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**IDAPA 22
TITLE 01
Chapter 07**

22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE

000. LEGAL AUTHORITY.

Pursuant to Title 54, Chapter 18, Idaho Code and in compliance with Title 67, Chapter 52, Idaho Code, the Idaho State Board of Medicine adopts the Rules of Practice and Procedure Governing Administrative Proceedings. (2-23-94)

001. TITLE AND SCOPE.

The title of this chapter is Rules of Practice and Procedure of the Board of Medicine. The Board of Medicine adopts Subchapter C, of the Idaho Rules of Administrative Procedure of the Attorney General Regarding Rulemaking, but the Board of Medicine expressly declines to adopt Subchapters A. and B. of the Idaho Rules of Administrative Procedure of the Attorney General. These rules shall be cited as IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine". (2-23-94)

002. -- 009. (RESERVED).

010. DEFINITIONS.

- 01. Board.** Either the Idaho State Board of Medicine or the Board of Professional Discipline. (7-1-93)
- 02. Board Of Discipline.** The Board of Professional Discipline of the Idaho State Board of Medicine. (7-1-93)
- 03. Board of Medicine.** The Idaho State Board of Medicine. (7-1-93)
- 04. Contested Case.** A proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by the Board after an opportunity for hearing. (7-1-93)
- 05. Executive Director.** The Executive Director of the Idaho State Board of Medicine. (7-1-93)
- 06. Hearing Officer.** A person or panel of persons appointed by the Board to conduct hearings and proceedings under these rules. (7-1-93)
- 07. License.** A license includes the whole or part of any permit, certificate, approval, registration, charter or similar form of permission issued by the Board pursuant to the Medical Practice Act, Title 54, Chapter 18, Idaho Code, or by other applicable licensing acts. (7-1-93)
- 08. Licensing.** Includes the process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (7-1-93)

011. -- 019. (RESERVED).

020. DELEGATION TO BOARD OF DISCIPLINE.

Pursuant to Sections 54-1806A, 54-1806A(7) and 54-1841, Idaho Code, the Board of Medicine has created a Board of Professional Discipline and has delegated to the Board of Professional Discipline the authority and power to act in the enforcement and supervision of professional discipline under the Medical Practice Act. (7-1-93)

021. GENERAL PROVISIONS.

- 01. Governed Procedures.** These rules, together with other applicable statutory provisions, govern all practice and procedures in contested cases before the Board. (7-1-93)
- 02. Office.** The central office of the Board will be in Boise, Idaho. The Board's mailing address, unless

otherwise indicated, will be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The telephone number of the Board is (208) 334-2822, a TDD or telecommunications device for the deaf is available at (208) 377-3529. The Board's facsimile (FAX) number is (208) 334-2801. (2-23-94)

03. Docket Number. Every matter coming within the purview of these rules shall be assigned a docket number by the Board, which shall be the official number for the purposes of identification. (7-1-93)

04. Communications. All written communications and documents concerning any matter covered by these rules should be addressed to the central office of the Board, and not to individual members of the Board. All communications and documents are deemed to be officially received only when received at the central office. (7-1-93)

05. Identification. Communications should embrace but one (1) subject and should be identified by the name and address of the communicant. When the subject matter pertains to a proceeding, the proceeding should be identified by appropriate name, number or otherwise. (7-1-93)

06. Transcript. The official transcript of the hearing will be taken in accordance with the provisions of Section 67-5209(f), Idaho Code, or as decided by the Board or the Hearing Officer. In addition, any party desiring the taking of stenographic notes of the oral proceedings by a qualified court reporter must make such request in writing within five (5) days before the date set for hearing and must submit to the Board or Hearing Officer the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees and any party may have such stenographic notes of the oral proceedings, or any part thereof, transcribed or request a copy at his own expense. (7-1-93)

022. PARTIES.

01. Classification Of Parties. Parties to proceedings before the Board shall be styled Applicant, Petitioner, Complainant, Respondent, Intervenor, or Protestant according to the nature of the proceedings and the relationship of the parties thereto. (7-1-93)

02. Applicant. Any person applying or petitioning for any right or authority from the Board shall be styled "Applicant". (7-1-93)

03. Petitioner. Any person petitioning for rehearing of a Board decision or for other affirmative relief (other than Complainants) shall be styled "Petitioner". (7-1-93)

04. Complainant. Any person who complains to the Board against any person shall be styled "Complainant". In any proceedings which the Board brings on its own motion, the Board shall be styled "Complainant". (7-1-93)

05. Respondent. Any person against whom the complaint is filed or investigation initiated shall be styled "Respondent". (7-1-93)

06. Intervenor. Any person permitted to intervene, as provided in these Rules, shall be styled "Intervenor". (7-1-93)

07. Protestant. Any person opposing any application or petition shall be styled "Protestant". (7-1-93)

08. Staff. The Board's staff may appear at any hearing and shall have all rights of participation as a party to the proceedings and, if counsel is desired, the attorney for the Board will represent the staff. (7-1-93)

023. -- 030. (RESERVED).

031. REPORT AND INVESTIGATION OF MISCONDUCT AND UNPROFESSIONAL BEHAVIOR.

01. Investigations. The Board may initiate or commence investigations, inquiries, proceedings, or all of them, into alleged misconduct or unprofessional behavior on its own motion and initiative or may proceed on the

request or complaint of any person, whether formally or informally stated and whether or not verified. (7-1-93)

02. Reporting. Any person licensed by the Board possessing knowledge of any misconduct or unprofessional behavior by any other person licensed by the Board shall with reasonable promptness report such knowledge to the Board, and failure to do so may subject the person to disciplinary action by the Board. (7-1-93)

03. Probable Cause. After preliminary investigation of the facts and circumstances surrounding the alleged misconduct or unprofessional behavior, the Board shall determine whether there is probable cause to initiate formal or informal proceedings. (7-1-93)

04. Cause To Proceed. Determination that there is cause to proceed may be made informally by the Chairman of the Board or may also be made by written expression of a majority of the members of the Board. (7-1-93)

05. Ratify. If a determination to proceed is made informally by the Chairman, the Board may orally vote to ratify the Chairman's determination at the next scheduled meeting of the Board. (7-1-93)

06. No Cause. If the determination is made that there is no cause to proceed, the determination shall be made in writing and a copy forwarded to the person whose complaint may have initiated or commenced the proceedings. (7-1-93)

032. INFORMAL PROCEEDINGS.

01. Reprimand. After the preliminary investigation, if the Board finds that a person licensed by the Board has engaged in minor misconduct, the Board may elect to reprimand the person under investigation by informal admonition or letter of concern. (7-1-93)

02. Informal Admonition. The Board, in its sole discretion, may elect to treat an informal admonition or letter of concern as closed and confidential or as public or non-confidential. (7-1-93)

03. Confidential Reprimand. If the Board elects to use a private and confidential reprimand, the proceedings shall be closed and confidential unless the person under investigation rejects the reprimand, in writing, within ten (10) days of the order of the Board. (7-1-93)

04. Rejects Reprimand. If a person under investigation rejects an informal reprimand, the Board shall convert the informal proceedings to a formal complaint and the matter shall be promptly set for hearing. (7-1-93)

05. Informal Disposition. Unless precluded by law, informal disposition may be made of any contested case by Stipulation, agreed settlement, consent order or default. (7-1-93)

033. PLEADINGS.

01. Pleadings Enumerated. Pleadings before the Board shall be styled after those provided in the Idaho Rules of Civil Procedure. (7-1-93)

02. Verification. All pleadings, except those made by the Board, shall be verified. (7-1-93)

03. Form And Size. Pleadings or briefs submitted under these rules shall be typewritten, or process printed properly entitled and shall be signed by the appropriate authorized individual or officer submitting the same and bear his or her address. All pleadings shall be on paper approximately eight and one-half by eleven inches (8 1/2" x 11") in size, shall state the name and address of each party thereof, shall clearly identify the proceeding, and shall set forth a clear and concise statement of the matters relied upon as a basis for such pleading, together with an appropriate prayer, when relief is sought. (7-1-93)

04. Defective Pleadings-Dismissal. Upon filing of any pleading, it will be inspected by the Board and if found to be defective or insufficient, the Board, on its own initiative, or on motion of any party, may strike or dismiss such document or require its amendment. (7-1-93)

05. Amendments To Pleadings. A pleading may be amended only by leave of the Board or the Hearing Officer. (7-1-93)

06. Formal Complaints. Formal complaints are those complaints filed under the provisions of the applicable law. Formal complaints must be in writing and shall set forth a short and plain statement of the ground of complaint and of the facts or things done or omitted to be done by such persons. (7-1-93)

07. Applications. All pleadings requesting a right or authority from the Board shall be styled "Applications." They must set forth the full name and post office address of the Applicant, and must contain fully the facts on which the application is based, with required exhibits, and a request for the order, authorization, permission, certificate or permit desired and a reference to the particular provision of law requiring or providing the same. The application shall be signed by the Applicant or his Attorney, if any. (7-1-93)

08. Petitions. All pleadings praying for affirmative relief, except complaints or answers, including requests to be permitted to intervene in proceedings or for rehearing, shall be styled "Petitions." (7-1-93)

09. Petitions For Rehearing. Petitions for rehearing must be filed within ten (10) days of the Board order and shall set forth specifically the ground or grounds upon which Petitioner considers the order, decision, rule, direction or regulation to be unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence such Petitioner will offer if rehearing is granted. (7-1-93)

10. Answers. Whenever a complaint is filed with the Board, setting forth a violation or omission by any party subject to Board jurisdiction, the Respondent shall answer the complaint. A party against whom a petition is directed who desires to contest the same or make any representation to the Board in connection therewith shall file an answer thereto. Answers shall be filed with the Board within the same time limit prescribed in Subsection 041.05. Answers shall be so drawn as to advise the Board and all parties of record fully and completely of the nature of such material allegations of the complaint or petition. Matters alleged by way of cross-complaint or affirmative defense shall be separately stated and numbered. In case a party fails to answer within the prescribed time, a default judgement may be entered against said party. (7-1-93)

11. Protests. A person who may be adversely affected by the granting of an application or petition shall have the right to file his written protest with the Board or Hearing Officer. Protestants are not entitled, as a matter of right, to a formal hearing upon the matter being protested, but protests may contain a request for a formal hearing. The Board or Hearing Officer may, whether or not a protest contains such a request, set the matter in question for formal hearing. In such case, a copy of the protest shall be served upon the applicant or petitioners, or other party, at the time notice of the Hearing is given. (7-1-93)

12. Motions. Motions shall be filed with the Board within the time limit prescribed in Subsection 041.06. Motions may be submitted for the Board's decision after completion of either written or oral argument as determined by the Board or Hearing Officer, and the filing of affidavits in support or contravention thereof may be permitted. Unless otherwise provided in these rules, the practice respecting motions and forms thereof shall conform insofar as practicable with the practice in the District Courts of the State of Idaho. (7-1-93)

13. Miscellaneous Petitions. When the subject matter of any desired relief is not specifically covered by these rules, a petition seeking such relief and stating the reason therefor may be filed, and will be handled in the same manner as other applications or petitions. (7-1-93)

034. -- 040. (RESERVED).

041. FILING AND SERVICE.

01. Filing Of Pleadings. The original of all pleadings shall be filed with the Board and a copy mailed to any Hearing Officer appointed by the Board. A copy of all applications, petitions, complaints and other pleadings shall be served on all parties. Special requirements for proceeding pursuant to Sections 67-5206 and 67-5208, Idaho Code, are contained in Chapter 08. (7-1-93)

02. Service By Parties. In the case of a formal complaint, the party against whom the complaint is directed shall be served by the Complainant. After proceedings have been instituted, all answers, motions and subsequent papers filed by any party must be served on all parties of record concurrently with the filing thereof.

(7-1-93)

03. Service By Board. All notices, findings of fact, opinions and orders required to be served by the Board may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States Mail.

(7-1-93)

04. Proof Of Service. There shall appear on the original of every pleading filed with the Board proof of service thereof by an acknowledgement of service or by a certificate in substantially the following form:

I hereby certify that on this day of ____, 19____, I served a true and correct copy of the foregoing document upon all parties of record in this proceeding, by delivering a copy thereof in person to by mailing a copy thereof, properly addressed with postage prepaid, to. Signature

(7-1-93)

05. Time For Filing Answers. Answers to complaints or petitions shall be filed with the Board and service thereof made to parties of record within thirty (30) days after service of said complaint or petition, unless for good cause, the Board of the Hearing Officer extends the time within which answer may be made.

(7-1-93)

06. Time For Filing Motions. Any motion directed toward a complaint or petition must be filed before the answer is due, otherwise such objection must be raised on the answer. If a motion is directed toward an answer, it must be filed within thirty (30) days of the service of the answer. Other motions, together with any supporting affidavits or briefs must be filed at least five (5) working days prior to any scheduled hearing.

(7-1-93)

042. INTERVENTION.

01. Leave To Intervene Necessary. Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, shall secure an order from the Board or Hearing Officer granting leave to intervene before being allowed to participate; provided, that the granting of leave to intervene or otherwise appear, in any matter or proceeding, shall not be construed to be a finding or determination of the Board that such party will or may be a party aggrieved by any ruling, order or decision of the Board, for purposes of court review or appeal.

(7-1-93)

02. Form And Content Of Petitions. Petitions for leave to intervene must be in writing and must clearly identify the proceeding in which intervention is sought, setting forth the name and address of the petitioner, making a clear and concise statement of the direct and substantial interest of the Petitioner in such proceeding, stating the manner in which such Petitioner will be affected by such proceeding, outlining the matters and things relied upon by such Petitioner as a basis for his request to intervene in such cause, and if affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence Petitioner will present if such petition is granted.

(7-1-93)

03. Filing Of Petitions. Petitions to intervene and proof of service of copy thereof on all other parties of record shall be filed within five (5) days after receiving notice of the proceeding, or if no notice is received, not less than five (5) days prior to the date set for hearing and, if filed thereafter, shall state a substantial reason for such delay. Otherwise such petition will not be considered.

(7-1-93)

043. PREHEARING CONFERENCES.

01. General. The Board or the Hearing Officer may, upon written notice to all interested parties, hold a prehearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepare expert testimony, limitation of the number of witnesses and consolidation of the examination of witnesses, procedure at the hearing, and such other matters which may expedite orderly conduct and disposition of the proceedings or settlements thereof.

(7-1-93)

02. Action Taken. If the parties are unable to agree upon the issues and matters set forth in Subsection

043.01, the Board or the Hearing Officer shall have the authority to issue orders which will expedite the orderly handling and disposition of the proceeding. Actions taken at prehearing conferences shall be set forth in writing and will control the course of subsequent proceedings unless modified at the hearing to prevent manifest injustice.

(7-1-93)

03. Recessing Hearing For Conference. In any proceeding, the Hearing Officer may, in his discretion, call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference, with the view of carrying out the purpose of this rule. The Hearing Officer shall state on the record the results of such conference.

(7-1-93)

044. HEARING PROCEDURES.

01. Place And Time. Hearings will be held before the Board or Board members who are to render the decision thereon or a Hearing Officer appointed by the Board. Notice of the place, date, hour and nature of the hearing will be served at least thirty (30) days before the time set therefor unless the Board shall find that public necessity requires the hearing to be held at an earlier date. Hearings will be held at such places in the State as may be selected by the Board and designated in the Notice of Hearing.

(7-1-93)

02. Failure To Appear. At the time and place set for hearing, if an Applicant, Petitioner or Complainant fails to appear, the Board may, with or without prejudice, dismiss the Petition, Application or Complaint or may, upon good cause shown, enter a default or recess said hearing for a further period to be set by the Board to enable said Applicant, Petitioner or Complainant to attend. Any and all costs incurred by reason of a party's non-appearance shall be assessed against such non-appearing party and no proceeding or action instigated by such non-appearing party shall be entertained by the Board until such assessed costs are paid.

(7-1-93)

03. Rights Of Parties. At any hearing, all parties named in Section 022 shall be entitled to enter an appearance to introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding. Attorneys who represent parties must be licensed to practice law in the State of Idaho. Other parties determined by the Board or Hearing Officer to be directly or substantially affected by the proceedings may enter an appearance, introduce evidence and, subject to the discretion of the Board or Hearing Officer, may otherwise participate in the conduct of the proceedings.

(7-1-93)

04. Taking Of Appearances. Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses and stating their position and representation, or interest in writing to the Hearing Officer, if such has been requested, who will include the same in the minutes of the hearing. The Hearing Officer conducting the hearing may, in addition, require appearances to be stated orally, so that the identity and interest of all parties present will be known to those at the hearing.

(7-1-93)

05. Former Employees. No former employee or member of the Board or member of the Attorney General's staff may at any time after severing his employment with the Board of the Attorney General, appear, except with the written permission of the Board, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the Board.

(7-1-93)

06. Expert Witnesses. No former employee or member of the Board shall at any time after severing his employment with the Board appear, except with the written permission of the Board, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation or preparation as a representative of the Board.

(7-1-93)

07. Preliminary Procedure. The Hearing Officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motions or petitions. The parties may then make opening statements as they may desire.

(7-1-93)

08. Conduct At Hearings. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner.

(7-1-93)

09. Testimony Under Oath. All testimony to be considered by the Board in formal hearings, except matters officially noticed or entered by stipulation, shall be sworn testimony. Before taking the witness stand, each

person shall swear or affirm that the testimony he is about to give in the hearing before the Board shall be the truth, the whole truth and nothing but the truth. (7-1-93)

10. Order Of Procedure. Applicants, Petitioners or Complainants shall present their evidence, and then such parties as may be opposing the application, petition or complaint shall submit their proof. The Hearing Officer shall determine the order in which Protestants shall introduce their evidence. Intervenors shall follow the party in whose behalf the intervention is made. If the intervention is not in support of either original party, the Hearing Officer shall designate at which point such intervention shall be heard. Evidence will ordinarily be received in the following order: (7-1-93)

- a. Upon Applications and Petitions. (7-1-93)
 - i. Applicant or Petitioner acknowledgment. (7-1-93)
 - ii. Board Staff. (7-1-93)
 - iii. Intervenors or Protestants. (7-1-93)
 - iv. Rebuttal by Applicant or Petitioner. (7-1-93)
- b. Upon formal Complaints. (7-1-93)
 - i. Complainant acknowledgment. (7-1-93)
 - ii. Respondent. (7-1-93)
 - iii. Board staff. (7-1-93)
 - iv. Rebuttal by Complainant. (7-1-93)
- c. Upon Complaints by Board and orders to show cause: (7-1-93)
 - i. Board staff acknowledgment. (7-1-93)
 - ii. Respondent. (7-1-93)
 - iii. Rebuttal by Board staff. (7-1-93)

11. Modified Procedure. The aforementioned procedure may be modified at the discretion of the Board or Hearing Officer. When two (2) or more causes are set for hearing at the same time and place, the cause having the lowest docket number shall first be heard, if all parties thereto are ready, unless the Hearing Officer directs a different order to suit the convenience of the parties. (7-1-93)

12. Consolidation. The Board may consolidate two (2) or more proceedings in any one (1) 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 (2) or more proceedings are consolidated for hearing, the Hearing Officer shall determine the order in which all the parties shall introduce their evidence and which party or parties shall open and close. (7-1-93)

13. Limits Of Intervenors And Protestants. Where two (2) or more Intervenors or Protestants have substantially the same interests and positions, the Hearing Officer may at any time before or during the hearing, if he deems it advisable in order to expedite the proceedings, limit the number of Intervenors or Protestants who will be permitted to testify, cross-examine witnesses or to make and argue motions and objections. (7-1-93)

14. Stipulations. With the approval of the Hearing Officer, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence at

the hearing. The Board, however, may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties. (7-1-93)

15. Rules Of Evidence. The admission of evidence before the Board shall be governed by Section 67-5210, Idaho Code. (7-1-93)

16. Prepared Testimony. With the approval of the Hearing Officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the Hearing Officer, the witness shall deliver copies thereof to the Hearing Officer, the reporter and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the Hearing Officer deems that substantial saving in time will result, and where the parties so agree, prepared testimony may be copied into the record without reading, provided that copies thereof shall have been served upon all parties and the Board ten (10) days before the hearing or such prior service is waived in writing. (7-1-93)

17. Subpoenas. Subpoenas requiring the attendance of a witness from any place in the state to any designated place of deposition or hearing for the purpose of taking oral testimony of such witness may be issued by any Board member or the Hearing Officer upon request of any party. The Board member or Hearing Officer may, as a condition of issuing a subpoena, require the party applying therefor to prepay fees of the witness. Subpoenas may also include a request for the production of books, papers, accounts or other documents. The Board member or Hearing Officer, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, may either (1) quash the subpoena if it is unreasonable or oppressive or (2) condition denial of the motion upon the advance payment by the person on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, accounts or other documents desired. (7-1-93)

18. Depositions. The Board or Hearing Officer or any party may, in any investigation or hearing before the Board, cause the deposition of any person who will be called as a witness, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the District Courts of this state and to that end may, by subpoena, compel the attendance of witnesses and the production of books, documents, papers and accounts. (7-1-93)

19. Continuances. The Board or the Hearing Officer may, in its discretion, either prior to hearing or during a hearing, and on proper showing, grant continuances for submission of further or additional proof on any subject matter. (7-1-93)

20. Briefs. In any hearing, the Board or the Hearing Officer may order briefs to be filed within such time as may be allowed by the Board. The original brief shall be filed with the Board, with a copy to the Hearing Officer, and shall be accompanied by any acknowledgement or an affidavit showing service on other parties of record. (7-1-93)

21. Joint Hearing. Where the Board participates jointly with a federal regulatory agency, the rules of practice and procedure of such federal agency shall govern. Where the Board participates jointly with an administrative body of another state or states, the rules of the state where the hearing is held shall govern such proceeding, unless otherwise agreed upon by the participating agencies. Any person entitled to appear in a representative capacity for any of the agencies involved in a joint hearing may do so in such joint hearing. (7-1-93)

22. Official Notice. The Board may take official notice, pursuant to the provisions of Section 67-5210(4), Idaho Code, of the following matters: (7-1-93)

- a. Rules, regulations, official reports, decisions and orders of any regulatory agency, state or federal; (7-1-93)
- b. Contents of formal and informal decisions, orders, certificates and licenses issued by the Board, or by Hearing Officers, Hearing Committees or Examining Committees appointed by the Board. (7-1-93)
- c. Matters of common knowledge and generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in

preliminary reports or otherwise, of the material and evidence officially noticed, including any staff memorandum or data, and shall be given an opportunity to examine any written evidence and parties shall be afforded an opportunity to contest any material and evidence so noticed. (7-1-93)

23. Rulings On Admissibility. The Hearing Officer shall rule on the admissibility of all evidence, subject to the requirements of Subsection 044.14. Such rulings may be reviewed by the Board in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Board is necessary to promote substantial justice, the Hearing Officer may refer the matter to the Board for determination. Any ruling may be deferred to the entire Board by the Hearing Officer or taken under advisement by the Hearing Officer. (7-1-93)

24. Objections And Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. (7-1-93)

25. Offer Of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence which objection has been sustained. (7-1-93)

045. -- 050. (RESERVED).

051. DECISIONS AND ORDERS.

01. Submission Of Decisions. A proceeding shall stand submitted for decision by the Board after the taking of evidence or the filing of briefs or the presentation of oral argument as may have been prescribed by the Board or the Hearing Officer, unless otherwise specifically provided. (7-1-93)

02. Record. The record in a contested case shall include: (7-1-93)

- a. All pleadings, motions and intermediate rulings; (7-1-93)
- b. Evidence received or considered; (7-1-93)
- c. A statement of matters officially noticed; (7-1-93)
- d. Questions and offers of proof, objections, and rulings thereon; (7-1-93)
- e. Admonitions. Proposed findings and exceptions; (7-1-93)
- f. Any decision, opinion or report by the officer presiding at the hearing; and (7-1-93)
- g. All staff memoranda or data submitted to the Hearing Officer or member of the Board in connection with their consideration of the case. (7-1-93)

03. Proposed Decision. When a case stands submitted for decision, the Hearing Officer shall prepare proposed findings of fact and conclusions of law and shall transmit said proposals and the record to the Board. (7-1-93)

04. Final Decision. The Board shall render the final decision in a contested case. Prior to rendering a final decision, each Board member, who has not heard the case, should read the record. If a majority of the Board members have not heard the case or read the record, the provisions of Section 67-5211, Idaho Code, shall apply. (7-1-93)

05. Form. A final decision or order adverse to a party shall be in writing and shall include findings of fact and conclusions of law which are separately stated. If findings of fact are set forth in statutory language, they shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (7-1-93)

06. Proposed Findings. The Board may, in its discretion, request proposed findings of fact from each party. If such is done, the Board's decision shall include a ruling on each proposed finding. (7-1-93)

07. Service Of Orders. Parties shall be notified either personally or by mail of any decision or order. Copies of the decision or order shall be delivered or mailed to all parties or their attorneys of record. (7-1-93)

08. Public Inspection. Decisions and orders of the Board shall be open to public inspection unless precluded by law. (7-1-93)

052. -- 055. (RESERVED).

056. EFFECTIVE DATE.

The rules found in IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine," were effective June 11, 1982, and certain amendments became effective September 15, 1987 and January 31, 1991. (7-1-93)

057. -- 999. (RESERVED).

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