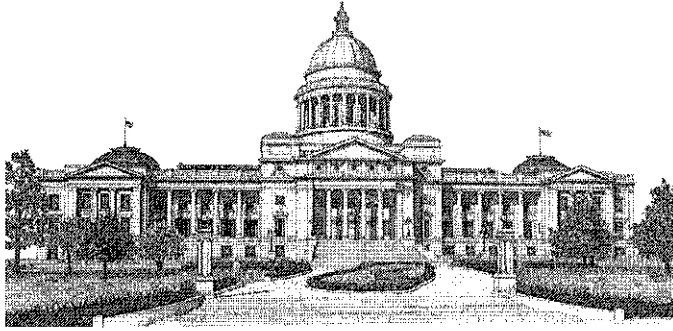


ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Health

Agency or Division Name Health Related Boards and Commissions

Other Subdivision or Department, If Applicable Arkansas State Board of Chiropractic Examiners

Previous Agency Name, If Applicable _____

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Name of Rule Rules of Procedure

Newspaper Name Arkansas Democrat Gazette

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Final Date for Public Comment March 9, 2020

Location and Time of Public Meeting _____

Mark-up of Rules

PART THREE RULES OF PROCEDURE

A. **BOARD MAY INVESTIGATE COMPLAINTS.** This Board shall have the right and responsibility, as provided by law, to investigate complaints, allegations or suspicions of violations of the Arkansas Chiropractic Practices Act or of these ~~Regulations, Rules.~~

Commented [LM20]: Proposed update Per ACT 315 of 2019

B. **METHOD FOR HEARINGS.** All hearings before the Board shall be conducted according to the Arkansas Administrative Procedure Act, Ark. Stat. Ann. #5-701, et seq., with the following additions:

(1) Notice.

(a) Except as provided in Section 2, whenever the Board contemplates taking disciplinary action, it shall serve a written notice upon the licensee at least thirty (30) days before the action is taken. This thirty (30) day requirement may be waived upon agreement of both

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parties.

- (b) The notice shall include a Statement of the Facts or conduct upon which disciplinary action is contemplated and shall inform the licensee of his right to a hearing and state the time and place where the hearing is scheduled. The notice shall also inform the licensee that continuances will be granted only for good cause and that if the licensee fails to appear at the hearing and has not obtained a continuance, then the Board may conduct the hearing in the licensee's absence.
 - (c) The notice shall be issued in the Board's name and shall be signed by the President, Executive Director, or the Board's Attorney.
 - (d) The notice shall be served either personally by registered or certified mail addressed to the licensee's current business address on file with the Board. If personal service is used, it may be proven by affidavit or testimony of the server and shall be deemed served on the date delivered. When service is by mail, it shall be deemed served on the date borne by the return receipt showing delivery, refusal, or inability to deliver.
- (2) **Emergency Action.** Notwithstanding Section 1, if the Board finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.
- (3) **Continuances.** A continuance shall be granted only for good cause.
- (4) **Failure to Appear.** If a licensee, after being served notice, fails to appear at the time and place where the hearing is scheduled and has not obtained a continuance, then the Board may conduct the proceedings without the licensee being present.
- (5) **Presiding Officer.** The President shall be the Presiding Officer at all hearings, except if the President is unavailable, then a majority of the Board members present shall select a Presiding Officer from among themselves present. A Hearing Officer may be appointed by the Executive Director of the Chiropractic Board to act as an impartial Hearing Officer at any disciplinary hearing. The Presiding Officer shall have power to:
- (a) issue subpoenas;
 - (b) administer oaths and affirmations;
 - (c) maintain order;
 - (d) rule on all questions arising during the proceedings;
 - (e) permit discovery by deposition or otherwise;
 - (f) hold conferences for the settlement or simplification of issues;
 - (g) make or recommend decisions;
 - (h) generally regulate and guide the course of the pending proceeding.
- (6) **Decisions.** A final decision shall be in writing or stated in the record. It shall include findings of fact and conclusions of law, separately stated. Parties shall be served either personally or by mail with a copy of any decision or order within a reasonable time.
- (7) **Authority of Board.** If the information contained in the Complaint states matters that are not under the authority of the board, or which would not constitute a violation if proven, the

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board may take no action. Notice shall be given to the complainant and the licensee that the complaint has been reviewed with the determination that no action is warranted by the board.

C. INFORMAL DISPOSITION OF COMPLAINTS.

As provided by the Arkansas Administrative Procedures Act, nothing contained herein shall prohibit informal disposition of complaints or allegations by settlement, consent or agreement of parties.

D. COMPLAINT HANDLING PROCEDURES.

- (1) Complaints against Chiropractic physicians may be made by letter, in person, or by telephone call to the President, Secretary or Executive Director of the Board of Examiners.
- (2) All complaints shall be logged in a special record, which shall be updated as necessary to indicate the current status of all complaints.
 - (a) The subject of the complaint will receive notification and a copy of the complaint. He/she will be given ten (10) days to submit a response in writing to the Board office.
 - (b) Failure of the (subject) of any and all complaints to cooperate may be considered unprofessional conduct and will be taken into consideration by the Board investigator and Board attorney.
- (3) Said complaints may be investigated by one or more of the Board members or agents of the Board. Informal disposition may be attempted by settlement, consent, agreement, or for lack of sufficient probable cause if, in the opinion of the Board, such disposition is warranted by the circumstances.
- (4) Any and every complaint making out a prima facie case shall be presented to and reasonably disposed of by the Board, giving due consideration to sufficient and necessary time to investigate and consider the complaint. Upon completion of an investigation, the designated Board investigator and Board's Attorney together shall determine whether a disciplinary hearing shall be scheduled to resolve the issue.
- (5) Disciplinary hearings may be conducted either on the Board's own motion or based on a written complaint if a violation of the Chiropractic Practices Act has been discovered.
- (6) All complaints not investigated and all complaints investigated but determined to not substantiate the charges shall be reported to the Board quarterly.
- (7) If the information contained in the complaint states matters that are not under the authority of the board, or which would not constitute a violation if proven, the board may take no action. Notice shall be given to the complainant and the licensee that the complaint has been reviewed with the determination that no action is warranted by the board.
- (8) Notwithstanding any of the foregoing, any complaint received by the Board that involves a procurer as defined in A.C.A. 17-81-107(a)(1)(A) and (B), imperatively requires immediate action and special handling; for all such complaints, the following provisions shall apply:

Mark-up of Rules

- (a) If the complaint is not received in writing, as set forth in Part III(D)(1), the person receiving the complaint shall without delay reduce the complaint to writing, stating at minimum, the date, the name, address and phone number of the person making the complaint; the name of the allegedly offending licensee and/or procurer; a fair summary of the facts upon which the complaint is based; and, any demand for relief or specific request for an act of the Board. A complaint reduced to writing is for all purposes the equivalent of a complaint received in writing.
- (b) Each written complaint shall be signed by the person receiving the complaint and distributed without delay to the president of the Board, the secretary or executive secretary, the investigating officer, and the attorney for the board.
- (c) Within three business days of the distribution of such complaint, the Board shall initiate the service of notice upon the licensee in accordance with Part III, (B)(1)(a)-(d); a copy of the complaint and any additional information in custody of the Board may, in the discretion of the Board, be provided to the appropriate law enforcement agency for investigation and possible prosecution pursuant to A.C.A. 5-37-505 and 506.
- (d) The notice of complaint shall provide the licensee with a copy of the written complaint as distributed, and shall advise the licensee that (a) the complaint that has been made against the licensee involves a procurer; (b) his or her response to the complaint is due within 10 business days of service; and (c) that a copy of the notice of complaint and any supporting documents may be provided to the appropriate law-enforcement agency for investigation and appropriate action.
- (e) Upon receipt of the response of the licensee, the date of the response is noted, and the response shall be distributed without delay to the president of the Board, the secretary or executive secretary, the investigating officer, and the attorney for the board.

E. AMENDMENTS TO RULES ~~AND REGULATIONS~~.

These rules, ~~regulations~~ and definitions may be modified, added to or deleted as deemed appropriate by the Board of Examiners in the method prescribed for such changes by the laws of the State of Arkansas.

F. ANNUAL/RENEWAL-FEE.

- (1) The annual renewal fee for a license issued by the Board shall be \$250.00.
- (2) If a license automatically expires and becomes forfeited pursuant to Ark. Code Ann. Sec. 17-81-311 for failure to timely pay the annual renewal fee, the license may be reinstated by the Board upon payment of the delinquent fee due and a penalty of \$200.00 for reinstatement, in addition to satisfying the Board in compliance with the education requirements.

Commented [LM21]: Proposed update Per ACT 315 of 2019

Commented [LM22]: Proposed update Per ACT 315 of 2019

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- (e) permit discovery by deposition or otherwise;
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- (g) make or recommend decisions;
- (h) generally regulate and guide the course of the pending proceeding.

(6) **Decisions.** A final decision shall be in writing or stated in the record. It shall include findings of fact and conclusions of law, separately stated. Parties shall be served either personally or by mail with a copy of any decision or order within a reasonable time.

(7) **Authority of Board.** If the information contained in the Complaint states matters that are not under the authority of the board, or which would not constitute a violation if proven, the board may take no action. Notice shall be given to the complainant and the licensee that the complaint has been reviewed with the determination that no action is warranted by the board.

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(a) The subject of the complaint will receive notification and a copy of the complaint. He/she will be given ten (10) days to submit a response in writing to the Board office.

(b) Failure of the (subject) of any and all complaints to cooperate may be considered unprofessional conduct and will be taken into consideration by the Board investigator and Board attorney.

(3) Said complaints may be investigated by one or more of the Board members or agents of the Board. Informal disposition may be attempted by settlement, consent, agreement, or for lack of sufficient probable cause if, in the opinion of the Board, such disposition is warranted by the circumstances.

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