

TO BE RESCINDED

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 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.
- (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 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.
- (D) No continuance of an adjudicatory hearing under division (G) or (I) of section 4731.22 of the Revised Code 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.
- (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.
- (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.

Effective:

Five Year Review (FYR) Dates: 05/05/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.08, 119.09, 4731.22, 4731.23
Prior Effective Dates: 6/30/89, 3/27/97, 5/31/02, 2/28/04

4731-13-06

Continuance of hearing.

- (A) Except in matters of summary suspension, the board or the board through its hearing examiner, shall continue 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 and available from the board's website at <http://med.ohio.gov/>. 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) A motion for a continuance shall not be granted unless good cause and proper diligence is demonstrated.
- (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 hearing 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 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.
- (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.

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TO BE RESCINDED

4731-13-08 **Filing.**

- (A) A document is "filed" when it is received and time stamped in the offices of the board.
- (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 case control office.

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Prior Effective Dates: 6/30/89, 2/28/04

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 for filing 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.

Replaces:

4731-13-08

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TO BE RESCINDED

4731-13-18

Exchange of documents and witness lists.

(A) 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.

(C) Upon motion of any party, failure without good cause to comply with paragraph (A) or B of this rule may result in exclusion from the hearing of such testimony or documents.

(D) Upon written motion of a party or upon the hearing examiner's initiative, the hearing examiner shall issue an order setting forth a schedule 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 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 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 hearing examiner's order shall result in the exclusion of the witness' expert testimony at hearing.

- (E) 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.
- (F) 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) 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) 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.

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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 a list of both the witnesses and the documents intended to be introduced at hearing.
- (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 may result in exclusion from the hearing of such testimony or documents.
- (C) The hearing examiner shall set, in the case management 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 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 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 shall result in the exclusion of the witness' expert testimony at hearing.
- (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) 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.
- (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.
- (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.

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