

## CHAPTER 5615

### BOARD OF MEDICAL PRACTICE

### HEARINGS BEFORE THE BOARD

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#### 5615.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5615.0100 to 5615.1300, the terms defined in this part have the following meanings.

Subp. 2. **Board.** "Board" means the Minnesota Board of Medical Practice or any member or members thereof authorized by law to adjudicate contested cases.

Subp. 3. **Contested case.** "Contested case" means a proceeding before the board in which the legal rights, duties, or privileges of specific parties under the provisions of any statute granting jurisdiction to the board are required by law or constitutional right to be determined after a board hearing.

Subp. 4. **Party.** "Party" includes the board, the respondent, and any person, other than a member of the board in the member's official capacity, who has been permitted to appear in the proceeding.

Subp. 5. **Respondent.** "Respondent" means any person or professional corporation against whom an accusation or charge has been filed pursuant to any statute granting jurisdiction to the board, or any person or professional corporation which is subject to a dispute concerning any legal rights, duties, or privileges granted or conferred thereby.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279; L 1991 c 106 s 6*

#### 5615.0200 ACCUSATION.

A hearing to determine whether a right, license, certificate, registration, or privilege should be revoked, suspended, qualified, restricted, limited, or conditioned, shall be initiated by the issuance of an accusation by the board. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be in sufficient detail to enable the respondent to prepare a defense. It shall specify the statutes and rules which the respondent is alleged to have violated. The accusation may also include any additional information which the board deems appropriate. The accusation shall be verified by a member of the board. The verification may be on information and belief.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279*

#### 5615.0300 STATEMENT OF ISSUES.

Subpart 1. **Initiation of hearing.** A hearing to determine whether a right, license, certificate, registration, or privilege should be granted, issued, or renewed shall be initiated either by the board or by the applicant by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the applicant must show compliance by producing proof at the hearing and, in addition, any additional matters which have come to the attention of the initiating party and which would bear upon the issues presented.

Subp. 2. **Verification.** The statement of issues shall be verified by the initiating party. The verification may be on information and belief.

Subp. 3. **Service of statement of issues.** If the board is the initiating party, the statement of issues shall be served in the same manner as an accusation, and shall be accompanied by a

notice of hearing substantially in the form set forth in part 5615.0600. If the applicant is the initiating party, the statement of issues shall be served on the board by registered or certified mail, addressed to the board at its office in St. Paul, Minnesota, and such service shall be deemed a request for hearing.

Subp. 4. **Notice of hearing.** Within ten days after such service, the board shall deliver or mail to the applicant a notice of hearing, substantially in the form set forth in part 5615.0600.

Subp. 5. **Time of hearing.** In either case, the hearing shall be held not less than 20 days nor more than 120 days after service of the statement of issues.

Subp. 6. **Place of hearing.** Hearings shall be held in St. Paul, Minnesota, at a place designated by the board, unless the parties, by agreement, select another place within the state of Minnesota.

**Statutory Authority:** *MS s 147.01 subd 3*

#### 5615.0400 SERVICE OF ACCUSATION.

Upon the issuance of an accusation, the board shall serve a copy thereof on the respondent as provided in this part.

If the respondent is a resident of the state of Minnesota and can be found therein, the accusation and all accompanying information shall be served upon respondent personally in the manner provided by law for the service of a summons in a civil action.

If the respondent is not a resident of the state of Minnesota, or if the respondent is a resident of the state of Minnesota but cannot be found therein, the accusation and all accompanying information shall be served upon respondent by registered or certified mail, addressed to the most recent address theretofore furnished by the respondent to the board, and the same shall be deemed received by respondent five days after having been deposited in the United States mail, postage prepaid, addressed to such address.

The appearance of respondent in the proceeding shall constitute a waiver of any defect in such service.

Service may be proved by the affidavit of the person making the same.

**Statutory Authority:** *MS s 147.01 subd 3*

#### 5615.0500 TIME AND PLACE OF HEARING.

The board shall determine the time and place of the hearing on the accusation which shall be held not less than 20 days nor more than 120 days after service of the accusation upon the respondent. The hearing shall be held in St. Paul, Minnesota, at a place designated by the board, unless the parties, by agreement, select another place within the state of Minnesota.

**Statutory Authority:** *MS s 147.01 subd 3*

#### 5615.0600 NOTICE OF HEARING.

A notice of hearing on the accusation shall be served by the board upon respondent at the same time and in the same manner as the service of the accusation. The notice of hearing shall be substantially in the following form:

You are hereby notified that a hearing will be held before the Minnesota Board of Medical Practice at \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ M., o'clock, upon the charges made in the accusation served upon you. You may be present at the hearing; may be, but need not be, represented by counsel of your own choosing; may present any relevant evidence on your own behalf and will be given full opportunity to cross-examine all witnesses who testify therein. If you fail to appear at the time and place above set forth, such failure will constitute a waiver of your right to a hearing and the Minnesota Board of Medical Practice may proceed upon the accusation with or without a hearing.

**Statutory Authority:** *MS s 147.01 subd 3;*

**History:** *L 1991 c 106 s 6*

#### 5615.0700 DEPOSITIONS.

On request of the respondent, or upon notice from the board to the respondent, the board may permit the testimony of any material witness, residing within or without the state, to be

taken for use as evidence in the hearing, by deposition in the manner prescribed by law for such depositions in civil actions. The request or notice shall set forth the nature of pending proceedings; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable to attend; and the board shall, thereupon, forward a request to the witness to appear and testify before an officer named in the request.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279*

#### **5615.0800 CONDUCT OF HEARING.**

**Subpart 1. Role of board members.** Every hearing in a contested case shall be presided over by a member of the board. A case may be heard by six or more members of the board.

**Subp. 2. Legal counsel.** The attorney for the board shall advise the member or members of the board concerning the conduct of the hearing and rulings on the admission or exclusion of evidence and other matters of law.

**Subp. 3. Disqualification of board member.** Any member of the board shall voluntarily disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined by the other members of the board. No board member shall withdraw voluntarily or be subject to disqualification if the disqualification would prevent the existence of a quorum qualified to act in a particular case.

**Subp. 4. Record of hearings.** All proceedings at the hearing shall be reported in writing, and the board shall prepare an official record, which shall include testimony and exhibits in each contested case, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279*

#### **5615.0900 EVIDENCE.**

**Subpart 1. Oath.** All evidence shall be taken only on oath or affirmation.

**Subp. 2. Rights of parties.** Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in direct examination, to impeach any witness regardless of which party first called that witness to testify, and to rebut the evidence against that party. If the respondent does not testify in the respondent's own behalf, she or he may be called and examined as if under cross-examination.

**Subp. 3. Admissible evidence.** The board may admit and give probative effect to relevant evidence which possesses probative value and shall not be bound by the technical rules relating to evidence and witnesses; provided, however, that the board shall give effect to the rules of privilege recognized by law. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. All evidence including records and documents, except tax returns and tax reports, in the possession of the board of which it desires to avail itself shall be offered and made a part of the record in the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279*

#### **5615.1000 DECISION IN CONTESTED CASE.**

**Subpart 1. Votes required.** No right, license, or privilege shall be granted, issued, renewed, revoked, suspended, limited, qualified, restricted, or conditioned except upon the affirmative vote of at least six members of the board.

**Subp. 2. Exceptions and argument before the board.** Whenever, in a contested case, a member of the board who has not participated in the hearing votes in the decision of the case,

a final decision, if adverse to the respondent, shall not be made until a proposed decision, including the statement of reasons therefor, has been served on the respondent, and opportunity has been afforded to file exceptions and present argument to all of the members of the board who are to render the final decision.

**Subp. 3. Respondent's argument and evidence.** The respondent shall have the opportunity to present either oral or written argument and to present additional newly discovered evidence after the close of the record but prior to final decision.

**Subp. 4. Informal dispositions.** Informal disposition of a contested case may be made in the manner prescribed by law.

**Statutory Authority:** *MS s 147.01 subd 3*

#### **5615.1100 FORM OF DECISION AND FINDINGS.**

Every decision and order adverse to a party to the proceeding shall be in writing and, except when such decision or order is made pursuant to stipulation with or the consent of the respondent, shall contain a statement of findings or reasons, a determination of the issues presented and the penalty, if any, or decision of the board. The findings shall consist of a statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceedings shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying statement of reasons together with proof of service shall be delivered or mailed, upon request, to the respondent or to the respondent's attorney of record.

**Statutory Authority:** *MS s 147.01 subd 3*

**History:** *17 SR 1279*

#### **5615.1200 EFFECTIVE DATE OF DECISION.**

The decision or order of the board shall become effective immediately upon its service on respondent; provided, however, that the board may, in its discretion, stay the enforcement of its decision pending appeal or reconsideration within 30 days after said service.

**Statutory Authority:** *MS s 147.01 subd 3*

#### **5615.1300 REVIEW OF DECISION IN CONTESTED CASE.**

The board may, upon its own motion or upon petition by respondent, reconsider or grant a rehearing of any decision rendered in a contested case or may condition any such decision upon just and reasonable grounds.

The filing of a petition for review shall not automatically stay the enforcement of the board's decision.

**Statutory Authority:** *MS s 147.01 subd 3*