

ALABAMA STATE BOARD OF PODIATRY
ADMINISTRATIVE CODE

CHAPTER 730-X-1
ORGANIZATION AND ADMINISTRATION

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730-X-1-.01 Composition Of The Board. The Board of Podiatry of the State of Alabama is composed of seven (7) practicing podiatrists appointed by the Governor of the State of Alabama who possess such qualifications as prescribed by law and who serve staggered terms of five (5) years.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-250.

History: Filed February 1, 1985.

730-X-1-.02 Officers Of The Board.

(1) The Board shall elect from its members a president and a vice president and a secretary-treasurer. The election of officers shall be held annually.

(2) The duties of the officers shall be as follows:

(a) The president shall preside at meetings of the Board and appoint members to serve on such committees as may be created.

(b) The vice president shall preside in the absence of the president and shall assume the duties of the president when necessary.

(c) The secretary-treasurer shall keep and maintain records and funds of the Board, keep minutes of all meetings, and assume other duties at the discretion of the president.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-250.

History: Filed February 1, 1985.

730-X-1-.03 Meetings Of The Board.

(1) The Board shall meet annually and may meet at such additional times as called for by the President, or by a petition of a majority of the members of the Board.

(2) A majority of the members of the Board shall constitute a quorum.

(3) The Secretary-Treasurer or his designee shall keep a record of all meetings. The place of each meeting of the Board, names of the members present, all official acts of the Board, and the votes shall be recorded in the minutes. The minutes shall be presented for approval or amendment at the next regular meeting, which upon approval will be signed by the Chairman. The minutes, not including any section relating to the good name or character of an individual, shall be open to public inspection.

(4) All meetings of the Board, not including any part relating to the good name or character of an individual, shall be open and public. Reports of investigations, documents subpoenaed by the Board, reports of any investigative committee appointed by the Board, memorandum of the Board's counsel relating to investigations, statements of persons interviewed by the Board or any committee of the Board unless made at a public hearing, shall be considered privileged and confidential and shall not be disclosed except to an agent, attorney or employee of the Board. The foregoing non-public records of the Board shall not be subject to subpoena except upon the express order of a court of competent jurisdiction.

(5) Meetings of the Board are governed by **Roberts' Rules of Order**, Newly Revised, and/or any amendments adopted by the Board.

Author: E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§34-24-251, 34-24-252.

History: Filed February 1, 1985. **Amended:** Filed May 14, 2001; effective June 18, 2001. **Amended:** Filed July 24, 2007; effective August 28, 2007.

730-X-1-.04 Executive Secretary. The Board may employ a qualified individual to serve as executive secretary, whose duties, responsibilities and compensation shall be set by the Board.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-252.

History: Filed February 1, 1985.

730-X-1-.05 Staff/Administrative Personnel. The Board or the executive secretary with the concurrence of the Board may employ qualified individuals to serve as staff and/or administrative personnel. The duties, responsibilities and compensation for each such employee shall be set by the Board.

Author:

Statutory Authority: Code of Ala 1975, §34-24-252.

History: Filed February 1, 1985.

730-X-1-.06 Powers And Duties Of The Board. The Board is authorized to:

(a) Adopt and promulgate rules and regulations and to do such other acts as may be necessary to carry into effect the duties and powers which accrue to the Board under laws now in force or which may hereafter be in force;

(b) Issue licenses to applicants meeting the statutory qualifications for licensure.

(c) Commence and maintain proceedings to restrain the unlawful practice of podiatry.

(d) Prescribe, administer and/or approve an examination in certain specified branches of medical learning;

(e) Provide for the safekeeping of complete records of all examinations held by the Board;

(f) Keep complete minutes of all the Board's proceedings;

(g) Keep records of all reports of claims, actions or violations concerning the performance of all licensees, professional and legal duties and to review the reports annually.

(h) Furnish all personnel and facilities necessary to administer and enforce the provisions of law relating to the Alabama State Board of Podiatry;

(i) Employ a legal advisor or attorney when deemed necessary to aid the Board;

(j) Certify applications of Alabama licenses for reciprocity in other states;

(k) Promote continuing medical education of all podiatrists licensed by the Board;

(l) The Board on its own motion or in response to any complaint submitted to the Board may investigate any evidence which appears to show that a licensee holding a license to practice podiatry in Alabama is or may be guilty of any of the acts, offenses, or conditions set out in Code of Ala. 1975, §34-24-276. Any hearings conducted by the Board pursuant to its investigative power shall not be deemed a contested case under Rule 730-X-4-.01, et seq.

(m) Suspend, revoke or nonrenew a license to practice podiatry when the statutory grounds for suspension, revocation or nonrenewal are present;

(n) Accept surrender of a license to practice podiatry.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-231, 34-24-252, 34-24-255, 34-24-256, 34-24-257, 34-24-270, 34-24-271, 34-24-273, 34-24-275, 34-24-276.

History: Filed February 1, 1985. **Amended:** Filed July 24, 2007; effective August 28, 2007.

730-X-1-.07 Rules And Regulations.

(1) All rules and regulations of the Board shall be adopted, amended or repealed in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-1, et seq.

(2) Prior to adoption, amendment or repeal of any rule the Board shall:

(a) Give at least thirty-five (35) days' notice of its intended action. Such notice shall include a statement of either

the terms of substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon; and the notice shall be published in the Alabama Administrative Monthly; and

(b) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. The Board shall consider fully all written and oral submissions respecting the proposed rule.

(3) If the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty-five (35) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing it finds practical, to adopt an emergency rule. The rules may be effective for a period of not longer than one hundred twenty (120) days.

(4) After adoption by the Board, each rule shall be filed with the Legislative Reference Service, becoming effective thirty-five (35) days thereafter.

Author:

Statutory Authority: Code of Ala. 1975, §41-22-5.

History: Filed February 1, 1985.

730-X-1-.08 Petition For Adoption, Amendment Or Repeal Of A Rule.

(1) Any interested person may petition the Board requesting the adoption, amendment or repeal of a rule. The petition shall:

- (a) be submitted in writing;
- (b) include an exact statement of the proposed rule, amendment or identification of the rule to be repealed;
- (c) include the pertinent facts, data, opinions or arguments in support of the petitioner's position.

(2) Within sixty (60) days after submission of a petition, the Board shall initiate rule-making proceedings or shall deny the petition in writing on the merits, stating its reasons for the denial.

(3) A petition requesting adoption, amendment or repeal of a rule shall not be considered by the Board if the subject of the petition is the same or similar to the subject presented in another petition considered by the Board within the previous twelve (12) months.

Author:

Statutory Authority: Code of Ala. 1975, §41-22-8.

History: Filed February 1, 1985.

730-X-1-.09 Declaratory Rulings.

(1) Any persons substantially affected by a rule may petition the Board for a declaratory ruling with respect to the validity of a rule or the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the Board.

(2) The petition shall be in writing and shall include:

(a) the name and address of the petitioner;

(b) a statement of facts sufficient to show that the person seeking relief is substantially affected by the rule;

(c) the rule, statute or order and the reasons for the questions;

(3) The petition shall be considered and answered in writing by the Board within forty-five (45) days unless the Board is unable to reach a decision on the facts presented.

(4) Circumstances in which rulings shall not be issued include but are not necessarily limited to:

(a) lack of jurisdiction;

(b) lack of clarity of the issues presented;

(c) no clear answer determinable.

(5) In the event the Board fails to issue a declaratory ruling on the merits within forty-five (45) days of the request for such a ruling, said failure shall constitute a denial of the request as well as a denial of the merits of the request.

Author:

Statutory Authority: Code of Ala. 1975, §41-22-11.

History: Filed February 1, 1985.

730-X-1-.10 Public Inspection Of Rules.

(1) All rules and other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its functions shall be made available for public inspection and copying, at cost.

(2) All final orders, decisions and opinions of the Board shall be available for public inspection and copying, at cost, except those expressly made confidential or privileged by statute or order of the court.

Author:

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: Filed February 1, 1985.

ALABAMA STATE BOARD OF PODIATRY ADMINISTRATIVE CODE

CHAPTER 730-X-2 DEFINITIONS

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730-X-2-.01 Definitions. The Alabama State Board of Podiatry hereby adopts by reference as its rule Code of Ala. 1975,

§ 34-24-230.

Author:

Statutory Authority: Code of Ala. 1975, §§ 34-24-252, 41-22-9.

History: Filed February 1, 1985.

ALABAMA STATE BOARD OF PODIATRY
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CHAPTER 730-X-3
CERTIFICATE OF QUALIFICATION

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730-X-3-.01 Application For License To Practice Podiatry: Certification By Examination. The Board may issue a license to practice podiatry to applicants who possess the following qualifications:

(a) At least twenty-one (21) years of age or over and of good moral character;

(b) Diploma showing graduation from a college of podiatry recognized by the American Podiatric Medical Association, together with record transcripts from the college of podiatry from which he or she graduated;

(c) Must have completed a podiatric residency or preceptorship program approved by the American Podiatric Medical Association or otherwise approved by the Board;

(d) Two written statements as to character from two currently licensed podiatrists;

(e) Notarized application and examination fees as prescribed by the Board;

(f) Diplomate Certificate of National Board of Podiatry Examiners showing successful completion by the applicant of all parts of the National Board of Podiatry Examiners, together with transcripts of all parts of the applicant's National Board Examinations.

(g) Successful completion of such examination as shall be prescribed by the Board in the areas of practical, theoretical and physiological podiatry, in the anatomy and physiology of the human foot, and in pathology as applied to podiatry. Said examination will be given annually on the last Saturday and Sunday in July. An unsuccessful examinee may take a second examination at the next scheduled examination date.

(h) Successful completion of an examination that tests the applicant's knowledge of the Podiatry Practice Act and the rules and regulations of the Board.

Authors: E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§34-24-255, 34-24-257.

History: Filed February 1, 1985. **Amended:** Filed October 15, 1993; effective November 26, 1993. **Amended:** Filed October 24, 2007; effective November 28, 2007.

730-X-3-.02 Application For Examination. An application for a license to practice podiatry may be obtained from the Alabama State Board of Podiatry, 610 South McDonough Street, Montgomery, Alabama, 36104.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-255.

History: Filed February 1, 1985. **Amended:** Filed May 21, 2007; effective June 25, 2007.

730-X-3-.03 Application For License To Practice Podiatry: Certification By Reciprocity.

(1) The commission of any of the acts specified in Code of Ala. 1975, §34-24-276, (as that statute presently exists or may be amended) by an applicant may be grounds for denial, within the discretion of the Board, of an application for license to practice podiatry by reciprocity.

(2) The Board may issue a license by reciprocity to practice podiatry to applicants who possess the following qualifications:

(a) At least twenty-one (21) years of age or over and of good moral character;

(b) Graduate from a college of Podiatry accredited by the American Podiatric Medical Association located in the United States (the fifty states and the District of Columbia) shall be deemed to be U.S. Podiatric graduate and shall meet the following requirements:

(c) Must have completed a podiatric residency or preceptorship program approved by the American Podiatric Medical Association or otherwise approved by the Board;

(d) Examination and/or certification by one of the following:

1. Applicants must present a certified statement from the Board of Podiatry or like board of the state or territory from which he or she removes, over the age of twenty-one (21) years, is a legal and ethical podiatrist of good moral character and that he or she has been examined and licensed by the board of such state or territory, and provided that the board of such state or territory recognizes in like manner a license issued by the Alabama State Board of Podiatry when presented to such other board by a legal practitioner of this state who may wish to remove to and practice in such state or territory; or

2. Examination as presented by part 730-X-3-.01(1).

(3) The Board may, within its discretion, require that an applicant attend a personal interview with the credentials committee of the Board or, at its discretion, a representative of the Board in the following circumstances:

(a) when the applicant's answer to any question on the application is incomplete or requires additional explanation;

(b) when the Board is in receipt of any information from any source concerning the applicant that would require additional information or explanation;

(c) when it appears that the applicant may have committed any of the acts constituting grounds for revocation of a license as stated in Code of Ala. 1975, §34-24-276.

(4) The applicant shall submit written statements as to character from each of the following:

(a) A podiatrist licensed to practice podiatry in Alabama.

(b) Another podiatrist.

(c) A podiatrist or layman.

(5) The applicant shall submit the application fee as prescribed by the Board.

(6) The applicant shall submit a completed and notarized application with proper required certification.

(7) Successful applicants must within twelve (12) months, unless otherwise allowed by the Board, relocate his office to this state for the full-time practice of podiatry. Failure to do so will result in the suspension of his license.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-255, 34-24-271, 34-24-276.

History: Filed February 1, 1985. **Amended:** Filed October 24, 2007; effective November 28, 2007.

730-X-3-.04 Application For Reciprocity. An example of the application for a license to practice podiatry may be obtained the Alabama State Board of Podiatry, 610 South McDonough Street, Montgomery, Alabama 36104.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-271.

History: Filed February 1, 1985. **Amended:** Filed May 21, 2007; effective June 25, 2007.

730-X-3-.05 Outgoing Reciprocity. (Repealed)

Author: E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §34-24-272.

History: Filed February 1, 1985. **Repealed:** Filed May 14, 2001; effective June 18, 2001.

730-X-3-.06 Renewal Of License To Practice Podiatry.

(1) Licensed Podiatrists shall apply to the Board to renew their license by October 1 of each year provided that said license may be renewed within thirty (30) days of October 1. After October 31, renewal will be approved upon payment of the renewal fee and penalty prescribed by law. Failure to renew by November 1 of each year may, after notice and an opportunity to

be heard, render said license non-valid and may subject the holder to the statutory penalties of Code of Ala. 1975, §34-24-270, should he continue to practice podiatry under said non-valid license.

(2) As a pre-condition to renewal, all licensed podiatrists shall submit at the time of renewal evidence of successful completion of any American Podiatric Medical Program approved course of study of not less than twelve (12) hours or not less than twelve (12) hours of study approved by the Board. Failure to submit such evidence may, after notice and an opportunity to be heard, render said license non-valid. If the licensee fails to provide proof of compliance with this rule by November 1 of each year, the licensee shall pay the penalty of \$300 set out in Code of Ala. 1975, §34-24-275.

(3) As a precondition to renewal each licensed podiatrist shall submit to the board, at the time of renewal, an update of his/her credentials including accomplishments such as board certification and professional affiliations.

(4) Every licensed podiatrist shall, within 90 days of a change in his/her address, notify the board of his/her new address.

Author: E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §34-24-270.

History: Filed February 1, 1985. **Amended:** Filed February 11, 1994; effective March 18, 1994. **Amended:** Filed March 8, 1995; effective April 12, 1995. **Amended:** Filed May 14, 2001; effective June 18, 2001

730-X-3-.07 Appeal From Denial Of Application For License. An applicant may request a hearing before the Board of any decision of the Board denying an application for a license to practice podiatry. The procedure for such a request shall be governed by Rule 730-X-4-.04(11).

Author: E. Terry Brown

Statutory Authority: Code of Ala. 1975, §34-24-275.

History: Filed February 1, 1985.

730-X-3-.08 Controlled Substances.

(1) It shall be necessary for all licensed podiatrists who dispense, administer, prescribe, maintain or otherwise have in their possession controlled substances to annually register

with the Alabama State Board of Podiatry and obtain a controlled substance number from said Board.

(2) This controlled substance number as well as the Federal Bureau of Narcotics and Dangerous Drug number must appear on prescription blanks.

(3) Registration under this rule will be due at the same time as the annual license registration to practice podiatry.

(4) The fee for registration and the controlled substance number shall be in an amount to be fixed by the Board.

(5) Any licensed podiatrist dispensing, administering, prescribing, maintaining, or possessing controlled substances who has not registered or obtained a controlled substance number from the Alabama State Board of Podiatry will be deemed in violation of the Uniform Controlled Substances Act and Code of Ala. 1975, §34-24-276.

Authors: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§34-24-252, 34-24-276, as amended by Alabama Act 87-588; §§20-2-1, et seq.

History: Filed May 18, 1988.

730-X-3-.09 Maintenance Of Controlled Substances Records And Inventory.

(1) Beginning on October 1, 1988, every podiatrist certified to dispense controlled substances by the Alabama State Board of Podiatry shall be required to maintain an accurate inventory and separate dispensing record of all controlled substances in Schedules II and III dispensed in their offices. The inventory shall account for all controlled substances obtained by the office or the podiatrist.

(2) The dispensing record shall contain the following information:

(a) The date the controlled substance was dispensed;

(b) The method by which the controlled substance was dispensed (i.e., administered in office or released to patient);

(c) The name of the controlled substance dispensed, trade name or generic name;

(d) The name of the patient to whom the controlled substance was dispensed;

(e) The quantity of the controlled substance dispensed.

(3) The inventory and separate dispensing record required by this rule shall be kept in the office of the podiatrist for a period of five (5) years from the date the controlled substances are dispensed and shall be made available for inspection by agents of the Alabama State Board of Podiatry or any law enforcement agency.

(4) Failure to maintain and make available the inventory and separate dispensing record required by this rule shall be considered a failure to maintain effective controls against diversion of controlled substances to other than legitimate podiatric channels and will also be considered a violation of Code of Ala. 1975, §34-24-276.

(5) The dispensing record shall be in the form set out in Appendix A to Chapter 9.

Authors: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§34-24-252, 34-24-276, as amended by Alabama Act 87-588; §§20-2-1, et seq.

History: Filed May 18, 1988. **Amended:** Filed October 15, 1993; effective November 26, 1993. **Amended:** Filed March 8, 1995; effective April 12, 1995.

730-X-3-.10 Fees. Applicants for licensure or licensees of the Board shall pay the following fees:

(1) Application fee \$100.00.

(2) State examination and re-examination fee \$100.00.

(3) License Renewal fee \$400.00.

(4) Controlled Substance Initial and Renewal fee \$50.00.

(5) Late License Renewal fee \$300.00.

Author: Randolph P. Reaves, P.C.

Statutory History: Code of Ala. 1975, §34-24-255.

History: **New Rule:** Filed October 15, 1993; effective November 26, 1993. **Amended:** Filed May 14, 2001; effective June 18, 2001. **Amended:** Filed November 1, 2005; effective

December 6, 2005. Amended: Filed May 21, 2007; effective
June 25, 2007.

ALABAMA STATE BOARD OF PODIATRY ADMINISTRATIVE CODE

CHAPTER 730-X-4 DISCIPLINARY ACTIONS, HEARINGS AND APPEALS

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730-X-4-.05 Judicial Review Of Contested Cases

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730-X-4-.01 Application And Scope. Unless otherwise specified, all hearings conducted by the Alabama State Board of Podiatry shall be considered a contested case under the Alabama Administrative Procedure Act (Code of Ala. 1975,

§ 41-22-1 et seq.), and shall be conducted in accordance with the requirements of that act, and the rules and regulations as set out in this chapter. Nothing contained herein shall preclude the informal disposition of contested cases as permitted by Code of Ala. 1975, § 41-22-12(e) and other pertinent provisions of these rules.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.; 34-24-252, 34-24-276.

History: Filed February 1, 1985.

730-X-4-.02 Grounds For Denial Of, Suspension, Revocation

Or Nonrenewal Of A License To Practice Podiatry. A license to practice podiatry may be denied to any person failing to meet the qualifications for license as set out in Code of Ala. 1975, §§ 34-24-271, 273, and Rules 730-X-3-.01, et seq. Renewal of a license to practice podiatry may be denied for failure to comply with Code of Ala. 1975, § 34-24-275. A license to practice podiatry may be suspended or revoked for any of the reasons expressed in Code of Ala. 1975,

§ 34-24-276.

Authors: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-271, 34-24-273, 34-24-275, 34-24-276.

History: Filed February 1, 1985. **Amended:** Filed May 18, 1988.

730-X-4-.03 Notice.

(1) No action to revoke, suspend or nonrenew a license to practice podiatry shall be taken until the licensee has been afforded an opportunity for a hearing after reasonable notice in writing, verified by oath, has been served. Where personal service cannot be effected, the Board may cause notice to be given by certified mail, return receipt requested, and if service cannot be obtained by certified mail, service can be effected by publishing an abbreviated notice at least 30 days prior to the date set for said hearing in a newspaper published in the county in which the licensee was last known to practice that at a definite time and place a hearing will be held by the Board concerning that person's license to practice podiatry.

(2) The notice, except abbreviated notice for service, shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters or charges asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished.

Authors: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-276, 41-22-1, et seq.

History: Filed February 1, 1985. **Amended:** Filed May 18, 1988.

730-X-4-.04 Conduct Of Hearings In Contested Cases.

(1)(a) The president of the Board, or in his absence, the vice president of the Board, or in his absence, the secretary-treasurer of the Board, shall preside during hearings but may rely upon the assistance and advice of a hearing officer. A quorum of the Board necessary to decide contested cases is set at five (5) members of the Board.

(b) In all instances in which a complaint has been filed with the Board, one member of the Board shall be appointed the investigating officer. This Board member shall assist in the investigation, and if necessary, the prosecution, of the case, and shall not vote at the hearing.

(2) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved and to be represented by counsel at their own expense.

(4) Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

(5) Parties and witnesses may be subpoenaed and compelled to attend the hearing and shall testify under oath and may be sworn by any member of the Board. The expense of the subpoenas, including mileage and per diem as specified by law, shall be borne by the party requesting the subpoena. The Board or hearing officer may prescribe reasonable time limitations for the filing of requests for witnesses and documents and may further require the payment of the expenses per such subpoena in advance.

(6) Contested Hearings shall be open to the public, unless private hearings are otherwise authorized by law. The proceedings shall be recorded either by mechanized means or by qualified shorthand reports. The proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of the proceedings or the transcription thereof shall be filed with and maintained by the Board for at least five years from the date of decision, and shall be made available for inspection by the public except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.

(7) Evidence.

(a) The rules of evidence as applied in non-jury civil cases in the circuit courts of this state shall be followed insofar as possible. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness.

(b) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Board. Parties shall be afforded an opportunity to contest such facts before the decision is announced unless the Board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

(e) The experience, technical competence, and specialized knowledge of the Board may be utilized in the evaluation of the evidence.

(8) Record. The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) All evidence received or considered and all other submission; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information.

(c) A statement of all matters officially noticed.

(d) All questions and offers of proof, objections and rulings thereon.

(e) All proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing officer at the hearing.

(g) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, if such memoranda or data contains information of a proprietary and confidential nature, it shall be protected by the Board from public disclosure.

(h) The recording or stenographic notes of the proceedings or the transcription thereof if requested by a party or the Board.

(9) Proposed Orders; Final Decisions; Examinations of Evidence. In a contested case, a majority of the Board who are to render the final order must be in accord for the decision of the Board to be a final decision. If any official of the Board who is to participate in the final decision has not heard the case or read the record, and his vote would affect the final decision, the final decision shall not be made until a proposed order is prepared and an opportunity is afforded to each party adversely affected by the proposed order to file exceptions and present briefs and oral argument to the official not having heard the case or read the record. The proposed order shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision prepared by the person who conducted the hearing or one who read the record. The proposed order shall become the final decision of the Board without further proceedings unless there are exceptions filed to the Board within the time provided by rule. The parties by written stipulation may waive compliance with this section.

(10) Final Decisions and Orders.

(a) The final order in a proceeding which affects substantial interest shall be in writing and made a part of the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within thirty days:

1. After the hearing is concluded, if conducted by the Board;
2. After a recommended order, or findings and conclusions are submitted to the Board and mailed to all parties, if the hearing is conducted by a hearing officer; or
3. After the Board has received the written and oral material it has authorized to be submitted, if there has been no hearing. The 30 day period may be waived or extended with the consent of all parties.

(b) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(c) If the Board finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such findings in the final order, which shall be appealable or enjoinable from the date rendered.

(d) Parties shall be notified either personally or by certified mail, return receipt requested, of any order; and, unless waived, a copy of the final order shall be so delivered or mailed to each party or to his attorney of record.

(11) Application for Rehearing.

(a) Any party to a contested case who deems himself aggrieved by a final order or Board Action and who desires to have the same modified, set aside, or reconsidered may within fifteen days after entry of said order or Board action file an application for rehearing which shall specify in detail the grounds for the relief sought therein and authorities in support thereof.

(b) The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the agency and shall continue in effect unless and until said application shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

(c) Such application for rehearing will lie only if the final order is:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the Board;
3. in violation of an agency rule;
4. made upon unlawful procedure;
5. affected by other error of law;

6. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

7. unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(d) Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.

(e) Within 30 days from the filing of an application the Board may in its discretion enter an order:

1. setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or

2. with reference to the application without a hearing; or

3. grant or deny the application.

(f) If the Board enters no order whatsoever regarding the application within the 30 day period, the application shall be deemed to have been denied as of the expiration of the 30 day period.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.

History: Filed February 1, 1985. Amended: Filed October 22, 1993; effective November 26, 1993.

730-X-4-.05 Judicial Review Of Contested Cases. A person who has exhausted all administrative remedies available within the agency (other than rehearing) and who is aggrieved by a final decision in a contested case is entitled to judicial review as provided by the Alabama Administrative Procedure Act, Code of Ala. 1975, §§ 41-22-1, et seq.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.

History: Filed February 1, 1985.

730-X-4-.06 Hearing Officer.

(1) A hearing officer is an individual appointed by the Board to act in such capacities and with such authority as is specified herein. A hearing officer may be an attorney licensed to practice law in the State of Alabama, or may be any person with the experience and

qualifications necessary to carry out the duties of the hearing officer.

(2) The general duties of the hearing officer shall be to guide and direct the court of contested cases before the Board, to advise the Board on matters of law and evidence pertaining to those contested cases and to assist the Board in the preparation of orders and decrees resulting from hearings on contested cases. Specifically, the hearing officer shall be empowered to:

(a) Rule upon any motions contesting or challenging the legal sufficiency of a complaint, order to show cause, or other document which is the basis of a contested case, subject to the limitation set forth in paragraph (e) below.

(b) Rule on all prehearing motions by all parties to a contested case except that the hearing officer may not grant a continuance or postponement of a hearing in a contested case without the consent of the president of the Board.

(c) Order the attendance of parties and/or attorneys at hearings and conferences on matters related to the contested case.

(d) Establish on behalf of the Board submission dates, deadlines and time tables which shall be binding on the parties in all matters related to the orderly conduct of the contested case.

(e) Enter orders on behalf of the Board when the Board is not in session on legal matters related to a pending contested case, except that the hearing officer is not authorized to dismiss a complaint. The hearing officer may order the complainant to file a more definite statement or to amend his complaint to provide additional information. Dismissal of a complaint will only be upon the order of the Board.

(f) Administer oaths and to certify the authenticity of documents when required in the discharge of his duties as hearing officer in a contested case.

(g) Direct that evidence relevant to the general character and reputation of the registrant be submitted in writing by affidavit or to place reasonable limitations upon the number of witnesses permitted to testify as to the character and reputation of the registrant.

(h) Render advice as to the president of the Board on the conduct of all aspects of hearings on contested cases.

(3) Except as limited above, the hearing officer is authorized to

rule on all legal matters, including motions addressed to the sufficiency of the complaint, objections to the evidence, motions to dismiss for lack of evidence, and any other matters requiring a legal opinion. The ruling of the hearing officer shall be deemed to be the official ruling of the Board unless that ruling is challenged by a member of the Board in which case the Board shall consider the challenge to the ruling of the hearing officer outside the presence of the parties and may affirm, modify or overrule the decision of the hearing officer.

(4) The hearing officer shall advise the Board on matters of evidence and law during its deliberations and shall, if requested, prepare and present for consideration by the Board proposed findings of fact and proposed conclusions of law; provided, however, that the Board in its final decision may within its sole discretion, modify, alter, amend, or disregard such proposed findings of fact and conclusions of law.

(5) When directed by the Board, the hearing officer shall prepare the final order reflecting the decision of the Board in each contested case. The final order shall be executed and authenticated in the manner prescribed by the Board.

(6) When directed by the Board, the hearing officer shall notify all parties to the hearing of the final order of the Board and of all appellate remedies available to any party that is adversely affected by a decision of the Board.

(7) In addition, the hearing officer shall be authorized to perform such duties and functions in each specific case as may be prescribed by the Board, it being the intent of this rule that the hearing officer shall be the chief legal advisor to the Board in the conduct and disposition of all contested cases; however, the Board shall retain the authority in all cases to hear all evidence and argument and be the sole judge of the facts. The Board shall fix the penalty or restriction, if any, to be imposed at the conclusion of a contested case. The Board shall appoint a hearing officer in each contested case unless the case is subject to informal disposition as otherwise provided in these rules.

(8) The person appointed by the Board to act as a hearing officer in the contested case shall not have participated in the investigation or prosecution of the registrant in the matters pertaining to the contested case. The hearing officer shall not have a manifest conflict of interest with any party in a contested case.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-252; 41-22-1, et seq.

History: Filed February 1, 1985.

ALABAMA STATE BOARD OF PODIATRY ADMINISTRATIVE CODE

CHAPTER 730-X-5 ADVERTISING

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730-X-5-.01 Definitions.

(1) Advertising is the communication of information in a manner designed to attract public attention to the practice of one or more podiatrists.

(2) Fraudulent Or Misleading Advertising. Fraudulent or misleading advertising is advertising which:

(a) Contains a misrepresentation of facts; or

(b) Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts; or

(c) Is intended or is likely to create false or unjustified expectations of favorable results; or

(d) Implies unusual or superior podiatric ability; or

(e) Contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived; or

(f) Unless otherwise excused by these rules, does not contain the following disclaimer in conspicuous form:

"No representation is made about the quality of the podiatric services to be performed or the expertise of the podiatrist performing such services."

Author: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-252, 34-24-276, as amended.

History: Filed May 18, 1988.

730-X-5-.02 Professional Notices, Letterheads, Offices, and Podiatric

Lists. A podiatrist may use the following without the "disclaimer" stated above if in dignified form:

(a) A professional card, appointment slips or cards, letterhead, or similar professional notices, identifying the podiatrist by name, and as a podiatrist either by reference to the term "podiatrist" or to any other commonly accepted professional designation, and giving his addresses, telephone numbers, the name of his office and any special area of practice approved by the American Podiatric Medical Association in which the podiatrist has met the existing educational requirements and standards set forth by that association;

(b) A brief professional announcement card stating new or changed associations or addresses, change of office name, or similar matters pertaining to the professional office of a podiatrist, which may be mailed to other podiatrists, patients, former patients, personal friends, and relatives, and published no more than twice in a local newspaper. It shall not state biographical data except to the extent reasonably necessary to identify the podiatrist or to explain the change in his association.

(c) A sign on or near the door of the podiatrist and in the building directory identifying the podiatrist, his professional association or professional corporation, his address, telephone numbers, and office hours, and his identification as a podiatrist, either by reference to the term "podiatrist" or any other commonly accepted professional designation.

(d) A listing of the office of a podiatrist in the alphabetical and classified sections of the telephone directory or the directories for the geographical area or areas from which the podiatrist resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his office is located, but the listing shall give only the name of the podiatrist, the name of his professional association or professional corporation, his identification as a podiatrist either by reference to the term "podiatrist" or to any other commonly accepted professional designation, his address, telephone numbers, and office hours;

(e) Listing in a reputable podiatric list or podiatric directory giving brief biographical and other informative data.

(f) Whenever a podiatrist advertises a board certification, the board issuing the certification shall be clearly identified and not just by initials or other abbreviations.

Authors: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-276, as amended.

History: Filed May 18, 1988. Amended: January 18, 1994. Amended:
Filed February 11, 1994; effective March 18, 1994.
