Chapter H 1

PLEADING, PRACTICE AND PROCEDURE

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H 1.01 Authorization. Rules H 1.02 to 1.36 inclusive, adopted pursuant to section 227.08, Wis. Stats., shall govern all types of proceedings in contests involving private rights, including rights of municipalities. Because of the multiplicity of statutes under which such matters come before the board, some of which contain procedural provisions while others do not, it is impossible to lay down rules of universal application and hence resort to the particular statute must be had in each case to supplement these rules. In any case where the statute involved provides a procedure inconsistent with these rules the statute shall govern to the extent of such inconsistency. If in any case the forms set out in these rules be found not appropriate, parties may devise forms substantially similar to those herein prescribed, to meet such situations.

REVOCATION AND SUSPENSION OF LICENSES

H 1.02 Definitions. As used in these rules, *license* means any license, permit, certificate of registration or other grant of authority issued and subject to suspension or revocation by the board; *board* means the state board of health and includes the committee of examiners in funeral directing and embalming in cases arising under chapter 156, stats.; *hearing* includes a joint hearing by the board and any other administrative agency; *revocation or suspension* of license includes refusal to renew the same except where the license is issued under a statute which does not require a hearing for suspension or revocation.

H 1.03 How proceedings initiated. Proceedings to revoke or suspend licenses may be initiated in one of two ways: (1) On a verified complaint by an individual or an officer required by law to enforce the law in question, filed in triplicate (original and two copies) with the state health officer;

(2) By the board on its own motion, whenever its investigation discloses probable grounds for disciplinary action. The state health officer may act for the board in initiating proceedings under this subsection.

H 1.04 Pleadings. All pleadings, notices, orders and other papers filed in such proceedings shall be captioned "before the Wisconsin state board of health" and shall be entitled "In the matter of the revocation or suspension of the _____ of
(license, permit or certificate of registration)
_____, respondent." The party whose license is involved shall be known and designated as the "respondent."

H 1.05 Complaint on board's investigation. If the complaint is founded upon an investigation made by the board, it shall be incorporated in the notice of hearing and statement of issues as prescribed by H 1.08.

H 1.06 Form of charges. If the alleged offense is a continuing one, its general nature and the approximate time covered shall be stated in the complaint or notice of hearing; if a specific incident is relied on, it shall be alleged with such particularity as to time, place and circumstances as may be necessary to enable the respondent to prepare his defense; and in either case the offense may be alleged in the language of the statute or rule claimed to have been violated, and shall conclude: "contrary to sec. _____ of the statutes" or "contrary to rule _____" of the rules and regulations of the board governing _____, or both. Separate charges shall be stated in separate paragraphs and numbered consecutively.

H 1.07 Procedure upon filing of complaint. Upon the filing of a complaint as prescribed by H 1.03 (1), the state health officer shall cause an investigation to be made of the matters alleged to determine whether there is probable cause for disciplinary action and if he determines that there is such probable cause he shall order a hearing as prescribed by H 1.08 and also notify the complainant thereof. If he determines that no further action is warranted he shall notify the complainant, who may appeal in writing to the board, which shall review the files of the state health officer and may affirm his decision, order further investigation or order a hearing on the charges. Provided, that in any case where a hearing has been ordered, the respondent has no standing to attack the determination of the state health officer or the board in ordering such hearing, but shall be required to plead to the merits.

H 1.08 Notice of hearing and statement of issues. Notices of hearing shall be addressed to the respondent at his last known postoffice address, shall include the statement of issues and shall be in substantially the following form:

(1) If on complaint filed as provided in H 1.03 (1), such complaint shall be attached to the following notice:

"to _____ (name)
_____ St.
_____, Wis.
Respondent

"Please take notice that a hearing will be held on the _____ day of _____, 19 ____, at room No. _____ (or other proper designation) of the _____ Building (or other proper designation), No. _____ St., in the city of _____, Wis., at _____ o'clock _____M., or as soon thereafter as the matter may be reached, on the question whether the _____ (license, permit or certificate) _____ heretofore issued to the above named respondent pursuant to sec. _____ stats., should be suspended or revoked. The issues involved and the charges there to be considered are (as set forth in the attached complaint) to which you are required to make answer in writing at least _____ days before the time set for said hearing.

"Dated at Madison, Wisconsin, this _____ day of _____, 19 ____.

"Wisconsin State Board of Health
By _____
State Health Officer"

(2) If on only part of the charges set forth in such complaint, the form set forth in subsec. (1) shall be altered by inserting in lieu of the matter enclosed in brackets: "as set forth in paragraphs _____, _____, _____ and _____ of the attached complaint".

(3) If initiated on the board's own motion, the form set forth in subsec. (1) shall be altered by inserting in lieu of the matter enclosed in brackets:

"the following:
"1. _____
"2. _____
"3. _____"

(4) If in part on complaint and in part on charges initiated by the board on its own motion, the form set forth in subsec. (1) shall be altered by inserting in lieu of the matter enclosed in brackets:

"as set forth in the attached complaint, (or paragraphs _____, _____, _____ and _____ of the attached complaint) together with the following additional issues and charges:
"1. _____
"2. _____
"3. _____"

H 1.09 Answer. The answer of the respondent shall be verified, unless an admission of the allegations might subject the party to prosecution for a felony, and shall be filed with the state health officer in triplicate (original and two copies) within at least one-half the time intervening between the notice of hearing and the time set for said hearing, and such time for answer shall be stated in said notice as required by H 1.08. The answer must contain: (1) A specific denial of each material allegation of the charges controverted by the respondent.

(2) A statement of any new matter constituting a defense or mitigating the offense charged, which the respondent wishes to have considered.

H 1.10 Admission by not denying. Every material allegation of the charges not controverted as prescribed shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

H 1.11 Default; relief therefrom. In case the respondent fails to submit an answer as required by H 1.09, or fails to appear at the hearing at the time fixed therefor, the charges specified may be taken as true and the board may make findings and enter its order on the basis of the facts revealed by the preliminary investigation. But the state health officer or the board may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend the proceeding, at any time before the board enters its order or within 60 days thereafter.

H 1.12 Temporary suspension of license. (1) In cases arising under section 145.10, Wis. Stats., or whenever provided by law, the notice of hearing and statement of issues may be accompanied by an order suspending the respondent's license pending final disposition of the case, in substantially the following form:

"Upon the attached verified complaint (or: Upon investigation by the Wisconsin state board of health) and the board having good reason to believe that _____ (has set forth
(name of licensee)
grounds of suspension as prescribed by law);

"Now therefore, it is ordered:

"That pursuant to section (145.10) of the Wisconsin statutes, the (plumber's) license of the said _____
(name of licensee)
be, and the same is hereby, suspended, effective (10 days after service of this order and) until the further order of the board.

"Dated at Madison, Wisconsin this _____ day of _____, 19 ____.

"By the Wisconsin State Board of Health

_____
Secretary"

(2) In the event that the statute relating to suspension requires no hearing the foregoing type of suspension order may be used and need not be accompanied by notice of hearing. It may be made effective immediately upon service thereof or otherwise and shall be subject to appeal as provided in H 1.21 and 1.22.

H 1.13 Service and filing of papers. Unless otherwise provided by law, all orders, notices and other papers may be served by the state health officer or the board by first class or registered mail addressed to the party at his last known postoffice address, or to his attorney of record. Papers required to be filed with the board or the state health officer may be mailed to the following address:

1 West Wilson Street,
Madison (2), Wisconsin.

H 1.14 Conduct of hearings; continuances; appearances; examination of witnesses. Unless otherwise ordered by the board, all hearings shall be conducted on behalf of the board by the state health officer or some other member of the board designated by him, except that when permitted by law he may designate an employe of the board for that purpose. Continuances and adjournments may be granted by such presiding officer for cause shown. The respondent may appear in person or by any officer, regular employe or attorney. The complainant may likewise so appear but shall not be deemed a party. Witnesses competent to take an oath shall be sworn by the presiding officer and may be examined on behalf of the board by the presiding officer or by a representative of the attorney general acting as counsel for the board, or, with the permission of the presiding officer, by any employe of the board or by the complainant or his attorney. The respondent or any of his agents, officers or employes may be examined adversely as prescribed by section 325.14, Wis. Stats.

H 1.15 Subpoenas. Any member of the board may sign and issue subpoenas, whether he is to conduct the hearing or not.

H 1.16 Prehearing conferences. Prehearing conferences may be held at the convenience of the parties and shall be conducted by the state health officer or other member or employe of the board designated by him, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. Such record shall be attached to the file and constitute a part of the official record of the case.

H 1.17 Arguments. Except as provided in section 227.12, Wis. Stats., arguments shall be submitted to the board in writing, unless otherwise ordered. Ten copies of such written arguments shall be filed with the state health officer, who shall forthwith send a copy to each member of the board, unless the decision is to be made by the state health officer under section 140.05 (1), Wis. Stats. The time for filing arguments shall be fixed by the officer presiding at the hearing.

H 1.18 Variances. The provisions of section 263.28, Wis. Stats., with reference to variances between the allegations and the proof, shall apply to proceedings under these rules.

Appeals to the Board and Applications for Hearings

H 1.21 Form of notice of appeal or application for hearing. Any person aggrieved by an order of the state health officer, made under sections 140.05 (1), 146.11 (7), Wis. Stats., or any other statute, or of the board, made under section 146.12 (10), Wis. Stats., or any other statute under which the board may act without a previous hearing, or any person aggrieved by the denial by the board of his application for federal aid in hospital construction, may file an original and eight copies of a notice of appeal or application for a hearing in the manner prescribed by H 1.13, in the following form:

"To the Wisconsin State Board of Health:

"The undersigned hereby appeals from the order of the state health officer (or "applies for a hearing in respect to the matters determined

in the order of the board") dated _____, 19 ____, whereby it was ordered that (here set forth the substance of the order).

"The grounds of appeal (or "of this application") are the following:

(Here set forth the exceptions or objections relied on, and if no answer has been filed, then also an answer to the findings of fact in the order, in the manner prescribed by H 1.09).

"Dated _____, 19 ____.

_____"

H 1.22 Procedure. Upon the filing of said notice or application the state health officer shall, unless a hearing has already been held under these rules, fix a time for hearing (within the time prescribed by law, if any) and give notice thereof in as nearly as possible the form prescribed by H 1.08 stating the issues to be considered. If hearing has not been set prior to the next regular meeting of the board, then the board shall set a date and direct the giving of notice. Thereafter proceedings shall be had as prescribed in H 1.02 to 1.18 of these rules and chapter 227, Wis. Stats. If hearing has already been held, or is waived, the matter shall be considered by the board at its next regular meeting.

H 1.23 Procedure for applications for aid in hospital construction. Every hearing upon an application for federal aid in hospital construction shall be held at a place convenient to the applicant and may not be adjourned to any other place. A stenographic record of the hearing shall be made, and upon request of the applicant, be transcribed and made available for examination. Decision upon such application shall be made in writing within 45 days from the date of the last day of the hearing. All proceedings upon such application shall be as prescribed in H 1.02 to 1.23 of these rules and chapter 227, Wis. Stats.

Tuberculosis Charges, Section 50.11, Wis. Stats.

H 1.26 Designation of parties. In proceedings under section 50.11 (4), Wis. Stats., the party applying for relief shall be known as the "applicant" and the party claimed to be chargeable shall be known as the "respondent."

H 1.27 Form of application. The application for relief from charges shall be captioned as prescribed in H 1.04 and entitled "In the matter of the application of _____ for relief from charges for _____ at
(name of patient)
_____." It shall be in substantially the
(name of sanatorium)
following form:

"The application of _____ county (or the State of Wisconsin) by _____, District Attorney (or the Attorney General) respectfully alleges:

"(1) That _____ was admitted to _____ _____ sanatorium on or about _____, 19____, as a charge (in part) of said county (or the state at large) by order of the county judge of _____ county dated _____, 19 ____.

"(2) That in said order the said judge found that the legal settlement of said patient was within _____ county (or, that said patient had no legal settlement within this state, or, that his legal settlement was in doubt).

"(3) That application for such admission was made to the said court by or on behalf of the said patient on the_____ day of _____, 19 ____.

"(4) That the legal settlement of said patient was, on said date of application, in the _____ of
(town, village or city)
_____, in _____ county (or, that on said date the said patient had no legal settlement in this state) for the following reasons: (or, for the reasons set out in the annexed affidavit).

"Wherefore, applicant prays for an order determining that said patient is properly chargeable to _____ county (or to the state at large).

"_____
District Attorney _____ County
(or Attorney General)

P. O. Address:

_____
_____Wis."

H 1.28 Filing and service of application. The application, together with any supporting affidavit or other proof, shall be filed in triplicate (original and two copies) with the board as prescribed in H 1.13. The board shall forthwith mail one copy to the district attorney of the respondent county or to the attorney general, as the case may be.

H 1.29 Time of hearing. The board shall allow the respondent a reasonable time for investigation of the facts alleged in the application before setting the matter for hearing. Notice of hearing shall be given to both parties at least 20 days in advance.

H 1.30 Answer or demurrer. At least 10 days before the time set for hearing the respondent shall file with the board an answer or demurrer in triplicate, one copy of which the board shall forthwith mail to the applicant. The only ground of demurrer is that the facts alleged do not warrant charging the patient to the respondent. If an answer is filed it must contain:

(1) A specific denial of each material allegation of the application controverted by respondent, or of any knowledge or information thereof sufficient to form a belief.

(2) A statement of any new matter constituting a defense.

H 1.31 Additional parties to be joined. If it appears from the answer or the proof that the patient may be chargeable to some third county or the state, not a party to the proceedings, the proceedings shall be stayed and such other county or the state shall be joined as a respondent and copies of all pleadings, together with a summary of any proof theretofore taken, shall be mailed to its legal counsel. After giving such additional party a reasonable time for investigation the matter shall be reset for hearing and notice thereof given to the parties as provided in H 1.29. Such additional party shall answer or demur as provided in H 1.30.

H 1.32 Hearings. H 1.14, 1.15, 1.16, 1.17 and 1.18 shall apply to hearings under rules H 1.26 to 1.32 insofar as the same may be applicable. Any county which is a party to the proceedings may appear by its district attorney and the state may appear by a representative of the attorney general.

Other Contested Matters

H 1.36 Rules under H 1.02 to 1.18 applicable. In any other contested matter which may come before the board for its decision proceedings shall be as nearly as possible governed by H 1.02 to 1.18 of these rules, with such changes as may be appropriate in the form and style of pleadings, orders, etc.

Petition for Rules

H 1.41 Who may petition. Any interested person or persons or professional or trade association may petition the board in writing for the adoption, repeal or amendment of any rule within the scope of the board's rule-making powers.

H 1.42 Form of petition. (1) Every such petition shall be captioned "Before the Wisconsin State Board of Health" and entitled "In the matter of the adoption of a rule relating to _____ (here insert subject matter dealt with in proposed rule)" or "In the matter of the amendment (or repeal) of rule number _____ of the rules and regulations relating to _____ (here insert proper title of the rules and regulations in which the rule to be repealed or amended appears)."

(2) If the petition is for the adoption of a new rule, the form of such proposed rule shall be set out in the petition, except that two or more forms may be set out in the alternative if the petitioner so desires.

(3) If the petition is for the repeal of an existing rule, such existing rule shall be set out verbatim in the petition. If the petition is for the amendment of an existing rule, the existing rule shall be set out at length with a horizontal line (or a line of hyphens) drawn through any words, figures and punctuation marks which the petitioner desires to have stricken and with new matter underscored or (if the petition is printed) in italics.

(4) A petition may be for the adoption, amendment or repeal of more than one rule, or for the repeal and re-creation of any rule, provided that each such proposal shall be separately stated in conformity with paragraphs (2) and (3) of this rule.

(5) The petition shall be signed by one or more natural persons. The postoffice address of each signer shall be set out opposite his name and if he signs on behalf of a corporation or association that fact shall also be indicated opposite his name.

H 1.43 Supporting data. Whenever the adoption, repeal or amendment of any rule is sought by reason of the existence of a factual situation which the petitioner claims exists, the petition shall be accompanied by a sworn statement or affidavit of at least one of the petitioners stating what facts the petitioner claims exist justifying the board in taking the action prayed for and stating what evidence

of such facts the petitioner has in his possession and desires to present to the board. Any petition requiring such supporting data may in the board's discretion be summarily rejected if it does not conform to this rule.

H 1.44 Filing. All such petitions shall be filed with the state health officer.

H 1.45 Duties of state health officer. Whenever any such petition shall be filed, the state health officer shall submit the same to such person or persons employed by or associated with the board as may be concerned, with a request for a written report on the advisability or inadvisability of the change recommended. He may make a preliminary investigation of the facts alleged in any supporting affidavit accompanying the petition. If he deems it desirable he shall consult with the attorney general's office as to the legality of the proposed rule or amendment. He shall then submit the petition together with the results of his investigation to the board at its next regular meeting. The board may order such further investigation as it deems advisable.

H 1.46 Hearings. (1) No hearing shall be held on any such petition unless ordered by the board. If ordered by the board such hearing shall be public and notice thereof shall be given to interested parties in such manner and within such time as the board may prescribe. Notice of the hearing shall be given in writing to the person filing the petition and shall be served by first class mail sent to the address shown on the petition, but if there are more than one signature to the petition it shall not be necessary to notify signers other than the one filing the petition.

(2) Persons or associations of persons desiring to be notified of all such hearings relating to any particular field of regulation by the board may file their names and post-office addresses with the state health officer, together with a statement of the subject matter in which they are interested, in which case the state health officer shall notify them of all hearings relating to such subject matter.

(3) Unless otherwise ordered by the board, hearings shall be conducted by the state health officer or some other member of the board or subordinate designated by him. The person conducting the hearing shall keep a list of the persons appearing for and against the proposed change and shall submit to the board a summary of the arguments on both sides.

(4) If testimony or other evidence is taken it shall be reported to the board in such manner as the board may order.

H 1.47 Arguments. Written or printed arguments for or against the proposed change may be filed in the manner prescribed in H 1.17. Arguments for the proposed change may be so submitted with the petition, at the option of petitioner.

Declaratory Rulings under section 227.06, Wis. Stats.

H 1.51 Who may petition. Any person in interest or his duly authorized agent or attorney may petition the board for a declaratory ruling with respect to the applicability to any persons, property or state of

facts of any rule or statute enforced by the board. Two or more persons similarly situated may join in a single petition and additional parties may intervene by petition.

H 1.52 Form of petition; verification. (1) Every such petition shall be captioned "Before the Wisconsin State Board of Health" and entitled "In the matter of the applicability of rule no. _____, of the rules and regulations relating to _____ (or, of section _____ of the Wisconsin statutes) to _____, Petitioner."

(2) The petition shall contain a plain and concise statement of the ultimate facts showing the petitioner's interest (including any license held by petitioner) and the situation as to which a declaratory ruling is desired, without argument or unnecessary repetition.

(3) The petition shall conclude with a prayer for the declaratory ruling to which the petitioner supposes himself to be entitled.

(4) Every such petition shall be signed by or on behalf of each petitioner, stating his postoffice address, and shall be verified by at least one of them.

H 1.53 Filing. The petition shall be filed in triplicate (original and two copies) with the state health officer.

H 1.54 Duties of state health officer. Upon the filing of such petition the state health officer may cause an investigation to be made as to the facts alleged in the petition and may consult with the attorney general's department as to any legal questions involved. If he determines that any of the allegations of the petition may be untrue or should be qualified, or that material facts bearing on the matter may not have been alleged, he shall prepare and serve on the petitioner(s) (and any interveners) a notice of hearing and statement of issues, setting forth the questions upon which the petitioner(s) will be required to produce evidence. The said notice shall follow as nearly as possible the form prescribed in H 1.08, but shall not require that an answer be made. If he determines that there is no issue of fact he shall state in the notice of hearing that issues of law only will be considered. Notice of hearing shall be given as soon as possible after filing of the petition.

H 1.55 Moot or hypothetical cases. The board will not consider moot or hypothetical cases, or cases in which the petitioner has no interest, financial or otherwise. Whenever a petitioner desires a declaratory ruling as to a prospective course of action, the petition shall allege and the proof must show that petitioner in good faith intends to pursue such course of action in the event of a favorable ruling by the board. Whenever the petition shows on its face, or the proof establishes, that the question presented is moot or hypothetical or that petitioner has no legal interest therein, the state health officer may make and serve an order dismissing the petition, stating the grounds of his action. Petitioner may appeal to the board from such order in the manner prescribed by H 1.21 to 1.23.

H 1.56 Hearings; appearances. Hearings shall be conducted as nearly as possible as prescribed by H 1.14. Petitioner(s) (and interveners) may appear in person or by any officer, regular employe or attorney. H 1.15 to 1.18 shall apply to proceedings under H 1.51 to 1.57.

H 1.57 Order; amendment of rules; disciplinary action. (1) Except in cases referred to the board under section 227.05 (3), Wis. Stats., the board may decline to make a declaratory ruling in any case.

(2) The order of the board need not contain findings of fact but shall, except as otherwise provided in par. (1), be so framed as to dispose of all questions raised in the proceedings. It may state that certain acts or fact situations are or will be contrary to the applicable statute or rule while others are not or will not be so. If during the pendency of the proceedings the board has adopted an amendment of its applicable rules, such amendment shall be given due effect. The order shall state that the ruling is not applicable to any fact situation not contemplated by the board and specifically mentioned in the order.

(3) Whenever the petition or the proof shows that any petitioner of intervener has wilfully violated any statute or rule or order of the board, constituting grounds for revocation or suspension of a license, the order may contain a finding to that effect and in addition to (or in lieu of) a declaratory ruling the board may order the license of any such party suspended or revoked.