

TITLE 30: PROFESSIONS AND OCCUPATIONS

PART 3002: ADMINISTRATIVE RULES

**MISSISSIPPI BOARD OF PHARMACY
ADMINISTRATIVE RULES
AS REQUIRED BY MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW**

I. METHOD OF OPERATION

1. Structure and Enabling Statutes

SEC. 73-21-75. State board of pharmacy; number, qualifications, appointment and terms of members; filling of vacancies; removal of members.

(1) The State Board of Pharmacy created by former Section 73-21-9 is hereby continued and reconstituted as follows: The board shall consist of seven (7) appointed members. At least one (1) appointment shall be made from each congressional district. Each appointed member of the board shall be appointed by the Governor, with the advice and consent of the Senate, from a list of five (5) names submitted by the Mississippi State Pharmaceutical Association/Mississippi Pharmacists Association. Of the members appointed, one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding an institutional permit, and one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding a retail permit. Any person appointed to the board shall be limited to two (2) full terms of office during any fifteen-year period, including any member serving on May 14, 1992.

(2) The members of the board appointed and serving prior to July 1, 1983, whose terms have not expired by July 1, 1983, shall serve the balance of their terms as members of the reconstituted board, and they shall be considered to be from the same congressional districts from which they were originally appointed if they still reside therein, even if the district boundaries have changed subsequent to their original appointments. The Governor shall appoint the remaining members of the reconstituted board in the manner prescribed in subsection (1) of this section on July 1, 1983. The initial members of the reconstituted board shall serve terms of office as follows:

(a) The term of the member from the First Congressional District shall expire on July 1, 1984; and from and after July 1, 1996, this appointment shall be designated as Post 1.

(b) The term of the member from the Second Congressional District shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 2.

(c) The term of the member from the Third Congressional District shall expire on July 1, 1986; and from and after July 1, 1996, this appointment shall be designated as Post 3.

(d) The term of the member from the Fourth Congressional District shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 4.

(e) The term of the member from the Fifth Congressional District shall expire on July 1, 1987; and from and after July 1, 1996, this appointment shall be designated as Post 5.

(f) The term of one (1) of the members from the state at large shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 6.

(g) The term of the other member from the state at large shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 7.

(3) At the expiration of a term, members of the board shall be appointed in the manner prescribed in subsection (1) of this section for terms of five (5) years from the expiration date of the previous terms. Any vacancy on the board prior to the expiration of a term for any reason, including resignation, removal, disqualification, death or disability, shall be filled by appointment of the Governor in the manner prescribed in subsection (1) of this section for the balance of the unexpired term. The Mississippi State Pharmaceutical Association/Mississippi Pharmacists Association shall submit a list of nominees no more than thirty (30) days after a vacancy occurs, and the Governor shall fill such vacancies within ninety (90) days after each such vacancy occurs.

(4) To be qualified to be a member of the board, a person shall:

(a) Be an adult citizen of Mississippi for a period of at least five (5) years preceding his appointment to the board;

(b) Be a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi;

(c) Have at least five (5) years' experience as a pharmacist; and

(d) Be actively engaged full time in the practice of pharmacy in Mississippi.

(5) The Governor may remove any or all members of the board on proof of unprofessional conduct, continued absence from the state, or for failure to perform the duties of his office. Any member who shall not attend two (2) consecutive meetings of the board for any reason other than illness of such member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings. No removal shall be made without first giving the accused an opportunity to be heard in refutation of the charges made against him, and he shall be entitled to receive a copy of the charges at the time of filing.

SOURCES: Laws, 1983, ch. 414, Sec. 3; 1991, ch. 527, Sec. 3; 1992, ch. 531 Sec. 1; reenacted, 1993, ch. 416, Sec. 4; 1995, ch. 513, Sec. 2, eff from

and after July 1, 1995

SEC. 73-21-77. Organization of board; oath; meetings; compensation and expenses of members.

- (1) Each person appointed as a member of the board shall qualify by taking the oath prescribed by the Constitution for the state officers, and shall file certificate thereof in the office of the Secretary of State within fifteen (15) days after his appointment.
- (2) There shall be a president of the board and such other officers as deemed necessary by the board elected by and from its membership.
- (3) The board shall meet at least once each quarter to transact business, and may meet at such additional times as it may deem necessary. Such additional meetings may be called by the president of the board or a majority of the members of the board.
- (4) The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.
- (5) A majority of the members of the board shall constitute a quorum for the conduct of the meeting and all actions of the board shall be by a majority.
- (6) Each member of the board shall receive a per diem as provided in Section 25-3-69, not to exceed thirty (30) days in any one (1) period of twelve (12) months, for each day actually engaged in meetings of the board, together with necessary traveling and other expenses as provided in Section 25-3-41.

SOURCES: Laws, 1983, ch. 414, Sec. 4; reenacted without change, 1991, ch. 527, Sec. 4; 1992, ch. 531 Sec. 2; reenacted, 1993, ch. 416, Sec. 5, eff from and after passage (approved March 18, 1993).

SEC. 73-21-79. Executive director; additional employees; legal counsel.

- (1) The board shall employ an executive director of the board. The executive director shall be a citizen of Mississippi and a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi, who has had five (5) years' experience as a pharmacist.
- (2) The executive director shall receive a salary to be set by the board, subject to the approval of the State Personnel Board, and shall be entitled to necessary expenses incurred in the performance of his official duties. He shall devote full time to the duties of his office and shall not be engaged in any other business that will interfere with the duties of his office.
- (3) The duties and responsibilities of the executive director shall be defined by rules and regulations prescribed by the board.
- (4) The board may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems

necessary to the proper conduct of board business. Any pharmacist-investigator employed by the board may have other part-time employment, provided that he shall not accept any employment that would cause a conflict of interest in his pharmacist-investigator duties. The board may employ legal counsel to assist in the conduct of its business. SOURCES: Laws, 1983, ch. 414, Sec. 5; reenacted without change, 1991, ch. 527, Sec. 5; 1992, ch. 531 Sec. 3; 1993, ch. 416, Sec. 6, eff from and after passage (approved March 18, 1993).

SEC. 73-21-81. General powers and duties of board; enforcement of chapter; rules and regulations.

The responsibility for the enforcement of the provisions of this chapter shall be vested in the board. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this chapter. The board may make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, in accordance with the provisions of the Mississippi Administrative Procedures Law (sections 25-43-1 et seq.).

SOURCES: Laws, 1983, ch. 414, Sec. 6; reenacted without change, 1991, ch. 527, Sec. 6; reenacted without change, 1993, ch. 416, Sec. 7, eff from and after passage (approved March 18, 1993).

SEC. 73-21-83. Board to regulate practice of pharmacy; licensing of pharmacists; fees; persons holding license on July 1, 1991.

(1) The board shall be responsible for the control and regulation of the practice of pharmacy, to include the regulation of pharmacy externs or interns and pharmacist technicians in this state, the regulation of the wholesaler distribution of drugs and devices as defined in Section 73-21-73, and the distribution of sample drugs or devices by manufacturer's distributors as defined in Section 73-21-73 by persons other than the original manufacturer or distributor in this state.

(2) A license for the practice of pharmacy shall be obtained by all persons prior to their engaging in the practice of pharmacy. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

(3) The initial licensure fee shall be set by the board but shall not exceed Two Hundred Dollars (\$200.00).

(4) All students actively enrolled in a professional school of pharmacy accredited by the American Council on Pharmaceutical Education who are making satisfactory progress toward graduation and who act as an extern or

intern under the direct supervision of a pharmacist in a location permitted by the Board of Pharmacy must obtain a pharmacy student registration prior to engaging in said activity. The student registration fee shall be set by the board but shall not exceed One Hundred Dollars (\$100.00).

(5) All persons licensed to practice pharmacy prior to July 1, 1991, by the State Board of Pharmacy under Section 73-21-89 shall continue to be licensed under the provisions of Section 73-21-91.

SOURCES: Laws, 1983, ch. 414, Sec. 7; 1991, ch. 527, Sec. 7; 1993, ch. 416, Sec. 8; 1994, ch. 513, Sec. 2, eff from and after July 1, 1994; 1997, ch. 441, Sec. 1, eff July 1, 1997.

2.Public Information. The public may obtain information regarding operations and responsibilities of the Mississippi Board of Pharmacy, the Pharmacy Practice Act and Board Regulations and other pertinent information by contacting the Board office at 204 Key Drive, Suite C, Madison, Mississippi 39110, 601-605-5388. Additional information is available on the Mississippi Board of Pharmacy Website at www.mbp.state.ms.us.

II. FORMAL AND INFORMAL PROCEEDINGS

MISSISSIPPI BOARD OF PHARMACY RULES OF PROCEDURE

I. SCOPE

The following Rules of Procedure shall apply to all pharmacists licensed by the Mississippi Board of Pharmacy and all other persons under the jurisdiction of said Board.

II. PURPOSE

A. To implement and enforce the standards of pharmacy and pharmacy practice and conduct of all other persons under the jurisdiction of the Mississippi Board of Pharmacy as provided for in all state & federal drug laws, the Mississippi Pharmacy Practice Act and the Pharmacy Practice Regulations of the Mississippi Board of Pharmacy.

III. DEFINITIONS

- A. The word "Board" shall mean the Mississippi Board of Pharmacy.
- B. The word "Respondent" shall mean a pharmacist or other person against whom a disciplinary action and proceeding has been initiated by the Mississippi Board of Pharmacy.
- C. Masculine terms, when used in the following Rules of Procedure, shall also be deemed to include the feminine.

IV. ADMINISTRATIVE HEARINGS

1. CONTINUANCES

- A. Hearings shall be held before the Board at the time and place designated in the "Notice of Hearing and Complaint", unless a continuance is granted for just good 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 pharmacists representing various regions of the State. Unlike the judiciary, the 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 the Board. Attorneys representing pharmacists 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 fifteen (15) days prior to the scheduled hearing date. Thereafter, no further continuances will be granted based solely on scheduling conflicts.

D. So that counsel for the Respondent and Complaint Counsel shall be able to adequately prepare for hearing, any motion for a continuance filed within the time limitations as specified in 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 without counsel or to 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.

2. POLICIES FOR ADMINISTRATIVE HEARINGS

A. Procedures are designed to give the accused the right to be heard in a fair and impartial hearing.

B. The President or the Senior Member of the Board present is the presiding officer and he/she rules on all objections and motions, subject to the Board's approval.

C. The Board is not bound by strict rules of evidence but all determinations must be based upon sufficient evidence.

D. All hearings are open to the public, however, public members may not participate nor be present for Executive Sessions.

E. The Executive Director, with the advice of the Board Counsel, will subpoena all witnesses for the Board or the defendant when requested.

F. All charges shall be based upon affidavits sufficiently definite to constitute allegation or specific violation of the laws and regulations that govern pharmacists and the practice of pharmacy.

G. The respondent has the right to appear either personally, by counsel, or both; to produce witnesses, cross-examine witnesses and have subpoenas issued by the Board.

H. A definite time and place shall be set with proper notice being given and a quorum present for all proceedings.

I. Board members who served on the Investigations Review Committee and who reviewed the investigation of the complaint that led to the administrative hearing, shall recuse themselves and not participate in the disciplinary proceeding.

J. All Board decisions are made in Executive Session.

K. A copy of these Board Rules of Procedure for Administrative Hearings shall be supplied to the respondent along with the Notice of Hearing and Complaint.

3. PROCEDURES FOR ADMINISTRATIVE HEARINGS

A. The Hearing is called to order by the President or presiding officer.

- B. President requests that the respondent/counsel be called.
- C. When respondent appears, introductions are made and oaths administered to respondent and others as may be necessary for proper conduct of the hearing.
- D. The respondent is then asked to state his/her name, address and license number. He/she is also informed that the hearing is being recorded.
- E. If respondent is represented by counsel, counsel name and address is entered into the record.
- F. The President then asks Board counsel to present the charges and place same into the record as appropriate.
- G. Before going into the merits of the cause, evidence should be placed into the record showing that the respondent was properly notified of the charges.
- H. The respondent is then asked to respond to the charges.
- I. The Board counsel may have witnesses called for the Board and he/she shall conduct the direct examination of same.
- (1) At the conclusion of the examination, the respondent or respondents counsel may cross-examine.
- (2) At the conclusion of the cross-examination, the Board may question the witness.
- (3) At the conclusion of the witness' testimony, the witness may be excused subject to recall.
- J. The respondent may call his/her witnesses after Board has rested its case. The respondent or respondent's counsel will conduct the direct examination.
- (1) Board Counsel may cross-examine respondent witness.
- (2) Board members may then question respondent witness.
- (3) The witness may be excused subject to recall.
- K. The Board may then call rebuttal witnesses.
- L. Respondent/counsel may make closing argument if desired.
- M. After all response has been presented by both sides, the Board goes into Executive Session to consider all evidence presented and make a final decision or ruling.
- N. The Board shall make findings of fact on each charge. The Board should adjudicate each charge as presented, based on the evidence submitted.
- O. The Board then determines what disciplinary action, if any, should be taken in the matter.
- P. Following the Executive Session, the respondent may or may not be informed of the Board's action, however, the action is always reduced to writing and notification may include Proceedings, Conclusions of Law, Findings of Fact and the Order of the Board.

V. 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 Board; or
 2. Acceptance by the Board of a mutually agreeable Consent Order in lieu of a hearing; or
 3. Dismissal of the case.
- B. As to disciplinary proceedings duly served by a Notice of Hearing and Complaint, Respondent and/or Respondent's Counsel may agree that an Informal Settlement Conference be held for the purpose of possible resolution of the matter or for purposes of 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 Board Counsel. Other parties who may attend include Compliance Agents for the Board and Board members who served on the Investigations Review Committee (IRC) that authorized that a Notice of Hearing and Complaint be issued in the matter. Other Board members may not attend or have knowledge or input into any activities of the Conference.

D. Discovery or exchange of information may be accomplished during the Informal Settlement Conference.

E. The Informal Settlement Conference may result in:

1. Preparation of a proposed Consent Order as a resolution of the matter;
2. 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 ten (10) working days prior to the scheduled hearing date. After the terms of the Consent Order have been prepared and mutually accepted by Board Counsel, the investigating Compliance Agent and the two (2) IRC Board members that originally heard the matter, it shall be binding on the Board, but not effective until 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 Board approval.

G. Failure of the Board to approve and/or ratify any Consent Order shall result in an administrative hearing before the Board as originally scheduled in order to resolve all matters as outlined in the Notice of Hearing and Complaint.

H. Hearings for matters in which Consent Orders are considered by the Board shall be conducted according to the Board's Rules of Procedures for Administrative Hearings.

VI. 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 person 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 Respondent shall be affected by registered mail.
3. All requests for 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.

III. ORAL PROCEEDINGS ON PROPOSED REGULATIONS

1.Scope. These rules set forth the Mississippi Board of Pharmacy, hereinafter “Board,” rules governing the form and content of requests for all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new regulations and amendments to regulations before the Board pursuant to §25-43-3.104.

2.When Oral Proceedings will be Scheduled on Proposed Regulations. The Board will conduct an oral proceeding on a proposed regulation or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed regulation.

3. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. Notification of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State’s office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer. The Board President or his designee, who is familiar with the substance of the proposed regulation, shall preside at the oral proceeding on a proposed regulation.

6. Public Presentations and Participation.

(a) At an oral proceeding on a proposed regulation, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed regulation.

(b) Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.

(c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

(d) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

(f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan’s time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

(a) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed regulation, a statement of the statutory authority for the proposed regulation, and the reasons provided by the Board for the proposed regulation; (iii) call on those individuals who have contacted the Board about speaking on or against the proposed regulation; (iv) allow for rebuttal statements following all participant's comments; (v) adjourn the proceeding.

(b) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that regulation-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(c) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.

(d) Recording. The Board may record oral proceedings by stenographic or electronic means.

IV. DECLARATORY OPINIONS

1. Scope. These rules set forth the Mississippi Board of Pharmacy, hereinafter "Board," rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the Board" means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board or (2) a regulation promulgated by the Board. The Board will not issue a declaratory opinion regarding a statute or regulation which is outside the primary jurisdiction of the Board.

4. Circumstances In which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

(a) lack of clarity concerning the question presented;

- (b) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (c) the statute or regulation on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (d) the facts presented in the request are not sufficient to answer the question presented;
- (e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- (f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or regulation on which a declaratory opinion is sought;
- (g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or regulation;
- (h) the question presented by the request concerns the legal validity of a statute or rule;
- (i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (j) no clear answer is determinable;
- (k) the question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;
- (l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (m) The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- (n) A similar request is pending before this Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such a opinion would constitute the unauthorized practice of law.
- (o) Where issuance of a declaratory opinion may adversely affect the interests of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
- (p) The question involves eligibility for a license, permit, registration or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, registration or other approval would be determined.

5. Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.

6. Where to Send Requests. All requests must be mailed, delivered or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of

relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. Question Presented. Each request shall contain the following:

- (a) a clear and concise statement of all facts on which the opinion is requested;
- (b) a citation to the statute or regulation at issue;
- (c) the question(s) sought to be answered in the opinion, stated clearly;
- (d) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
- (e) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
- (f) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

10. Time for Board's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

- (a) issue a declaratory opinion regarding the specified statute or regulation as applied to the specified circumstances;
- (b) decline to issue a declaratory opinion, stating the reasons for its action; or
- (c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

11. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

12. Notice by Board to third parties. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

13. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

14. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

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PART 3002: ADMINISTRATIVE RULES

MISSISSIPPI BOARD OF PHARMACY ADMINISTRATIVE RULES AS REQUIRED BY MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW

I. METHOD OF OPERATION

1. Structure and Enabling Statutes

SEC. 73-21-75. State board of pharmacy; number, qualifications, appointment and terms of members; filling of vacancies; removal of members.

(1) The State Board of Pharmacy created by former Section 73-21-9 is hereby continued and reconstituted as follows: The board shall consist of seven (7) appointed members. At least one (1) appointment shall be made from each congressional district. Each appointed member of the board shall be appointed by the Governor, with the advice and consent of the Senate, from a list of five (5) names submitted by the Mississippi State Pharmaceutical Association/Mississippi Pharmacists Association. Of the members appointed, one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding an institutional permit, and one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding a retail permit. Any person appointed to the board shall be limited to two (2) full terms of office during any fifteen-year period, including any member serving on May 14, 1992.

(2) The members of the board appointed and serving prior to July 1, 1983, whose terms have not expired by July 1, 1983, shall serve the balance of their terms as members of the reconstituted board, and they shall be considered to be from the same congressional districts from which they were originally appointed if they still reside therein, even if the district boundaries have changed subsequent to their original appointments. The Governor shall appoint the remaining members of the reconstituted board in the manner prescribed in subsection (1) of this section on July 1, 1983.

The initial members of the reconstituted board shall serve terms of office as follows:

- (a) The term of the member from the First Congressional District shall expire on July 1, 1984; and from and after July 1, 1996, this appointment shall be designated as Post 1.
 - (b) The term of the member from the Second Congressional District shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 2.
 - (c) The term of the member from the Third Congressional District shall expire on July 1, 1986; and from and after July 1, 1996, this appointment shall be designated as Post 3.
 - (d) The term of the member from the Fourth Congressional District shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 4.
 - (e) The term of the member from the Fifth Congressional District shall expire on July 1, 1987; and from and after July 1, 1996, this appointment shall be designated as Post 5.
 - (f) The term of one (1) of the members from the state at large shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 6.
 - (g) The term of the other member from the state at large shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 7.
- (3) At the expiration of a term, members of the board shall be appointed in the manner prescribed in subsection (1) of this section for terms of five (5) years from the expiration date of the previous terms. Any vacancy on the board prior to the expiration of a term for any reason, including resignation, removal, disqualification, death or disability, shall be filled by appointment of the Governor in the manner prescribed in subsection (1) of this section for the balance of the unexpired term. The Mississippi State Pharmaceutical Association/Mississippi Pharmacists Association shall submit a list of nominees no more than thirty (30) days after a vacancy occurs, and the Governor shall fill such vacancies within ninety (90) days after each such vacancy occurs.
- (4) To be qualified to be a member of the board, a person shall:
- (a) Be an adult citizen of Mississippi for a period of at least five (5) years preceding his appointment to the board;
 - (b) Be a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi;
 - (c) Have at least five (5) years' experience as a pharmacist; and
 - (d) Be actively engaged full time in the practice of pharmacy in Mississippi.
- (5) The Governor may remove any or all members of the board on proof of unprofessional conduct, continued absence from the state, or for failure to perform the duties of his office. Any member who shall not attend two (2) consecutive meetings of the board for any reason other than illness of such

member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings. No removal shall be made without first giving the accused an opportunity to be heard in refutation of the charges made against him, and he shall be entitled to receive a copy of the charges at the time of filing.

SOURCES: Laws, 1983, ch. 414, Sec. 3; 1991, ch. 527, Sec. 3; 1992, ch. 531 Sec. 1; reenacted, 1993, ch. 416, Sec. 4; 1995, ch. 513, Sec. 2, eff from and after July 1, 1995

SEC. 73-21-77. Organization of board; oath; meetings; compensation and expenses of members.

(1) Each person appointed as a member of the board shall qualify by taking the oath prescribed by the Constitution for the state officers, and shall file certificate thereof in the office of the Secretary of State within fifteen (15) days after his appointment.

(2) There shall be a president of the board and such other officers as deemed necessary by the board elected by and from its membership.

(3) The board shall meet at least once each quarter to transact business, and may meet at such additional times as it may deem necessary. Such additional meetings may be called by the president of the board or a majority of the members of the board.

(4) The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.

(5) A majority of the members of the board shall constitute a quorum for the conduct of the meeting and all actions of the board shall be by a majority.

(6) Each member of the board shall receive a per diem as provided in Section 25-3-69, not to exceed thirty (30) days in any one (1) period of twelve (12) months, for each day actually engaged in meetings of the board, together with necessary traveling and other expenses as provided in Section 25-3-41.

SOURCES: Laws, 1983, ch. 414, Sec. 4; reenacted without change, 1991, ch. 527, Sec. 4; 1992, ch. 531 Sec. 2; reenacted, 1993, ch. 416, Sec. 5, eff from and after passage (approved March 18, 1993).

SEC. 73-21-79. Executive director; additional employees; legal counsel.

(1) The board shall employ an executive director of the board. The executive director shall be a citizen of Mississippi and a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi, who has had five (5) years' experience as a pharmacist.

(2) The executive director shall receive a salary to be set by the board, subject to the approval of the State Personnel Board, and shall be entitled

to necessary expenses incurred in the performance of his official duties. He shall devote full time to the duties of his office and shall not be ~~interested directly or indirectly as defined in Section 73-21-73 in the operation of a pharmacy in Mississippi or any other facility permitted by the board or~~ engaged in any other business that will interfere with the duties of his office.

(3) The duties and responsibilities of the executive director shall be defined by rules and regulations prescribed by the board.

(4) The board may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems necessary to the proper conduct of board business. Any pharmacist-investigator employed by the board may have other part-time employment, provided that he shall not accept any employment that would cause a conflict of interest in his pharmacist-investigator duties. The board may employ legal counsel to assist in the conduct of its business.

SOURCES: Laws, 1983, ch. 414, Sec. 5; reenacted without change, 1991, ch. 527, Sec. 5; 1992, ch. 531 Sec. 3; 1993, ch. 416, Sec. 6, eff from and after passage (approved March 18, 1993).

SEC. 73-21-81. General powers and duties of board; enforcement of chapter; rules and regulations.

The responsibility for the enforcement of the provisions of this chapter shall be vested in the board. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this chapter. The board may make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, in accordance with the provisions of the Mississippi Administrative Procedures Law (sections 25-43-1 et seq.).

SOURCES: Laws, 1983, ch. 414, Sec. 6; reenacted without change, 1991, ch. 527, Sec. 6; reenacted without change, 1993, ch. 416, Sec. 7, eff from and after passage (approved March 18, 1993).

SEC. 73-21-83. Board to regulate practice of pharmacy; licensing of pharmacists; fees; persons holding license on July 1, 1991.

(1) The board shall be responsible for the control and regulation of the practice of pharmacy, to include the regulation of pharmacy externs or interns and pharmacist technicians in this state, the regulation of the wholesaler distribution of drugs and devices as defined in Section 73-21-73, and the distribution of sample drugs or devices by manufacturer's distributors as defined in Section 73-21-73 by persons other than the original manufacturer or distributor in this state.

(2) A license for the practice of pharmacy shall be obtained by all persons prior to their engaging in the practice of pharmacy. However, the

provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

(3) The initial licensure fee shall be set by the board but shall not exceed Two Hundred Dollars (\$200.00).

(4) All students actively enrolled in a professional school of pharmacy accredited by the American Council on Pharmaceutical Education who are making satisfactory progress toward graduation and who act as an extern or intern under the direct supervision of a pharmacist in a location permitted by the Board of Pharmacy must obtain a pharmacy student registration prior to engaging in said activity. The student registration fee shall be set by the board but shall not exceed One Hundred Dollars (\$100.00).

(5) All persons licensed to practice pharmacy prior to July 1, 1991, by the State Board of Pharmacy under Section 73-21-89 shall continue to be licensed under the provisions of Section 73-21-91.

SOURCES: Laws, 1983, ch. 414, Sec. 7; 1991, ch. 527, Sec. 7; 1993, ch. 416, Sec. 8; 1994, ch. 513, Sec. 2, eff from and after July 1, 1994; 1997, ch. 441, Sec. 1, eff July 1, 1997.

2.Public Information. The public may obtain information regarding operations and responsibilities of the Mississippi Board of Pharmacy, the Pharmacy Practice Act and Board Regulations and other pertinent information by contacting the Board office at 204 Key Drive, Suite C, Madison, Mississippi 39110, 601-605-5388. Additional information is available on the Mississippi Board of Pharmacy Website at www.mbp.state.ms.us.

II. FORMAL AND INFORMAL PROCEEDINGS

MISSISSIPPI BOARD OF PHARMACY RULES OF PROCEDURE

I. SCOPE

The following Rules of Procedure shall apply to all pharmacists licensed by the Mississippi Board of Pharmacy and all other persons under the jurisdiction of said Board.

II. PURPOSE

A. To implement and enforce the standards of pharmacy and pharmacy practice and conduct of all other persons under the jurisdiction of the Mississippi Board of Pharmacy as provided for in all state & federal drug laws, the Mississippi Pharmacy Practice Act and the Pharmacy Practice Regulations of the Mississippi Board of Pharmacy.

III. DEFINITIONS

A. The word "Board" shall mean the Mississippi Board of Pharmacy.

B. The word "Respondent" shall mean a pharmacist or other person against whom a disciplinary action and proceeding has been initiated by the Mississippi Board of Pharmacy.

C. Masculine terms, when used in the following Rules of Procedure, shall also be deemed to include the feminine.

IV. ADMINISTRATIVE HEARINGS

1. CONTINUANCES

A. Hearings shall be held before the Board at the time and place designated in the "Notice of Hearing and Complaint", unless a continuance is granted for just good 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 pharmacists representing various regions of the State. Unlike the judiciary, the 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 the Board. Attorneys representing pharmacists 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 fifteen (15) days prior to the scheduled hearing date. Thereafter, no further continuances will be granted based solely on scheduling conflicts.

D. So that counsel for the Respondent and Complaint Counsel shall be able to adequately prepare for hearing, any motion for a continuance filed within the time limitations as specified in 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 without counsel or to 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.

2. POLICIES FOR ADMINISTRATIVE HEARINGS

A. Procedures are designed to give the accused the right to be heard in a fair and impartial hearing.

B. The President or the Senior Member of the Board present is the presiding officer and he/she rules on all objections and motions, subject to the Board's approval.

C. The Board is not bound by strict rules of evidence but all determinations must be based upon sufficient evidence.

D. All hearings are open to the public, however, public members may not participate nor be present for Executive Sessions.

E. The Executive Director, with the advice of the Board Counsel, will subpoena all witnesses for the Board or the defendant when requested.

- F. All charges shall be based upon affidavits sufficiently definite to constitute allegation or specific violation of the laws and regulations that govern pharmacists and the practice of pharmacy.
- G. The respondent has the right to appear either personally, by counsel, or both; to produce witnesses, cross-examine witnesses and have subpoenas issued by the Board.
- H. A definite time and place shall be set with proper notice being given and a quorum present for all proceedings.
- I. Board members who served on the Investigations Review Committee and who reviewed the investigation of the complaint that led to the administrative hearing, shall recuse themselves and not participate in the disciplinary proceeding.
- J. All Board decisions are made in Executive Session.
- K. A copy of these Board Rules of Procedure for Administrative Hearings shall be supplied to the respondent along with the Notice of Hearing and Complaint.

3. PROCEDURES FOR ADMINISTRATIVE HEARINGS

- A. The Hearing is called to order by the President or presiding officer.
- B. President requests that the respondent/counsel be called.
- C. When respondent appears, introductions are made and oaths administered to respondent and others as may be necessary for proper conduct of the hearing.
- D. The respondent is then asked to state his/her name, address and license number. He/she is also informed that the hearing is being recorded.
- E. If respondent is represented by counsel, counsel name and address is entered into the record.
- F. The President then asks Board counsel to present the charges and place same into the record as appropriate.
- G. Before going into the merits of the cause, evidence should be placed into the record showing that the respondent was properly notified of the charges.
- H. The respondent is then asked to respond to the charges.
- I. The Board counsel may have witnesses called for the Board and he/she shall conduct the direct examination of same.
 - (1) At the conclusion of the examination, the respondent or respondents counsel may cross-examine.
 - (2) At the conclusion of the cross-examination, the Board may question the witness.
 - (3) At the conclusion of the witness' testimony, the witness may be excused subject to recall.
- J. The respondent may call his/her witnesses after Board has rested its case. The respondent or respondent's counsel will conduct the direct examination.
 - (1) Board Counsel may cross-examine respondent witness.
 - (2) Board members may then question respondent witness.
 - (3) The witness may be excused subject to recall.
- K. The Board may then call rebuttal witnesses.
- L. Respondent/counsel may make closing argument if desired.
- M. After all response has been presented by both sides, the Board goes into Executive Session to consider all evidence presented and make a final decision or ruling.
- N. The Board shall make findings of fact on each charge. The Board should adjudicate each charge as presented, based on the evidence submitted.
- O. The Board then determines what disciplinary action, if any, should be taken in the matter.

P. Following the Executive Session, the respondent may or may not be informed of the Board's action, however, the action is always reduced to writing and notification may include Proceedings, Conclusions of Law, Findings of Fact and the Order of the Board.

V. 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 Board; or
2. Acceptance by the Board of a mutually agreeable Consent Order in lieu of a hearing; or
3. Dismissal of the case.

B. As to disciplinary proceedings duly served by a Notice of Hearing and Complaint, Respondent and/or Respondent's Counsel may agree that an Informal Settlement Conference be held for the purpose of possible resolution of the matter or for purposes of 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 Board Counsel. Other parties who may attend include Compliance Agents for the Board and Board members who served on the Investigations Review Committee (IRC) that authorized that a Notice of Hearing and Complaint be issued in the matter. Other Board members may not attend or have knowledge or input into any activities of the Conference.

D. Discovery or exchange of information may be accomplished during the Informal Settlement Conference.

E. The Informal Settlement Conference may result in:

1. Preparation of a proposed Consent Order as a resolution of the matter;
2. 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 ten (10) working days prior to the scheduled hearing date. After the terms of the Consent Order have been prepared and mutually accepted by Board Counsel, the investigating Compliance Agent and the two (2) IRC Board members that originally heard the matter, it shall be binding on the Board, but not effective until 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 Board approval.

G. Failure of the Board to approve and/or ratify any Consent Order shall result in an administrative hearing before the Board as originally scheduled in order to resolve all matters as outlined in the Notice of Hearing and Complaint.

H. Hearings for matters in which Consent Orders are considered by the Board shall be conducted according to the Board's Rules of Procedures for Administrative Hearings.

VI. 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 person 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 Respondent shall be affected by registered mail.
 3. All requests for 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.

III. ORAL PROCEEDINGS ON PROPOSED REGULATIONS

1.Scope. These rules set forth the Mississippi Board of Pharmacy, hereinafter “Board,” rules governing the form and content of requests for all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new regulations and amendments to regulations before the Board pursuant to §25-43-3.104.

2.When Oral Proceedings will be Scheduled on Proposed Regulations. The Board will conduct an oral proceeding on a proposed regulation or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed regulation.

3. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. Notification of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State’s office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer. The Board President or his designee, who is familiar with the substance of the proposed regulation, shall preside at the oral proceeding on a proposed regulation.

6. Public Presentations and Participation.

(a) At an oral proceeding on a proposed regulation, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed regulation.

- (b) Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
- (c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- (d) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- (e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- (f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

- (a) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed regulation, a statement of the statutory authority for the proposed regulation, and the reasons provided by the Board for the proposed regulation; (iii) call on those individuals who have contacted the Board about speaking on or against the proposed regulation; (iv) allow for rebuttal statements following all participant's comments; (v) adjourn the proceeding.
- (b) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that regulation-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- (c) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.
- (d) Recording. The Board may record oral proceedings by stenographic or electronic means.

IV. DECLARATORY OPINIONS

1. Scope. These rules set forth the Mississippi Board of Pharmacy, hereinafter "Board," rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. “Substantial interest in the subject matter” means: an individual, business, group or other entity that is directly affected by the Board’s administration of the laws within its primary jurisdiction. “Primary jurisdiction of the Board” means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board or (2) a regulation promulgated by the Board. The Board will not issue a declaratory opinion regarding a statute or regulation which is outside the primary jurisdiction of the Board.

4. Circumstances In which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (a) lack of clarity concerning the question presented;
- (b) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (c) the statute or regulation on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (d) the facts presented in the request are not sufficient to answer the question presented;
- (e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- (f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or regulation on which a declaratory opinion is sought;
- (g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or regulation;
- (h) the question presented by the request concerns the legal validity of a statute or rule;
- (i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (j) no clear answer is determinable;
- (k) the question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;
- (l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (m) The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- (n) A similar request is pending before this Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such a opinion would constitute the unauthorized practice of law.

(o) Where issuance of a declaratory opinion may adversely affect the interests of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(p) The question involves eligibility for a license, permit, registration or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, registration or other approval would be determined.

5. Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.

6. Where to Send Requests. All requests must be mailed, delivered or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. Question Presented. Each request shall contain the following:

(a) a clear and concise statement of all facts on which the opinion is requested;

(b) a citation to the statute or regulation at issue;

(c) the question(s) sought to be answered in the opinion, stated clearly;

(d) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;

(e) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and

(f) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

10. Time for Board's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

(a) issue a declaratory opinion regarding the specified statute or regulation as applied to the specified circumstances;

(b) decline to issue a declaratory opinion, stating the reasons for its action; or

(c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

11. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

12. Notice by Board to third parties. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

13. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

14. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.