

Title 10
DEPARTMENT OF HEALTH

Subtitle 46 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Chapter 03 Procedure for Board Hearings

Authority: Health Occupations Article, §10-205 and 10-316; State Government Article, §§10-205 and 10-206; Annotated Code of Maryland

.01 Scope.

This chapter applies to all formal hearings before the Board of Occupational Therapy Practice. They do not apply to informal investigations, meetings, or proceedings when no formal ruling or decision is made.

.02 Notice of Hearing.

A. Written notice of a hearing shall be sent by the Board to all interested parties at least 30 days before the hearing. The notice shall state the date, time, and place of the hearing. It shall also state the issues or charges involved in the proceeding.

B. If, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary they shall be fully stated as soon as practicable.

C. Service upon a party shall be delivery of the charging document and a copy of the complaint to the party in person. Instead of personal service, the Board may serve the charging document and a copy of the complaint by registered or certified mail, restricted delivery, return receipt requested.

.03 Representation of Parties.

All parties appearing at formal hearings shall have the right to appear in proper person, or by or with counsel.

.04 Prehearing Procedures.

A. Prehearing- Conferences. The Board may set a prehearing conference as it deems appropriate.

B. Case Resolution Conference (CRC) Committee.

(1) One or more Board members comprise a committee which makes recommendations to the Board with regard to proposed disposition of matters before hearing.

(2) After service of charges or the response to the notice of intent to deny, the Board shall offer the respondent a case resolution conference (CRC).

(3) If there is no basis for an agreement between the respondent and the administrative prosecutor, the matter proceeds to hearing.

(4) Generally, one or two Board members compose the CRC committee.

(5) Except for consideration of a proposed resolution of a case achieved through the CRC, the Board may not make later use of any commentary, admissions, facts revealed, or positions taken, unless the subject matter is available from other sources or is otherwise discovered.

(6) Participation in a CRC is not ordinarily a basis for recusal of a Board member from further proceedings in the case.

C. Filing of Motions and Response. All motions shall be accompanied by a memorandum of points and authorities, and shall be filed with the Board at least 15 working days before the hearing. A copy shall be served on the opposing party. Any response shall be filed with the Board at least 10 working days before the hearing and copy served on the opposing party.

D. Discovery on Request. By written request, served on the other party and filed with the Board or the Office of Administrative

Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

- (1) A list of witnesses to be called;
- (2) Copies of documents intended to be produced at the hearing; or
- (3) Both §C(1) and (2) of this regulation.

E. Mandatory Discovery.

(1) Each party shall provide to the other party, not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

(a) The name and curriculum vitae of any expert witness who will be testifying at the hearing; and

(b) A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.

(2) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

(3) The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:

(a) At the prehearing conference, if scheduled; or

(b) Immediately before the scheduled hearing.

(4) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in this section.

F. Parties are not entitled to discovery of items other than as listed in §§C and D of this regulation.

G. Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

H. Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list:

(1) After the prehearing conference, if scheduled; or

(2) Later than 15 days before the hearing, if no prehearing conference is scheduled.

I. The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

J. Construction.

(1) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall be construed, whenever possible, as supplementing and in harmony with COMAR 28.02.01.

(2) In the event of a conflict between this regulation and COMAR 28.02.01, this regulation applies.

.05 Conduct of the Hearing.

A. Board Majority. Except as provided in §B of this regulation, each hearing shall be held before a majority of the Board.

B. Delegation. The Board may delegate the authority to conduct the hearing to a committee in accordance with Health Occupations Article, §10-316, Annotated Code of Maryland, or to an administrative law judge in accordance with State Government Article, §10-205, Annotated Code of Maryland.

C. Duties of Presiding Officer.

(1) The chairperson, or a member designated by the chairperson, shall be the presiding officer. (2) The presiding officer shall:

- (a) Have complete charge of the hearing;
 - (b) Permit the examination of witnesses;
 - (c) Admit evidence;
 - (d) Rule on the admissibility of evidence;
 - (e) Adjourn or recess the hearing from time to time.
- (3) The presiding officer has discretion to set reasonable time limits on arguments and presentation of evidence.
- (4) The presiding officer shall be responsible for decorum in a hearing and can suspend the proceedings as necessary to maintain decorum.

D. Legal Advisor and Counsel for the Board.

(1) The presiding officer may request the Office of the Attorney General to participate in any hearing to present the case on behalf of the Board.

(2) Counsel presenting the case on behalf of the Board shall have the same rights with regard to the submission of evidence, examinations, cross-examination of witnesses, presentation of summation and argument, and filing of objections, exceptions, and motions as does counsel for any party.

(3) The presiding officer may also request a representative of the Office of the Attorney General to act as legal advisor to the Board as to questions of evidence and law.

E. Order of Procedure. The case on behalf of the Board shall be presented first. The respondent shall then present his case. After that, rebuttal shall be permitted.

F. Examination of Witnesses and Introduction of Evidence.

(1) The rules of evidence in all hearings under these regulations shall be as set forth in State Government Article, §§ 10-208 and 10-209, Annotated Code of Maryland.

(2) Every party has the right to:

- (a) Call witnesses and present evidence;
- (b) Cross-examine every witness called on behalf of the Board or other party;
- (c) Present summation and argument, and file objections, exceptions, and motions.

(3) When a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions, and motions shall be done and presented solely by counsel.

(4) Witnesses.

(a) The presiding officer, or any person designated by him for that purpose, may examine any witness called to testify.

(b) The presiding officer may call as a witness any person in attendance at the hearing.

(c) Any member of the Board may examine any witness called to testify.

.06 Records and Transcripts.

A. The Board shall prepare an official record which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding.

B. A stenographic record of the proceedings shall be made at the expense of the Board. This record need not be transcribed, however. Unless requested by a party, or by the Board. The cost of any typewritten transcripts of any proceedings, or part of them, shall be paid by the party requesting the transcript.

.07 Decision and Order

Each decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record.

.08 Rehearings.

- A. Any party aggrieved by the decision and order may apply for rehearing within 10 days after service of the decision and order. Action on an application shall lie in the discretion of the Board.
- B. Unless otherwise ordered, neither the rehearing nor the application for it shall stay the enforcement of the order, or excuse the persons affected by it for failure to comply with its terms.
- C. On rehearing, the Board shall only consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

Administrative History

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