

RULES OF PROCEDURE OF THE MEDICAL ADVISORY BOARD
OF THE WORKERS' COMPENSATION COURT OF RHODE ISLAND

DISQUALIFICATION OF MEDICAL CARE PROVIDERS

SEC. 1.1 Construction

These rules are promulgated for the purpose of assisting the Administrator of the Medical Advisory Board, the respondent medical/services provider, and the Medical Advisory Board to develop the facts relating to, and to reach a just and proper determination of, complaints formally brought to the attention of the Board.

SEC. 1.2 Procedure to Apply

Formal proceedings before the Medical Advisory Board are neither civil nor criminal in nature but are quasi-judicial administrative proceedings. The proceedings shall conform generally to these Rules and to such other Rules of Procedure as may be adopted by the Medical Advisory Board, as authorized by R.I.G.L. § 28-30-22(b)(3).

SEC. 1.3 Content of the Complaint

(a) Time of Filing Complaint: A complaint may be filed with the Administrator of the Medical Advisory Board within one year from the date of the occurrence of the alleged violation. The date of receipt by the Administrator, and not the date of deposit in the mails, is determinative.

(b) Place of Filing Complaint: A complaint may be filed at the office of the Administrator of the Medical Advisory Board.

(c) Content of the Complaint: A complaint shall contain, as a minimum, the following:

1. The full name and address of the person/entity making the complaint.
2. The full name and address of the person against whom the charge is made.
3. A concise statement of facts as to why complainant believes a violation(s) of the medical protocols and/or violation(s) of a specific section of the statute has occurred.
4. A statement listing the specific medical protocols and/or specific sections of the statute.
5. The date(s) of the alleged violation(s), or if the alleged violation(s) is of a continuing nature, the dates between which said continuing violations have occurred.

SEC 1.4 Determination of Jurisdiction

The Administrator of the Medical Advisory Board shall process a complaint in either of the following situations:

(a) pursuant to a referral by a Judge of the Workers' Compensation Court regarding allegations of misconduct in any matter heard by him/her.

(b) pursuant to a properly filed complaint as described in Section 1.3 entitled Content of the Complaint.

In any case in which the Administrator of the Medical Advisory Board receives a complaint, he/she shall investigate allegations as defined by said statute. The complaint shall be reviewed by the Administrator as to whether or not the complaint falls within the purview of the Medical Advisory Board as defined by statute.

If a determination is made that the complaint does not fall within the jurisdiction of the Medical Advisory Board, the charge shall be dismissed. A letter shall be sent to the complainant. The initial complaint and the response are filed in a "not opened" complaint file.

If a determination is made that the complaint does fall within the jurisdiction of the Medical Advisory Board, a case file shall be established.

A letter shall be sent return receipt requested to the health care provider stating the alleged violation(s). This letter shall contain a request for written response to the alleged violation(s) within fourteen (14) work days. If the health care provider does not choose to respond, the health care provider is informed that the Medical Advisory Board will proceed with the investigation without his/her response.

(c) Request to be heard in mitigation. The respondent may include in his/her answer a request that a conference be held on the issue of mitigation.

SEC. 1.5 No Other Pleadings

Pleadings shall be limited to a petition for discipline and answer thereto.

SEC. 1.6 Preliminary Investigations

The Administrator may conduct a preliminary investigation into matters under its jurisdiction. Such investigation shall be designed to obtain adequate information upon which the Medical Panel can determine that a finding of a violation may be warranted.

SEC 1.7 Affidavits

The Administrator shall review the adequacy of affidavits with reference to timeliness, completeness, and truthfulness. If after review, the Administrator finds that there has been an improper filing of affidavits (as provided for in the statute), then the Administrator may send an educational letter of concern to the health care provider.

If after initial review, it is determined that the health care provider has repeatedly failed to submit affidavits, then the Administrator shall conduct a preliminary investigation and refer his/her findings to the Medical Panel.

In addition, after initial review, it is determined that there exists a second, separate violation of the statute in addition to the improper filing of affidavits, then the Administrator shall conduct a preliminary investigation and refer his/her findings to the Medical Panel.

SEC 1.8 Medical Panel

In order to provide for the disposition of complaints as a result of preliminary investigation as authorized by R.I.G.L. § 28-30-22(e), the Board Chair shall appoint and designate one or more Medical Panels as required. When a case file is opened, a Medical Panel will be assigned to the case.

The Medical Panel shall meet to review the preliminary investigations. The respondent is given the opportunity to appear before the Medical Panel to discuss the case with or without legal counsel, as he/she may decide. Subsequent to that appearance, the Medical Panel votes a finding that either a violation has occurred or that no violation has occurred. If the vote is unanimous that a violation has occurred, then the Medical Panel shall state its findings and a sanction(s).

A Final Order containing the findings and a sanction(s), if any, is then drafted. Upon receipt of the decision of the Medical Panel, the Administrator of the Medical Advisory Board shall advise the respondent of any sanctions ordered.

SEC 1.9 Disqualification or Suspension

If an Order of the Medical Panel disqualifies or suspends the health care provider, he/she may appeal this Order to the Medical Advisory Board (as provided by statute) within ten (10) working days of the entry of the Order by the Administrator. If no appeal is taken, the Order shall be considered a Final Order of the Medical Advisory Board.

SEC 1.10 Appeal to the Medical Advisory Board

An Order which disqualifies or suspends a health care provider may be appealed to the Medical Advisory Board (as provided by statute) for formal proceedings.

(a) An appeal shall be taken within ten (10) working days of the entry of the decision of the Medical Panel. The request for appeal shall be in writing and mailed (return receipt) to the Administrator of the Medical Advisory Board. The date of receipt by the Medical Advisory Board, and not the date of deposit in the mails, is determinative. An appeal shall contain, at a minimum, the following:

1. The full name and address of the health care provider requesting the appeal
2. A concise statement of facts and the reasons of appeal
3. A copy of the Medical Panel's Order

(b) No member of the Medical Panel shall participate with the Medical Advisory Board on an appeal of disqualification or suspension.

(c) Appearance pro se. When a respondent appears in his/her own behalf in a formal proceeding, he/she shall file with the Medical Advisory Board an address at which any notice or other written communication required to be served on him/her may be sent.

(d) Representation of respondent by counsel. When a respondent is represented or is to be represented before the Medical Advisory Board by counsel in a formal proceeding, counsel shall file with the Medical Advisory Board a written notice of such appearance, which shall state his/her name, address, and telephone number, the name and address of the respondent on whose behalf he/she appears, and the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent may be sent to the counsel of record of such respondent at the stated address of the counsel in lieu of transmission to the respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the respondent shall also be served upon or furnished to his/her counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

SEC 1.11 Continuances

(a) Avoidance of Delay. All formal proceedings under these Rules shall be as expeditious as possible, and all time limits shall be discretionary and not mandatory. No more than two (2) continuances will be granted to either party.

(b) Continuances. The Chairperson or an Acting Chairperson of the Board may grant extensions of time in a formal proceeding where the continuance will not result in undue delay and where the failure to grant a continuance will result in undue hardship.

SEC 1.12 Service by the Medical Advisory Board

Orders, notices, and other documents originating with the Medical Advisory Board, including all forms of Medical Advisory Board action, petition, and similar process, and other documents designated by the Medical Advisory Board for this purpose, shall be signed by the Chairperson and served by the Medical Advisory Board by mail, except when service by another method shall be specifically required by these Rules, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at his/hers or its address of record.

SEC 1.13 Service to Participant

All pleadings, briefs, and other documents, filed in formal proceedings, when filed or tendered to the Medical Advisory Board for filing, shall be served upon all participants in the proceeding. Such services shall be made by delivering in person or by mailing, properly addressed, with postage prepaid.

SEC 1.14 Effect of Service Upon Counsel

When any participant has appeared by counsel, service upon such counsel shall be deemed service upon the participant as provided in Section 1.10(d) of these Rules (relating to representation by counsel) and separate service upon the party may be omitted as provided in such subsection.

SEC 1.15 Date of Service

The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be; except as to pleadings or other documents required or permitted to be filed with the Medical Advisory Board as provided in Section 1.10 of these Rules. A postmark shall be determinative of the day of deposit in the United States mail.

SEC 1.16 Proof of Service

There shall accompany and be attached to the original of each pleading or other document filed with the Medical Advisory Board, when service is required to be made by the parties, a certificate of service substantially in the form prescribed by Section 1.17 of these Rules (relating to certificate of service). All other copies filed shall be fully conformed thereto.

SEC 1.17 Certificate of Service

I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.

Dated this _____ day of _____, _____ .

Signature

SEC 1.18 Appearances

The Medical Advisory Board shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearances is made.

SEC 1.19 Order of Procedure

In proceedings upon a petition for discipline, the Administrator of the Medical Advisory Board shall have the burden of proof, shall indicate the specific acts of misconduct alleged, the specific protocols violated, and all other evidence demonstrating a violation of Rhode Island General Laws, and may also present rebuttal evidence.

SEC 1.20 Presentation by the Parties

(a) General Rule. The respondent and the Administrator of the Medical Advisory Board shall have the right of presentation of relevant facts and argument. The proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) Objections. When objections to the admission or exclusion of factual material or other procedural objections are made, the grounds relied upon shall be stated briefly. Exceptions are unnecessary and shall not be taken to procedural rulings.

SEC 1.21 Limiting Number of Witnesses

The Medical Advisory Board may limit appropriately the number of witnesses who may be heard upon any issue, to eliminate unduly repetitious or cumulative testimony without prejudice to the substantive rights of any party.

SEC 1.22 Additional Evidence

At the hearing, the Medical Advisory Board may, if deemed advisable, and subject to the appropriate order to protect the substantive rights of any party, authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

SEC 1.23 Transcript

Hearings shall be reported by a reporter designated by the Medical Advisory Board. Such transcript shall include a verbatim report of the hearings, and nothing shall be omitted therefrom and shall be the sole official transcript of the proceeding. After closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in Section 1.22 of these Rules (relating to additional evidence) or changes in the transcript as provided in Section 1.24 of these Rules (relating to transcript corrections).

SEC 1.24 Transcript Corrections

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the Medical Advisory Board, at any time during the hearing, or after the close of the hearing. The Medical Advisory Board may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

SEC 1.25 Copies of Transcripts

The Medical Advisory Board will cause to be made a stenographic record of all Medical Advisory Board hearings and such copies of the transcript thereof as it requires for its own purposes. A respondent desiring a copy of such transcript may obtain it from the official reporter at his/her own expense.

SEC 1.26 Presentation and Effect of Stipulation

The participants may stipulate as to any relevant matter of fact or the authenticity of any relevant documents. Such stipulations may be received at a hearing, and when so received, shall be binding on the participants with respect to the matters therein stipulated.

SEC 1.27 Admissibility of Evidence

(a) Pleadings. The petition for discipline and answer thereto, and similar formal documents upon which a complaint is based shall, without further action, be considered as part of the record, but in no event shall pleadings, or any part hereof, be considered as evidence of any fact other than that of the filing thereof unless offered and received in evidence in accordance with these Rules.

(b) The Medical Advisory Board shall accept all documentary evidence presented by a party, including cited copies of sections of learned treatises offered by a party to assist the Medical Advisory Board in the resolution of any question presented.

SEC 1.28 Reception and Ruling on Evidence

(a) In the event that the Medical Advisory Board determines that serious factual issues exist which are essential to its action on a complaint, the Board shall refer the matter to the Chief Judge of the Workers' Compensation Court who shall assign the matter to a Judge of the Court for an evidentiary hearing and determination of all issues raised. Such hearing shall be strictly confidential and shall otherwise follow the Rules of Procedure and Rules of Evidence as adopted by the Workers' Compensation Court.

(b) Following a full hearing on all issues raised by the Medical Advisory Board, a Judge of the Workers' Compensation Court shall file a written decision and shall advise the Medical Advisory Board of his/her findings.

SEC 1.29 Filing or Determination

The Medical Advisory Board shall submit a written decision of its action setting forth the specific violations found and the sanctions to be assessed. Copies of the decision of the Medical Advisory Board shall be served on the respondent and the Administrator of the Medical Advisory Board. Upon receipt of the decision of the Medical Advisory Board, the Administrator of the Medical Advisory Board shall advise the respondent of any sanctions ordered.

SEC 1.30 Conferences to Expedite Proceedings

In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

SEC 1.31 Appeal to the Workers' Compensation Court

A health care provider may appeal the Medical Advisory Board's decision to disqualify or suspend as provided by the statute. The Workers' Compensation Court Rules of Practice should be followed in filing an appeal.

SEC 1.32 Enforcement of the Final Order

The Medical Advisory Board may petition the Workers' Compensation Court for enforcement of any Final Order.

SEC 1.33 Access to Public Records

Pursuant to R.I.G.L. § 38-2-2(d)(16), all investigatory records of the Medical Advisory Board shall not be open to the public. Records of final actions taken by the Medical Advisory Board are available for viewing, by appointment, to members of the public at the office of the Administrator.

Upon a finding by the Medical Panel or Medical Advisory Board that a violation has occurred, the Final Order shall be disseminated to the health care provider, the complainant, and to the proper licensing authority.