

West's Mississippi Administrative Code
Title 30. Professions and Occupations
Subtitle 18. Board of Nursing
Part 2825. Rules of Procedure
Chapter 1. Disciplinary Proceedings

Miss. Admin. Code 30-18-2825:1.10

30-18-2825:1.10. Appeal of Board Hearing Panel Decision to Full Membership of the Board.

Currentness

<Emergency action effective 08/01/2016.>

Appeals from any decision of a Board Hearing Panel shall be made to the Full Membership of the Board, pursuant to MS ST § 73-15-31, except as set forth in MS ST § 93-11-153, 93-11-163, and 37- 101-291.

A. Procedures for Appeal of Board Hearing Panel Decision: Any Respondent who appeals a decision of the Board Hearing Panel must file his Notice of Appeal of the Board Hearing Panel's decision in writing along with a fifty dollar (\$50.00) appeal fee within thirty (30) days of the Executive Director signing the Final Order of the Board Panel. Notice of the Hearing Panel's decision occurs on the date the order of the Board Hearing Panel is mailed via certified mail to or personally served upon the Respondent.

1) Within seven (7) days after filing his Notice of Appeal, the Respondent/Appellant shall serve on the court reporter a written request for the transcript of the hearing that resulted in the appealed decision. Respondent/Appellant shall be responsible for the cost of the preparation of said transcript. In his request for the transcript, Respondent/Applicant shall request that the court reporter notify the Board's legal staff when the transcript has been completed. Respondent/Appellant shall simultaneously file with the Board a copy of the written request for said transcript.

2) Within sixty (60) days after the court reporter mails a copy of the transcript to Respondent/Appellant, Respondent/Appellant shall file with the Board by mail or in person one (1) copy of a written brief specifying the issues being appealed and including supporting rationale. Briefs shall be submitted on 8 1/2 by 11 inch paper and shall not exceed ten (10) typed double-spaced pages.

3) Within sixty (60) days after receipt of Respondent/Appellant's brief, the staff of the Board, as Appellee, shall submit a written brief in response to the brief of Respondent/Appellant.

4) The Board, in its discretion for good cause shown, may grant upon written request one (1) enlargement of the time prescribed by these rules for doing any act, but the Board will not enlarge the time for filing notice of appeal.

5) If a Respondent/Appellant fails to file his brief within the time provided by this Rule or within the time as extended, the appeal may be dismissed on motion of the Appellee or upon the Board's own initiative. If the Appellee fails to file its brief as required, such brief if later filed may be stricken from the record on motion of Respondent/

Appellant or by a motion of the Board. If the Appellee fails to file a brief, it will not be heard at oral argument except by permission of the Board.

6) Appeals of Board Hearing Panel decisions shall be scheduled for hearing by the Full Membership of the Board at the first available Board meeting following receipt of the reply brief of the staff of the Board as Appellee.

B. Appeal Hearing before the Full Membership of the Board. Appeals of a decision of the Board Hearing Panel shall be heard before at least a quorum of the Full Membership of the Board - seven (7) members of the Board, including at least three (3) RNs and two (2) LPNs.

1) Appeals before the Full Membership of the Board shall be conducted on the record of the hearing before the Board Hearing Panel. The Full Membership of the Board shall not receive any new evidence nor shall it retry the appealed case. Arguments shall be directed solely to issues identified in the appeal and shall not introduce new evidence, testimony, or witnesses.

2) Respondent/Appellant and Appellee shall each be allotted twenty (20) minutes to present arguments why the decision of the Board Hearing Panel should be overturned or affirmed, unless otherwise ordered by the Board. Respondent/Appellant may reserve a portion of his allotted time for rebuttal. A party is not obligated to use all the time allotted, and the Board may terminate the argument when in its judgment further argument is unnecessary.

3) Respondent/Appellant is entitled to open and conclude the argument.

4) Parties will not be permitted to read at length from briefs or records.

5) The Full Membership of the Board may, in its discretion, advise the parties of points upon which it desires to hear argument.

6) Members of the Full Membership of the Board participating in the appeal hearing may ask questions of either party related to issues identified in the appeal.

7) Board members who participated in the Board Hearing Panel which decided the underlying case at issue in an appeal of that decision shall recuse themselves from participation in the appeal hearing of that matter.

C. Board Decision.

1) The Full Membership of the Board may:

(a) Affirm the decision of the Board Hearing Panel;

(b) Affirm a portion of the decision of the Board Hearing Panel and remand the case to the Board Hearing Panel for reconsideration of a portion of the order;

(c) Affirm a portion of the decision of the Board Hearing Panel and overturn a portion of the decision of the Board Hearing Panel; or

(d) Overturn the decision of the Board Hearing Panel.

2) Although the Full Membership of the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order. A copy of such order shall be sent to Respondent/Appellant via certified mail at his last known address or served personally upon Respondent. The decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent shall become final thirty (30) days after signed by the Executive Director unless within said period the Respondent appeals the decision to the Chancery Court as provided by law.

Credits

Adopted emergency effective Aug. 1, 2016.

Current through the Mississippi Administrative Rules Listing of Filings, dated September 2016.

Miss. Admin. Code 30-18-2825:1.10, MS ADC 30-18-2825:1.10

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