

PROPOSED UPDATE TO AAC R4-30-120 through R4-30-126

These changes are necessary to:

- **strengthen 'due process' requirements during the complaint resolution process**
 - **ensure that registrants' Constitutional rights are respected**
 - **ensure Board does not just 'ignore' a properly filed Motion for Review or Rehearing**
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R4-30-120. Complaint Review Process

A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees. The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. Each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.

B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee for an informal conference relating to the complaint. **The Board staff shall mail the notice of the committee meeting to the registrant at least 15 days before the date of the meeting.**

Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.

C. Respondents are not required to participate in the informal conference and no inference shall be drawn from a respondent's decision not to attend.

D. If a respondent chooses not to attend the informal conference, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.

E. The Board shall advise the respondent of the committee recommendation **in writing** and offer the respondent the opportunity to attend an informal compliance conference as outlined in R4-30-123 as part of the informal investigation.

F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.

G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to obtain a signed consent agreement. The Board shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

H. Prior to approving a signed consent agreement or rendering a decision relating to any complaint, the Board shall review the information presented by staff to verify

the Board provided registrant with proper notices and otherwise complied with these rules.

R4-30-121. Investigation of Violations

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted prior to the initiation of formal proceedings. Investigative reports, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall **immediately** inform the respondent **in writing** that an investigation is being conducted and explain the general nature of the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

R4-30-122. Issuance of Subpoenas

Any party desiring the Board or its hearing officers to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board or its hearing officer to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, or administrative law judge shall be sufficient attestation of the same. The party applying for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person's last known address.

R4-30-123. Informal Compliance Procedures

A. Upon notification of the recommendation of an enforcement advisory committee, a registrant may attend a compliance conference with Board staff. The registrant may appear with or without counsel. The Board staff shall mail the notice of the compliance conference to the registrant at least 15 days before the date of the conference. The purpose of the compliance conference is to discuss informal settlement of the investigative matter. Upon completion of the interview, a Board enforcement officer shall make recommendations to the Board.

B. At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action by the Board, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

R4-30-124. Repealed

R4-30-125. Reserved

R4-30-126. Service of Board Decisions; Rehearing of Board Decisions

A. Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).

B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency, members of the Board or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
7. The decision is unjustified based upon the evidence or is contrary to law.

D. The Board ~~may~~ **shall either** affirm **the decision,** ~~or~~ modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.