

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Dental Board

Regulation/Package Title: 2015 – Chapter 15

Rule Number(s): 4715-15-01 to 4715-15-28 inclusive

Date: December 7, 2015

Rule Type:

New
 Amended

5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

No Change

The following rules set forth the guidelines for Chapter 119. administrative hearings for violations of O.R.C. Chapter 4715.

- 4715-15-03 Request for hearing.
- 4715-15-04 Authority and duties of attorney hearing examiners.

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- 4715-15-05 Consolidation.
- 4715-15-06 Intervention.
- 4715-15-07 Continuance of hearing.
- 4715-15-08 Motions.
- 4715-15-09 Filing.
- 4715-15-10 Service on parties.
- 4715-15-11 Computation and extension of time.
- 4715-15-12 Notice of hearings.
- 4715-15-13 Transcripts.
- 4715-15-14 Subpoenas for purposes of hearing.
- 4715-15-15 Mileage reimbursements and witness fees.
- 4715-15-17 Exchange of documents.
- 4715-15-18 Requirements for pre-hearing exchange of information.
- 4715-15-19 Prehearing conferences.
- 4715-15-20 Status conference.
- 4715-15-21 Deposition in lieu of testimony at hearing and transcripts of prior testimony for submission at hearing.
- 4715-15-22 Prior action by the state dental board.
- 4715-15-23 Stipulation of facts.
- 4715-15-24 Witnesses.
- 4715-15-25 Conviction of a crime.
- 4715-15-26 Evidence.
- 4715-15-27 Broadcasting and photographing administrative hearings.
- 4715-15-28 Reinstatement of license or certificate.

Amended

The following rules set forth the guidelines for O.R.C. Chapter 119. administrative hearings for violations of O.R.C. Chapter 4715. Amendments to the rules are to correct typographical errors and to incorporate requirements due to the enactment of H.B.215 of the 128th General Assembly.

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- 4715-15-01 Enforcement
- 4715-15-02 Representatives; appearances; communications; applicability.
- 4715-15-16 Reports and recommendations.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 4715.03 Board organization – examinations.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

These regulations do not implement a federal requirement nor were they implemented to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This question is not applicable since the regulations do not implement a federal requirement.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The General Assembly determined that the profession of dentistry required regulation and established a Board to license individuals and enforce the law and rules governing the practice of dentistry and dental hygiene in Ohio. These regulations allow the Board to carry out its statutory mission of ensuring public protection by setting forth guidelines for hearings for those individuals found in violation of O.R.C. Chapter 4715.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules are not quantitative regulations, nor does it impose a measureable (if any) quantitative burden on the licensees. The success of the regulation will be measured by the licensees understanding or legal objections to the rules.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Board's Law and Rules Review Committee (Committee), holds open meetings throughout the rule review year. The Committee is comprised of eleven (11) members including representatives of the Board, the Ohio Dental Association and the Ohio Dental Hygienists' Association. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list, a listing of parties interested in all Board proceedings. The Committee met with the opportunity to discuss these rules in July, September, and December 2014.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Discussion by the Committee and by the full Board resulted in the conclusion that these rules are working as intended by the legislature and that the only amendments were to correct for typographical errors and incorporate requirements due to the enactment of H.B.215 of the 128th General Assembly.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data was not used to develop this rule as the rule is not data driven.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternative regulations were considered by the agency since it was determined that the rule works as intended by legislature.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The Board did not see an application for the rule in this package to be performance-based.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The five-year rule review process is conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties help to ensure that these rules do not duplicate any existing Ohio regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Board will continue to use its website and social media links to educate and update licensees on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel in an effort to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules, particularly amended rules are provided to their members through communications and CE opportunities. Staff training is conducted for rule changes to ensure that regulations are applied consistently.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Licensed, registered, or certified individuals regulated by ORC Chapter 4715. and the employees of licensed dentists.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Individuals are required to have a license to practice dentistry and dental hygiene and, violations of O.R.C. Chapter 4715., may result in disciplinary sanctions, which may include continuing education, practice restrictions, or license suspension or revocation.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The cost of adverse impact of the rules are in any disciplinary sanctions taken against the licensee due to substandard care. More specifically a result in lost time/earnings, suspension of licensure, cost/lost time for educational remediation, or loss of practice due to revocation of licensure to practice could occur. Additionally, these rules may adversely impact employees of the licensed individual in the manner of lost jobs/wages if the affected licensee is the sole owner/employer of a dental practice.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules exist for the sole purpose to provide the Board the authority to discipline licensees for substandard practice which allows the Board to fulfill its statutory mission of protection of the public.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

These rules do not provide any exemption or alternative means of compliance for small businesses. All licensed dental personnel under ORC 4715 must have a license, registration or certificate to provide services in Ohio. The law does not differentiate on the size of the business and therefore, these rules apply to all licensed, certified, or registered providers.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ORC 4715 does not allow for the implementation of fines or penalties. Therefore, this is not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

Resources available to assist small businesses/stakeholders with compliance are online access to the Ohio Revised and Administrative Codes. Additionally, Board staff regularly respond to inquiries from interested parties.

ENFORCEMENT; HEARINGS

4715-15-01 ENFORCEMENT.

Dentists and other licensees governed by Chapter 4715. of the Revised Code, and by Chapter ~~4715-15~~4715. of the Administrative Code, shall be disciplined in accordance with Chapters 4715. and 119. of the Revised Code, for violation of this chapter and statutes.

4715-15-02 REPRESENTATIVES; APPEARANCES; COMMUNICATIONS; APPLICABILITY.

- (A) As used in Chapter ~~4715-15~~4715. of the Administrative Code, "respondent" shall be defined as the person who is requesting or has requested a hearing as provided in Chapter 119. of the Revised Code.
- (A) The respondent may represent himself or may be represented by an attorney admitted to the practice of law in Ohio. If the respondent does represent himself, he shall be deemed the representative of record for purposes of Chapter ~~4715-15~~4715. of the Administrative Code.
- (B) The respondent is not required to personally appear at any hearing unless he has been subpoenaed to appear by a party of record. The respondent can authorize his representative to represent him in all facets of a hearing before the board unless he has been subpoenaed to appear by a party of record.
- (C) The respondent or his representative may present his position, arguments, or contentions in writing rather than personally appearing at any hearing provided the respondent has not been subpoenaed.
- (D) The representative of record for the respondent shall enter his appearance in writing.
- (E) The representative of record from the office of the attorney general shall enter his appearance in writing.
- (F) One who has entered an appearance as representative remains the representative of record unless and until a written withdrawal is filed with the state dental board.
- (G) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board or its attorney hearing examiner shall be sent to the representative of record.
- (H) The members of the dental board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the dental board in any way other than by review of the evidence of record shall be considered by such member in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless the member excuses himself or herself from participation in the decision on the ground that he or she cannot restrict his or her decision on the matter only to the evidence of record.
- (I) Except as otherwise provided under this chapter or by statute, no attorney hearing examiner or member of the state dental board shall initiate or consider ex parte communications concerning a pending or impending adjudicatory proceeding. Nothing contained herein, however, shall preclude the attorney hearing examiner from nonsubstantive ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.
- (J) The attorney hearing examiner and members of the state dental board shall disclose on the record the source and substance of any ex parte or attempted ex parte communications. That disclosure shall be made at the earliest possible opportunity, but at least prior to deliberation on a pending or impending adjudicatory proceeding.

- (K) Except as otherwise provided under this chapter or by statute, a rule promulgated under this chapter shall apply only to those administrative proceedings for which the notice of opportunity for hearing was mailed to respondent, or his representative, on or after the effective date of the particular rule.
- (L) Any provision of the rules in this chapter which references the attorney hearing examiner shall apply to the board in those instances in which the administrative hearing is conducted before the board, rather than an attorney hearing officer, unless such rule by its nature is clearly inapplicable.
- (M) If any provision of the rules in this chapter is held or if the application of any provision of the rules in this chapter to any person or circumstance is held invalid, the invalidity does not affect any other provision of the rules in this chapter, or the application of any other provision of the rules in this chapter, that can be given effect without the invalid provision or application, and, to this end, the provisions of the rules in this chapter are hereby declared severable.

4715-15-03 FILING REQUEST FOR HEARING.

- (A) In order to request a hearing under Chapter 119. of the Revised Code, a respondent or his representative must, in accordance with rule 4715-15-09 of the Administrative Code, file in writing a statement requesting such adjudication hearing within thirty days of the date of mailing of the board's notice of opportunity for hearing, or the date of personal service . The date of mailing shall be the date appearing on the certified mail receipt.
- (B) A respondent or his representative properly filing a request for an adjudication hearing shall be entitled to such adjudication hearing within fifteen days but not sooner than seven days after such request has been filed unless both representatives agree otherwise or a continuance is granted pursuant to section 119.09 of the Revised Code and rule 4715-15-07 of the Administrative Code.

4715-15-04 AUTHORITY AND DUTIES OF ATTORNEY HEARING EXAMINERS.

- (A) Adjudication hearings may be conducted before an attorney hearing examiner pursuant to Chapters 4715. and 119. of the Revised Code.
- (B) All hearings shall be open to the public, but the hearing examiner conducting a hearing may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing examiner determines to close the hearing, the hearing examiner shall state the reasons therefore in the public record.
- (C) The hearing examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.
- (D) The authority of the attorney hearing examiner shall include, but not be limited to, authority to:
 - (1) Administer oaths and affirmations;
 - (2) Order issuance of subpoenas and subpoenas duces tecum to require the attendance of witnesses at hearings and depositions in lieu of live testimony at hearing and to require the production of evidence for hearings and depositions;
 - (3) Examine witnesses and direct witnesses to testify;
 - (4) Make rulings on the admissibility of evidence;
 - (5) Make rulings on procedural motions, whether such motions are oral or written;

- (6) Hold prehearing and status conferences pursuant to rules 4715-15-19 and 4715-15-20 of the Administrative Code;
 - (7) Request briefs before, during or following the hearing, as well as suggested findings, orders, and conclusions of law within such time limits as the attorney hearing examiner may determine;
 - (8) Prepare entries, findings, orders, or reports and recommendations pursuant to rule 4715-15-16 of the Administrative Code;
 - (9) Request preparation of entries, findings, or orders;
 - (10) Make rulings on requests to broadcast, record, televise or photograph the hearing;
 - (11) Take such other actions as may be necessary to accomplish the purposes of paragraph (C) of this rule;
 - (12) Determine the order in which any hearing shall proceed.
- (E) The authority of the attorney hearing examiner shall not include authority to:
- (1) Grant motions for dismissal of charges;
 - (2) Modify, compromise, or settle charges or allegations.
- (F) The attorney hearing examiner shall have such other powers, duties, and authority as are granted by statutes or rules.
- (G) All rulings on evidence and motions and on any other procedural matters shall be subject to review by the board upon presentation of the proposed findings of facts and conclusions of law of the attorney hearing examiner. When such rulings warrant, the matter may be remanded to the attorney hearing examiner.

4715-15-05 CONSOLIDATION.

Upon motion by any representative of record, the attorney hearing examiner may consolidate two or more hearings into a single hearing.

4715-15-06 INTERVENTION.

Petitions to intervene shall not be permitted.

4715-15-07 CONTINUANCE OF HEARING.

- (A) The board shall initially continue a hearing upon its own motion for a period of not less than thirty days, in order to more efficiently and effectively conduct its business unless the circumstances establish that a continuance would not serve the interest of justice.
- (B) The attorney hearing examiner may continue a hearing upon the motion of a representative of record.
- (C) Hearings shall not be continued upon motion by a representative unless a showing of reasonable cause and proper diligence is presented. Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings. In no event will a motion for a continuance by a representative, requested less than five days prior to the scheduled date of the hearing, be granted unless it is demonstrated that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.

- (D) No continuance of an adjudicatory hearing under division (E) or (F) of section 4715.30 of the Revised Code shall be granted without the written agreement of the respondent or his representative and the board.
- (E) If a continuance is granted, the attorney hearing examiner shall immediately establish a new hearing date, unless circumstances prohibit.
- (F) Hearings may be continued due to the unavailability of a subpoenaed witness at the discretion of the attorney hearing examiner. The attorney hearing examiner may hold the record open to accept a deposition in lieu of live testimony of a subpoenaed witness. The procedures set forth in rule 4715-15-21 of the Administrative Code shall apply to any deposition taken pursuant to this rule.
- (G) No adjudication hearing shall be continued for more than ninety days for the purpose of exchanging witness or document lists to the extent provided in rule 4715-15-17 of the Administrative Code unless the board or attorney hearing examiner finds in writing that such exchange was diligently pursued but was not completed due to the unusual circumstances of the case.

4715-15-08 MOTIONS.

- (A) Except as otherwise provided under Chapter 4715-15 of the Administrative Code or Chapter 119. of the Revised Code, all motions, unless made upon the record at the hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds therefore, and shall be filed in compliance with rule 4715-15-09 of the Administrative Code. A proposed entry may accompany any motion. All motions except for motions for continuance and those motions filed subsequent to the close of the hearing shall be made no later than fourteen days before the date of hearing unless express exception is granted by the attorney hearing examiner or by this chapter.
- (B) All motions, together with supporting documentation, if any, shall be served as provided in rule 4715-15-10 of the Administrative Code.
- (C) Within ten days after service of a written prehearing motion, or such other time as is fixed by the attorney hearing examiner, a response to that motion may be filed. A movant may reply to a response only with the permission of the attorney hearing examiner.
- (D) Before ruling upon a written motion, the attorney hearing examiner shall consider all memoranda and supporting documents filed. The attorney hearing examiner shall enter a written ruling and shall issue copies to the representatives as identified under rule 4715-15-02 of the Administrative Code. The ruling on all oral motions made at hearing shall be included in the record except where the attorney hearing examiner elects to take the motion under advisement and issue a written ruling at a later time. The attorney hearing examiner shall include in each written ruling on a motion a short statement of the reasons therefore.
- (E) Except as otherwise provided in this chapter or Chapter 119. of the Revised Code, rulings on all substantive motions filed subsequent to the issuance of the report and recommendation shall be rendered by the board, and rulings on all procedural motions may be rendered by the secretary acting on its behalf.

4715-15-09 FILING.

- (A) A document is "filed" when it is received and time stamped in the offices of the state dental board during normal business hours. The burden of ensuring that the document(s) is properly filed is borne by the party filing the document(s).
- (B) An original of any document required to be filed by Chapter 4715-15 of the Administrative Code shall be filed with the state dental board not more than three days after service.
- (C) All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief and shall be appropriately captioned to indicate the name of the respondent.

4715-15-10 SERVICE ON PARTIES.

- (A) Any document required by Chapter 4715-15 of the Administrative Code to be served by a representative of record may be served either personally, by mail, by facsimile, or electronic mail.
- (B) Service is complete on the date of mailing, or on personal service of the document, or the date of facsimile or electronic mail was sent. Any facsimile or electronic mail sent after 5:00 p.m. will be deemed served on the next business day.
- (C) A motion shall be considered by the board or its attorney hearing examiner only if a certificate of service appears on it. Any signed statement is an acceptable certificate of service so long as it contains all of the following information:
 - (1) Date of service;
 - (2) Method by which service was made;
 - (3) Address where service was made; and
 - (4) Name of the person or authority who was served.

4715-15-11 COMPUTATION AND EXTENSION OF TIME.

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under Chapter 4715-15 of the Administrative Code. The last day of the period is included in the computation of the time limit. If the last day of a period is not a regular business day, the time period runs through the end of the next regularly scheduled business day.
- (B) The board or its attorney hearing examiner may extend the time for filing or responding to motions and briefs.
 - (1) Requests for extension of time shall be made in writing and filed as provided in rule 4715-15-09 of the Administrative Code prior to the expiration of any applicable time limit.
 - (2) Requests for extension of time shall be served as provided in rule 4715-15-10 of the Administrative Code.

4715-15-12 NOTICE OF HEARINGS.

Notice specifying the date, time and place set for hearing shall be mailed by certified mail to the representatives of record, except that notice of changes to the date, time or place set for hearing shall be mailed by regular mail or facsimile if a representative of each party participated in the selection of the new date, time or place.

4715-15-13 TRANSCRIPTS.

- (A) Duplicate transcripts of the stenographic record taken of hearings may be obtained directly from the court reporter at the requestor's expense prior to receipt of the original transcript by the board.
- (B) Upon request made to the board, a copy of original transcripts may be reviewed at the board office or signed out for a period of forty-eight hours. Additional copies may be prepared at the requestor's expense.
- (C) Original transcripts shall not be removed from the board office.

4715-15-14 SUBPOENAS FOR PURPOSES OF HEARING.

- (A) Upon written request of either party, the board shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers at the administrative hearing. Each subpoena shall indicate on whose behalf the witness is required to testify. Copies of such subpoenas shall be provided to each representative of record.
- (B) For purposes of a hearing conducted pursuant to Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date, time and location the individual is to appear at the administrative hearing. If the subpoena includes a duces tecum request, the specific documents or tangible things to be produced at the administrative hearing shall be listed in the request.
- (C) Except upon leave of the board or its attorney hearing examiner, subpoena requests are to be filed with the board as provided in rule 4715-15-09 of the Administrative Code at least fourteen days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.
- (D) In the event that the number of subpoenas requested appears to be unreasonable, the board or its attorney hearing examiner may require a showing of necessity therefore, and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within five days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
- (E) After the hearing has commenced, the board or its attorney hearing examiner may order the issuance of subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to each representative of record.
- (F) Upon motion and for good cause, the board or its attorney hearing examiner may order any subpoena be quashed. Motions to quash shall be made in the manner provided in rules 4715-15-08 and 4715-15-09 of the Administrative Code, except that motions to quash shall be filed at least five days prior to the date of compliance. The non-moving party may file a response no later than four days after service of the motion to quash or at least one day prior to the date of compliance whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing to which he was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.
- (G) Witnesses shall not be subpoenaed to prehearing conferences.

4715-15-15 MILEAGE REIMBURSEMENTS AND WITNESS FEES.

- (A) Mileage shall be paid in the same manner set forth in Chapter 119 of the Administrative Code.

(B) The respondent shall not subpoena himself.

(C) Mileage and witness fees shall be returned by anyone who fails to appear at the hearing for which he was subpoenaed.

Effective: 04-02-2010

4715-15-16 REPORTS AND RECOMMENDATIONS.

(A) Within ~~sixty~~thirty days following the close of an adjudication hearing conducted pursuant to Chapter 119. of the Revised Code, the attorney hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the board. Any requests by the attorney hearing examiner to extend the time to file the report must be submitted within ~~forty-five~~twenty-five days of the close of the hearing record. Such request shall be ruled upon by the secretary of the board or in the absence of the secretary, by the board executive director. The hearing shall not be considered closed until such time as the record is complete, as determined by the attorney hearing examiner.

(B) A copy of such written report shall be issued to each representative of record. The copy issued to the respondent's representative of record shall be accompanied by notice of the date the report and recommendation is to be considered by the board.

(C) Either representative of record may, within ten days of his receipt of the attorney hearing examiner's report and recommendation, file written objections to the report and recommendation. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the attorney hearing examiner's recommendation unless otherwise determined by the board.

(D) Upon written request, the board may grant extensions of the time within which to file objections to the report and recommendations. In the event that the board is not in session, the secretary of the board may grant such extensions.

(E) The board shall consider the attorney hearing examiner's report and recommendation and any objections thereto at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may order additional testimony to be taken or permit the introduction of further documentary evidence, or act upon the report and recommendation. For purposes of taking such additional testimony or documentary evidence, the board may remand to the attorney hearing examiner.

(F) Any motion to reopen the hearing record for purposes of introducing newly discovered material evidence that with reasonable diligence could not have been discovered and produced at the hearing shall be filed in the manner provided in rules 4715-15-08 and 4715-15-09 of the Administrative Code. Such motion to reopen shall be filed not later than ten days prior to the scheduled consideration by the board of the attorney hearing examiner's report and recommendation and any objections thereto. If such motion is filed prior to the issuance of the attorney hearing examiner's report and recommendation, the attorney hearing examiner shall rule on the motion. If such motion is filed subsequent to the issuance of the attorney hearing examiner's report and recommendation, the board shall rule upon the motion.

(G) Without leave of the board, the respondent or any representative of record shall not be permitted to address the board at the time of consideration of the attorney hearing examiner's report and recommendation. Any request for such leave shall be filed by motion no less than five days prior to the date the report and recommendation is to be considered by the board and shall be served upon the representative of record.

(H) If a request to address the board is granted, the opposing representative may also address the board.

4715-15-17 EXCHANGE OF DOCUMENTS AND WITNESS LISTS.

- (A) Any representative of record may serve upon the opposing representative of record a written request for a list of both the witnesses and the documents intended to be introduced at hearing. Within twelve days of service of that request, the opposing representative shall provide a response to the requesting representative. All final lists requested under this rule shall be exchanged no later than thirty days prior to the commencement of the administrative hearing, unless leave from the attorney hearing examiner has been obtained.
- (B) Failure without good cause to comply with paragraph (A) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

4715-15-18 REQUIREMENTS FOR PRE-HEARING EXCHANGE OF INFORMATION.

The attorney hearing examiner shall, upon written motion of any representative of a party, issue an order setting forth a schedule by which the parties shall simultaneously exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses. Any witness including the respondent, identified as, or wishing to testify as an expert witness, shall prepare and file an expert report that sets forth the opinions to which the expert will testify and the bases for such opinions. The failure of a party to produce a written report from an expert in accordance with this rule or under the terms of the hearing examiner's order may result in the exclusion of that expert's testimony at hearing. The failure of a party to produce an exhibit under the terms of the attorney hearing examiner's order may result in the exclusion of that exhibit from evidence. The failure of a party to identify a lay or expert witness under the terms of the hearing examiner's order may result in the exclusion of that witness' testimony at hearing.

4715-15-19 PREHEARING CONFERENCES.

- (A) The attorney hearing examiner shall, upon request of either party, schedule a prehearing conference. Further, the attorney hearing examiner may direct participation by the representatives of record in a prehearing conference. Such conference may be initiated by the attorney hearing examiner, or upon motion of either representative.
- (B) Prehearing conferences may be held for the following purposes:
 - (1) Identification of issues;
 - (2) Obtaining stipulations and admissions;
 - (3) Agreements limiting the number of witnesses;
 - (4) Discussion of documents, exhibits, and witness lists;
 - (5) Estimating the time necessary for hearing;
 - (6) Discussion of any other matters tending to expedite the proceedings.
- (C) All representatives of record shall attend the prehearing conference fully prepared to discuss the items enumerated in paragraph (B) of this rule.

- (D) Procedural orders may be issued by the attorney hearing examiner based upon information obtained at a prehearing conference.

4715-15-20 STATUS CONFERENCE.

With or without written motion from the representative of any party, the attorney hearing examiner may convene a status conference with representatives of the parties to address any matter related to preparation for hearing or the conduct of a hearing. The attorney hearing examiner may issue such orders related to preparation for hearing and the conduct of the hearing which in the judgment of the attorney hearing examiner facilitate the just and efficient disposition of the subject of the hearing.

Prior Effective Dates: 11-10-00

4715-15-21 DEPOSITIONS IN LIEU OF TESTIMONY AT HEARING AND TRANSCRIPTS OF PRIOR TESTIMONY FOR SUBMISSION AT HEARING.

- (A) Upon written motion of any representative of record, and upon service of that motion to all other representatives, the attorney hearing examiner may order that the testimony of a witness be taken by deposition in lieu of live testimony under such conditions and terms as the attorney hearing examiner shall set, and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

- (1) The witness will be unavailable to attend or will be prevented from attending a hearing; and
- (2) The testimony of the witness is material; and
- (3) The testimony of the witness is necessary in order to prevent a failure of justice.

In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for the attorney hearing examiner's consideration of the motion of a representative to take a deposition in lieu of live testimony.

- (B) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney hearing examiner shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. The attorney hearing examiner has the discretion to be present at the deposition in lieu of testimony at hearing.
- (C) A deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and shall be offered into evidence at hearing by the representative requesting the deposition, in lieu of the witness' live testimony at hearing. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor.
- (D) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition of prior testimony is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.

A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.

4715-15-22 PRIOR ACTION BY THE STATE DENTAL BOARD.

The attorney hearing examiner shall admit evidence of any prior action entered by the Ohio state dental board against the respondent, including formal disciplinary action or warning letters.

4715-15-23 STIPULATION OF FACTS.

Representatives of record may, by stipulation, agree on any or all facts involved in proceedings before the attorney hearing examiner. The attorney hearing examiner may thereafter require development of any fact deemed necessary for just adjudication.

4715-15-24 WITNESSES.

- (A) All witnesses at any administrative hearing or during any deposition in lieu of live testimony at hearing pursuant to rule 4715-15-21 of the Administrative Code shall testify under oath or affirmation.
- (B) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and that legal counsel may neither examine nor cross-examine any witnesses.
- (C) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the state dental board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.
- (D) The presiding attorney hearing examiner, because of his duties, shall not be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or an attorney hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, board members and attorney hearing examiners shall not be competent witnesses nor subject to deposition in any adjudication proceeding. Former board members shall not be competent witnesses nor subject to deposition in any adjudication proceeding in cases wherein the former board member had personal knowledge of the case or were privy to or ascertained information while serving as a board member. Evidence from other persons relating to the mental processes of the presiding attorney hearing examiner or board members shall not be admissible.
- (E) If the attorney hearing examiner/board member intends to serve as a witness, he/she shall recuse him/herself from presiding over, deliberating on, or ruling on the matter.
- (F) Any representative of record may move for a separation of witnesses. Expert witnesses shall not be separated.

(G) Each representative of record at a hearing shall inform the attorney hearing examiner of the identity of each potential witness for his case present in the hearing room. Failure to so identify potential witnesses may be grounds for their later disqualification as witnesses.

(H) No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, in the discretion of the attorney hearing examiner, testify as to an ultimate issue of fact.

4715-15-25 CONVICTION OF A CRIME.

A certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

4715-15-26 EVIDENCE.

(A) The "Ohio rules of evidence" may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling. The "Ohio rules of evidence" are readily available to attorneys and may be found at public libraries, bookstores, and on the internet at www.sconet.state.oh.us/rules/evidence.

The attorney hearing examiner may permit the use of electronic or photographic means for the presentation of evidence.

4715-15-27 BROADCASTING AND PHOTOGRAPHING ADMINISTRATIVE HEARINGS.

If the attorney hearing examiner determines that broadcasting, televising, recording or taking of photographs in the hearing room would not distract participants or impair the dignity of the proceedings or otherwise materially interfere with the achievement of a fair administrative hearing, the broadcasting, televising, recording or taking of photographs during hearing proceedings open to the public may be permitted under the following conditions and upon request:

(A) Requests for permission for the broadcasting, televising, recording or taking of photographs in the hearing room shall be made in writing to the attorney hearing examiner at least seven days prior to the scheduled commencement of the hearing, and shall be made a part of the record of the proceedings;

(B) Permission is expressly granted prior to commencement of the hearing in writing by the attorney hearing examiner and is made a part of the record of the proceedings;

(C) If the permission is granted, the attorney hearing examiner shall specify the place or places in the hearing room where operators and equipment are to be positioned;

(D) The filming, videotaping, recording or taking of photographs of witnesses who object thereto shall not be permitted.

4715-15-28 REINSTATEMENT OF LICENSE OR CERTIFICATE.

Any disciplinary action taken by the board pursuant to section 4715.30 of the Revised Code which results in suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the license or certificate may be reinstated.

Such conditions may include but are not limited to:

- (A) Submission of a written application for reinstatement;
- (B) Payment of all appropriate fees as provided in Chapter 4715. of the Revised Code;
- (C) Mental or physical examination;
- (D) Additional education or training;
- (E) Reexamination;
- (F) Practice limitations;
- (G) Participation in counseling programs;
- (H) Demonstration that the licensee can resume practice in compliance with acceptable and prevailing standards.
- (I) Satisfactory completion of all terms, conditions or limitations placed upon the licensee through a board approved consent agreement or adjudication order.