

**GEORGIA BOARD OF DENTISTRY**  
**Rules Committee Meeting**  
**October 4, 2013**  
**2 Peachtree St., N.W. 36<sup>th</sup> Floor**  
**Atlanta, GA 30303**  
**8:30 a.m.**

**The following committee members were present:**

Dr. Tom Godfrey  
Dr. Barry Stacey  
Dr. Bert Yeargan

**Staff Present:**

Tanja Battle, Executive Director  
Bryon Thernes, Board Attorney  
Anil Foreman, Legal Officer  
Brandi Howell, Bus Operations Analyst

**Visitors:**

Melana McClatchey, GDA

**Open Session**

Dr. Godfrey established that a quorum was present and called the meeting to order at 8:46 a.m.

**Approval of Minutes**

Dr. Stacey made a motion to approve the minutes for the July 12, 2013 Rules Committee Meeting. Dr. Yeargan seconded and the Committee voted unanimously in favor of the motion.

**Discussion Topics**

Procedural Rules: Dr. Stacey made a motion that the Committee provide the proposed amended rules for the Board's consideration to vote to post at the Board meeting today. Dr. Yeargan seconded and the Committee voted unanimously to provide the following rules for the Board's consideration:

**150-15-.01 Scope and Application of These Rules.**

The following Rules govern procedure in "contested cases" as that term is defined in the Georgia Administrative Procedure Act (O.C.G.A. 50-13-2(2)) and which are conducted before the Board of Dentistry.

**150-15-.02 Docket**

- (1) The Executive Director shall keep a book known as a docket, which shall be arranged by a sequential numbering system for each case or other matter and shall show for each case or matter, as permitted by law, all proceedings, actions and filings.
- (2) The Executive Director shall keep a docket index by both docket number and alphabetical list of the names of the Respondents in all proceedings.

**150-15-.03 Office Hours**

The offices of the Board of Dentistry shall be open from 8:00 a.m. to 5:00 p.m. each weekday except Saturdays, Sundays and legal holidays.

**150-15-.04 Communications.**

All communications, including correspondence, motions, and pleadings, shall be filed with the Executive Director, Board of Dentistry, 2 Peachtree Street, 36<sup>th</sup> Floor, Atlanta, GA 30303. Copies

shall be furnished to all parties of record, including the attorney representing the State. An original and one duplicate of all correspondence, motions, and pleadings shall be filed with the Executive Director and shall comply in all respects with Rule 150-18-04.

#### **150-15-.05 Date of Filing.**

All communications, correspondence, motions and pleadings in any proceedings shall be deemed to be filed or received on the date on which they are actually received by the Executive Director.

#### **150-15-.06 Computation of Time**

Computation of any period of time referred to in these rules shall begin with the first day following that on which the act which initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Board of Dentistry is closed, the period shall run until the end of the following business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is seven (7) days or less, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; or otherwise such days shall be included in the computation.

#### **150-15-.07 Extension of Times**

It shall be within the discretion of the presiding officer to extend, for good cause shown, any time limit prescribed or allowed by these rules. All requests for an extension should be made by a motion in accordance with 150-17-01 and shall indicate therein whether all parties concur. The presiding officer shall notify all parties of its action upon the motion. Extension shall be granted only when the presiding officer is satisfied that good cause has been shown and not otherwise.

#### **150-15-.08 Signatures**

Every notice, pleading, petition, motion or other document filed by a party, represented by an attorney, shall be signed by at least one attorney of record in his individual name and his address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading, and that it is not interposed for delay.

#### **150-15-.09 Ex-parté Communication**

No person not employed by the Board of Dentistry shall communicate *ex parte* with the presiding officer, any member of the Board of Dentistry or any employee of the Board of Dentistry involved in the decisional process with respect to the merits of a contested case. If any *ex parte* communication is directed to any person in violation of these rules, the presiding officer and all other parties shall be immediately informed of the substance of the communication and the circumstances of its receipt; provided, that a request for information with respect to the status of a proceeding shall not be prohibited by this section.

#### **150-15-.10 Petition for Promulgation, Amendment, or Repeal of Rules.**

(1) Form of Petition. Each petition for promulgation, amendment or repeal of rules made pursuant to the Georgia Administration Procedure Act shall be filed with the Board of Dentistry. The petition shall be in writing and shall state:

(a) The name and address of the petitioner;

(b) The full text of the rule requested to be amended or repealed, or the full text of the rule desired to be promulgated;

(c) A statement of the reason such rule should be amended, repealed, or promulgated including a statement of all pertinent existing facts which relate to petitioner's interest in the matter;

(d) Citations of legal authority, if any, which authorize, support, or require the action requested by petition. The petition shall be verified under oath by or in proper behalf of; the petitioner.

(2) Proceeding on Petition. Upon receipt of the petition, the Board of Dentistry shall decide upon the action to be taken. Within thirty days after receipt of the petition, the Board either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making or rule-changing proceedings in accordance with Section 4 of the Georgia Administrative Procedure Act.

### **150-16-01 Initial Pleading**

(1) The hearing in a contested case shall be commenced by the Agency's filing of a notice of hearing directed to the respondent, or respondents.

(2) Every pleading or other paper submitted for filing in a contested case, to the extent possible, shall contain the following:

(a) A title which indicates the nature of the proceeding and the parties involved therein;

(b) The name of the Agency;

(c) A short and plain statement of the nature of the pleading (e.g. Answer, Motion for Continuance, etc.);

(d) In addition, the notice of hearing shall, to the extent possible, contain the following:

1. A short and plain statement of the matters asserted or the issues involved;

2. A clear and concise statement of the laws involved;

3. A notice of the rights of the person to whom the notice of hearing is directed;

4. A statement that an answer to the matters asserted is required;

5. Any other information required by law or deemed appropriate by the Agency.

### **150-16-02 Answer**

The party to whom a notice of hearing is directed must file with the Agency an answer within fourteen (14) days after service of the notice of hearing. All allegations contained in the notice of hearing which are not specifically admitted are deemed denied.

### **150-16-03 Replies**

A reply to the answer shall not be permitted and any new matters asserted in the answer shall be deemed denied.

### **150-16-04 Amendments**

Any party, including the Agency, may amend any pleading or notice without leave until the eighth day prior to the date set for the hearing on the matter. Thereafter a party may amend his pleadings only by leave of the Board or its designee and leave shall be freely given when justice so requires. If an amendment is made to a notice of hearing, the answer to said amended notice shall be filed within seven (7) days after service of the amended notice, unless otherwise ordered by the presiding officer.

### **150-17-01 Motions: Written and Oral**

(1) An application to the Agency for an order to take any action or to enter any order shall be made by motion which, unless made during the hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth the action or order sought. A copy of all written motions shall be served upon the parties in accordance with Chapter 150-18.

(2) A motion for a continuance or an extension of time shall be ruled upon by the presiding officer forthwith. All other motions shall be ruled upon by the presiding officer at the outset of the hearing, after an opportunity for argument by the parties; provided, however, that when the presiding officer is a duly appointed hearing officer, the presiding officer may establish a hearing schedule and dispose of motions at his discretion. The presiding officer may request briefs in support of or in opposition to any motion.

## **150-17-.02 More Definite Statement**

A motion for more definite statement shall be filed and ruled upon pursuant to 150-17-.01.

## **150-17-.03 General Procedures.**

Proceedings before the Agency shall be conducted as expeditiously as possible, with due regard to the rights of the parties. In contested cases before the Board of Dentistry upon issuance of a notice of hearing, the procedures set forth in this chapter and Chapters 150-15 through Chapter 150-24 shall enable the parties to obtain relevant information needed for preparation of the case, to the extent that such disclosure is authorized by law.

## **150-17-.04 Witnesses, Respondent Statements, Witness Statements.**

- (1) The parties shall within a reasonable time prior to the commencement of the hearing but at least ten (10) days prior to the hearing, exchange lists of the names, addresses, and phone numbers of witnesses, including experts, whom each party expects to call or may call on its behalf.
- (2) The parties shall also, within a reasonable period of time prior to the hearing, exchange copies of documents, and designate documents already in the possession of the other party which are intended to be introduced as evidence at the hearing. The parties shall similarly, upon request, make available to each other for inspection, copying, testing or sampling any tangible item intended to be introduced as evidence.
- (3) Respondent shall be furnished, within a reasonable time prior to the commencement of the hearing but at least ten (10) days prior to the hearing, any written statements or other record memorializing oral statements made by the Respondent during the course of the investigation.
- (4) The parties shall be required to confer either in person or by telephone, in reasonable advance of a scheduled hearing date but at least seven (7) days prior to the hearing, in a good-faith attempt to reach an agreement as to the admissibility of any documents or tangible items intended to be offered in evidence for either side. The parties may stipulate as to any matter of fact and such stipulation will satisfy a party's burden of proving the fact alleged. The parties shall be encouraged to reach pre-hearing stipulations which could facilitate adjudication of the case. The hearing officer, upon his or her own motion or upon the request of either party, may schedule a pre-hearing conference to hear and rule on motions or other preliminary matters, or otherwise facilitate adjudication of the case.

## **150-17-.05 Pre-Hearing Discovery.**

Except as may be expressly authorized by these rules or by statute, no other forms of prehearing discovery shall be authorized or permitted including, but not limited to the following: interrogatories; requests for production of documents and things; requests for physical or mental examination; and requests for admission.

## **150-18-.01 By the Agency**

Service of the notice of hearing, initial decision and final order shall be by personal delivery or certified mail to the licensee or applicant, in addition to counsel of record. All other notices, pleadings, orders, motions and other documents shall be served by hand delivery or first class mail.

## **150-18-.02 Service On All Parties.**

A copy of the answer and all other pleadings, notices, motions, briefs, memoranda and other documents filed by any party with the Executive Director shall be served upon all other parties to the proceeding, including counsel for the Agency, by personal delivery or by first-class mail.

## **150-18-.03 To Party's Attorney**

Service upon a party's attorney shall be deemed service upon the party, except as provided in 150-18-.01.

## **150-18-.04 Filing of Pleading**

A pleading subsequent to the Notice of Hearing shall not be entitled to filing unless accompanied by an Acknowledgement of Service required hereunder or a certificate that the service required hereunder has been made. In addition, a pleading shall not be entitled to filing unless it is stamped or otherwise marked in the upper left hand corner on the first page of the document as "original", and a duplicate copy is simultaneously submitted which is stamped or otherwise marked as "duplicate" in the upper left hand corner on the first page.

## **150-19-.01 Substitution of Parties**

The presiding officer may upon motion, at any time during the course of the proceeding, permit such substitution of parties as justice may require.

## **150-19-.02 Intervention**

Any person desiring to intervene pursuant to Section 14 of the Georgia Administrative Procedure Act (O.C.G.A. 50-12-14) shall file a motion in accordance with Rule 150-18-.04, which motion shall state therein the specific grounds for seeking intervention. The Agency and any other parties shall have fourteen (14) days from the date of service to file a response to such request.

## **150-20-.01 Evidence on Hearings**

In all hearings, the testimony of witnesses shall be taken orally before the Agency or hearing officer, unless otherwise provided by these rules.

Authority Ga. L. 1931, pp. 7, 35, 37.

## **150-20-.02 Evidence on Motions**

When a motion is based on facts not appearing of record, the presiding officer may hear the matter on affidavits presented by the respective parties, but the presiding officer may direct that the matter be heard wholly or partly on oral testimony.

## **150-20-.03 Objections and Exceptions**

Formal exceptions to rulings on evidence are unnecessary. It is sufficient that a party, at the time that a ruling of the presiding officer is made or sought, makes known to the presiding officer the action which he desires taken or his objections to such action and his grounds therefor.

## **150-20-.04 Subpoenas.**

(1) In contested cases, subpoenas shall be issued without discrimination between public and private parties. At any time after issuance of the Notice of Hearing, and prior to the scheduled date for the hearing, the parties may request the issuance of subpoenas by filing a written request with the Executive Director, in accordance with Rule 150-15-.04, with appropriate service on the opposing party or counsel. Subpoena requests shall state the name and complete address of the person to whom it is directed.

(2) Subpoenas issued pursuant to a request in accordance with Rule 150-20-.04(1) shall not be issued in blank. Every subpoena issued by the Executive Director shall state the name of the Board of Dentistry and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the hearing at a time and place therein specified, or to produce documents for examination at the hearing, or both. If such a subpoena is directed to any member, investigator, employee, or other agent or representative of the Agency, including experts retained by the Agency for purposes of the particular case, production of documentary evidence from the Agency or investigative file of the applicant or licensee and the taking of testimony at the hearing from such person or persons shall be governed by applicable provisions in the Dental Practice Act, and by O.C.G.A. 43-1-19(h)(2).

(3) The party requesting the issuance of the subpoena shall be responsible for serving the same and paying the cost of securing the attendance of witnesses, in the same manner as prescribed by law in civil cases in Superior Court.

**150-21-01 Taking of Testimony by Deposition.**

(1) At anytime during the course of the proceeding, the presiding officer may, in his discretion, permit the testimony of a witness to be taken by deposition. Application to take testimony by deposition shall be made in writing and shall be filed with the Executive Director of the Board and served upon all parties to the proceedings, including counsel for the Agency.

(2) The application shall state the name and address of the witness, the subject matter concerning which the witness is expected to testify, the date, time and place of the proposed deposition, and the reason why the witness cannot appear and testify before the Agency. The presiding officer may, in his discretion, allow the application where the circumstances are such that the witness to be deposed cannot appear before the Agency without substantial hardship to the deponent or to the parties to the case or that testimony by any other method will unduly delay expeditious completion of the proceedings. An application for the taking of testimony by deposition shall not be allowed if the deposition would result in any undue burden to another party or any undue delay of the proceedings. If the application is allowed, the presiding officer should give notice of the taking of the testimony by deposition to all parties.

**150-21-02 Conduct of the Deposition**

(1) Examination and cross-examination of the witness shall proceed as would be permitted at the hearing and under those rules of evidence applicable to proceedings conducted pursuant to the Georgia Administrative Procedure Act. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection.

(2) All errors and irregularities in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is served upon the Board prior to the deposition. Objections to taking testimony by depositions because of disqualification of the officer before whom it is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) Objections to the competency of a witness are not waived by failure to make them before or during the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. Errors and irregularities occurring at the taking of the testimony in the manner of taking the deposition, in the form that the questions are answered, in the oath of affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed or cured if properly presented, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(4) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer taking the testimony are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(5) The deposition shall be sealed and filed with the Board of Dentistry.

**150-21-03 Taking of Testimony by Interrogatory**

Application to take testimony by interrogatory shall be made and allowed in the same manner as prescribed in Rule 150-21-01.

## **150-22-.01 Notice of Hearing**

The Agency shall notify all parties of the date, time and place of the hearing.

## **150-22-.02 Conduct of the Hearing**

(1) The hearing shall be conducted by the Board of an administrative law judge (ALJ) appointed by the Office of State Administrative Hearings (OSAH).

(2) Duties of the Presiding Officer. The Board shall have the authority to do the following: to administer oaths and affirmations; rule upon offers of proofs; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing briefs and memoranda; dispose of motions; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the presiding officer.

(3) Sworn Testimony. All testimony given at the hearing shall be under oath administered by the Board or any person designated by the Board.

(4) Order of Presentation. The State, or in a proper case a moving or complaining party, shall present its evidence or testimony first. Where there is more than one moving or complaining party, the order of presentation shall be at the discretion of the Board. After all of the evidence and testimony of the State, or the moving or complaining party, has been received, all other parties shall be allowed to present their evidence or testimony. All parties, other than the party introducing the testimony, shall be allowed to cross-examine any witness immediately after his testimony has been received. The State, or the moving or complaining party, shall be allowed to present rebuttal testimony or evidence if it so desires.

## **150-22-.03 Hearing Officers**

The Board or the Chairman or president of the Board may appoint a hearing officer to act as the presiding officer in the proceeding.

## **150-23-.01 Consolidation**

The presiding officer upon his own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters at issue in such proceedings.

## **150-24-.01 Briefs**

Briefs may be filed by a party or any interested person either before or during the course of the hearing, or within such time thereafter as the Board or its designee shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

## **150-24-.02 Filing of Documents Subsequent to Hearing**

(1) Upon request, the Board or its designee may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of the hearing, such time to be determined by the Board or its designee. If a request for such subsequent filing is granted, the requesting party shall, on or before the date set for filing, send copies of all documents or exhibits which are the subject of the request to all other parties.

(2) Prior to the admission into evidence of any documents or exhibits filed subsequent to the hearing, the opposing party shall have ten (10) days from the date of service of copies of such proposed documents or exhibits to file any objections to the admission of such evidence.

## **150-24-.03 Motion to Reopen Hearing**

A party may, at any time prior to the rendering of a final decision by the Agency, move that the hearing be reopened for the purpose of receiving new evidence. Such motions shall be filed in accordance with the provisions of Rule 150-17-.01 and shall be granted only for good cause shown. The Agency shall notify all parties of its action upon the motion. Notwithstanding the above, the Agency may at any time prior to the rendering of a decision, reopen the hearing on its own motion.

#### **150-24-.04 Review of Initial Decision.**

(1) Either the Respondent or the Board may seek review of the initial decision of the hearing officer pursuant to O.C.G.A. 50-13-17(a). If the Respondent files a timely motion for review of the initial decision of the hearing officer, the Respondent may include therein a statement of the reasons for seeking review and alleged errors made by the hearing officer in the initial decision. If the Board files a timely order for review of the initial decision on its own motion, it may include in its order the issues to be considered by the Board at the review hearing.

(2) Upon the filing of a timely motion by Respondent seeking review of the initial decision of the hearing officer, or upon the filing of a timely order for review of an initial decision by the Board on its own motion, notice of the date and time for the review shall be served on Respondent or counsel for Respondent and counsel for the Agency.

(3) The Board may appoint a hearing officer for review, other than the hearing officer who entered the initial decision, who shall preside over the review proceedings and control the conduct of the review hearing. In acting as presiding officer, the hearing officer for review shall rule on all procedural and evidentiary questions that arise during the course of the review. At the direction of the Board, the hearing officer for review shall draft the final decision for the Board.

(4) On review, the Board shall have all the powers it would have in making the initial decision, and in its discretion shall have the power to take additional testimony or remand the case to the original hearing officer for such purpose, as provided in the Administrative Procedure Act, O.C.G.A. 50-13-17 and in accordance with this Rule. Motions, including motions to present additional evidence, shall be filed in accordance with the time periods for such motions set forth in the Order scheduling the review.

(a) Motions to present additional evidence or to remand the case to the original hearing officer for such purpose shall be granted only if the additional evidence is material, and there was good cause for failing to present such evidence before the original hearing officer. All motions, including motions for the presentation of additional evidence, shall be ruled on by the Board, prior to oral arguments during the review hearing.

(5) Oral argument up to 30 minutes per side is permitted in the review hearing. Additional time for argument must be requested in writing and docketed at least fourteen (14) days before the date set for the review hearing.

(6) Once the review hearing is concluded, the Board shall deliberate as to the final decision. Neither the hearing officer for review nor the parties nor their counsel shall be present during or participate in the deliberations or voting on the final decision. Provided, however, that during the course of the deliberations the Board may seek or obtain legal advice of its counsel or make an inquiry on the record concerning either procedure or the merits of the case in the presence of all parties.

(a) At the conclusion of the deliberations, the vote and decision of the Board shall be announced in open session, unless the sanction imposed by the decision is made confidential by statute, in which case it shall be announced *in camera* to the Respondent and counsel for the parties. The Board may take the matter under advisement and continue the deliberations until a date certain if deemed necessary due to the Board's agenda or the complexity of the issues.

#### **150-24-.05 Rehearing.**

Any party may file a motion for rehearing of a final decision of the Board within ten (10) days after the date of actual service of such final decision on the Respondent or Respondent's counsel. Such motion shall be in accordance with Rule 150-17-.01 and, in addition, shall include a statement of all matters alleged to have been erroneously decided and, if applicable, a statement as to any newly discovered matters or circumstances that have arisen subsequent to the final decision. The filing of said motion shall not operate as a stay of the final decision of the Agency unless so ordered by the Board.

**150-24-.06 Appeals of Final Decisions.**

All appeals shall be filed in accordance with the Georgia Administrative Procedure Act and must be filed in the Superior Court of Fulton County, the court of domicile of the Board.

Board Rule 150-8-.02 Fee Splitting: The Committee will continue to review and will discuss further at the next scheduled Committee meeting.

Mobile Clinics: The Committee will continue to review and will discuss further at the next scheduled Committee meeting.

There being no further business to come before the Committee, the meeting was adjourned at 9:08 a.m.

Minutes recorded by Brandi Howell, Business Operations Analyst

Minutes edited by Tanja D. Battle, Executive Director