

Chapter SPS 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

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Note: Chapter RL 1 was renumbered chapter SPS 1 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. SPS 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; am., Register, July, 1996, No. 487, eff. 8-1-96.

SPS 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(1g) "Breach of examination security" means any of the following:

(a) Removing from the examination room any examination materials without authorization.

(b) Reproducing, or assisting a person in reproducing, any portion of the credentialing examination by any means and without authorization.

(c) Paying a person to take the credentialing examination to discover the content of any portion of the credentialing examination.

(d) Obtaining examination questions or other examination materials, except by specific authorization before, during, or after an examination.

(e) Using, or purporting to use, improperly obtained examination questions or materials to instruct or prepare an applicant for the credentialing examination.

(f) Selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered credentialing examination.

(1r) "Cheating on an examination" includes:

(a) Communicating with other persons inside or outside of the examination room concerning examination content using any means of communication while the examination is being administered.

(b) Copying the answers of another applicant, or permitting answers to be copied by another applicant.

(c) Substituting another person to write one or more of the examination answers or papers in the place of the applicant.

(d) Referring to "notes," textbooks or other unauthorized information sources inside or outside the examination room while the examination is being administered.

(e) Disclosing the nature or content of any examination question or answer to another person prior to, during, or subsequent to the conclusion of the examination.

(f) Removing or attempting to remove any examination materials, notes or facsimiles of examination content such as photo, audiovisual, or electronic records from the examination room.

(g) Violating rules of conduct of the examination.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews either a decision to deny a completed application for a credential or a determination of cheating on an examination or breach of examination security.

(5) "Department" means the department of safety and professional services.

(6) "Division" means the division of enforcement in the department.

(7) "Office of examinations" means the office of examinations in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: cr. (1g), (1r) and (7), am. (4) Register January 2006 No. 601, eff. 2-1-06; correction in (5) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

SPS 1.04 Examination failure: retake and hearing, consequences of cheating on an examination or breach of examination security. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

(3) (a) Consequences imposed for cheating on an examination or for committing a breach of examination security shall be related to the seriousness of the offense and may include: denial of grades; entering of a failing grade on all examinations in which cheating occurred; restrictions on reexamination; or denial of licensure. If more than one applicant are involved in a connected offense of cheating on an examination or breach of examination

security, each applicant knowingly involved is subject to the consequences in this section.

(b) Restrictions on reexamination may include denying the applicant the right to retake the examination for a specified period of time or the imposition of a permanent bar on reexamination.

(c) The department may provide information on the consequences imposed upon an applicant to other jurisdictions where the applicant may apply for credentialing or examination.

(d) If an approved or credentialed school or instructor is found to have facilitated actions constituting cheating on an examination or breach of examination security, the school or instructor may be subject to disciplinary action or revocation of approval.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: cr. (3) Register January 2006 No. 601, eff. 2-1-06.

SPS 1.05 Notice of intent to deny, notice of denial and notice of cheating on an examination or breach of examination security. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. SPS 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

(3) NOTICE OF CHEATING ON AN EXAMINATION OR BREACH OF EXAMINATION SECURITY. If after an investigation the office of examinations determines there is probable cause to believe that an applicant has cheated on an examination or breached examination security and the office of examinations and the applicant cannot agree upon a consequence acceptable to the credentialing authority, the office of examinations shall issue a notice of cheating on an examination or breach of examination security. The notice shall:

(a) Include the name and address of the applicant, the examination involved, and a statement identifying with reasonable particularity the grounds for the conclusion that the applicant has cheated on an examination or breached examination security.

(b) Be mailed to the applicant at the address provided in the materials submitted by the applicant when applying to take the examination. Notice is effective upon mailing.

History: Cr., Register, July, 1996, eff. 8-1-96; CR 05-050: cr. (3) Register January 2006 No. 601, eff. 2-1-06; **correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credential-

ing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8-1-96.

SPS 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority or notice of cheating on an examination or breach of examination security by the office of examinations. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential or for reversing a determination of cheating on an examination or a determination of breach of examination security. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: am. (intro.) and (3) Register January 2006 No. 601, eff. 2-1-06.

SPS 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential or on a determination of cheating on an examination or a determination of breach of examination security. A request shall be granted if requirements in s. SPS 1.07 are met, and the credentialing authority or its designee shall notify the applicant of the time, place and nature of the hearing. If the requirements in s. SPS 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential. The office of examinations has the burden of proof to show by a preponderance of the evidence that the applicant cheated on an examination or breached examination security.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: am. (1) and (4) Register January 2006 No. 601, eff. 2-1-06; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) **ADJOURNMENTS.** The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) **SUBPOENAS.** (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) **MOTIONS.** All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) **EVIDENCE.** The credentialing authority, the office of examinations and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(5m) **CONFIDENTIALITY OF EXAMINATION RECORDS.** The presiding officer shall take appropriate precautions to preserve examination security in conjunction with the conduct of a hearing held pursuant to this section.

(6) **BRIEFS.** The presiding officer may require the filing of briefs.

(7) **LOCATION OF HEARING.** All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: am. (5), cr. (5m) Register January 2006 No. 601, eff. 2-1-06.

SPS 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8-1-96.

SPS 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and

place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal the action taken by the credentialing authority.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: am. Register January 2006 No. 601, eff. 2-1-06.

SPS 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial or on the determination of cheating on an examination or determination of breach of examination security.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96; CR 05-050: am. Register January 2006 No. 601, eff. 2-1-06.

SPS 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.