

RULES AND REGULATIONS
EMERGENCY MEDICAL SERVICES

CHAPTER 9

HEARINGS

Section 1. Purpose. This Chapter has been adopted to provide uniform procedures for the conduct of contested cases involving the denial, revocation, restriction or suspension of a license or certificate.

Section 2. Definitions. The definitions set forth in the Wyoming Administrative Procedures Act W.S. 16-3-101, *et seq.*, are incorporated by reference and, for the purposes of a contested case hearing the following definitions apply.

(a) "Contested Case" means a proceeding involving the denial, revocation, restriction or suspension of a license or certification during which legal rights, duties or privileges of a Contestant are required by law to be determined by the Department after an opportunity for hearing. The hearing shall be conducted in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-101, *et seq.*;

(b) "Contestant" means the person who requests the hearing;

(c) "Department" means the Wyoming Department of Health, its agent, designee or successor;

(d) "Discovery" means pre-hearing procedures used to obtain information from the adverse party;

(e) "Hearing" means a contested case hearing before a hearing officer;

(f) "Hearing Officer" means the individual or individuals designated by the Department to serve as the presiding officer(s) at a hearing held under this Chapter of these rules;

(g) "Respondent" means the Department;

(h) "Wyoming Administrative Procedures Act" or "WAPA" means W.S. 16-3-101, *et seq.*; and

(i) "Wyoming Rules of Civil Procedure" or "WRCP" means the rules governing procedure in all courts of record in the State of Wyoming, in all actions, suits or proceedings of a civil nature, Rule 1 of the Wyoming Rules of Civil Procedure.

Section 3. Emergency Suspension.

(a) Pursuant to W.S. 16-3-113, the Department shall order summary suspension of a certificate or license if the Department finds, and incorporates such finding in the order, that

public health, safety or welfare imperatively requires emergency action of suspension of the certificate or license.

(b) The Department shall accept written notice from the physician medical director that the physician has terminated his position as physician medical director for an EMT, attendant or ambulance service as constituting sufficient evidence supporting a finding that public health, safety or welfare imperatively requires emergency action of suspension, if the physician also provides reason to believe that:

(i) The EMT, attendant or ambulance service has failed or refused to demonstrate the practical performance competency required of an EMT, attendant, or ambulance service;

(ii) The EMT, attendant or ambulance service intentionally misstated or failed to provide any fact that would have resulted in the denial of a certificate or license; or

(iii) Some fact, reason or condition exists that would have resulted in the denial of a certificate or license, whether or not such fact, reason or condition existed at the time of the approval.

(c) The notice of summary suspension shall be issued immediately upon receipt by the Department of the notice described in paragraph (b) of this section. This notice shall be sent by certified mail and/or delivered personally to the ambulance service, attendant or EMT's last known address. Any summary suspension shall become effective immediately upon receipt by the EMT, attendant or ambulance service of notice from the Department.

(d) Proceedings consistent with this Chapter shall be promptly instituted to determine whether the summary suspension shall be affirmed as a revocation or suspension, modified as a restriction, vacated or terminated.

Section 4. Appeal Following Denial, Suspension, Revocation, or Restriction.

(a) A person or an entity whose license or certificate was denied, suspended, revoked, or restricted on the grounds of engaging in conduct constituting a ground for disciplinary action set forth in Chapter 2, Section 12, or Chapter 5, Section 9 or as otherwise provided by law, may request an appeal of the decision within thirty (30) days following the Division's decision.

(b) The request for appeal of the decision shall be in writing and shall contain:

(i) The name of the person or entity (Contestant), address and telephone number;

(ii) A statement in ordinary and concise language setting forth the grounds for the appeal including all statutes or rules upon which the Contestant relies;

(iii) The action for which the appeal is sought; and

(iv) The remedy requested by the Contestant.

(c) Within thirty (30) days after receiving the request, the Department shall make its decision and notify the Contestant. The Department may:

(i) Decide in favor of the Contestant;

(ii) Notify the Contestant that a contested case hearing shall be held; or,

(iii) Notify the Contestant a contested case hearing is denied. Following such notification, the Department shall issue findings and an order. The order shall be the Department's final decision and may be appealed to the district court pursuant to the WAPA.

Section 5. Initiation of Contested Case Hearing.

(a) The Department shall notify the Contestant at least twenty (20) days before holding a contested case hearing. The Department and Contestant may waive this requirement by written agreement.

(b) The Notice of the complaint shall be served as required by Chapter 1, Section 4(qq) of these rules.

(c) The Notice shall, at minimum, contain the following information:

(i) The potential Contestant's name;

(ii) The time and place of the hearing;

(iii) The docket number assigned to the case;

(iv) The legal authority and jurisdiction under which the hearing is to be held;

(v) The particular sections of the statutes and rules involved; and

(vi) A statement in ordinary and concise language setting forth the grounds for the Department's intended action.

Section 6. Answer. If she wishes to contest the Department's intended action, the potential Contestant must file a response within twenty (20) days after receiving the notice. Failure to file a response within twenty (20) days shall be deemed a waiver of any right to respond.

Section 7. Informal Disposition.

(a) Unless contrary to law or rule, a disciplinary proceeding may be settled by informal means at any time.

(b) Settlement conference. Any party may request that the matter be set for a settlement conference. Upon such request, the Hearing Officer shall schedule a conference and direct that a representative of each party attend, such representative to have authority to settle the

matter. The Hearing Officer shall neither attend the conference nor be advised of the proposals of either party. The Hearing Officer may designate another individual, not previously involved in the matter, to attend the conference and assist the parties in attempting to reach a settlement.

Section 8. Hearing Officer.

(a) The Department shall appoint a Hearing Officer to preside over each contested case hearings on a case-by-case basis, or for schedules period of time, as she sees fit.

(b) The Hearing Officer shall be an individual or individuals determined by the Department to be qualified to serve in such a capacity, who has not taken part in the investigation, preparation, or earlier disposition of the case to be heard.

(i) The Hearing Officer shall withdraw himself from consideration of a case at any time he deems himself disqualified. Withdrawal shall be made in writing to the Department.

(ii) Any party may request in writing that the Department remove and replace the Hearing Officer in a contested case. This request must be accompanied by a statement and affidavits, setting forth the alleged grounds for disqualification. The Department may deny a party's request for removal and shall issue a written statement explaining grounds for his denial which shall be made part of the record. If the request is granted, the Department shall appoint a new Hearing Officer as soon as is practicable.

(iii) The Contestant may object to the appointment of the Hearing Officer in the record at the hearing. The objection shall set forth the alleged grounds for disqualification.

(c) The Hearing Officer shall have all powers necessary to conduct a fair and impartial hearing, including but not limited to the following authority:

(i) To administer oaths and affirmations;

(ii) To subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry;

(iii) To rule upon offers of proof and relevant evidence;

(iv) To provide for discovery and determine its scope;

(v) To regulate the course of the hearing;

(vi) To schedule conferences for the settlement and to hold conferences for simplifications of the issues;

(vii) To dispose of procedural requests or similar matters; and

(viii) To take any other action authorized by the Department's rules.

(d) Failure or refusal to appear or obey orders of the Hearing Officer may result in

the sanctions provided in W.S. 16-3-107(c) and (f).

Section 9. Discovery. Discovery in a Department disciplinary proceeding shall be governed by W.S. 16-3-107 and Wyoming Rules of Civil Procedure (WRCP).

Section 10. Pre-hearing Conference.

(a) At a time on or before the day of the hearing, the Hearing Officer, on his own or either party's motion, may meet with the parties for a conference to consider simplification of the issues, stipulations and admissions of fact, clarifications or limitation of evidence, and any other matters that may expedite the proceeding and assure a just conclusion of the case. The meeting may be held by the telephone conference.

(b) Any stipulations, limitations or agreements made at a pre-hearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent manifest injustice.

Section 11. Evidence and Testimony.

(a) Burden of Proof. The Department shall have the burden of proof for all disciplinary proceedings.

(b) Admissibility of Evidence. Admissibility is governed by W.S. 16-3-108 and WRCP.

(i) The parties shall be entitled to present oral or documentary evidence, submit rebuttal evidence and conduct cross-examinations, as maybe required for a full disclosure of the facts. All documentary or physical evidence submitted for consideration shall be marked as exhibits. The Department's exhibits shall be marked by letters of the alphabet beginning with "A." Contestant's exhibits shall be marked by numbers beginning with "1."

(ii) The Hearing Officer shall allow oral or documentary evidence which is not relevant, immaterial or unduly repetitions evidence.

(c) Objections.

(i) The grounds for objections to any evidentiary rulings by the Hearing Officer shall be briefly stated. Rulings on all objections shall appear in the records. Only those objections made before the Hearing Officer, or specifically stipulated to by both parties, may be relied on in a subsequent proceeding.

(ii) Formal exception to an adverse ruling is not required.

(d) Privileged and Confidential Information.

(i) Any privilege at law shall be recognized by the Hearing Officer in considering evidence.

(ii) No employee of the Department shall be compelled to testify, or to

divulge information which is confidential or privileged at law and which is contained within the records of the Department or acquired within the scope of his employment except as provided in W.S. 16-3-107.

(e) The Hearing Officer may take official notice of any material fact not appearing in evidence in the record that is of the nature of traditional matters of judicial notice or within the special technical knowledge or files of the Department. Parties shall be given an opportunity to contest matters officially noticed prior to a final decision by the Department in accordance with W.S. 16-3-108.

(f) Each witness who is present to give testimony must identify himself or herself by stating his or her name and address, indicate on whose behalf he or she shall testify, and be administered the following oath by the Hearing Officer: "Do you swear or affirm to tell the whole truth, and nothing but the truth?"

Section 12. Representation.

(a) All parties have a right to represent themselves, to be represented by an attorney authorized to practice pursuant to the rules of the Supreme Court of Wyoming, or be represented by any other person chosen by the Contestant to appear on his behalf. If the Contestant is represented by an attorney, the Contestant shall pay his attorney's fees and costs. During such hearings:

(i) A party, his attorney, or his representative may examine or cross-examine witnesses;

(ii) The Hearing Officer may examine witnesses; but

(iii) Other than as delineated in (i) or (ii) above, no other person may examine or cross-examine witnesses.

(b) The Respondent may request the Attorney General to assist in contested case hearings to the extent required by W.S. 16-3-112(c).

Section 13. Location of Hearing.

(a) Hearings involving certification of a Contestant and licensing of an ambulance service shall be held in Cheyenne, Wyoming unless the Department consents, in writing to a different location.

Section 14. Consolidation of Hearings. Upon motion of on of the parties, the Hearing Officer may consolidate two or more hearings if the hearings involve the same parties with similar related issues.

Section 15. Procedural Rights of Contestant. The Contestant, or his representative may, in keeping within the Wyoming Rules of Civil Procedure:

(a) Engage in discovery; and

(b) Bring witnesses, establish all pertinent facts and circumstances, present an argument, and question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, in compliance with the WRCP.

Section 16. Failure to Appear. If a Contestant fails to appear at the place, date, and time specified in a notice, the Hearing Officer may:

(a) Continue the hearing until a later date and provide proper notice as prescribed in these rules;

(b) Proceed to conduct the hearing without the Contestant and dispose of the contested case; or

(c) Enter a finding adverse to the Contestant.

Section 17. Order of Procedure.

(a) As nearly as practicable, the following order shall be followed:

(i) Opening statements may be made, Respondent first, then Contestant.

(ii) The Respondent shall have the burden of proof and shall offer evidence first, and then the Contestant may offer evidence.

(iii) No testimony shall be received by the Hearing Officer unless given under oath/affirmation administered by the Hearing Officer.

(iv) Closing statements may be made, Respondent first, then Contestant, then the Respondent in rebuttal.

(v) The Hearing Officer may limit the time for opening and closing statements.

(vi) After all parties have had an opportunity to be heard, the Hearing Officer shall excuse all witnesses and close the evidence.

(vii) Evidence may be reopened only upon written motion by a party to the proceeding and a showing of good cause.

(b) Upon their own motion, all parties or other interested parties may submit legal briefs after the close of the hearing. The Hearing Officer shall allow reasonable time, not less than ten (10) days from the date of the hearing, for preparation of briefs. The time may be extended upon agreement between the parties with the approval of the Hearing Officer.

Section 18. Decisions.

(a) The Hearing Officer shall make proposed findings of fact and conclusions of law within twenty (20) working days of the close of the hearings (the time permitted for parties or other interested persons to submit briefs shall be included within twenty {20} working days) and

forward them to the Department for final determination. This time may be extended but not by more than ten (10) working days, unless the parties stipulate in writing or on the record at the hearing, to a later date.

(i) Within ten (10) working days of the close of the hearing, or at such later time as the Hearing Officer may allow, each party shall be allowed to file with the Hearing Officer any proposed findings of fact and conclusions of law, together with a supporting brief. Such proposals and briefs shall be served on all other parties.

(ii) Within ten (10) working days after the issuance of the Hearing Officer's proposed findings of fact and conclusions of law, any of the parties may submit exceptions. Such exceptions shall be filed with the Department and served on all other parties.

(b) Within ten (10) working days after the period for submitting exceptions pursuant to (a)(ii), the Department shall make and enter into the record the final decision. The final decision shall be served on all parties to the proceedings. The final decision shall include:

(i) A statement of the findings of fact and conclusions of law; and

(ii) The appropriate rule, order, relief or denial thereof. The Decision shall be based upon the contested case record or any portion stipulated to by the parties. The decision shall include facts officially noticed and relief upon as provided by W.S. 16-3-108(d). It shall be made on the basis of a preponderance of evidence contained in the record.

(c) Final decision of the Department shall be in accordance with W.S. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure, except as otherwise agreed by the parties.

Section 19. Appeals

Appeals from a final decision of the Department shall be in accordance with W.S. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure, except as otherwise agreed by the parties.

Section 20. Transcripts and Record.

(a) When a contested case is set for hearing, the Department shall assign a docket number and date of filing on a docket. The Department shall maintain a separate file for each docketed case in which all pleadings, transcriptions, correspondence, appears, and exhibits for that case shall be maintained. All such items shall have noted thereon the assigned docket number and the date of filing.

(b) The Department shall record all contested case proceedings:

(i) Electronically;

(ii) Through the use of a qualified court reporter; or

(iii) Any other appropriate means determined by the Department. Transcription of oral proceedings or written transcripts of a witness' testimony may be obtained

by Contestant from the Department upon payment of the cost of copying the transcripts.

- (c) The record of the hearing shall contain:
 - (i) All formal and informal notices, pleadings, motions and intermediate rulings;
 - (ii) Evidence received or considered, including matters officially noticed;
 - (iii) Questions and offers of proof, objections and rulings;
 - (iv) Proposed findings of fact and conclusions of law, submitted by any party;
 - (v) The proposed findings of fact and conclusions of law of the Hearing Officer; and
 - (vi) Any exceptions to the Hearing Officer's proposed findings of fact and conclusions of law.
- (d) The Department's final decision or a stipulation resolving the matter shall be part of the record unless otherwise agreed by the parties.

Section 21. Ex Parte Matters. Unless required for the disposition of ex parte matters authorized by law, the Hearing Officer shall not consult with an individual or party on any matter at issue as allowed in W.S. 16-3-111.

