
HEARING PROCEDURES

Section 1. Application Review Process.

(a) Upon receipt of a complete application, the Board Office shall forward the application to the Application Review Committee (ARC).

(b) The ARC may:

(i) Approve the application if the applicant meets all requirements, or

(ii) Forward the application to the Attorney General for review if the application raises questions as to whether denial is appropriate.

(c) If, after review, the ARC and Attorney General recommend denial of an application:

(i) A preliminary denial letter shall be sent to applicant. The letter shall:

(A) State the basis for the denial including relevant statutes and rules; and

(B) Advise the applicant of the right to request reconsideration.

(ii) If the applicant fails to request reconsideration in writing within 30 days of the date of the preliminary denial letter, the preliminary denial becomes final.

(iii) If the applicant requests reconsideration within 30 days, a reconsideration conference shall be held with the ARC, the Attorney General, and the applicant.

(iv) Following a reconsideration conference, the ARC shall either approve or deny the application.

(v) If denied, the applicant must submit a written request for a hearing, within 30 days of the date of the denial letter.

(d) Application denial hearings:

(i) An application denial hearing is a formal contested case hearing conducted pursuant to the Wyoming Administrative Procedure Act.

(ii) The hearing is to be conducted in the presence of a quorum of the board, with a hearing officer presiding.

(iii) The applicant has the burden of proving that he/she meets all requirements for the license or certificate applied for.

Section 2. Information and Complaints.

(a) Information. If information concerning a possible violation of the Act or rules is received or obtained by a board member or members of the staff, the Board may, on its own motion, initiate proceedings under the Act and in accordance with the Wyoming Administrative Procedure Act. The license or certificate holder will be notified of proceedings initiated under this section.

(b) Complaint. Persons or entities other than the Board may initiate a disciplinary action against a license or certificate holder by submitting a written complaint to the Board office. Nothing in the section shall be construed to prohibit the Board or the Board's staff from filing a written complaint. The written complaint should provide as much of the following information as may be applicable:

(i) The name, address and other contact information for the complainant;

(ii) The name, address, place of employment, and telephone number of the license or certificate holder against whom the charges are made;

(iii) The specific conduct alleged to constitute the violation;

(iv) The name and address of any other witnesses; and

(v) The signature of the complainant.

Section 3. Review of Written Complaint.

(a) Written complaints shall be referred to the Discipline Committee (DC). If the DC recommends, the Board may hire an independent investigator to conduct the investigation. The license or certificate holder will be advised of the investigation, the names of the DC members, and the nature of the complaint.

(i) The DC members shall not take part in the consideration of any contested case.

(ii) Members of the DC shall not by this rule be barred from attending any disciplinary hearing.

Section 4. Investigations and Board Action. The DC shall investigate those written complaints received by the Board which merit further investigation.

(a) Upon completion of the investigation, the DC shall prepare an investigative report.

(i) The report shall include:

(A) The findings of the committee;

(B) Recommended action;

(C) A list of statutes and/or Board rules believed to have been violated;

(D) Any additional information that is relevant to the report.

(b) Upon completion of the investigation, the committee may:

(i) Send the notice required by Section 5;

(ii) Prepare and file formal petition and notice of hearing with the Board, setting the matter for a contested case hearing;

(iii) Recommend an offer of conditional terms for settlement, which may include educational courses, to the Board;

(iv) Recommend the Board dismiss the complaint.

(c) The Board may resolve a complaint at any time by:

(i) Accepting a voluntary surrender of a license or permit;

(ii) Accepting conditional terms for settlement;

(iii) Dismissal.

Section 5. Service of Notice and Opportunity to Show Compliance.

(a) Prior to commencement of a formal hearing, the DC shall give notice by mail to the license or certificate holder of the facts or conduct which warrant its intended action. The notice shall give the license or certificate holder an opportunity to show compliance with all lawful requirements for retention of the license or certificate within twenty (20) days of the mailing of the notice. Such notice shall be sent to the license or certificate holder's last known address by certified mail with return receipt requested and by first class mail.

Section 6. Formal Hearing Procedures.

(a) Formal proceedings for a hearing before the board regarding action against a license or certificate holder shall be commenced by petition and notice of hearing, served in person, or by certified mail and first class mail sent to the address last known by the Board at least thirty (30) days prior to the date set for the hearing. The petition and notice shall contain at least:

- (i) The name and address of the license or certificate holder;
- (ii) A statement, in ordinary and concise language, of the nature of the complaint filed with the Board, and the facts upon which the complaint is based, as well as the specific statute(s) or Board rules and regulations alleged to have been violated;
- (iii) The time, place, and nature of the hearing;
- (iv) That the hearing is being held pursuant to the authority provided by W.S. 33-27-120; and
- (v) The license or certificate holder shall file an Answer or Notice of Appearance, which must be received by the Board at least ten (10) working days prior to the date set for hearing or the holder will be in default.

Section 7. Continuance. For good cause shown, extensions and continuances may be granted or denied at the discretion of the Board or the hearing officer.

Section 8. Default. The Board may enter an order based on the allegations in a petition in any case where the applicant, license, or certificate holder has not answered or appeared in writing ten (10) working days before the hearing, or in any case in which the applicant, license, or certificate holder or his/her representative has not appeared at a scheduled hearing for which they had notice.

Section 9. Hearing Officer. The Board may appoint a hearing officer to take evidence at the hearing or the Chairperson or a Board member may serve as the hearing officer.

Section 10. Discovery. In all formal proceedings before the Board, discovery shall be afforded in accordance with the Wyoming Administrative Procedure Act.

Section 11. Subpoenas.

(a) A Board member or the hearing officer may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths.

(b) Service of a subpoena must be made at the expense of the party applying for it and shall be made in the manner provided by law for service of subpoenas in civil actions.

Section 12. Witnesses.

(a) All persons testifying at any hearing before the Board shall be administered a standard oath or affirmation.

(b) No testimony will be received from a witness except under oath or affirmation.

(c) The party calling a witness shall bear the costs associated with the witness's appearance.

(d) The Board and hearing officer shall have an opportunity to examine any witness.

Section 13. Representation.

(a) An applicant, license, or certificate holder may represent him/herself or be represented by counsel, provided that such counsel is licensed to practice law in the State of Wyoming, or is associated at the hearing with one or more attorneys license to practice law in the State of Wyoming.

(b) In any case before the Board, an appearance in person or the filing of an answer or other pleading shall constitute an appearance of record by an attorney.

(c) A request for withdrawal from representation by an attorney shall be submitted to the Board in writing.

(d) A representative of the Attorney General's office may present all matters in a contested case on behalf of the IC or DC.

Section 14. Prehearing Conference.

(a) The hearing officer may direct the parties to appear before him/her to consider:

(i) The simplification of the issues;

(ii) The necessity of desirability of amending the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

- (iv) Formulating procedures to govern the hearing; or
- (v) Such other matters as may aid in the disposition of the case.

(b) Prehearing conferences shall be conducted informally. An order will be prepared which recites the actions taken at the conference, amendments allowed, agreements of the parties, and the issues to be determined at the hearing.

Section 15. Order of Procedure at Hearing. The hearing will be conducted in substantially the following order:

(a) Opening announcements are made by the hearing officer, including case name and docket number, the issue(s) to be considered, parties and counsel present, and subpoenas issued;

(b) Witnesses should be identified and sworn;

(c) Opening statements may be made at the discretion of the hearing officer. In cases of license denial, the applicant should go first. In disciplinary cases the DC should go first;

(d) Presentation of Evidence. The order above will be followed with each party, the hearing officer, and the Board having the opportunity to cross-examine the witnesses. Rebuttal evidence may be presented;

(e) Exhibits offered in evidence by the applicant, license, or certificate holder will be marked with the letters of the alphabet. Those offered by the DC will be marked numerically;

(f) Closing arguments may be made at the discretion of the hearing officer. Time may be limited, the order of presentation is as above, and brief rebuttal time may be allowed. The hearing and the evidence are then closed, unless reopened by the hearing officer for good cause shown.

Section 16. Decisions.

(a) Proposed Decisions:

(i) At the discretion and direction of the Board, the parties may file proposed findings of fact, conclusions of law, and order after the hearing and before the deadline announced in the hearing's closing announcements.

(ii) At the discretion and direction of the Board, the hearing officer shall prepare proposed findings of fact, conclusions of law, and order.

(b) Final Decisions. Proposed decisions will be given consideration but are not binding upon the Board. All final decisions will be issued by the Board and be based exclusively upon the evidence in the record and matters officially noticed. All final decisions issued by the Board will be served to all parties by first class mail.

Section 17. Appeals. A Petition for Judicial Review of the Board decision may be filed in the district court in accordance with the Wyoming Rules of Appellate Procedure.

Section 18. Transcripts. If a Petition for Judicial Review is filed in the district court, the petitioner shall arrange the preparation and pay for the transcript of the testimony, or reimburse the Board for the cost of the transcript if previously prepared at Board expense.