

Chapter SPS 6

SUMMARY SUSPENSIONS

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Note: Chapter RL 6 was renumbered chapter SPS 6 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

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

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. SPS 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (2), (6) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

SPS 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats., as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.06 Issuance of summary suspension order.

(1) If the licensing authority finds that notice has been given under s. SPS 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. SPS 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. SPS 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. SPS 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 6.07 Contents of summary suspension order.

The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

SPS 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceed-

ing under s. SPS 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 6.11 Delegation. (1) A board may by a two-thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of the board or an employee of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. SPS 6.09; or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. SPS 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. SPS 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) (a), (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.