

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board

Regulation/Package Title: Hearing Rules

Rule Number(s): 4731-13-01, 4731-11-02, 4731-13-03, 4731-13-04, 4731-13-05, 4731-13-06, 4731-13-07, 4731-13-08, 4731-13-09, 4731-13-10, 4731-13-11, 4731-13-12, 4731-13-13, 4731-14, 4731-15, 4731-13-16, 4731-13-17, 4731-13-18, 4731-13-20, 4731-13-20.1, 4731-13-21, 4731-13-22, 4731-13-23, 4731-13-24, 4731-13-25, 4731-13-26, 4731-13-27, 4731-13-28, 4731-13-30, 4731-13-31, 4731-13-32, 4731-13-33, 4731-13-34, 4731-13-35, and 4731-13-36.

Clarification note: Rules 4731-13-19 and 4731-13-29 were rescinded effective 2-28-04.

Date: _____

Rule Type:

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in Chapter 4731-13 set forth the procedures for conducting administrative hearings. Administrative hearings must be conducted in compliance with the Ohio Administrative Procedures Act (“APA”), Chapter 119, Ohio Revised Code. The APA specifies such matters as procedures for service of the notice with allegations, service of subpoenas, and the required process by which the Hearing Examiner’s report and recommendation comes before the Medical Board for its consideration. Therefore, the rules facilitate procedural and substantive due process by specifying procedures for conduct of pre-hearing, hearing, and post-hearing activities. The hearing rules notify applicants and licensees, attorneys, and the public of the procedures and expected actions. The proposed amendments include, but are not limited to, requiring that the hearing date and dates for exchange of documents be set according to a case management schedule, allowing for witness testimony via real-time video or telephonic testimony, and allowing for electronic filing of documents.

The proposed actions on the rules are as follows:

Rule 4731-13-01: Add definitions of “hearing” and “summary suspension.” This will allow for efficiency in the language for other rules in the Chapter.

Rule 4731-13-02: Eliminate the word “adjudication” before the word “hearing.”

Rule 4731-13-03: Eliminate the word “adjudication” before the word “hearing”; remove the reference to Rule 4731-13-19 in paragraph (D)(6) because it has been repealed.

Rule 4731-13-04: No changes proposed.

Rule 4731-13-05: No changes proposed.

Rule 4731-13-06: Requires hearing dates to be scheduled with input of the parties and in accordance with a case management schedule which will be set through policy. Requires that continuances requested less than 14 days prior to the scheduled hearing will be only granted upon a showing of good cause. Because more than fifty percent of the wording is being amended, the current rule will be rescinded and a new rule adopted.

Rule 4731-13-07: No changes proposed.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Rule 4731-13-08: Allows for electronic filing of documents; specifies that filings are made to the hearing unit. Because more than fifty percent of the wording is being amended, the current rule will be rescinded and a new rule adopted.

Rule 4731-13-09: Allows for electronic service of documents in this chapter.

Rule 4731-13-10: Specifies that requests for extension of time are filed with the hearing unit.

Rule 4731-13-11: Allows for electronic mailing of notice scheduling the hearing.

Rule 4731-13-12: Specifies that transcripts are requested from the hearing unit.

Rule 4731-13-13: Makes changes to the due dates for requesting and processing subpoenas.

Rule 4731-13-14: No changes proposed.

Rule 4731-13-15: Removes the word “adjudication” before the word “hearing.”

Rule 4731-13-16: Adds payment of fines as a condition of reinstatement or restoration of certificate.

Rule 4731-13-17: No changes proposed.

Rule 4731-13-18: Requires the dates for exchange of list of witnesses and documents to be introduced at hearing to be set by the case management schedule. Requires the dates for exchange of hearing exhibits, identification of lay and expert witnesses and exchange of written expert reports to be set by the case management schedule. Because more than fifty percent of the wording is being amended, the current rule will be rescinded and a new rule adopted.

Rule 4731-13-20: Language clean-up to make the rule easier to understand.

Rule 4731-13-20.1: NEW RULE: Allows for parties to present the testimony of witnesses via real-time video or telephonic testimony.

Rule 4731-13-21: No changes proposed.

Rule 4731-13-22: No changes proposed.

Rule 4731-13-23: Language clean-up to make the rule easier to understand.

Rule 4731-13-24: No changes proposed.

Rule 4731-13-25: No changes proposed.

Rule 4731-13-26: No changes proposed.

Rule 4731-13-27: No changes proposed.

Rule 4731-13-28: No changes proposed.

Rule 4731-13-30: No changes proposed.

Rule 4731-13-31: No changes proposed.

Rule 4731-13-32: No changes proposed.

Rule 4731-13-33: No changes proposed.

Rule 4731-13-34: Eliminate the word “adjudicatory” before the word proceeding and replace the word “proceeding” with the word “hearing”. Corrects “preoffered” to “proffered.”

Rule 4731-13-35: No changes proposed.

Rule 4731-13-36: Adds newer chapters of the Revised Code and Administrative Code (4774, 4778). Adds payment of fines as a condition for reinstatement under (C)(2)(c).

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 4731.05, Ohio Revised Code (“ORC”).

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

They are not required to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program. However, they facilitate the provision of substantive and procedural due process required under the Ohio and U.S. constitutions.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules facilitate the provision of substantive and procedural due process rights of applicants and/or licensees required under the Ohio and U.S. constitutions by establishing standards for conduct of hearings. They notify applicants and licensees, attorneys, and the public of the procedures to be followed for administrative hearings, in a manner similar to the rules established by Ohio courts.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of the rules will be measured by completing administrative hearings in alignment with the timeframe envisioned in the case management schedule that will be adopted as Medical Board policy, and with any adjudication order that is appealed to court on due process grounds being upheld.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On September 23, 2015, medical organizations and attorneys who represent applicants and licensees before the Medical Board were emailed a solicitation of comments on proposed changes to Rule 4731-13-06, Continuance of Hearing.

On November 6, 2015, an invitation to comment on the proposed rules in Chapter 4731-13 was sent via e-mail to organizations such as, but not limited to, the Ohio Association of Physician Assistants, Ohio State Medical Association, Ohio Academy of Family Physicians, Academy of Medicine of Cleveland and Northern Ohio, and Ohio Osteopathic Association; governmental affairs representatives for numerous organizations; attorneys who appear before the Medical Board; and all other persons who have requested notice of Medical Board rule activity.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Draft changes to Rule 4731-13-06, Continuance of Hearing, were first sent to medical associations and attorneys who represent clients before the Medical Board. The cover message stated that the overarching goal of the proposed amendments was to make the administrative hearing process more streamlined and efficient. Four attorneys who frequently represent clients before the Medical Board submitted comments, with most comments concerning the proposal to require requests for a continuance of a hearing to be filed no later than twenty-one days prior to the scheduled hearing and that, where a continuance is granted, the new hearing date be set for a date within thirty days of the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

original date. Based on the comments received, the proposed amendments to the Rule 473-13-06 were reworked to provide that the hearing dates will be scheduled with input of the parties and in accordance with a case management schedule set through Medical Board policy and to require that continuances granted less than fourteen days prior to a scheduled hearing date be granted only upon a showing of good cause.

No comments were received in response to the invitation to comment on proposed wording for all of the rules in Chapter 4731-13 that was sent on November 6, 2015. It is important to note that the attorneys who had submitted comments in response to September invitation related to proposed changes to Rule 4731-13-06 were included in this mailing and did not submit additional comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data is not the appropriate standard upon which to base rules designed to facilitate due process. The rules are based on the provisions of the APA and state and federal court decisions that interpret the procedural and substantive due process requirements of the Ohio and/or U.S. constitutions.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Please see the discussion of Rule 4731-13-06 in question 8, above. The originally proposed language was changed to accommodate concerns raised by attorneys who frequently represent clients before the Medical Board.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The rules are performance-based. They set requirements but do not specify how the attorneys and/or respondents meet them.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Chapter 119, ORC, is the only statutory source of procedure for conducting administrative hearings in Ohio. The rules do not conflict with the provisions of Chapter 119. Moreover,

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

the rules only apply to administrative hearings at the Medical Board regarding applicants and licensees whose licensure is regulated solely by the Medical Board.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules will be circulated to all of the interested parties listed in question 7, above and made available on the Medical Board’s website. The rules will be adhered to by the Medical Board’s Hearing Examiners.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community includes attorneys who represent clients before the Medical Board, as well as applicants and licensees who receive a notice of allegations giving rise to the opportunity to have an administrative hearing on the allegations.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The adverse impact on attorneys is that they must be licensed in Ohio and adhere to the procedures and deadlines set in the rules. Failure to comply with the rules may lead the client to bring a court action alleging legal malpractice.

The adverse impact on applicants and licensees who receive a notice setting forth allegations that give rise to the opportunity to have an administrative hearing is that (1) if they choose to be represented the representative must be an attorney licensed in Ohio; and, (2) if their attorney, or themselves if acting *pro se*, does not follow the rules their evidence may be excluded from the hearing record, a requested continuance of hearing may not be granted, another type of motion may not be granted, or requested subpoenas may not be issued.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

For attorneys, the cost of obtaining a license in Ohio may include: (1) \$75 fee for application to register as a candidate for admission to the practice of law; (2) \$358 fee for the application to take bar exam; (3) \$350 fee for biennial registration. The costs associated with a legal malpractice claim depend upon the fees charged by the attorney defending the attorney being sued and the monetary amount awarded by the court, if any.

The adverse impact on an applicant or licensee who is the respondent in an administrative hearing depends upon the fee charged by an Ohio licensed attorney, if the respondent chooses to be represented. However, the other possible adverse impacts cannot be quantified in terms of money.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Ohio and U.S. constitutions require that there be a framework for administrative hearings that facilitate substantive and procedural due process. The rules inform all participants of the framework for hearings at the Medical Board. The rules have served as a model for other licensing agencies in adopting their respective hearing rules.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The rules provide for the substantive and procedural due process rights of applicants and licensees who appear before the Medical Board.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Violation of the rules does not result in fines or penalties for paperwork violations. The waiver of fines and penalties provided for in Section 119.41, ORC, does not apply because the rules facilitate due process.

18. What resources are available to assist small businesses with compliance of the regulation?

The Medical Board's Hearing Examiners will answer any questions that are presented by licensees or applicants and the attorneys who represent them.

*****DRAFT - NOT FOR FILING*****

4731-13-01 Representatives; appearances.

(A) As used in this chapter of the Administrative Code:

- (1) "Respondent" means a person who is requesting or has requested a hearing as provided in Chapter 119. of the Revised Code.
- (2) "Representative of record" means one person designated by each party to be the party's agent for purposes of receipt of service pursuant to this chapter of the Administrative Code.
- (3) "Hearing" means the adjudication hearing held pursuant to Chapter 119 of the Revised Code when a hearing is requested by an applicant or licensee for whom the Board has proposed formal action under Sections 4730.25, 4731.22, 4760.13, 4762.13, 4774.13, or 4778.14 of the Revised Code.
- (4) "Summary Suspension" means the pre-hearing suspension of the license under Sections 4730.25(G), 4731.22(G), 4760.13(G), 4762.13(G), 4774.13(G), or 4778.14(G) of the Revised Code.

- (B) The respondent may represent himself or herself or may be represented by an attorney or attorneys who shall be admitted to the practice of law in Ohio. Each attorney representing the respondent shall enter his or her appearance in writing. The respondent may authorize his or her attorney or attorneys to represent the respondent in all facets of a hearing before the board. .
- (C) If the respondent is self represented, he or she shall be deemed the representative of record for purposes of service pursuant to this chapter of the Administrative Code. If the respondent is represented by one attorney, that attorney shall be deemed the representative of record for purposes of service pursuant to this chapter of the Administrative Code. If the respondent is represented by more than one attorney, the respondent shall designate one of those attorneys as the representative of record for purposes of service pursuant to this chapter of the Administrative Code.
- (D) Each representative from the office of the attorney general shall enter his or her appearance in writing. The office of the attorney general shall identify one attorney from that office as the representative of record for purposes of service pursuant to this chapter of the Administrative Code.
- (E) The respondent shall not be required to appear personally at any hearing provided he or she has not been subpoenaed. If a respondent has not been subpoenaed to appear at hearing, a respondent may present his or her position, arguments or contentions in writing.
- (F) An attorney who has filed notice of appearance with the board shall withdraw his or her representation of a respondent by filing a written notice of withdrawal with the board.
- (G) An attorney who has been designated as a respondent's representative of record for purposes of service pursuant to this chapter of the Administrative Code shall remain the representative of record for that party until a representative of that party files a written notice designating another attorney or the respondent as the representative of record.
- (H) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board or its hearing examiner shall be sent to the representative of record for each party.

*****DRAFT - NOT FOR FILING*****

4731-13-02 Filing request for hearing.

- (A) In order to request a hearing pursuant to Chapter 119. of the Revised Code, the respondent or the respondent's attorney or attorneys shall file a written request for a ~~an adjudication~~ hearing in accordance with rule 4731-13-08 of the Administrative Code. The request shall be filed within thirty days of the date of mailing of the board's notice of opportunity for hearing upon which service is perfected, of the date of personal service of the board's notice of opportunity for hearing or of the date of publication of the board's notice of opportunity for hearing in accordance with Chapter 119. of the Revised Code, whichever occurs first. The date of mailing of the board's notice of opportunity for hearing shall be the date postmarked on the certified mail receipt.
- (B) A respondent properly filing a request for a ~~an adjudication~~ hearing, whether personally or by attorney or attorneys, shall be entitled to such ~~adjudication~~ hearing within fifteen days but not sooner than seven days after such request has been filed unless both parties agree otherwise or a continuance is granted pursuant to section 119.09 of the Revised Code and rule 4731-13-06 of the Administrative Code.

*****DRAFT - NOT FOR FILING*****

4731-13-03 Authority and duties of hearing examiners.

- (A) ~~Adjudication hearings~~ Hearings shall be conducted before hearing examiner pursuant to section 4731.23 of the Revised Code.
- (B) All hearings shall be open to the public, but the hearing examiner conducting a hearing may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing examiner determines to close the hearing, the hearing examiner shall state the reasons ~~therefor~~ in the public record.
- (C) The hearing examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order and ensure the development of a clear and adequate record.
- (D) The authority of the hearing examiner shall include, but not be limited to, authority to:
- (1) Administer oaths and affirmations;
 - (2) Order issuance of subpoenas and subpoenas duces tecum to require the attendance of witnesses at hearings and depositions in lieu of live testimony and to require the production of evidence for hearings and depositions in lieu of live testimony;
 - (3) Examine witnesses and direct witnesses to testify;
 - (4) Make rulings on the admissibility of evidence;
 - (5) Make rulings on procedural motions, whether such motions are oral or written;
 - (6) Hold prehearing conferences ~~pursuant to rule 4731-13-19 of the Administrative Code~~;
 - (7) Request briefs before, during or following the hearing;
 - (8) Prepare entries, proposed findings, proposed orders or reports and recommendations pursuant to rule 4731-13-15 of the Administrative Code;
 - (9) Make rulings on requests to broadcast, record, televise or photograph the hearing;
 - (10) Take such other actions as may be necessary to accomplish the purposes of paragraph (C) of this rule; and
 - (11) Determine the order in which any hearing shall proceed.
- (E) The authority of the hearing examiner shall not include authority to grant motions for dismissal of charges, or modify, compromise or settle charges or allegations.
- (F) The hearing examiner shall have such other powers, duties, and authority as are granted by statutes or rules.
- (G) All rulings on evidence and motions and on any other procedural matters shall be subject to review by the board upon presentation of the proposed findings of facts and conclusions of law of the hearing examiner. When such rulings warrant, the board may remand the matter to the attorney hearing examiner.
- (H) The hearing examiner may assist the board by reviewing the evidence in matters that have been subject to a notice of opportunity for hearing but for which no timely hearing request has been filed. In such matters the

*****DRAFT - NOT FOR FILING*****

hearing examiner may prepare proposed findings and a proposed order for the board's consideration.

*** DRAFT - NOT YET FILED ***

4731-13-04

Consolidation.

Upon motion by either party, or upon the initiative of the hearing examiner, the hearing examiner may consolidate two or more hearings into a single hearing, unless either party objects for good cause.

*** DRAFT - NOT YET FILED ***

4731-13-05

Intervention.

Petitions to intervene shall not be permitted.

4731-13-06

Continuance of hearing.

- (A) Except in matters of summary suspension ~~under division (G) or automatic suspension under division (I) of section 4731.22 of the Revised Code~~, the board or the board through its hearing examiner, shall ~~initially~~ continue ~~a~~ the initially scheduled hearing upon its own motion in order to more efficiently and effectively conduct its business unless the circumstances establish that a continuance would not serve the interest of justice. The new hearing date shall be set according to the case management schedule approved by the Board for the type of violation alleged. In setting the new hearing date, the hearing examiner shall make a reasonable attempt to obtain input from the parties. Upon motion of at least one of the parties demonstrating extraordinary circumstances, the hearing examiner may approve a special case management schedule.
- (B) A hearing shall be continued only with the approval of the board or its hearing examiner based upon a written motion of a party or upon the initiative of the hearing examiner.
- (C) ~~Hearings shall not be continued upon motion by a party unless a~~ A motion for a continuance shall not be granted unless good cause and proper diligence is demonstrated. ~~showing of reasonable cause and proper diligence is presented. Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings. In no event will a motion for a continuance requested less than five days prior to the scheduled date of the hearing be granted unless it is demonstrated that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.~~
- (1) Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings.
- (2) In no event will a motion for a continuance requested less than fourteen days prior to the scheduled date of the hearing be granted unless it is demonstrated that good cause exists which would justify the granting of a continuance.
- (D) No continuance of ~~a~~ an adjudicatory hearing ~~under division (G) or (I) of section 4731.22 of the Revised Code~~ for a summary suspension shall be granted without the written agreement of the respondent or the respondent's attorney or attorneys and of the board through its secretary and supervising member.
- (E) If a continuance is granted, ~~the hearing examiner shall immediately establish a new hearing date, unless circumstances prohibit.~~ the entry granting the continuance shall specify the dates to which the hearing is continued and shall be set in accordance with the case management schedule. Upon motion of at least one of the parties demonstrating extraordinary circumstances, the hearing examiner may approve a

[special case management schedule.](#)

(F) Hearings shall not be continued due to the unavailability of a subpoenaed witness without approval of the hearing examiner. ~~The hearing examiner may hold the record open to accept a deposition in lieu of live testimony of a subpoenaed witness. The procedures set forth in rule 4731-13-20 of the Administrative Code shall apply to any deposition in lieu of live testimony taken pursuant to this rule.~~

[\(1\) The hearing examiner may hold the record open to accept a deposition in lieu of live testimony of a subpoenaed witness.](#)

[\(2\) The procedures set forth in rules 4731-13-20 and 4731-13-20.1 of the Administrative Code shall apply to any deposition in lieu of live testimony taken pursuant to this rule.](#)

~~(G) No adjudication hearing shall be continued for more than ninety days for the purpose of exchanging witness or document lists to the extent provided in rule 4731-13-18 of the Administrative Code unless the board or its hearing examiner finds in writing that such exchange was diligently pursued but was not completed due to the unusual circumstances of the case.~~

4731-13-07

Motions.

- (A) Except as otherwise provided under Chapter 4731-13 of the Administrative Code or Chapter 119. of the Revised Code, all motions, unless made upon the record at hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds therefore, and shall be filed in compliance with rule 4731-13-08 of the Administrative Code. Except in cases of summary suspensions pursuant to division (G) of section 4731.22 of the Revised Code, all prehearing motions except motions for continuance pursuant to rule 4731-13-06 of the Administrative Code and motions to quash pursuant to paragraph (F) of rule 4731-13-13 of the Administrative Code, shall be made no later than fourteen days before the date of hearing unless express exception is granted by the hearing examiner or by this chapter.
- (B) All motions, together with any supporting documentation, shall be served as provided in rule 4731-13-09 of the Administrative Code.
- (C) Any response to a prehearing motion shall be filed within ten days after service of that motion, or at such other time as is fixed by the hearing examiner. A movant may reply to a response only with the permission of the hearing examiner.
- (D) Before ruling upon a written motion, the hearing examiner shall consider all memoranda and supporting documents filed. The hearing examiner shall enter a written ruling and shall issue copies to each representative of record. The ruling on all motions made at hearing shall be included in the hearing transcript except where the hearing examiner elects to take the motion under advisement and issue a written ruling at a later time. The hearing examiner shall include in each written ruling on a motion a statement of the reasons therefore.
- (E) Except as otherwise provided in this chapter or Chapter 119. of the Revised Code, rulings on all motions filed subsequent to the issuance of the report and recommendation shall be rendered by the board or, if the board is not in session, by the president acting on its behalf.

*** DRAFT - NOT YET FILED ***

4731-13-08

Filing.

- (A) A document is "filed" when it is received and time stamped in the offices of the board. For documents received via e-mail, the time stamp provided by the Board's computer shall be the time of receipt. Documents received after 5:00 p.m. eastern standard time shall not be considered as filed until the next business day.
- (B) An original of any document required to be served by Chapter 4731-13 of the Administrative Code shall be filed with the board not more than three days after service.
- (C) All filings shall be addressed to the board to the attention of its hearing unit. ~~ease control office.~~

4731-13-09

Service.

To be considered by the board and its hearing examiner, any document required by Chapter 4731-13 of the Administrative Code to be served shall:

- (A) Be served either personally, ~~or~~ by regular mail, ~~or~~ by facsimile, or by e-mail. Service is complete on the date of mailing, e-mailing, facsimile or personal service of the document.
- (B) Contain the name, address, and telephone number of the person submitting the document and shall be appropriately captioned to indicate the name of the respondent.
- (C) Have a certificate of service on it. A certificate of service shall be signed and contain the following:
 - (1) The date of service;
 - (2) The method by which service was made;
 - (3) The address where service was made; and
 - (4) The name of the person or authority who was served.

4731-13-10

Computation and extension of time.

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under Chapter 4731-13 of the Administrative Code. The last day of the period is included in the computation of the time limit. If the last day of a period is not a regular business day, the time period runs through the end of the next regularly scheduled business day.
- (B) The board or its hearing examiner may extend the time for filing or responding to motions and briefs.
- (1) Requests for extension of time shall be made in writing and filed as provided in rule 4731-13-08 of the Administrative Code prior to the expiration of any applicable time limit.
 - (2) Requests for extension of time shall be addressed to the attention of the board's ~~ease control office~~ [hearing unit](#).
 - (3) Requests for extension of time shall be served as provided in rule 4731-13-09 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

4731-13-11

Notice of hearings.

Notice specifying the date, time and place set for hearing shall be mailed by certified mail to the representatives of record , except that notice of changes to the date, time or place set for hearing shall be mailed by regular mail, [e-mail](#) or facsimile if a representative of each party participated in the selection of the new date, time or place.

4731-13-12

Transcripts.

- (A) Duplicate transcripts of the stenographic record taken of hearings may be obtained directly from the court reporter at the requestor's expense prior to receipt of the original transcript by the board, except as otherwise restricted by 4731-13-31 of the Administrative Code.
- (B) Upon request made to the board's ~~ease-control-office~~ [hearing unit](#), a copy of the original hearing transcripts may be reviewed at the board offices. Additional copies may be prepared at the requestor's expense and shall be provided by the board within a reasonable period of time.
- (C) Original transcripts shall not be removed from the board offices.
- (D) Any portion of a hearing transcript which contains information that is required to be kept confidential pursuant to any state or federal law shall be sealed and made part of the hearing record. Confidential portions of hearing transcripts shall be provided only to agents of the parties for purposes of the administrative hearing and shall not be disseminated to any other persons.

4731-13-12

Transcripts.

- (A) Duplicate transcripts of the stenographic record taken of hearings may be obtained directly from the court reporter at the requestor's expense prior to receipt of the original transcript by the board, except as otherwise restricted by 4731-13-31 of the Administrative Code.
- (B) Upon request made to the board's ~~ease-control-office~~ [hearing unit](#), a copy of the original hearing transcripts may be reviewed at the board offices. Additional copies may be prepared at the requestor's expense and shall be provided by the board within a reasonable period of time.
- (C) Original transcripts shall not be removed from the board offices.
- (D) Any portion of a hearing transcript which contains information that is required to be kept confidential pursuant to any state or federal law shall be sealed and made part of the hearing record. Confidential portions of hearing transcripts shall be provided only to agents of the parties for purposes of the administrative hearing and shall not be disseminated to any other persons.

4731-13-13

Subpoenas for purposes of hearing.

- (A) Upon written request, the board shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Each subpoena shall indicate on whose behalf the witness is required to testify. Copies of such subpoenas shall be issued to each representative of record.
- (B) For purposes of a hearing conducted pursuant to Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date and time at which the individual is to appear. With respect to the production of books, records and papers, such request may not specify a date of compliance less not more than fourteen seven days prior to hearing.
- (C) Except upon leave of the board or its hearing examiner, subpoena requests are to be filed with the board as provided in rule 4731-13-08 of the Administrative Code at least twenty-one fourteen days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.
- (D) In the event that the number of subpoenas requested appears to be unreasonable, the board or its hearing examiner may require a showing of necessity therefore and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within seven five days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
- (E) After the hearing has commenced the hearing examiner may order the issuance of subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to each representative of record.
- (F) Upon motion and for good cause, the hearing examiner may order any subpoena be quashed. Motions to quash shall be made in the manner provided in rules 4731-13-07 and 4731-13-08 of the Administrative Code, except that motions to quash shall be filed at least seven five days prior to the date of compliance. The non-moving party may file a response no later than five four days after service of the motion to quash or at least one day prior to the date of compliance whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.
- (G) Witnesses shall not be subpoenaed to prehearing conferences.

4731-13-14

Mileage reimbursement and witness fees.

- (A) Mileage shall be paid in the same manner as that allowed in the court of common pleas in criminal cases in the county of hearing.
- (B) The respondent shall not subpoena him or her self.
- (C) Mileage and witness fees shall be returned by anyone who fails to appear at the hearing for which he or she was subpoenaed.

4731-13-15

Reports and recommendations.

- (A) Within thirty days following the close of ~~an adjudication~~ a hearing conducted ~~pursuant to~~ under Chapter 119. of the Revised Code, the hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the board. The hearing shall not be considered closed until such time as the record is complete, as determined by the hearing examiner.
- (B) A copy of such written report shall be issued to each representatives of record. The copy issued to the respondent's representative of record shall be accompanied by notice of the date the report and recommendation is to be considered by the board.
- (C) Either representative of record may, within ten days of receipt of the hearing examiner's report and recommendation, file written objections to the report and recommendation. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the hearing examiner's recommendation, unless otherwise determined by the board.
- (D) Upon written request, the board may grant extensions of the time within which to file objections to the report and recommendation. In the event that the board is not in session, the president of the board may grant such extensions.
- (E) Unless otherwise determined by the board based upon written motion of a party, the board shall consider the hearing examiner's report and recommendation and any objections thereto at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may do any or all of the following: order additional testimony to be taken; permit the introduction of further documentary evidence; or act upon the report and recommendation. For purposes of taking such additional testimony or documentary evidence, the board may remand to the hearing examiner.
- (F) Any motion to reopen the hearing record for purposes of introducing newly discovered material evidence that , with reasonable diligence, could not have been discovered and produced at the hearing shall be filed in the manner provided in rules 4731-13-07 and 4731-13-08 of the Administrative Code. Such motion to reopen shall be filed not later than fourteen days prior to the scheduled consideration by the board of the hearing examiner's report and recommendation, unless the newly discovered material evidence, with reasonable diligence, could not have been discovered earlier than fourteen days prior to the scheduled consideration by the board. The other party shall have an opportunity to file, not later than seven days prior to the scheduled consideration by the board of the hearing examiner's report and recommendation, a memorandum contra to said motion.

Any submission of documentation or evidence received by the board after the close

of the record and prior to the date of consideration of the hearing examiner's report and recommendation by the board shall be deemed a motion to reopen the record pursuant to this rule. If such motion is filed prior to the issuance of the hearing examiner's report and recommendation, the hearing examiner shall rule on the motion. If such motion is filed subsequent to the issuance of the hearing examiner's report and recommendation, the board shall rule on the motion. All submitted materials must be accompanied by an affidavit from the moving party that sets forth how the evidence is material, how the evidence is newly discovered, and why it could not have been produced at hearing. The affidavit must also show that the party made a reasonably diligent effort to obtain the material prior to hearing. Failure to comply with the requirements of this rule shall result in the exclusion of the submitted material unless the moving party shows good cause and the board votes to admit the document or evidence.

- (G) Without leave of the board, no party shall be permitted to address the board at the time of consideration of the hearing examiner's report and recommendation. Any request for such leave shall be filed by motion no less than five days prior to the date the report and recommendation is to be considered by the board. No such leave shall be granted unless the opposing representative of record has been actually notified of the request , unless otherwise determined by the board.

- (H) If a request to address the board is granted, the opposing party may also address the board.

4731-13-16

Reinstatement or restoration of certificate.

Any disciplinary action taken by the board which results in a suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the certificate may be reinstated or restored, unless terms for reinstatement or restoration are otherwise governed by statute.

Such conditions may include but are not limited to:

- (A) Submission of a written application for reinstatement or restoration;
- (B) Payment of all appropriate fees [and fines](#) as provided in Chapter 4731. of the Revised Code;
- (C) Mental or physical examination;
- (D) Additional education or training;
- (E) Reexamination;
- (F) Practice limitations;
- (G) Participation in counseling programs;
- (H) Demonstration that the respondent can resume practice in compliance with acceptable and prevailing standards.

4731-13-17

Settlements, dismissals, and voluntary surrenders.

- (A) Settlement shall be negotiated on behalf of the board by the secretary and supervising member of the board. Any settlement agreement containing terms not in conformity with the disciplinary guidelines adopted by the board must have the concurrence of the board's president prior to execution.
- (B) Any matter which is the subject of a hearing may be settled by the parties. If settlement negotiations continue after the final day of hearing, the parties shall, within ten days of the final day of hearing, jointly present the hearing examiner with written notice specifying a period of time, not to exceed thirty days, during which the record shall be held open for purposes of negotiation.
 - (1) If the hearing record has closed or closes during the period of time specified in the parties' joint notice, such notice shall toll the hearing examiner's thirty-day time period for issuance of findings of fact and conclusions of law pursuant to section 4731.23 of the Revised Code.
 - (2) If, at the conclusion of the time period specified by the parties' joint notice, the hearing examiner has not received appropriate written notice that a settlement agreement has been executed, the tolling of the hearing examiner's thirty-day period for issuance of findings of fact and conclusions of law shall cease, no further settlement negotiations shall be undertaken, and no settlement agreement shall be executed in lieu of the filing of a report and recommendation by the hearing examiner and the issuance of a final order by the board.
- (C) Before being submitted to the board for ratification, all settlement agreements shall be in writing and shall be signed by the respondent and by the respondent's attorney, if any.
- (D) Signed settlement agreements shall be submitted to the board for ratification.
- (E) If the board ratifies a settlement agreement, the following shall sign the ratified agreement:
 - (1) The secretary and supervising member of the board shall sign the ratified agreement.
 - (2) If the settlement agreement was negotiated prior to the issuance of a notice of opportunity for hearing, an appropriate board staff attorney shall sign the ratified agreement.

- (3) If the settlement was negotiated subsequent to the issuance of a notice of opportunity for hearing, an attorney from the office of the attorney general shall sign the ratified agreement.
- (F) A notice of dismissal may be entered at any time prior to the filing of the report and recommendation. If negotiations continue after the final day of hearing, the procedures in paragraph (B) of this rule shall be followed. A notice of dismissal shall be authorized and signed by the board's secretary and supervising member.
- (G) This rule shall neither apply to nor limit the authority granted the board under division (M) of section 4731.22 of the Revised Code with regard to the surrender of a license or certificate or the withdrawal of an application for a license or certificate.
- (H) In the event that the board issues an amended notice of opportunity for hearing, the original notice of opportunity for hearing is automatically superseded by the amended notice. To request a hearing pursuant to Chapter 119. of the Revised Code, the respondent must file a new hearing request in response to the amended notice of opportunity for hearing. For purposes of this chapter of the Administrative Code, "amended cite" means a cite in which there has been a substantive alteration to one or more factual allegations or statutory charges, other than correction of a clerical or technical error, that relates to the allegations set forth in the original notice.

4731-13-18

Exchange of documents and witness lists.

(A) At the time the hearing examiner schedules the hearing with input from the parties, a case management schedule shall be created which will include the deadline dates for each party to provide ~~Any party may serve upon the other party's representative of record a written request for~~ a list of both the witnesses and the documents intended to be introduced at hearing.

~~(1) Except in the case of summary suspension, the requested list of witnesses and documents shall be provided within twelve days of service of the request.~~

~~(2) In the case of summary suspension, the requested list of witnesses and documents shall be provided within a reasonable time, but in no event less than three days prior to commencement of the hearing.~~

~~(B) Any party may serve upon the other party's representative of record a written request for copies of the documents intended to be introduced at hearing.~~

~~(1) Except in the case of summary suspension, the requested copies of documents shall be provided no later than fourteen days prior to commencement of the hearing.~~

~~(2) In the case of summary suspension, the requested copies of documents shall be provided no less than three days prior to commencement of the hearing.~~

~~(B)~~ (B) Upon motion of any party, failure without good cause to provide the list of witnesses and documents by the deadline date established in the case management schedule ~~comply with paragraph (A) or B of this rule~~ may result in exclusion from the hearing of such testimony or documents.

~~(C)~~ (C) The hearing examiner shall set, in the case management schedule, Upon written motion of a party or upon the hearing examiner's initiative, the hearing examiner shall issue an order setting forth a schedule the deadline dates by which the parties shall exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses.

(1) Absent extraordinary circumstances, the failure of a party to produce an exhibit under the terms of the case management schedule ~~hearing examiner's order~~ shall result in the exclusion of that exhibit from evidence at hearing.

(2) Absent extraordinary circumstances, the failure of a party to identify a lay or expert witness under the terms of the case management schedule ~~hearing examiner's order~~ shall result in the exclusion of that witness' testimony at hearing.

- (3) Absent extraordinary circumstances, the failure of a party to produce a written report from an expert witness under the terms of the [case management schedule](#) ~~hearing examiner's order~~ shall result in the exclusion of the witness' expert testimony at hearing.
- ~~(E)~~(D) A party shall notify the hearing examiner of any deficiency in the materials provided by the other party within a reasonable period of time after discovery of the deficiency.
- ~~(E)~~(E) A party shall notify the hearing examiner of any failure by the other party to comply with a deadline imposed pursuant to this rule within seven days of the failure to comply.
- ~~(G)~~(F) Any witness who intends to testify as an expert, including the respondent, must submit a written report. A written report by an expert shall set forth the opinions to which the expert witness will testify and the bases for such opinions. This paragraph will not preclude the respondent from testifying as a fact witness.
- ~~(H)~~(G) Any exhibit exchanged by the parties which is a patient record or which contains information that is required to be kept confidential pursuant to any state or federal law may be provided only to agents of the parties for purposes of the administrative hearing and shall not be disseminated to any other person or entity.

4731-13-20

Depositions in lieu of live testimony.

- (A) Upon written motion of any party, and upon service of that motion to the other party's representative of record, the hearing examiner may order that the testimony of a prospective witness be taken by deposition in lieu of live testimony. The hearing examiner may grant the motion if it appears probable that:
- (1) The prospective witness will be unavailable to attend or will be prevented from attending a hearing;
 - (2) The testimony of the prospective witness is material; and
 - (3) In the case of an expert witness, a showing of the unavailability of the expert to attend shall not be necessary for the hearing examiner's consideration of the motion to take a deposition in lieu of live testimony.
- (B) The testimony shall be taken under such conditions and terms as the hearing examiner shall set forth. Moreover, the hearing examiner may order the production of any designated books, papers, documents or tangible objects, so long as not privileged, at the same time and place.
- (C) The parties shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions in lieu of live testimony shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the parties. If the parties are unable to agree, the hearing examiner shall set the time or fix the place of deposition.
- (D) At a deposition in lieu of live testimony taken ~~pursuant to~~ under this rule, each party shall have the right, as at hearing, to fully examine witnesses.
- (E) The transcript of a deposition in lieu of live testimony taken under this rule shall be offered into evidence at hearing. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is submitted as evidence at the hearing shall be borne by the board.
- (F) The expense of any video deposition shall be borne by the requestor.

4731-13-20.1

Electronic Testimony.

- (A) Upon written motion of any party, and upon service of that motion to the other party's representative of record, the hearing examiner may order that the testimony of a prospective witness be taken by telephonic or real-time video testimony. The hearing examiner may grant the motion if it appears probable that:
- (1) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; and
 - (2) The testimony of the prospective witness is material.
- (B) The testimony shall be taken under such conditions and terms as the hearing examiner shall set forth. Moreover, the hearing examiner may order the production of any designated books, papers, documents or tangible objects, so long as not privileged, at the same time and place.
- (C) The hearing examiner shall set the time and fix the place of telephonic or real-time video testimony.

*** DRAFT - NOT YET FILED ***

4731-13-21

Prior action by the state medical board.

The hearing examiner shall admit evidence of any prior action entered by the board against the respondent. Such evidence shall include a certified copy of the final order in that prior action, and may also include other certified documents pertaining to that action.

*** DRAFT - NOT YET FILED ***

4731-13-22

Stipulation of facts.

Parties may, by stipulation, agree on any or all facts involved in proceedings before the hearing examiner. The hearing examiner may thereafter require development of any fact the hearing examiner deems necessary.

4731-13-23

Witnesses.

- (A) All witnesses at any hearing before the hearing examiner shall testify under oath or affirmation.
- (B) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that ~~witness'~~witness's rights, and that legal counsel may neither examine nor cross-examine any witnesses.
- (C) ~~Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena; The the~~ board may institute contempt proceedings pursuant to section 119.09 of the Revised Code; if a witness refuses to answer a question ruled proper at a hearing or disobeys a subpoena.
- (D) For purposes of this chapter:
 - (1) A sitting board member is an individual who is currently a member of the board.
 - (2) A presiding board member is a sitting board member who has a decisive role in the outcome of the matter in question and who is neither the secretary nor the supervising member as appointed pursuant to Chapter 4731. of the Revised Code.
 - (3) A non-presiding board member is a sitting board member who does not have a decisive role in the outcome of the matter in question due to recusal, absence or other reason.
 - (4) A presiding hearing examiner is a hearing examiner who is assigned to the matter in question pursuant to section 4731.23 of the Revised Code.
 - (5) A non-presiding hearing examiner is a hearing examiner who is not assigned to the matter in question pursuant to section 4731.23 of the Revised Code.
- (E) Neither a presiding board member nor a presiding hearing examiner shall be a competent witness in any adjudication proceeding. Evidence from other persons relating to the mental processes of a presiding board member or a presiding hearing examiner shall not be admissible.
- (F) Unless the testimony of a non-presiding board member or a non-presiding hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, neither a non-presiding board member nor a non-presiding hearing

examiner shall be a competent witness in any adjudication proceeding.

- (G) A sitting board member shall not be subpoenaed to provide expert testimony.
- (H) Any party may move for a separation of witnesses. Expert witnesses shall not be separated.
- (I) Upon commencement of a hearing, each party shall inform the hearing examiner of the identity of each potential witness for his or her cause who is present in the hearing room. Failure to so identify potential witnesses may be grounds for their later disqualification as witnesses.
- (J) A witness may, in the discretion of the attorney hearing examiner, testify as to an ultimate issue of fact. An expert witness may testify regarding the appropriate treatment for impairment.

*** DRAFT - NOT YET FILED ***

4731-13-24

Conviction of a crime.

A certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

4731-13-25

Evidence.

- (A) The "Ohio Rules of Evidence" may be taken into consideration by the board or its hearing examiner in determining the admissibility of evidence, but shall not be controlling. The "Ohio Rules of Evidence" are readily available to attorneys and may be found at libraries, bookstores and on the internet at www.sconet.state.oh.us/rules/evidence.

- (B) The hearing examiner may permit the use of electronic or photographic means for the presentation of evidence.

4731-13-26

Broadcasting and photographing administrative hearings.

If the hearing examiner determines that broadcasting, televising, recording or taking of photographs in the hearing room would not distract participants, impair the dignity of the proceedings or otherwise materially interfere with the achievement of a fair administrative hearing, the broadcasting, televising, recording or taking of photographs during hearing proceedings open to the public may be permitted under the following conditions and upon request:

- (A) Requests for permission for the broadcasting, televising, recording or taking of photographs in the hearing room shall be made in writing to the hearing examiner prior to the commencement of the hearing, and shall be made a part of the record of the proceedings;
- (B) Permission is expressly granted prior to commencement of the hearing in writing by the hearing examiner and is made a part of the record of the proceedings;
- (C) If the permission is granted, the hearing examiner shall specify the place or places in the hearing room where operators and equipment are to be positioned;
- (D) The filming, videotaping, recording or taking of photographs of witnesses who object thereto shall not be permitted.

4731-13-27

Sexual misconduct evidence.

In those cases where sexual misconduct has been alleged:

- (A) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's sexual activity with the offender, and only to the extent that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.
- (B) Prior to taking testimony or receiving evidence of any sexual activity of the victim, the hearing examiner shall resolve the admissibility of the proposed evidence in a closed hearing. The victim may be represented by counsel in that hearing or other proceedings to resolve the admissibility of evidence upon approval by the hearing examiner.
- (C) Nothing in this rule shall be construed as limiting the authority of the hearing examiner to close a hearing as provided under paragraph (B) of rule 4731-13-03 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

4731-13-28

Supervision of hearing examiners.

The hearing examiners shall perform their duties under the supervision and direction of the board's executive director, provided that the board, other than the secretary and supervising member, shall have exclusive authority to impose discipline based on the substance of the hearing examiners' reports and recommendations.

4731-13-30

Prehearing conference.

With or without written motion from any party, the hearing examiner may schedule a prehearing conference to address any matter related to preparation for or conduct of a hearing. The prehearing conference may be in person or by telephone. No witness testimony shall be taken during a prehearing conference. Any documents presented at the prehearing conference shall be made part of the hearing record. If a transcript of the proceeding is prepared, the transcript shall be made part of the hearing record.

4731-13-31

Transcripts of prior testimony.

- (A) Any transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a transcript is offered into evidence by a party, the other party may offer any other part.
- (B) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding concerns the basis for the board's allegations against the respondent. Upon offering part of a transcript or exhibit from a prior proceeding, the offering party may be required by the other party to present any other part of the offered item which should in fairness be considered contemporaneously with it.
- (C) Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in rule 4731-13-20 of the Administrative Code.
- (D) Nothing in this rule shall be construed to limit the use of a prior statement by a respondent as set forth in rule 4731-13-32 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

4731-13-32

Prior statements of the respondent.

Prior statements of the respondent shall not be excluded on the basis of hearsay.

*** DRAFT - NOT YET FILED ***

4731-13-33

"Physicians' Desk Reference".

The board or its hearing examiner may utilize the "Physicians' Desk Reference" (PDR) for information regarding the FDA approved labeling for dangerous drugs. The edition(s) of the PDR utilized shall be the edition(s) contemporaneous with the allegations set forth in the notice of opportunity for hearing upon which the hearing is based. The "PDR" is a well-known and readily available text. It may be found at libraries, bookstores or on the internet at www.pdr.net.

4731-13-34

Ex parte communication.

- (A) The members of the board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the board in any way other than by review of the evidence of record shall be considered by such member in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless the member excuses himself or herself from participation in the decision on the ground that he or she cannot restrict his or her decision on the matter to the evidence of record.
- (B) Except as otherwise provided under this chapter or by statute, no hearing examiner or member of the board shall initiate or consider ex parte communications concerning a substantive matter related to a pending hearing ~~adjudicatory proceeding~~. Nothing contained herein, however, shall preclude the hearing examiner from nonsubstantive ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.
- (C) The hearing examiner and members of the board shall disclose on the public record the source of any ex parte or attempted ex parte communications pertaining to a substantive issue. If the recipient of the ex parte communication determines that he or she can no longer render an impartial decision, the recipient shall recuse himself or herself from further participation in consideration of the matter.
- (D) If requested by any party, the recipient of the ex parte communication shall file with the board an affidavit setting forth the substance of the ex parte communication. The affidavit shall be sealed, held as proffered ~~preoffered~~ material and maintained with the hearing record.

4731-13-35

Severability.

- (A) Except as otherwise provided under this chapter or by statute, a rule promulgated under this chapter shall apply only to those administrative proceedings for which the notice of opportunity for hearing was mailed to respondent, or his representative, on or after the effective date of the particular rule.

- (B) If any provision of the rules in this chapter of the Administrative Code or if the application of any provision of the rules in this chapter of the Administrative Code is held invalid, the invalidity shall not affect any other provision of the rules in this chapter, or the application of any other provision of the rules in this chapter, that can be given effect without the invalid provision or application, and, to this end, the provisions of the rules in this chapter are hereby declared severable.

4731-13-36

Disciplinary actions.

For purposes of Chapters 4730., 4731., 4760., ~~and 4762.~~ 4774. and 4778. of the Revised Code and ~~agency 4731 of~~ Chapters 4730., 4731., 4774. and 4778. of the Administrative Code:

- (A) "Permanent revocation" means the permanent loss of a certificate to practice in Ohio and the inability, at any time, to reapply for or hold any certificate to practice in Ohio. An individual whose certificate has been permanently revoked shall forever thereafter be ineligible to hold any certificate to practice, and the board shall not accept from that individual an application for reinstatement or restoration of the certificate or for issuance of any new certificate.
- (B) "Revocation" means the loss of a certificate to practice in Ohio. An individual whose certificate has been revoked shall be eligible to submit an application for a new certificate. The application for a new certificate shall be subject to all requirements for certification in effect at the time the application is submitted. In determining whether to grant such an application, the board may consider any violations of Chapters 4730., 4731., 4760., ~~and 4762.~~ 4774. and 4778. of the Revised Code, whichever is applicable, that were committed by the individual before or after the revocation of the individual's certificate, including those that formed the basis for the revocation. All disciplinary action taken by the board against the revoked certificate shall be made a part of the board's records for any new certificate granted under this rule.
- (C) "Suspension" means the temporary loss of a certificate to practice in Ohio. A suspension shall be imposed for either a definite term or an indefinite term.
- (1) An order for a definite term of suspension shall specify the time period of the suspension. A certificate which has been suspended for a definite term shall be reinstated at the conclusion of the specified time period.
- (2) An order for an indefinite term of suspension shall contain a written statement of the conditions under which the certificate may be reinstated. Such conditions may include, but are not limited to, the following:
- (a) A minimum time period of suspension;
 - (b) Submission of a written application for reinstatement;
 - (c) Payment of all appropriate fees and fines as provided in Chapters 4730., 4731., 4760., ~~and 4762.~~ 4774. and 4778. of the Revised Code;
 - (d) Mental or physical examination;

- (e) Additional education or training;
 - (f) Reexamination;
 - (g) Participation in counseling programs;
 - (h) Demonstration that the certificate holder can resume practice in compliance with acceptable and prevailing standards;
 - (i) Satisfactory completion of all terms, conditions or limitations placed upon the certificate holder through a board-approved consent agreement or board order;
 - (j) Passage of an examination to determine present fitness to resume practice, pursuant to section 4731.222 of the Revised Code; and
 - (k) Acceptance of conditions of probation or practice limitations.
- (D) "Limitation" means to preclude the certificate holder from engaging in a particular conduct or activity, to impose conditions on the manner in which that conduct or activity may be performed, or to require the certificate holder to abide by specific conditions in order to continue practicing medicine. A limitation shall be either temporary or permanent.
- (E) "Probation" means a situation whereby the certificate holder shall continue to practice only under conditions specified by the board. Failure of the certificate holder to comply with the conditions of probation may result in further disciplinary action being imposed by the board. The probation period shall be for either a definite or an indefinite term. If probation is for an indefinite term, the board shall establish a minimum probation period and the board shall release the certificate holder from the conditions of probation upon completion of the minimum probation period and upon the board's determination that the purpose of probation has been fulfilled.
- (F) "Reprimand" means the certificate holder is formally and publicly reprimanded in writing.
- (G) "No Further Action" means that the board finds that a violation occurred but declines to impose any disciplinary sanction. No further action shall be ordered by the board under circumstances where the board finds that all necessary remedial measures have been completed by the certificate holder, future monitoring is unnecessary and reprimand is not warranted.

- (H) "Dismissal" means that the board finds that no violation occurred.
- (I) "Grant of Application for Certificate" means that the board grants an application for a certificate to practice. In matters where disciplinary violations have been alleged against an applicant for a certificate, the grant of an application for certificate may be accompanied by a suspension, limitation, probation, reprimand or no further action.
- (J) "Permanent Denial" and "Permanent Refusal to Register or Reinstate" mean the permanent denial of an application for a certificate to practice in Ohio. An individual whose application for a certificate has been permanently denied shall forever thereafter be ineligible to apply to the board for any certificate to practice, and the board shall not accept from that individual an application for issuance of any certificate.
- (K) "Denial" and "Refusal to Register to Reinstate" mean the denial of an application for a certificate to practice in Ohio. An individual whose application for a certificate has been denied shall be eligible to submit a new application for a certificate. The new application shall be subject to all requirements for certification in effect at the time the new application is submitted. In determining whether to grant a new application, the board may consider any violations of Chapters 4730., 4731., 4760., ~~and 4762.~~ 4774. and 4778. of the Revised Code, whichever is applicable, that were committed by the individual before or after the denial of the individual's previous application, including those that formed the basis for the denial.