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24.20.01 - RULES OF THE BUREAU OF OCCUPATIONAL LICENSES

000. LEGAL AUTHORITY (Rule 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Bureau of Occupational Licenses by the provisions of Section 67-2609, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (Rule 1)

These rules shall be cited as Title 20, Chapter 01, "Rules of the Bureau of Occupational Licenses." (7-1-93)

002. (RESERVED).

003. WRITTEN INTERPRETATIONS (Rule 3).

The bureau may have written statements which pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-1-93)

004. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

01. Board. Any professional or occupational licensing board of the state of Idaho receiving administrative services from the Bureau of Occupational Licenses. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses. (7-1-93)

03. Hearing Officer. A non-member of a Board who presides over the hearing of a contested case. (7-1-93)

04. Representative of Board. Any person, including the Chief of the Bureau of Occupational Licenses, designated by a Board to act as its agent under certain circumstances. (7-1-93)

05. Hearing Contested Case. A hearing is a disciplinary proceeding involving the revocation, restriction, suspension, annulment (refusal to issue), or withdrawal of a professional or occupational license, registration, or certificate. (7-1-93)

011. -- 099. (RESERVED).

100. OCCUPATIONAL LICENSE HEARINGS (Rule 100).

01. General Provisions. These rules supplement and define the disciplinary hearing procedures of the Board of Architectural Examiners, Idaho Code, 54-305(2); Board of Barber Examiners, 54-517; Board of Chiropractic Physicians, 54-711; Board of Cosmetology, 54-817; Board of Environmental Health Specialist Examiners, 54-2410 to 54-2413; Board of Hearing Aid Dealers and Fitters, 54-2912; Board of Landscape Architects, 54-3004; Board of Morticians, 54-1116 to 54-1117; Board of Examiners of Nursing Home Administrators, 54-1612; Board of Optometry, 54-1510 to 54-1513; Board of Podiatry, 54-608 to 54-611; Board of Psychologist Examiners, 54-2305(d), 54-2309; Board of Social Work Examiners, Title 54, Chap. 32, I.C., and such other professional and occupational licensing boards as request services from the Bureau of Occupational Licenses. Where these rules are inconsistent with provisions of the Idaho Code, the Code provisions are the controlling authority. (7-1-93)

101. -- 199. (RESERVED).

200. REPORT AND INVESTIGATION OF VIOLATIONS (Rule 200).

01. Who May Report a Violation. Any person who knows of a violation by an occupational license

holder of the lawful requirements for the retention of that license may report the violation to the Bureau of Occupational Licenses. The Bureau shall then make a preliminary investigation of all the facts and circumstances surrounding the reported facts and events. (7-1-93)

02. Person Reporting a Violation. A person reporting a violation is not regarded as a party to the investigation or to any proceeding which might result from the investigation. The policy of the Bureau shall be not to publish or divulge the name of any person reporting a violation unless the testimony of such person is required to show a violation at a hearing. (7-1-93)

03. Insufficient Facts and Events. If after investigations the Bureau finds that the report concerns facts and events insufficient to warrant official action, no further action shall be taken. (7-1-93)

04. Sufficient Facts and Events. If after investigation the Bureau finds that the report concerns facts and events potentially sufficient to warrant the suspension, restriction, or revocation of an occupational license, the Bureau shall, with the approval and assistance of the Office of the Attorney General, prepare a formal complaint against the license holder. Furthermore, if after investigation the report is found to concern facts and events which clearly constitute an immediate threat to the public health, safety, or welfare, and statutory authority exists for the Board, the Bureau may, with the approval and assistance of the Office of the Attorney General, proceed to suspend summarily the contested license pending the prompt initiation of a revocation hearing. (7-1-93)

05. Preliminary Investigations and Papers. Preliminary investigations and papers in connection with them shall be confidential until a formal complaint is filed. (7-1-93)

201. -- 299. (RESERVED).

300. INITIATION OF HEARING (Rule 300).

01. Complaint. A hearing to determine whether or not a license should be limited, conditioned, revoked, suspended or not renewed shall be initiated by filing with the relevant Board a complaint signed by the Chief of the Bureau of Occupational Licenses, or his designated representative. The complaint shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, the facts surrounding the matter in dispute, the statutes and rules which the respondent is alleged to have violated, and the action sought from the Board. (7-1-93)

02. Docketing and Service of Complaint. Upon receipt of a complaint, the relevant Board or its representative shall assign it a docket number, select and appoint a hearing officer who shall determine the time and place for the hearing to take place. The Board or its representative shall then cause a copy of the docketed complaint to be served on respondent together with a statement of notice in substantially the following form: (7-1-93)

TO: _____
(name and address)

The accompanying complaint has been filed against you with _____, and
(name of board)
a hearing on the suspension or revocation of your occupational license has been scheduled for
_____.
(time) (date) (location)

Five days before the hearing you are required to have a written response to the complaint on file with the Board at the following address:

(address of board or bureau)

At the hearing you will be afforded an opportunity to respond to the complaint and to present evidence and argument on all issues involved. You will be afforded an opportunity to cross-examine all witnesses testifying against you.

You have the right to be represented by an attorney.

If you fail to appear at the hearing, the Board may revoke or suspend your license without further notice.

You are entitled to the issuance of subpoenas to compel attendance of witnesses and the production of books, documents, or other things relevant to the proceedings.

(signature of board member or designated representative of board)

(7-1-93)

03. Setting Date for Hearing. The date selected by the Board for a revocation hearing shall be calculated to be at least twenty days from service of the notice and complaint on the respondent. (7-1-93)

04. Service of Notice. The Board shall serve respondent with copies of the complaint and notice of hearing by mailing them to respondent's last known or address of record, home or business address by United States mail, or by personal service in the manner of civil actions in district court. (7-1-93)

05. Continuance of Postponement of Hearing. (7-1-93)

a. By agreement. A hearing may be continued or postponed at any time upon agreement of all parties and the Board or its designated presiding officer. (7-1-93)

b. By request. Any party may cause a hearing to be continued by showing good and sufficient cause. A request by a party for a continuance or postponement shall state precisely the reasons therefore, be in writing, and be received by the Board, presiding officer, and all other parties, not less than five (5) days prior to the scheduled date of the hearing. Grant of a continuance or postponement shall be in the discretion of the Board or its designated presiding officer. Notice of a continuance or postponement shall be given all parties. (7-1-93)

06. Settlement of Complaint. Parties to a revocation hearing and the Board or its designated presiding officer, may agree to settle a complaint at any time. (7-1-93)

07. Discovery. By agreement or by order of the Board or its designated presiding officer, after a showing of good and sufficient cause, the parties to a license revocation hearing may obtain discovery of any nonprivileged matter relevant to the subject of the pending hearing. Discovery shall be in substantial conformity with Rule 26 of the Idaho Rules of Civil Procedure which authorize written interrogatories; production of documents or things, permission to enter property, physical and mental examinations, and requests for admission. (7-1-93)

08. Hearing Officer. A hearing may be conducted by the Board, a member or members of the Board designated by the Board, or a hearing officer designated by the Board. Regardless of who conducts the hearing, all Board members shall be entitled to attend and participate in a hearing. (7-1-93)

09. Disqualification of Officer or Board Member. (7-1-93)

a. Voluntary. A hearing officer or Board member shall voluntarily disqualify himself and withdraw from any case to which he cannot accord a fair and impartial hearing or consideration, unless to do so would prevent the existence of a quorum to decide to case. (7-1-93)

b. By request. (7-1-93)

i. Hearing officers. Any party may request the disqualification of a presiding officer by filing an affidavit five days prior to the hearing stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined by the Board, a member of the Board designated by the Board, or a representative of the Board designated by the Board. (7-1-93)

ii. Board members voting on decision. Any party may request the disqualification of a Board member from voting on a decision by filing an affidavit stating with particularity why a fair and impartial consideration cannot

be accorded. The issue shall be determined by the Board, a member of the Board designated by the Board, or a representative of the Board designated by the Board, except that no Board member shall be disqualified if that would prevent the existence of a quorum to decide the case. (7-1-93)

10. **Setting Date for Hearing.** The date selected by the Board to hold a hearing shall be calculated to be at least twenty days from service of the notice and complaint on respondent. (7-1-93)

11. **Revocation Hearing Is Contested Case.** A hearing, as defined above, is a contested case governed by the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. All hearings shall be open to the public unless required to be closed by law. Request for a stenographic reported must be made not later than five (5) days before the date set for the hearing and must submit to the presiding officer the name of an available reporter. The party requesting the reporter shall bear the expense of the reporter's attendance fees and the costs of the original transcript and a copy for the Board. Other parties desiring a copy of the transcript shall bear the expense thereof. (7-1-93)

12. **Rights of Parties.** All parties, including staff of the Board and Bureau where appropriate, shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the hearing. (7-1-93)

13. **Testimony Under Oath.** All testimony to be heard by the presiding officer in adjudicatory hearings, except matters noticed officially or entered by stipulation, shall be sworn testimony. Before taking the witness stand, each person shall swear or affirm that the evidence he is about to give shall be the truth, the whole truth, and nothing but the truth. (7-1-93)

14. **Order of Proceeding.** (7-1-93)

a. The presiding officer shall call the hearing to order, identify the proceeding, and take the names of all appearing parties and attorneys. The parties may make opening statements if they desire. (7-1-93)

b. The Bureau shall present evidence first. The respondent shall follow and thereafter the Bureau shall be allowed to present rebuttal evidence. Further order of proceeding shall be controlled by the hearing officer. (7-1-93)

15. **Evidence.** The admission of evidence shall be governed by Idaho Code, 67-5210. The hearing officer shall rule on the admissibility of all evidence. Grounds for objection to the admission of evidence shall be stated clearly. Formal exceptions to a ruling of the presiding officer need not be made. A party barred from submitting certain evidence may make an offer of proof on the record consisting of a statement of the substance of the evidence and its relevancy. (7-1-93)

16. **Stipulations.** With the approval of the hearing officer, the parties may enter into a stipulation as to any fact at issue. A stipulation shall be in writing and introduced into evidence as an exhibit or shall be made by oral statement upon the record. (7-1-93)

17. **Consolidation.** The Board may consolidate two or more proceedings in any one hearing where it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by such procedure. Where two or more proceedings are consolidated for hearing, the hearing officer shall determine the order in which all parties shall introduce their evidence and which party or parties shall open and close. (7-1-93)

18. **Briefs.** Under the direction of the hearing officer, the parties may submit briefs, including proposed findings of fact, conclusions of law, and a proposed decision. (7-1-93)

19. **Submission for Decision.** A contested case shall stand submitted for decision after the taking of evidence, the presentation of oral arguments and the filing of such briefs as may have been prescribed by the hearing officer. A final decision shall not be made until a proposed decision prepared by a hearing officer or someone who has read the record is served upon the parties personally or by mail. The proposed decision shall be in such form that it may be adopted as the decision in the case, and shall contain proposed findings of fact and conclusions of law, as well as a proposed findings of fact and conclusions of law, as well as a proposed order. (7-1-93)

20. Final Decision. The Board may adopt the proposed decision in whole or in part, it may itself decide the case on the record, or it may refer the case to the same or another presiding officer to take additional evidence in accordance with these rules. A final decision shall include findings of fact and conclusions of law, separately stated. It shall include an explicit ruling on all alternative findings of fact submitted by the parties. Findings of fact should be supported by express reference to information contained in the record. In addition to findings of fact and conclusions of law, the final decision shall contain some statement of the reasoning employed in arriving at the decision. Final decisions shall be made upon the majority vote of the Board members taking part in the decision. Abstentions shall not be counted for the purpose of determining a majority. (7-1-93)

21. Contempt. If any person appearing or ordered to appear before the Board refuses to respond to a subpoena, refuses to testify, obstructs the proceedings by misconduct, or willfully disobeys a lawful order, the Board shall certify the facts to the appropriate district court for the initiation of contempt proceedings. (7-1-93)

301. -- 399. (RESERVED).

400. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES (Rule 400).

01. Interested Person. Any interested person, including license holders and license applicants, may petition the relevant professional or occupational licensing board to adopt, amend, or repeal any rule. Such petition shall be expressly designated as a Petition For Adoption Of Rules under Idaho Code, 67-5206, and it shall state clearly and concisely: (7-1-93)

a. The substance or nature of the rule, regulation, amendment, or repeal requested; (7-1-93)

b. The reason for the request; (7-1-93)

c. Reference to the authority of the board to take the action requested. (7-1-93)

02. Submission of Briefs. Briefs may be submitted in support of any contentions made by the petitioner. (7-1-93)

03. Documents, Data, and Exhibits May Accompany the Petition. Documents, data, and exhibits may accompany the petition. (7-1-93)

04. Action on Petition. Action on petition for adoption, amendment, or repeal of rules. (7-1-93)

a. Within thirty (30) days of the receipt of a petition for adoption, amendment, or repeal of rules, the Board or its designated representative shall, with the advice of the Office of the Attorney General, either grant the petition and schedule the matter for a public hearing under Idaho Code, 67-5203, require additional information from the petitioner before granting or denying the petition, or deny the petition and inform the petitioner of the reasons for such denial. (7-1-93)

b. The Board may grant or deny a petition in part, as well as grant such other relief or take such other action as may be warranted. (7-1-93)

c. The Board shall notify the petitioner in writing of any action taken. (7-1-93)

d. Any interested person may request reconsideration of any part or all of a Board decision. A request for reconsideration shall be submitted no later than 30 days after notification of the Board's decision has been sent to the petitioner. (7-1-93)

401. -- 499. (RESERVED).

500. PETITION FOR DECLARATORY RULING (Rule 500).

01. Interested Person. Any interested person, including license holders and license applicants, may

petition the relevant Board for a declaratory ruling as to the applicability of board rules and statutory provisions to a particular situation. Such petition shall be entitled a Petition For Declaratory Ruling, under Idaho Code, 67-5208, and it shall state clearly and concisely: (7-1-93)

- a. All board rules, Idaho Code provisions, or legal issues in question; (7-1-93)
 - b. Sufficient facts from which it can be determined that a real question exists concerning the applicability of the Board rules or Idaho Code provisions to the petitioner and that a declaratory ruling would resolve the question; (7-1-93)
 - c. A proposed ruling, and; (7-1-93)
 - d. The reasons for the Board to adopt the proposed ruling. (7-1-93)
02. Submission of Briefs. Briefs may be submitted in support of any contentions made by the petitioner. (7-1-93)
03. Documents, Data, And Exhibits May Accompany the Petition. Documents, data, and exhibits may accompany the petition. (7-1-93)
04. Action on Petition. Action on petition for declaratory ruling. (7-1-93)
- a. Within thirty (30) days of the receipt of a petition for declaratory ruling, under Idaho Code, 67-5208, the Board or its designated representative shall, with the advice of the Office of the Attorney General, either make a ruling, require additional information from the petitioner before making a ruling, or refuse to make a ruling on the question presented, and inform the petitioner in writing of the action taken. (7-1-93)
 - b. The Board may either grant or deny a petition in part or it may grant such other relief as may be warranted. (7-1-93)
 - c. Any interested person may request reconsideration of any part or all of a Board decision. A request for reconsideration shall be submitted no later than thirty (30) days after notification of the Board's decision has been sent to the petitioner. (7-1-93)

501. -- 599. (RESERVED).

600. RULE MAKING HISTORY PRIOR TO JULY 1, 1993 (Rule 600). These rules adopted and effective this first day of June, 1981. (7-1-93)

601. -- 999. (RESERVED).