

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 190 Department or Agency: Alabama State Board of Chiropractic Examiners
Rule No. 190-X-4-.05

Rule Title: Disciplinary Hearings

 New XX Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in costs, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? n/a

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Donald J. Collins DC

Date August 20, 2013

DATE FILED
(STAMP)

ALABAMA STATE BOARD OF CHIROPRACTIC EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: The Alabama State Board of Chiropractic Examiners

RULE NO. & TITLE:

Rule 190-X-4-.05 Disciplinary Hearings

INTENDED ACTION:

The Alabama State Board of Chiropractic Examiners proposes to amend this rule

SUBSTANCE OF PROPOSED ACTIONS:


The Alabama State Board of Chiropractic Examiners proposes amend the rule to delete redundant portions that are in the Alabama Administrative Procedure Act.

TIME, PLACE AND MANNER FOR PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama State Board of Chiropractic Examiners, 126 Chilton Place, Clanton, AL 35045, 205-755-8000.

FINAL DATE FOR COMMENT & COMPLETION OF NOTICE: October 7, 2013.

CONTACT PERSON AND ADDRESS:

Amy Deavers
Administrative Assistant
Alabama State Board of Chiropractic Examiners
126 Chilton Place
Clanton, AL 35045
1-800-949-5838 ext. 226



Sheila Bolton
Executive Director

Alabama State Board of Chiropractic Examiners
Proposed Amended Rule

190-X-4-.05 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) Hearing Officer. The Board shall appoint a person to act as an impartial hearing officer at any disciplinary hearing. Such hearing officer shall preside at the hearing and shall rule on all questions of evidence and procedure, notwithstanding any other provisions of these rules to the contrary.

~~(b) Plea. The respondent shall plea either "guilty" or "not guilty" to the charges set forth in the complaint.~~

~~(c) Opening Statement. Each side shall be permitted to make a short opening statement.~~

~~(d) The state shall present its evidence, followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:~~

- ~~1. Direct examination~~
- ~~2. Cross examination~~
- ~~3. Examination by the Board~~
- ~~4. Re-direct examination~~
- ~~5. Re-cross examination~~
- ~~6. Re-examination by the Board~~

~~(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.~~

(2) The procedure and format of the hearing shall be the same as that utilized in non-jury civil cases in the Circuit Courts of this State. Additionally, the Board is allowed the right to examine any witness called by either party.

~~(f)(3) Order. The Board shall ~~issue an~~ render a final Order within thirty (30) days of the date of the ~~final~~ hearing, which shall include ~~findings of fact, official notice taken and~~~~

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~~conclusions of law, separately state be in writing and made part of the record and include findings of fact and conclusions of law specifically stated.~~ The licensee and/or permit holder shall be delivered a copy of the Order by certified mail, return receipt requested, and a copy shall be mailed first class to the attorney of record.

~~(2) Plea of Guilty and Waiver of Hearing. Upon the terms acceptable to the Board, the Board attorney may offer a Respondent the opportunity of a settlement of the charges of the complaint which such settlement may include the entering by the Respondent of a plea of guilty to some or all of the charges of a complaint, thereby waiving any hearing on the charges of the complaint. Upon the Board's acceptance of a Respondent's guilty plea to one or more charges of a complaint, the Board may enter an order within a reasonable time thereafter revoking or suspending the Respondent's license and/or non licensed owner's permit, and/or fining the Respondent and/or taxing costs against the Respondent in accordance with Rules 190-X-4-.06 and 190-X-4-.07.~~

~~(3)(4) Evidence. Evidence shall be admitted in accordance with Code of Alabama, 1975 41-22-13 and 34-24-173. the Alabama Administrative Procedure Act Section 13 Section 2 Act 89-237. The probable cause note and any attachments thereto shall be admitted into evidence as a portion of the complaint without further authentication.~~

~~(4)(5) Emergencies. The Board may in any emergency situation, when danger to the public health, safety, and welfare requires, suspend a license and/or permit without hearing or with an abbreviated hearing in accordance with the Code of Alabama 1975 41-22-19(4) and 34-24-174(c) Alabama Administrative Procedures Act (19)(4).~~

~~(5)(6) Other. The hearing shall otherwise be conducted in compliance with the provision of the Alabama Administrative Procedures Act.~~

Author: Steve Dodd, Assistant Attorney General

Statutory Authority: Code of Ala. 1975, §§34-24-144, 34-24-165, 34-24-168, 41-22-13, 41-22-16(3).

Effective: 3/6/90, amended 9/92, (a) (f) (g) (h) amended 5/99,

(1) (f) (2) (4) amended 3/2009, amended 8/2013

(1) (a) (b) (c) (d) (e) (f) (2) (3) (4) (5)

Authority: 34-24-168; 41-22-16(3); 34-24-144; 34-24-165