

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 250 Department or Agency Board of Cosmetology
Rule No. 250-X-1
Rule Title: Administration
 New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

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? N/A

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 cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

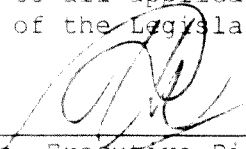
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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.



Bob McKee, Executive Director

Date August 20, 2013

(DATE FILED)
(STAMP)

ALABAMA BOARD OF COSMETOLOGY

NOTICE OF INTENDED ACTION

AGENCY NAME: Board of Cosmetology

RULE NO. & TITLE: 250-X-1 Administration

INTENDED ACTION: To repeal and replace this chapter

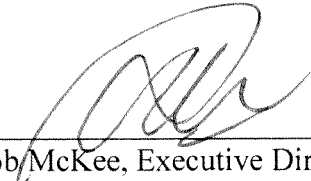
SUBSTANCE OF PROPOSED ACTION: To adopt new rules consistent with new law Act 2013-371.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Interested persons may present comments in writing at any time during the thirty-five (35) day period following publication of this notice to Bob McKee, Executive Director of the Alabama Board of Cosmetology, 100 North Union St., Suite 320, Montgomery, AL 36130-1750. Comments may be presented in person to the Executive Director at the above address on Monday, October 7, 2013 at 10:00 AM. Requests for comments in person must be submitted in writing in advance. Copies of proposed rule changes are available at the Executive Director's office at 334-242-1918.

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

CONTACT PERSON AT AGENCY:



Bob McKee, Executive Director
Alabama Board of Cosmetology
RSA Union Building
100 North Union St., Suite 320
Montgomery, AL 36130-1750

CHAPTER 250-X-1 ADMINISTRATION

250-X-1.01 Disciplinary Procedures and Actions.

(1) The Board may initiate investigations as appropriate by inspections or otherwise to determine compliance with state law and the rules and regulations of the Board.

(2) On the basis of investigative findings, the Board may file a complaint against any person or business licensed under the provisions of the *Code of AL 1975, Section 34-7B*, or against any other person or business in violation thereof.

(3) The Board shall investigate written complaints filed by the public against any person or business licensed under the provisions of the *Code of AL 1975, Section 34-7B*, or against any other person or business in violation thereof.

(4) The Board may require a licensee to submit a written and sworn statement to the Board in response to any complaint or investigation by the Board.

(5) All reports of investigations of complaints shall be submitted to the Investigative Committee of the Board.

(a) The Investigative Committee shall be composed of one Board member, the Board's attorney and the Executive Director of the Board or the Director's designee. By vote the Board shall appoint a Board member to serve on the Investigative Committee on an annual basis.

(b) The Investigative Committee shall review the investigation and complaint to determine if probable cause exists for disciplinary or enforcement proceedings by the Board. The Board member participating in the probable cause determination by the Investigative Committee shall not participate in any disciplinary proceedings of the Board arising from the investigation.

(c) Two members shall comprise a quorum of the Investigative Committee.

(d) No Board member shall serve longer than two (2) consecutive annual terms on the Investigative Committee. By vote the Board may remove or replace designated Board member serving on Investigative Committee for any reason.

(e) By vote the Board may appoint a substitute on the Investigative Committee for any complaint in which the designated Board member has a conflict of interest or is otherwise disqualified, including involvement as a possible witness to facts involved in the investigation.

(6) The Board's attorney on behalf of the Board shall refer investigations involving possible criminal violations of state law to the Alabama Attorney General or other appropriate state or local law enforcement agency and provide assistance as necessary to assure compliance with state laws and Board rules.

Author: Bob McKee

Statutory Authority : Code of Ala: 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.02 Administrative Complaint Procedures.

(1) When the Investigative Committee determines disciplinary action against a licensee is necessary, the Board shall prepare a summons and administrative complaint to be executed by the Executive Director on behalf of the Board. However, the Board may enter into settlement as referenced in paragraph 8 of Administrative Rule 250-X-1-.02 before issuance of any summons and complaint.

(2) The Board shall serve a copy of the summons and administrative complaint on the licensee against whom the complaint has been filed. The method of service shall be either certified mail or personal service. If the Board is unable to obtain service of the summons and

administrative complaint by certified mail or personal service, the Board or its attorney may serve the summons and administrative complaint by first class mail to the most recent address on file with the Board of the licensee against whom the complaint has been filed.

(3) The summons and administrative complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act, Section 12(b)¹

(4) Upon service of the administrative complaint, the Board shall schedule an administrative hearing to be held within two months of the date the summons and administrative complaint has been served by certified mail or personal service. The administrative hearing shall be held at the offices of the Board or other location designated by the Board.

(5) If the person against whom the administrative complaint has been filed is a member of the Board, that Board member shall be notified in writing of the administrative charges by the Board's Executive Director and shall not participate in any proceedings or meetings related to the complaint.

(6) In all administrative charges issued by the Board, the Board's attorney shall serve as prosecuting attorney and shall present evidence in support of the administrative complaint at the administrative hearing conducted by the Board or its Hearing Officer.

(7) Following its investigation, if the Investigative Committee determines that no probable cause exists, the investigative proceedings shall be terminated and investigation of that complaint shall be closed.

(8) At any time during the investigation process, including the time that the Investigative Committee's investigation is in progress, the Board may enter into informal settlement agreements, provided the informal settlement is ratified and approved by the Board.

(9) The Board retains the discretionary authority to invoke the administrative complaint procedures set forth in these Rules against any person in lieu of instituting criminal proceedings against the unlicensed person. This provision does not restrict in any manner the authority of other state or local law enforcement agencies to pursue criminal penalties as otherwise provided by law.

Author: Bob McKee

Statutory Authority: Code of Ala., 1975, 34-7B-10

History:Filed: August 20, 2013

250-X-1-.03 Informal Settlement Proceedings.

(1) The Board or other party to an administrative proceeding may initiate informal settlement negotiations to resolve the administrative complaint or investigation by the Board.

(2) Neither the Board nor any other party is obligated to use informal settlement procedures or to participate in informal settlement negotiations.

(3) Any informal settlement shall be to terms that are negotiated to be in the best interest of the Board.

¹ Alabama Administrative Procedure Act, Section 41-22-12(b), Code of Alabama 1975, reads as follows:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved; and

(4) A short and plain statement of the matters asserted. If the agency of other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.04 Consolidation of Administrative Proceedings.

(1) The Board or its Hearing Officer may order the consolidation, in whole or in part, of two or more administrative proceedings whenever it appears the matters are substantially related and that such consolidation would expedite or simplify consideration of issues, and no party would be prejudiced thereby. This consolidation may include multiple cases involving the same parties or may include multiple cases involving different parties provided that other requirements of consolidation have been met.

(2) Any party may request the Board or its Hearing Officer to sever any part of an administrative proceeding that has been consolidated when it appears consolidation will not expedite or simplify consideration of issues or that the party will be prejudiced by continued consolidation of proceedings.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.05 Motions.

(1) All motions, except those made orally on the record during an administrative hearing, shall be in writing and shall state the grounds in support of motions. All motions shall describe the relief sought and shall include any legal authority relied upon for relief. A copy of each motion filed with the Board shall be served on all parties accompanied by a certificate of service describing the method of service of the motion on other parties.

(2) The Board or its Hearing Officer may permit the non-moving party to file a response to any motion. Any response filed shall be served on other parties in the same manner as required for filing of motions.

(3) Any party may submit affidavits or other legal evidence in support of a motion or response provided such evidence is served on the other parties as an attachment to the motion or response filed with the Board.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.06 Pre-hearing Procedures.

(1) The time requirements for conducting an administrative hearing may be waived by the filing of a written joint motion of the parties indicating an agreement to delay the proceedings and including a brief statement of the reasons for the requested delay. The Board or its Hearing Officer shall retain the discretionary authority to grant or deny the request to delay the proceedings.

(2) The Board or its Hearing Officer may require the parties to appear at a specified time and place in advance of the hearing for one or more pre-hearing conferences to consider:

- (a) The settlement of the case;
- (b) The identification and/or clarification of the contested issues;
- (c) Submission of admissions or stipulation to facts;

(d) Stipulation to the genuineness of documents that avoid unnecessary witnesses or proof;

(e) The identification of any facts of which official notice is proposed to be taken;

(f) The identification of any expert witnesses expected to testify and the substance of any opinion to which the expert witness may testify;

(g) And any other such matters that may be necessary or relevant to the determination of the issues involved in the administrative hearing.

(3) The Board or its Hearing Officer shall issue a written pre-hearing order reciting the actions taken at any pre-hearing conference, including any stipulations or agreements by the parties regarding the issues to be resolved at administrative hearing.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.07 Pre-hearing Discovery.

(1) Pre-hearing discovery shall be permitted only upon determination by the Board or its Hearing Officer that:

(a) Discovery will not unreasonably delay the proceedings;

(b) Discovery sought has significant probative value to the issues involved in the administrative hearing;

(c) Discovery sought will prevent fraud;

(d) Discovery sought will prevent undue surprise at the administrative hearing;

(e) And/or discovery sought will other-wise provide fundamental fairness to the parties to the administrative hearing.

(2) All discovery sought must relate to charges contained in the administrative complaint or defenses to those charges.

(3) The following methods of discovery are available, pursuant to the discretion of the Board or the Board's Hearing officer:

(a) Depositions upon oral examinations of expert witnesses;

(b) Interrogatories to the Respondent;

(c) Production and copying of documents and things;

(d) Request for admissions to the Respondent;

(e) Requests for entry upon land for inspection and other purposes against any person.

(4) All discovery should be conducted in accordance with any terms and conditions imposed by the Board or its Hearing Officer. These terms and conditions may be imposed to protect the parties or other persons from annoyance, embarrassment, oppression, or undue burden and expense. Court reporters' fees and reasonable copying costs shall be borne by the party requesting discovery.

(5) Depositions of all parties and their employees, agents, and other persons under their control shall be conducted at the Board's offices in Montgomery, Alabama unless another location is agreed upon by all parties.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.09 Failure of a Party to Appear.

If a party fails to appear at a hearing after being given notice of hearing as required by these Rules, the Board or Board's Hearing Officer may proceed with hearing in absence of the party.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-.10 Administrative Hearing Procedures.

(1) The Board may appoint a person to act on its behalf as Hearing Officer at its administrative hearings. The Hearing Officer shall preside at administrative hearings and shall rule on all questions of evidence and procedure. The Hearing Officer shall admit all evidence that is relevant, material, and which has probative value to the issues under consideration by the Board. Offers of settlement and compromise are not admissible. The Hearing Officer shall consider evidence presented and then submit a recommendation to Board, including: a procedural summary of case; findings of fact; conclusions of law; and a recommended decision on the issues included in administrative complaint including, if necessary, suggested administrative punishment pursuant to the charges in the administrative complaint. The Hearing Officer's recommendations shall be considered by the Board but are not binding on the Board. Within sixty (60) days after receipt of the Hearing Officer's recommendation, the Board shall issue an appropriate administrative order modifying, approving or rejecting the recommendation. If the hearing was conducted by the Board itself, the Board shall issue its order within sixty (60) days after receipt of the court reporter's transcript of the administrative hearing. The Board's order in all instances shall include a procedural history of the case, findings of fact, conclusions of law, and its decision regarding the issues contained within the administrative complaint, including, if necessary, the appropriate administrative punishment.

(2) Prior to the taking of witness testimony at the administrative hearing, the Respondent or Respondents shall enter a plea of "guilty" or "not guilty" to each charge contained in the administrative complaint.

(3) All parties shall be allowed to make a concise opening statement regarding the charges in the administrative complaint, defenses to the administrative complaint, expected testimony and evidence, and any proposed administrative punishment.

(4) The parties shall be allowed to present evidence by direct and cross-examination. The Executive Director, or a designee acting on behalf of the Investigative Committee, shall present its evidence first followed by the other parties in the order determined by the Board or its Hearing Officer. Examination of witnesses shall not be unduly repetitious. The testimony of all parties and witnesses shall be made under oath administered by the Board or the Board's Hearing Officer.

(5) The Board or the Board's Hearing Officer may examine and question any party or witness regarding the administrative complaint and defenses thereto.

(6) All parties shall be allowed to make a brief closing statement summarizing the evidence presented and regarding the applicability or relevant state law and/or Board rules and regulations.

(7) All testimony and statements given in this administrative hearing shall be electronically or stenographically recorded. Any party wishing to obtain a transcript of the

hearing shall make arrangements with the court reporter to receive a copy of the transcript at their own expense.

(8) The parties shall not be bound by the strict rules of evidence prevailing in the courts. Evidence shall be submitted in accordance with the Alabama Administrative Procedures Act, Section 13.¹ The administrative complaint and all attachments shall be made a part of the administrative record for consideration by the Board without further authentication.

(9) The Board or its Hearing Officer may admit into evidence the deposition of any witness who is not subject to the subpoena power of the Board or who is unable to be present to testify at the hearing because of death, physical or mental illness, or other good reason at the discretion of the Board or its Hearing Officer.

(10) All exhibits that are offered into evidence, whether admitted or not, shall be made a part of the administrative record in the case and be included as part of the court reporter's original transcript of the hearing. The party who offers each exhibit shall be permitted to substitute a true copy of the exhibit for the original exhibit upon request to and permission by the Board or its Hearing Officer.

(11) All objections concerning the conduct of the hearing or the admission of evidence may be stated orally or filed in writing during the hearing. The objections and responses thereto shall include a statement of the grounds for the objection and legal authority relied upon. The ruling on the objection by the Board or the Board's Hearing Officer shall be made a part of the administrative record of the hearing. Any party may make an offer of proof regarding evidence that is not admitted and may describe the general nature of the evidence offered and not admitted as part of the administrative record of the hearing.

(12) The Board or the Board's Hearing Officer may allow the parties to submit for consideration a proposed order or recommendation which includes a procedural history, proposed findings of fact, conclusions of law, and any suggested administrative punishment. The parties shall cite the appropriate pages of the hearing transcript for any proposed findings of fact.

(13) The administrative hearing shall be otherwise conducted in compliance with the provisions and in accordance with the Alabama Administrative Procedures Act, Section 41-22-12, *et. seq.*, *Code of Alabama 1975*.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7B-10

History: Filed: August 20, 2013

250-X-1-11 Penalties.

(1) The Board may, in its discretion, issue a written public or private reprimand or remove, revoke, or suspend the license of any person who violates state law or the rules and regulations of the Board.

(2) The issuance of two or more written letters of public reprimand to a licensee may serve as probable cause for the Investigative Committee to proceed with administrative charges to seek the revocation or suspension of that person's license by the Board, pursuant to an administrative hearing described in these rules.

(3) The Board may, in addition to or in lieu of other penalties, levy and collect administrative fines for violations of state law or the rules and regulations of the Board of not more than \$ 750.00 for each violation.

Author: Bob McKee **Statutory Authority:** Code of Ala. 1975, 34-7B-10; **History: Repealed;**
Filed: August 20, 2013

Alabama Administrative Procedures Act, Section 13 reads as follows:

(1) The rules of evidence as applied in nonjury civil cases in the Circuit Courts of this state shall be followed when necessary to ascertain facts not reasonably susceptible of proof under those rules. Evidence not admissible there under may be admitted (except when precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give affect to the rules of privilege by law. Except as hereinafter provided, objections to evidentiary offers may be made and shall be noted in the record. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a party of record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and interests of the parties will not be prejudiced substantially, any part of the evidence may be received or may be required to be submitted in verified form; provided the adversary party shall not be denied the right of cross-examination of the witness. The testimony of parties and witnesses shall be made under oath; provided however, in the hearing of a contested case where judicial review of the case is trial de novo, the agency may announce that it shall not be necessary that objections be made during the hearing and upon such announcement, it shall not be required or necessary that objections to be made to any testimony or evidence which may be offered by either party, and on the consideration of such cases the agency shall consider only such testimony and evidence as is relevant, material, competent, and legal, and shall not consider any testimony or evidence which is irrelevant, immaterial, incompetent or illegal, whether objection shall have been made thereto or not, and whether such testimony be brought on direct, cross or re-direct examination, or is hearsay. The agency shall not be required to point out what testimony or evidence should be excluded or not considered. Either party, on submission, shall have the privilege of calling attention to any testimony or evidence which is deemed objectionable. If specific objection be made to any evidence and a ruling made thereon by the agency, this exception shall not apply to such evidence.

(2) Documentary evidence otherwise admissible may be received in the form of copies of excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.

(4) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as party of the record of decision that fairness to the parties does not require an opportunity to contest such facts.

(5) The experience, technical competence, and specialized knowledge of the agency may be utilized in the evaluation of evidence.

Section 41-22-13, Code of Alabama, 1975.

ALABAMA BOARD OF COSMETOLOGY
ADMINISTRATIVE CODE

CHAPTER 250-X-1
ADMINISTRATION

TABLE OF CONTENTS

250-X-1-.01	Disciplinary Procedures And Actions
250-X-1-.02	Administrative Complaint Procedures
250-X-1-.03	Informal Settlement Proceedings
250-X-1-.04	Consolidation Of Administrative Proceedings
250-X-1-.05	Motions
250-X-1-.06	Pre-hearing Procedures
250-X-1-.07	Pre-hearing Discovery
250-X-1-.08	Subpoenas (Repealed 10/12/05)
250-X-1-.09	Failure Of A Party To Appear
250-X-1-.10	Administrative Hearing Procedures
250-X-1-.11	Penalties

250-X-1-.01 Disciplinary Procedures And Actions.

(1) The Board may initiate investigations as appropriate by inspections or otherwise to determine compliance with state law and the rules and regulations of the Board.

(2) On the basis of investigate findings, the Board may file a complaint against any person or business licensed under the provisions of Section 34-7A, Code of Ala. 1975, or against any other person or business in violation thereof.

(3) The Board shall investigate written complaints filed by the public against any person or business licensed under the provisions of Section 34-7A, Code of Ala. 1975, or against any other person or business in violation thereof.

(4) The Board may require a licensee to submit a written and sworn statement to the Board in response to any complaint or investigation by the Board.

(5) All reports of investigations of complaints shall be submitted to the Investigative Committee of the Board.

(a) The Investigative Committee shall be composed of one Board member, the Board's attorney and the Executive Director

of the Board. By vote the Board shall appoint a Board member to serve on the Investigative Committee on an annual basis.

(b) The Investigative Committee shall review the investigation and complaint to determine if probable cause exists for disciplinary or enforcement proceedings by the Board. The Board member participating in the probable cause determination by the Investigative Committee shall not participate in any disciplinary proceedings of the Board arising from the investigation.

(c) Two members shall comprise a quorum of the Investigative Committee.

(d) No Board member shall serve for longer than two (2) consecutive annual terms on the Investigative Committee. By vote the Board may remove or replace the designated Board member serving on the Investigative Committee for any reason.

(e) By vote the Board may appoint a substitute on the Investigative Committee for any complaint in which the designated Board member has a conflict of interest or is otherwise disqualified, including involvement as a possible witness to facts involved in the investigation.

(6) The Board shall refer investigations involving possible criminal violations of state law to the Alabama Attorney General or other appropriate state or local law enforcement agency and provide assistance as necessary to assure compliance with state laws and Board rules.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, 34-7A-15.

History: Filed September 24, 1982. **New Rule:** Filed March 1, 2001; effective April 5, 2001. **Amended (See Ed. Note):** Filed July 1, 2002; effective August 5, 2002. **Repealed and New Rule:** Filed February 15, 2005; effective March 22, 2005.

Amended: Filed September 7, 2005; effective October 12, 2005.

Ed. Note: Rule 250-X-1-.01.01, Disciplinary Procedures And Actions, was renumbered 250-X-1-.01 after the original 250-X-1-.01, Organization And Purpose was repealed as per certification filed July 1, 2002; effective August 5, 2002.

250-X-1-.02 Administrative Complaint Procedures.

(1) When the investigative Committee determines disciplinary action against a licensee is necessary, the Board's attorney shall prepare a summons and administrative complaint to

be executed by the Executive Director on behalf of the Board. However, the board may enter into settlement as referenced in paragraph 8 of Administrative Rule 250-X-1-.02 before issuance of any summons and complaint.

(2) The Board shall serve a copy of the summons and administrative complaint on the licensee against whom the complaint has been filed. The method of service shall be either certified mail with return receipt requested or personal service. If the Board is unable to obtain service of the summons and administrative complaint by certified mail or personal service, the Board or its attorney may serve the summons and administrative complaint by first class mail to the most recent address on file with the Board of the licensee against whom the complaint has been filed.

(3) The summons and administrative complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act, Section 12(b).¹

(4) Upon service of the administrative complaint, the Board shall schedule an administrative hearing to be held within two months of the date the summons and administrative complaint has been served by certified mail or personal service. The administrative hearing shall be held at the offices of the Board or other location designated by the Board.

(5) If the person against whom the administrative complaint has been filed is a member of the Board, that Board member shall be notified in writing of the administrative charges by the Board's executive director and shall not participate in any proceedings or meetings related to the complaint.

(6) In all administrative charges issued by the Board, the Board's attorney shall serve as prosecuting attorney and shall present evidence in support of the administrative complaint at the administrative hearing conducted by the Board or its Hearing Officer.

(7) Following its investigation, if the Investigative Committee determines that no probable cause exists, the

¹ Alabama Administrative Procedure Act, Section 12(b) reads as follows:

The notice shall include

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and
- (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

Section 41-22-12(b), Code of Ala. 1975.

investigative proceedings shall be terminated and investigation of that complaint shall be closed.

(8) At any time during the investigation process, including the time that the Investigative Committee's investigation is in progress, the Board may enter into informal settlement agreements, provided the informal settlement is ratified and approved by the Board.

(9) The Board retains the discretionary authority to invoke the administrative complaint procedures set forth in these Rules against any person in lieu of instituting criminal proceedings against the unlicensed person. This provision does not restrict in any manner the authority of other state or local law enforcement agencies to pursue criminal penalties as otherwise provided by law.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **New Rule:** Filed March 1, 2001; effective April 5, 2001. **Amended (See Ed. Note):** Filed July 1, 2002; effective August 5, 2002. **Repealed and New Rule:** Filed February 15, 2005; effective March 22, 2005.

Amended: Filed September 20, 2005; effective October 25, 2005.

Ed. Note: Rule 250-X-1-.02.01, Hearing Procedures, was renumbered 250-X-1-.02 after the original 250-X-1-.02, Composition And Selection Of Board was repealed as per certification filed July 1, 2002; effective August 5, 2002.

250-X-1-.03 Informal Settlement Proceedings.

(1) The Board or other party to an administrative proceeding may initiate informal settlement negotiations to resolve the administrative complaint or investigation by the Board.

(2) Neither the Board nor any other party is obligated to use informal settlement procedures or to participate in informal settlement negotiations.

(3) Any informal settlement shall be to terms that are negotiated to be in the best interest of the Board and the public and shall not become final until ratified and approved by the Board.

All informal settlement agreements ratified and approved by the Board shall be incorporated by reference in the official minutes of the Board.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.04 Consolidation Of Administrative Proceedings.

(1) The Board or its Hearing Officer may order the consolidation, in whole or in part, of two or more administrative proceedings whenever it appears the matters are substantially related and that such consolidation would expedite or simplify consideration of the issues, and no party would be prejudiced thereby. This consolidation may include multiple cases involving the same parties or may include multiple cases involving different parties provided that the other requirements of consolidation have been met.

(2) Any party may request that the Board or its Hearing Officer sever any part of an administrative proceeding that has been consolidated when it appears the consolidation will not expedite or simplify consideration of the issues or that party will be prejudiced by the continued consolidation of proceedings.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.05 Motions.

(1) All motions, except those made orally on the record during an administrative hearing, shall be in writing and shall state the grounds in support of motions. All motions shall describe the relief sought and shall include any legal authority relied upon for relief. A copy of each motion filed with the Board shall be served on all parties accompanied by a certificate of service describing the method of service of the motion on other parties.

(2) The Board or its Hearing Officer may permit the non-moving party to file a response to any motion. Any response filed shall be served on the other parties in the same manner as required for the filing of motions.

(3) Any party may submit affidavits or other legal evidence in support of a motion or response provided such evidence is served on the other parties as an attachment to the motion or response filed with the Board.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.06 Pre-hearing Procedures

(1) The time requirements for conducting an administrative hearing may be waived by the filing of a written joint motion of the parties indicating an agreement to delay the proceedings and including a brief statement of the reasons for the requested delay. The Board or its Hearing Officer shall retain the discretionary authority to grant or deny the request to delay the proceedings.

(2) The Board or its Hearing Officer may require the parties to appear at a specified time and place in advance of the hearing for one or more pre-hearing conferences to consider:

- (a) The settlement of the case;
- (b) The identification and/or clarification of the contested issues;
- (c) The submission of admissions or stipulation to facts;
- (d) The stipulation to the genuineness of documents that avoid unnecessary witnesses or proof;
- (e) The identification of any facts of which official notice is proposed to be taken;
- (f) The identification of any expert witnesses expected to testify and the substance of any opinion to which the expert witness may testify;
- (g) And any other such matters that may be necessary or relevant to the determination of the issues involved in the administrative hearing.

(3) The Board or its hearing officer shall issue a written pre-hearing order reciting the actions taken at any

pre-hearing conference, including any stipulations or agreements by the parties regarding the issues to be resolved at the administrative hearing.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.07 Pre-hearing Discovery.

(1) Pre-hearing discovery shall be permitted only upon determination by the Board or its Hearing Officer that:

- (a) The discovery will not unreasonably delay the proceedings;
- (b) The discovery sought has significant probative value to the issues involved in the administrative hearing;
- (c) The discovery sought will prevent fraud;
- (d) The discovery sought will prevent undue surprise at the administrative hearing;
- (e) And/or the discovery sought will otherwise provide fundamental fairness to the parties to the administrative hearing.

(2) All discovery sought must relate to charges contained in the administrative complaint or defenses to those charges.

(3) The following methods of discovery are available, pursuant to the discretion of the Board or the Board's Hearing officer:

- (a) Depositions upon oral examinations of expert witnesses;
- (b) Interrogatories to the Respondent;
- (c) Production and copying of documents and things;
- (d) Request for admissions to the Respondent;

(e) Requests for entry upon land for inspection and other purposes against any person.

(4) All discovery should be conducted in accordance with any terms and conditions imposed by the Board or its Hearing Officer. These terms and conditions may be imposed to protect the parties or other persons from annoyance, embarrassment, oppression, or undue burden and expense. Court reporters' fees and reasonable copying costs shall be borne by the party requesting discovery.

(5) Depositions of all parties and their employees, agents, and other persons under their control shall be conducted at the Board's offices in Montgomery, Alabama unless another location is agreed upon by all parties.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.08 Subpoenas. (Repealed)

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005. **Repealed:** Filed September 7, 2005; effective October 12, 2005.

250-X-1-.09 Failure Of A Party To Appear. If a party fails to appear at a hearing after being given notice of the hearing as required by these Rules, the Board or the Board's Hearing Officer may proceed with the hearing in the absence of the party.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: Filed September 24, 1982. **Repealed:** Filed July 1, 2002; effective August 5, 2002. **New Rule:** Filed February 15, 2005; effective March 22, 2005.

250-X-1-.10 Administrative Hearing Procedures.

(1) The Board may appoint a person to act on its behalf as Hearing Officer at its administrative hearings. The

Hearing Officer shall preside at administrative hearings and shall rule on all questions of evidence and procedure. The Hearing Officer shall admit all evidence that is relevant, material, and which has probative value to the issues under consideration by the Board. Offers of settlement and compromise are not admissible. The Hearing Officer shall consider the evidence presented and submit a recommendation to the Board, including: a procedural summary of the case, findings of fact; conclusions of law; and a recommended decision on the issues included in the administrative complaint including, if necessary, suggested administrative punishment pursuant to the charges in the administrative complaint. The Hearing Officer's recommendations shall be considered by the Board but are not binding on the Board. Within sixty (60) days after receipt of the Hearing Officer's recommendation, the Board shall issue an appropriate administrative order modifying, approving, or rejecting the recommendation. If the hearing was conducted by the board itself, the Board shall issue its order within sixty (60) days after receipt of the court reporter's transcript of the administrative hearing. The Board's order in all instances shall include a procedural history of the case, findings of fact, conclusions of law, and its decision regarding the issues contained within the administrative complaint, including, if necessary, the appropriate administrative punishment.

(2) Prior to the taking of witness testimony at the administrative hearing, the Respondent or Respondents shall enter a plea of "guilty" or "not guilty" to each charge contained in the administrative complaint.

(3) All parties shall be allowed to make a concise opening statement regarding the charges in the administrative complaint, defenses to the administrative complaint, expected testimony and evidence, and any proposed administrative punishment.

(4) The parties shall be allowed to present evidence by direct and cross-examination. The executive director, or a designee acting on behalf of the Investigative Committee, shall present its evidence first followed by the other parties in the order determined by the Board or its Hearing Officer. Examination of witnesses shall not be unduly repetitious. The testimony of all parties and witnesses shall be made under oath administered by the Board or the Board's Hearing Officer.

(5) The Board or the Board's Hearing Officer may examine and question any party or witness regarding the administrative complaint and defenses thereto.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: New Rule: Filed February 15, 2005; effective March 22, 2005.

250-X-1-.11 Inspectors, Counsel, And Clerks.

(1) The Board may, in its discretion, issue a written public or private reprimand or remove, revoke, or suspend the license of any person who violates state law or the rules and regulations of the Board.

(2) The issuance of two or more written letters of public reprimand to a licensee may serve as probable cause for the Investigative Committee to proceed with administrative charges to seek the revocation or suspension of that person's license by the Board, pursuant to an administrative hearing described in these rules.

(3) The Board may, in addition to or in lieu of other penalties, levy and collect administrative fines for violations of state law or the rules and regulations of the Board of not more than \$ 500.00 for each violation.

Author: Bob McKee

Statutory Authority: Code of Ala. 1975, §34-7A-15.

History: New Rule: Filed February 15, 2005; effective March 22, 2005.