

# Louisiana Administrative Code

## Title 46 – Professional and Occupational Standards

### Part LIII: Pharmacists

#### Chapter 3. Board Hearings

##### §301. Board Hearing Procedures and Jurisdiction

- A. Person. The board has jurisdictional authority over the person practicing pharmacy, assisting in the practice of pharmacy, operating a pharmacy, or otherwise licensed, registered, certified, or permitted by the board. A person is as defined in R.S. 37:1164(33) of the Pharmacy Practice Act.
- B. Subject Matter. The board has jurisdiction over any subject matter related to the practice of pharmacy or any other matter regarding the dispensing or selling of prescription drugs in a safe manner so as not to endanger the public health, safety, or welfare.
- C. Board Authority. The board has authority to adopt rules pursuant to the Pharmacy Practice Act, R.S. 37:1161 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq., regarding due process disciplinary hearings.
- D. Venue. A due process hearing shall convene in a designated Louisiana parish at a regularly called board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

##### §303. Summons

- A. A summons shall represent a complaint of an alleged violation directed to a respondent.
- B. Hearing Notice. The board shall initiate a hearing by issuing a notice summons. The notice summons shall be forwarded to the respondent commanding his presence to appear before the board for a due process hearing setting forth the following:
  - 1. Name. The notice shall include the respondent's name and address.
  - 2. Time. The notice shall state the designated time, date, and place.
  - 3. Allegation. The notice shall recite the alleged violation(s) establishing a cause of action and the nature of the hearing.
  - 4. Authority. The notice shall make references to specific board, state, or federal statutes, regulations, rules, policies, or code of ethics involved in the alleged violation(s).
  - 5. Citation. The notice shall cite legal or jurisdictional authority constituting an alleged violation(s).
  - 6. Documents. The notice may include supporting documents, reports, and/or other relevant material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

##### §305. Service

- A. Method. Service of a summons shall be made either by regular, registered, or certified mail, with a return receipt requested, or board or court designated process servers effected by tendering the summons to the respondent personally or domiciliary at the last known address.
- B. Time. Service shall be made at least thirty days prior to the date of the hearing as per R.S. 37:1245.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1245.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

### **§307. Default Proceedings**

- A. The board may proceed with a hearing in the event the respondent fails to appear after due notice was perfected or a diligent effort had been made to perfect service on the respondent at the last known address of record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

### **§309. Joinder**

- A. Several complaints may be joined or incorporated and the respondents may be joined in the same or similar complaints based on the same or similar acts or transactions that are connected in a common plan or scheme.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

### **§311. Consolidation**

- A. Hearings may be held jointly to assure a fair due process hearing. Any alleged violations may be consolidated for an administrative hearing of respondents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

### **§313. Severance**

- A. A severance of complaints is permitted when a fair due process hearing will not be satisfied. Otherwise, complaints may be heard jointly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2077 (October 2003), effective January 1, 2004.

### **§315. Motions**

- A. Hearing Motions. Motions are directed to the board or presiding officer for particular relief or action before, during, or after a hearing and shall be in writing when applicable, and allege specifically the grounds upon which the relief is based, and filed with the board five days before hearing or within ten days post-hearing or timely filed during the hearing. At an appropriate time to be decided by the hearing officer, oral or written motions may be directed to the presiding hearing officer during a hearing. Hearing motions are directed to the presiding hearing officer and disposed of appropriately.
- B. Continuance Motions.
  - 1. Postponement Motions. The board may grant or deny a continuance based upon critical or extenuating circumstances that could jeopardize a fair and expeditious due process hearing.
  - 2. Time. Continuance motions shall be filed in writing at least five days prior to the scheduled hearing with specific grounds for postponement. This requirement may be waived by the board under emergency circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§317. Recusation**

- A. A board member or special counsel may be recused by one's own motion because of an inability to contribute to a fair and impartial hearing or may be recused by a majority vote of the board members present based on the following grounds:
  - 1. Prejudicial or personal interest in a case that might prevent one from participating in an impartial hearing.

2. The board may recuse the presiding administrative hearing officer on his own motion or he may be disqualified based upon his own inability to contribute to or conduct an impartial hearing by the respondent filing an affidavit of specific grounds at least five days prior to the scheduled hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§319. Sequestration**

- A. Upon request by either respondent or special counsel or by direction of the hearing officer, witnesses shall be sequestered and not allowed in the hearing chambers or permitted to discuss their testimony with other witnesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§321. Sanction Guidelines**

- A. The sanctions imposed by the board pursuant to R.S. 37:1241 of the Pharmacy Practice Act shall be based on the following guidelines:
  1. Nature. The nature or seriousness of the violation.
  2. Degree. The degree of culpability, knowledge and/or intent, or the responsibility to have knowledge.
  3. Scope. The scope of circumstances involved.
  4. Demeanor. Honesty and truthfulness of respondent.
  5. History. History of prior offenses.
  6. Sanctions. Prior sanctions.
  7. Cooperation. Willingness of respondent to comply with applicable laws and regulations and avoid future violations.
  8. Sufficiency. Sanctions are sufficient to remedy the problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§323. Administrative Investigation**

- A. Upon the receipt of a written complaint, board staff shall initiate and conduct an investigation.
  1. Grounds. The investigative report shall be reviewed by board-designated staff and forwarded to the violations committee or legal counsel to determine sufficient grounds for proceeding either informally or formally.
  2. The report shall include:
    - a. respondent's name and address; and
    - b. a concise statement of facts and circumstances indicating the basis of the routine or specific complaint or cause of action; and
    - c. supporting documents and/or materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§325. Violations Committee**

- A. Purpose. Board-designated staff shall receive reports and complaints and review and evaluate findings to determine the nature and disposition of the alleged violation(s). The alleged violation(s) may then be directed to:
  1. violations committee for informal hearing;
  2. violations committee for interlocutory hearing; and/or
  3. special counsel for institution of a formal administrative hearing.

- B. Guidelines. If determined appropriate by board-designated staff, the violations committee shall receive and review complaints and determine the disposition of the pending matters based on the following:
  - 1. Seriousness. The seriousness of the alleged offense.
  - 2. Degree. The extent of the alleged violations.
  - 3. History. The history of prior violations.
  - 4. Record. Prior sanctions.
  - 5. Cooperation. Willingness to obey the prescribed laws and regulations.
  - 6. Deterrent. Consider the sanctions as a deterrent to future violations.
  - 7. Remedy. The sanctions are sufficient to remedy the problem.
- C. Informal Hearings. The violations committee may conduct an informal non-adversarial hearing with the respondent properly notified of the inquiry regarding the issues to be discussed. The committee shall receive information and deliberate as to a cause of action regarding a potential violation. The committee may recommend a course of action to the full board or dismiss the allegations by an affirmative majority vote of the committee. Should the violations committee recommend a course of action to the full board, the following shall apply:
  - 1. Disclosure. Respondent's testimony or the work product from the informal hearing of any staff or committee member may not be introduced at any subsequent formal hearing.
  - 2. Recusal. Violations committee members shall not be permitted to participate in subsequent formal board hearings pertaining to complaints or alleged violations heard by the violations committee, unless respondent allows otherwise.
- D. Interlocutory Hearings. By interlocutory (or summary) hearing, the violations committee may summarily suspend a license, permit, certification, and/or registration prior to a formal administrative board hearing wherein, based upon the committee's judgment and reflected by adequate evidence and an affirmative majority decision, a person poses a danger to the public's health, safety, and welfare, and the danger requires emergency action.
  - 1. Summons Notice. A summary proceeding summons notice shall be served at least five days before the scheduled hearing to afford the respondent an opportunity to be heard with respect to a potential summary suspension action. The notice shall contain a time, place, nature, and the grounds asserted relative to the alleged conduct warranting summary suspension.
  - 2. Burden of Proof. Legal counsel shall have the burden of proof to support the contention that the public's health, safety, or welfare is in danger and requires summary or emergency action.
  - 3. Evidence. The respondent shall have the right to appear personally and/or be represented by counsel to submit affidavits, documentary evidence, or testimony in response to the cause of action asserted as the basis for the summary suspension.
  - 4. Decision. The committee shall determine whether to grant or deny the summary suspension based upon adequate evidence with an affirmative majority vote substantiated by finding(s) of fact and conclusion(s) of law that the public's health, safety, or welfare is in danger and requires emergency or summary action.
  - 5. Report. The committee shall submit their findings and interlocutory decree to the board when rendered.
  - 6. Suspensive Duration. The summary suspension decree shall be followed by a formal administrative hearing within thirty days from receipt of notice by the respondent.
- E. Probation Violation Hearings. Probation violation proceedings shall be initiated upon receipt of information indicating that a respondent is in violation of any of the terms or conditions of his probation.
  - 1. Review. Board-designated staff shall receive and review the compliance officer's report and then determine whether a probation violation proceeding is warranted. Should a probation violation hearing be determined warranted, the violations committee shall proceed by interlocutory hearing or informal hearing as deemed appropriate.
  - 2. Notice. Notice shall be afforded the respondent of the allegation(s) forming the basis of the alleged violation status, and the time and place of the appropriate hearing to be conducted.
  - 3. Disposition. Disposition of the hearing shall be according to the appropriate procedures to informal hearings or interlocutory hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2078 (October 2003), effective January 1, 2004.

### **§327. Impairment Committee**

- A. Impairment – Impairment means a condition that causes an infringement on the ability of an individual to practice, or assist in the practice, of pharmacy sufficient to pose a danger to the public. Impairment may be caused by, but is not limited to, alcoholism, substance abuse or addiction, mental illness, or physical illness.
- B. The impairment committee shall have the following responsibilities:
  - 1. Supervise the Practitioner Recovery Program.
  - 2. Recommend for board consideration any addictionists or other professionals utilized by the program.
  - 3. Recommend for board consideration any action for reinstatement of recovering persons.
  - 4. Any other related responsibilities deemed appropriate by the board.
- C. Practitioner Recovery Program. The board may establish and maintain a recovery program to assist impaired persons through the recovery process so that they may safely return to practice. The board may utilize the services of outside agencies to assist in the recovery of the impaired person.
- D. Informal Hearing.
  - 1. The board may convene an informal administrative hearing to identify an impaired person and to take appropriate action. The board may require the appearance of any persons deemed necessary to properly conduct an informal hearing. This process shall be conducted by the impairment committee chairman or any other member(s) of the board or staff as the president deems necessary.
  - 2. Any knowledge acquired by any board member or staff in identifying and assisting an allegedly impaired person shall not automatically be grounds for recusal at any later hearing on that same matter.
  - 3. An impaired or allegedly impaired person may enter into a preliminary consent agreement that shall include a mandatory surrender of that person's license, permit, certification, or registration, which shall be delivered to the board office and shall effectively prohibit that person from practicing, or assisting in the practice of, pharmacy. Such person shall agree to enter into an approved treatment and monitoring program as determined by the board. This consent agreement shall not restrain the board from conducting violations proceedings in the matter as it deems necessary.
  - 4. The impairment committee may make recommendations to the full board and/or the violations committee as it deems appropriate on an impaired or allegedly impaired person.
- E. Impaired Reinstatement. An application for reinstatement of an impaired person shall be filed with the impairment committee for consideration and recommendation to the violations committee and/or the full board.
  - 1. An impaired person may petition the board for reinstatement of his license, permit, certification, or registration, provided he has:
    - a. documented proof from an attending physician that he has successfully completed an alcohol or substance abuse recovery program, and
    - b. a current post-treatment evaluation from a board-approved addictionist, and
    - c. successfully completed any requirements the board deems necessary with respect to the particular type of impairment.
    - d. The impairment committee may waive the above requirements for impairments not related to alcohol or substance abuse.
  - 2. After the above stipulations have been met, the person applying for reinstatement may be scheduled for an interview with the impairment committee for consideration of any recommendation to the reinstatement committee and/or the full board.
  - 3. Upon reinstatement, the board may place the reinstated person on probation for a specified length of time and may assign conditions of the probation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2079 (October 2003), effective January 1, 2004.

### **§329. Formal Hearing**

- A. Authority. The board shall provide a formal administrative hearing pertaining to the proprietary rights or privilege to practice pharmacy, or operate a pharmacy, or hold a certificate or registration, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., with authority to take disciplinary action pursuant to R.S. 37:1241 of the Pharmacy Practice Act.

- B. Ex-Parte Communication. Once a formal hearing has been initiated and notice served, board members participating in the decision process shall not communicate with a respondent or a respondent's attorney concerning any issue of fact or law involved in the formal hearing.
- C. Notice. A formal disciplinary public proceeding may be initiated upon proper notice to a respondent and held at a designated time and place based upon the following grounds:
  - 1. violation – sufficient evidence or a serious complaint of an alleged violation to require a formal hearing shall be directed to legal or special counsel for administrative prosecution to justify a formal hearing; or
  - 2. failure to respond – a failure by the respondent to respond to the violations committee informal inquiry; or
  - 3. irresolvable issues – a violations committee informal hearing fails to resolve all issues and requires further formal action; or
  - 4. irreconcilable issues – an interlocutory hearing fails to resolve all pertinent pending issues thus requiring further formal action, or
  - 5. reaffirmation – reaffirmation of an interlocutory decree.
  - 6. requirement – a formal administrative hearing requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2080 (October 2003), effective January 1, 2004.

### **§331. Formal Hearing Procedures**

- A. Hearing Officers.
  - 1. Administrative Hearing Officer. The presiding hearing officer may be the board president, a vice-president, or other individual appointed by the president or his successor. The hearing officer has the responsibility to conduct a fair and impartial proceeding with the administrative duty and authority to:
    - a. convene an administrative board hearing;
    - b. rule on motions and procedural questions arising during the hearing such as objections or admissibility of evidence or examination of witnesses;
    - c. issue or direct staff to issue subpoenas;
    - d. declare recess;
    - e. maintain order;
    - f. enforce a standard of conduct to insure a fair and orderly hearing;
    - g. remove disruptive person(s) from a hearing.
  - 2. Oaths. The presiding hearing officer, executive director, or other board designee may administer oaths.
- B. Administrative Jury. The board, comprised of a quorum of members, shall serve as an administrative jury to hear and determine the disposition of the pending matter based on the finding(s) of fact and conclusion(s) of law by receiving evidence and reaching a decision and/or ordering sanctions with an affirmative majority record vote of board members participating in the decision process.
- C. Administrative Hearing Clerk. The board's executive director shall serve as the administrative hearing clerk and shall maintain administrative hearing records.
- D. Administrative Prosecutor. The legal or special counsel shall prosecute the pending matter and bear the burden of proof to be presented to the board.
- E. Administrative Reporting. The board-designated stenographer shall record all testimony dictated and evidence received at the hearing. The utilization of recording equipment may be employed.
- F. Hearing Order.
  - 1. Docket. Contested matters shall be identified by reference docket number and caption title. The administrative hearing clerk or other staff or board member designated by the presiding hearing officer shall announce the docket and identify persons present or absent in the hearing chambers.
  - 2. Complaint. The complaint may be read at an open hearing unless waived by the respondent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2080 (October 2003), effective January 1, 2004.

### **§333. Pre-hearing Conference**

- A. Respondents and/or their legal counsel in matters pending before the board may be directed by the presiding administrative hearing officer to appear at a pre-hearing conference to consider the simplification of the issues, admission of facts, or stipulations to documents which may avoid unnecessary proof and such other items as may aid in the disposition of the matter(s) pending.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§335. Consent Agreements**

- A. Respondents may enter into consent agreements with the board on any matter pending before the board. A consent agreement is not final until the board approves the consent agreement by majority vote of the administrative jury. If the consent agreement is rejected in full or part, the matter shall be heard at the next regularly scheduled board hearing. However, nothing herein shall limit the board from modifying a consent agreement, with respondent's approval, to include less severe sanctions than those originally agreed to in a pending consent agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§337. Opening Statement**

- A. An opening statement by legal or special counsel may present a brief position comment with an outline of evidence to be offered. Respondent or respondent's legal counsel may present an opening defense position statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§339. Evidence**

- A. Testimony Received. Testimony shall be received under oath administered by the presiding hearing officer, the executive director, or other staff or board member designated by the hearing officer.
- B. Evidence Introduction. All parties shall be afforded an opportunity to present evidence on all issues of fact and argue on all issues of law and respond by direct testimony, followed with cross examination as may be required for a full and true disclosure of the facts. The direct presentation of evidence shall be introduced by the legal or special counsel and shall be followed by the respondent in proper person or by legal counsel by direct and/or cross-examination and/or rebuttal.
- C. Examination. Witnesses may be directly examined and cross-examined. Additionally, witnesses and/or respondents may be questioned during an administrative hearing by members of the administrative jury on matters for clarification.
- D. Rule Interpretation. Liberal rules of evidence shall be employed by the presiding hearing officer to provide adequate facts and law necessary for the board to deliberate and decide each case. The board's administrative hearing shall not be bound to strict rules of evidence.
- E. Admissibility. Admissibility of evidence and testimony shall be determined by the presiding hearing officer as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§341. Closing Arguments**

- A. Closing arguments may be made by respondent in proper person or by legal counsel followed by closing arguments from prosecuting legal or special counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§343. Board Decisions**

- A. The board's decision shall be based on finding(s) of fact and conclusion(s) of law. The board's decision shall be based on a preponderance of the evidence presented at a formal hearing, together with the board's determination of any appropriate sanctions, by an affirmative majority record vote of the board members participating in the decision process. Decisions shall be recorded and made part of the record.
  1. Board Order. The board's order shall be rendered at the open hearing or taken under advisement and rendered within thirty days of the hearing and then served personally or domiciliary at the respondent's last known address by regular, registered, or certified mail, or by a diligent attempt thereof.
  2. Finality of Board Order. The board's order becomes final eleven days after receipt of notification of the board's decision by respondent, provided an appeal is not filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004, amended LR 33:1124 (June 2007).

### **§345. Complaint Dismissal**

- A. The board, in their discretion and based upon lack of evidence, may orally dismiss at an open hearing a pending matter or parts thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§347. Transcripts**

- A. A complete record of all formal hearing proceedings shall be transcribed, maintained, and available upon written request with sufficient costs of the preparation of the transcript for a minimum of three years from the date the pertinent order(s) is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§349. Contempt**

- A. A failure of a respondent or witness to comply with a board order, after being duly served, constitutes contempt and the board may petition a court of competent jurisdiction to rule the witness or respondent in court to show cause why he should not be held in contempt of court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2081 (October 2003), effective January 1, 2004.

### **§351. Administrative Review**

- A. Rehearing. An aggrieved respondent may file within ten days a rehearing motion in proper form requesting reconsideration or a rehearing by the board or by the interlocutory hearing panel.
- B. Grounds. The board or an interlocutory hearing panel may reconsider the motion for rehearing at the next regularly scheduled board meeting. The grounds for such action shall be either that:
  1. the board's decision was clearly contrary to the law or evidence; or
  2. newly discovered evidence not available at the time of the hearing which may be sufficient to reverse the board's decision; or
  3. issues not previously considered ought to be examined; or
  4. it is in the public interest to reconsider the issues and the evidence.



- C. Time. The board or the hearing officer shall grant or deny the petition for rehearing within thirty days after its submission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2082 (October 2003), effective January 1, 2004, amended LR 33:1124 (June 2007).

### **§353. Judicial Review**

- A. An aggrieved respondent may appeal the board's decision to a court of appropriate jurisdiction within thirty days from the board order or rehearing motion denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1248.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2082 (October 2003), effective January 1, 2004.

### **§355. Reporting**

- A. The board may publish in the board's newsletter the sanctions imposed by the board that are of public interest and the public's right to know.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2082 (October 2003), effective January 1, 2004.

### **§357. Reinstatement**

- A. An application for reinstatement based on revocation or suspension of a pharmacist license, pharmacy permit, certification, registration, or any other designation authorized by the board shall be filed with and heard by the reinstatement committee for consideration and recommendation to the full board. The board may then hold a formal hearing whereby the burden of proof shifts to the applicant to demonstrate and support with substantial evidence respondent's rehabilitation and that the reinstatement of the license, permit, certification, registration, or other board-authorized designation at issue would not pose a danger to the public's health, safety, or welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2082 (October 2003), effective January 1, 2004.

### **§359. Declaratory Statements & Advisory Opinions**

- A. The board may issue declaratory rulings in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. These may include a declaratory statement or an advisory opinion, in the form of a ruling which has the same status as board decision in adjudicated cases, in response to a request for clarification of the effect of rules and regulations or of R.S. 37:1161 et seq. Advisory opinions as a statement of the board's ruling are generally rendered in cases that relate to specific situations. Declaratory statements contain the board's ruling relative to the petition, with the principles and rationale that support the ruling. Declaratory statements are generally rendered in situations that relate to widespread situations. Neither an advisory opinion nor a declaratory statement has the binding force of law, but they represent the board's expert opinion relative to the matter in question.
- B. A request for a declaratory statement or for an advisory opinion is made in the form of a petition to the board. At a minimum, the petition shall include:
1. the name and address of the petitioner;
  2. specific reference to the statutes or rules and regulations to which the petition relates;
  3. a concise statement of the manner in which the petitioner is aggrieved by the rule, regulation, or statute, or by its potential application to the petitioner, or in which the petitioner is uncertain of its effects,
  4. a statement of whether an oral hearing is desired; and
  5. other information appropriate for the board's deliberation on the request.
- C. Said petition shall be considered by the board at its next regularly scheduled meeting provided that the petition has been filed at least sixty days prior to the next scheduled board meeting.

- D. The declaratory statement/advisory opinion of the board on said petition shall be in writing and mailed to petitioner at the last address furnished to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2082 (October 2003), effective January 1, 2004.

**§361. Cease and Desist Orders; Injunctive Relief**

- A. The board is empowered to issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of the Louisiana Pharmacy Practice Act or the regulations promulgated thereto, directing such person or firm to forthwith cease and desist from such activity, conduct, or practice.
- B. If the person or firm to whom the board directs a cease and desist order does not cease and desist the prohibited activity, conduct, or practice within the timeframe directed by said order, the board may seek, in any court of competent jurisdiction and proper venue, a writ of injunction enjoining such person or firm from engaging in the activity, conduct, or practice.
- C. Upon proper showing of the board that such person or firm has engaged in the prohibited activity, conduct, or practice, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct, or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall be issued after a hearing, commanding the cessation of the unlawful activity, conduct, or practices complained of.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1124 (June 2007).