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**IDAPA 22
TITLE 01
Chapter 12**

22.01.12 - RULES RELATING TO HEALTH CARE WORKERS

000. LEGAL AUTHORITY.

Pursuant to Idaho Code, Section 54-1806A, the Idaho State Board of Medicine is authorized to promulgate rules to govern the practice of health care workers who perform exposure prone procedures, who are licensed, registered or certified by the Board. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 22.01.12, "Rules Relating to Health Care Workers." (7-1-93)

002. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Medicine. (4-2-93)
02. Health Care Worker. Any individual licensed, registered or certified by the Idaho State Board of Medicine to provide health care services to individuals within the State of Idaho. (4-2-93)
03. License. Includes a license, registration or certification issued by the Board. (4-2-93)

011. GENERAL POLICY.

It is the policy of the Idaho State Board of Medicine to encourage all health care workers who perform exposure prone procedures to be aware of their HIV and HBV status. The Board shall monitor the practice of HIV/HBV positive health care workers as may be required by the guidelines of the Center for Disease Control or by these Rules. (4-2-93)

01. Duties of Board of Medicine. If the Board of Medicine ("Board") has reasonable cause to believe that a health care worker is unable to practice with reasonable skill and safety to patients because of a HIV or HBV condition the Board shall cause an examination of such health care worker to be made and shall, following such examination, take appropriate action within the provisions of this act. (4-2-93)

02. Composition of Examining Committee. Examination of a health care worker under this section shall be conducted by an examining committee which the board shall designate and which shall be composed of two (2) licensed, practicing physicians and one (1) person holding a license similar to that of the health care worker being examined. (4-2-93)

03. Examination by Committee. The examining committee assigned to examine a health care worker pursuant to referral by the Board shall conduct an examination of such health care worker for the purpose of determining the health care worker's fitness to practice with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The committee shall order the health care worker to appear before the committee for hearing and give them ten (10) days' notice of time and place of the hearing, together with a statement of the cause for such examination. Such notice shall be served upon the health care worker either personally or by registered or certified mail with return receipt requested. (4-2-93)

04. Mental or Physical Examination. If the examining committee, in its discretion, should deem a mental or physical examination of the health care worker necessary to its determination of the fitness of the health care worker to practice, the committee shall order the health care worker to submit to such examination. Any health care worker licensed to practice in this state shall, by so practicing or by making or filing of annual registration to practice in this state, be deemed to have given his consent to submit to mental or physical examination when so directed by the examining committee and, further, to have waived all objections to the admissibility of the examining committee's report to the board on the grounds of privileged communication. Any health care worker ordered to a hearing before the committee under Subsection 011.03 of this section shall be entitled to a mental or physical examination by that committee if he makes request therefor. (4-2-93)

05. Physician Designation. Any health care worker who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the Board. (4-2-93)

06. Failure to Comply. Failure of a health care worker to comply with a committee order under Subsection 011.04 of this section to appear before it for hearing or to submit to mental or physical examination under this section shall be reported by the committee to the Board, and, unless due to circumstances beyond the control of the health care worker, shall be grounds for suspension by the board of the health care worker's license to practice in this state until such time as such health care worker has complied with the order of the committee. (4-2-93)

012. -- 018. (RESERVED).

019. VOLUNTARY RESTRICTION OF LICENSURE.

A health care worker may request in writing to the board a restriction of his license to practice. The board may grant such request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the health care worker to practice within specified limitations, and waive the commencement of any proceedings under Section 030. Removal of a voluntary restriction on licensure to practice shall be subject to the procedure for reinstatement of license in Section 54-1838. (4-2-93)

020. REPORT TO THE BOARD.

01. Action. The examining committee shall report to the board its findings on the examination of the health care worker under Section 011, the determination of the committee as to the fitness of the health care worker to engage in practice with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Such recommendation by the committee shall be advisory only and shall not be binding on the board. (4-2-93)

02. Acceptance or Rejection. The board may accept or reject the recommendation of the examining committee to permit a health care worker to continue to practice with or without any restriction on his license to practice, or may refer the matter back to the examining committee for further examination and report thereon. (4-2-93)

03. Absence of Voluntary Agreement. In the absence of a voluntary agreement by a health care worker under Section 019 for restriction of the licensure of such health care worker to practice, any health care worker shall be entitled to a hearing in formal proceedings before the board and a determination on the evidence as to whether or not restriction, suspension, or revocation of licensure shall be imposed. (4-2-93)

021. -- 029. (RESERVED).

030. PROCEEDINGS (EFFECTIVE JULY 1, 1993).

01. Notice of Hearing. The board may proceed against a health care worker under this act by serving upon such health care worker at least fifteen (15) days' notice of a time and place fixed for a hearing, together with copies of the examining committee's report and diagnosis. Such notice and reports shall be served upon the health care worker either personally or by registered or certified mail with return receipt requested. (4-2-93)

02. Due Process. At said hearing the health care worker shall have the right to be present, to be represented by counsel, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. (4-2-93)

03. Order. At the conclusion of the hearing, the board shall make a determination of the merits and, if grounds therefor are found to exist, may issue an order imposing one (1) or more of the following: (4-2-93)

a. Make a recommendation that the health care worker submit to the care, counseling, or treatment by physicians acceptable to the board; or (4-2-93)

b. Suspend or restrict the license of the health care worker to practice for the duration of his

impairment; or (4-2-93)

c. Revoke the license of the health care worker to practice; and if grounds are not found to exist, the board shall enter its order so stating, shall dismiss the proceedings and shall provide the respondent a true copy thereof. (4-2-93)

04. Board Sanctions. The board may temporarily suspend or restrict the license of any health care worker or enter an appropriate order or temporary probation, ex parte, on its own motion or on petition of the examining committee, pending further or final order without prior hearing, simultaneously with or at any time after the institution of proceedings for a hearing under this section, but only if it first finds, on the basis of a responsible showing which satisfactorily demonstrates that the health care worker, in his capacity as such and for reasons set forth by petition, affidavit, or other verified showing, is causing great harm to the public, or to any patient or group of patients, or is likely to cause such harm and therefore should be immediately suspended, restricted or specially controlled in or from practice. (4-2-93)

a. In such cases, the board may summarily, and ex parte, order temporary conditions of probation, suspension or restriction of said health care worker and his or her license and authority to practice in the state of Idaho, pending further or final order in the proceedings. (4-2-93)

b. In cases of extreme emergency the board may enter said temporary order under this section without prior referral to or recommendation from the examining committee. (4-2-93)

c. In cases in which the examining committee first determines that such temporary suspension, restriction or probation of such health care worker is necessary and in the public interest pending the final conclusion of proceedings or further order, it shall so recommend to the board, and the board, if it finds that the evidence in support of such determination and recommendation is clear and convincing and that the health care worker's continuation in practice would constitute an imminent danger to public health and safety or pose a threat or menace of the kind herein above specified, may, in its discretion, enter an order in keeping with the recommendation of the examining committee or provide such modifications, conditions or orders as it deems appropriate. (4-2-93)

d. The health care worker may, for good cause, request dissolution or amendment of any such temporary order by petition filed with the board, which petition shall be set for prompt hearing before the board or, if necessary and on request of the health care worker in the interest of early consideration, before a hearing officer or special committee designated by the board for that purpose, which officer or committee shall forthwith hear said matter and report to the board its report and recommendation. The board, consistent with due process, shall rule with the least amount of delay reasonably possible. (4-2-93)

05. Disclosure. Neither the record of the proceeding nor any order entered against a health care worker may be used against him in any other legal proceeding except upon judicial review as provided herein, it being the intent and purpose of this act that all evidence, testimony, showings and proceedings are subject to disclosure according to chapter 3, title, 9, Idaho Code, but not to be used in criminal or civil proceedings concerning the subject health care worker. (4-2-93)

031. -- 035. (RESERVED).

036. REINSTATEMENT OF LICENSE.

A health care worker whose license has been restricted, suspended or revoked under this act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of his license and to demonstrate that he can resume competent practice with reasonable skill and safety to patients. Such petition shall be made in writing and on a form prescribed by the board. Action of the board on such petition shall be initiated by referral to and examination by the examining committee pursuant to the provisions of Section 011 and Section 019. The board may, upon written recommendation of the examining committee, restore the licensure of the health care worker on a general or limited basis or institute a proceeding pursuant to this section for the determination of the fitness of the health care worker to resume practice. (4-2-93)

037. -- 999. (RESERVED).