

CHAPTER 3. INDIVIDUAL PROCEEDINGS

SUBCHAPTER 3. INVESTIGATIONS AND HEARINGS

435:3-3-1. Investigations

Any person may file a complaint with the Board in regard to any person licensed or certified by the Board. Complaints may be written or oral. The Staff may require complainants to reduce oral complaints to writing. The Staff may inquire of a complainant for any additional useful information related to the complaint. The Staff shall investigate all credible complaints over which the Board would reasonably have jurisdiction. In addition, the Staff may refer complaints to other entities with jurisdiction, such as, but not limited to the Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs, Oklahoma Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma Attorney General, Oklahoma State Board of Osteopathic Examiners, Oklahoma State Department of Health, appropriate District Attorney ~~or Oklahoma State Medical Association~~, for action when the Board lacks jurisdiction. Further, the Staff may report alleged criminal violations to appropriate law enforcement agencies.

435:3-3-2. Confidentiality during investigations

(a) During the conduct of any investigation, the investigative staff shall take all proper and necessary action to ensure the confidentiality of investigative files, in accordance with the Oklahoma Open Records Act, 51 O.S.1991, §§ 24a.1 ~~et seq.~~ ~~In particular, staff shall take all necessary action to ensure patient files obtained by the agency during an investigation shall not be disclosed to the public. The investigative staff shall emend all copies of patient records used during an investigation to delete, redact, black-out or otherwise render unreadable the name and other identification information of a patient, unless that information is pertinent to the hearing and reasonable efforts have been made by the Staff to secure the cooperation of the patient or the patient's parent or guardian.~~

(b) All investigative files shall remain confidential and privileged, such information can be offered by the state in administrative proceedings before the board and if admitted then it becomes a public record. The information is not deemed a record under Oklahoma Open Records Act Pursuant to 59 O.S. Section 509.1. The information is not subject to subpoena or discovery in any civil or criminal proceedings except that the board may give the information to law enforcement and other state agencies as necessary and appropriate discharge of duties of that agency and ensuring against unauthorized access to the information.

(c) In particular, staff shall take all necessary action to ensure patient files obtained by the agency during an investigation shall not be disclosed to the public. The investigative staff shall redact all copies of patient records used during an investigation to render unreadable the name and other identification information of a patient, unless that information is pertinent to the hearing and reasonable efforts have been made by the Staff to secure the cooperation of the patient or the patient's parent or guardian.

435:3-3-3. Confidentiality during hearings

During a hearing before the Board or presentation of a witness before the Trial Examiner, patient records necessary for use in the hearing shall be so marked as to ensure the confidentiality and privilege of the patient where disclosure of the patient's identity is not pertinent to the hearing. In addition, a witness who is or was a patient of a physician before the Board may assume a pseudonym to protect the patient's identity. No patient shall be required to identify himself or herself. In the event of a minor patient, a parent or guardian shall be inquired of as to identification of the minor.

435:3-3-8. Response to a complaint

(a) The defendant shall file a written answer under oath with the Secretary within 20 days after the service of the citation. If said answer is not filed, the defendant shall be considered in default. At the hearing of the complaint, the Board may accept the allegations set forth in the complaint as true. Further, the Board may then take action against the defendant based upon the complaint, which may include any sanction authorized by law, including revocation.

(b) The Secretary may extend the time within which an answer shall be filed.

435:3-3-13. Trial examiner

(a) The Board or the Board Secretary may direct that the Board utilize a Trial Examiner to hear matters specified by the Secretary or as authorized by this Chapter. Generally, where the Trial Examiner is requested, the duties of the Trial Examiner in an individual proceeding shall be:

- (1) to hear and rule upon pretrial discovery disputes.
- (2) to hear and rule on Motions in Limine.
- (3) to review Motions to Dismiss in order to advise the Board on questions of law therein.
- (4) to hear and rule on Motions for Continuance of a hearing (a continuance which is granted by the Trial Examiner ~~must~~ shall be ratified by the Secretary of the Board).
- (5) to hear and rule on other preliminary motions.
- (6) to hear and rule on motions to have a Board Member recused from a hearing.

(b) The Board or the Secretary may assign the Trial Examiner to perform any of the following duties:

- (1) to mark, identify and admit or deny exhibits.
 - (2) to hear non-physician prosecution witnesses.
 - (3) to hear non-physician defense witnesses.
 - (4) to hear prosecution/defense corroborating witnesses.
 - (5) to hear character witnesses.
 - (6) to hear cumulative witnesses.
 - (7) to hear peripheral witnesses.
 - (8) to receive offers of proof.
 - (9) to prepare a written report to Board members and counsel summarizing all proceedings, rulings, testimony, and exhibits received. The Trial Examiner shall allow counsel time to file any written objections or exceptions to the report.
- (c) The Board members shall read the Trial Examiner's report and any objections that were filed.
- (d) In the event the Trial Examiner assumes the additional duties of (b) in this section, the format for the hearing before the Board shall be as follows:
- (1) The Board receives brief orientations from the Trial Examiner before each case is presented.
 - (2) The Board hears only physician witnesses or expert witnesses that the Trial Examiner has permitted because of the nature of the testimony.
 - (3) The Board hears rebuttal witnesses, if any.
 - (4) The Board hears opening and closing arguments.

435:3-3-16. Subpoenas

~~Subpoenas to compel the attendance of witnesses, for the furnishing of information required by the Board, and/or for the production of evidence or records of any kind may be issued by the Secretary, a Board member, or the Trial Examiner. Subpoenas shall be served, and a return made, in any manner prescribed by general civil law. shall be issued by the Secretary, or the trial examiner. Subpoenas shall be served, and a return made, in any manner prescribed by Oklahoma statutes for the following:~~

- (1) to compel the attendance of witnesses;
- (2) for the furnishing of information required by the Board, or
- (3) for the production of evidence or records of any kind.

435:3-3-18. Hearing records

- (a) A record of the hearing, by means of ~~tape~~ audio recording, will be made of all hearings conducted by the Board. The record of the proceeding shall not be transcribed ~~except upon written application~~ but the audio recording shall be provided upon written request by the defendant, and a deposit sufficient in the amount to pay for having the record transcribed. The Staff shall then make appropriate arrangements with a certified court reporter to transcribe the hearing from tape The defendant may, at his or her expense, arrange for the audio recording to be transcribed.
- (b) A defendant may, at his or her expense, arrange for a record of the hearing to be made by a court reporter.

435:3-3-19. Maintenance of hearing records

The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Secretary of the Board. The ~~tape~~ recording of the proceedings shall be maintained in accordance with the Oklahoma Archives and Records Act and the Oklahoma Open Records Act.