



NOTICE OF RULE MAKING HEARING

Pursuant to Section 24-4-103, C.R.S., and Section 12-36-104(1)(a), C.R.S., you are hereby advised that the Colorado Medical Board (“Board”) will hold a public rule making hearing on Thursday, May 18, 2017 at 10:00 a.m., 1560 Broadway, Conference Room 1250C, Denver, Colorado 80202, for consideration of the following:

Amending existing rules:

RULE 280 - RULES AND REGULATIONS REGARDING SUSPENSIONS

The Board encourages interested parties to submit written comments to the following address: Timothy Martinez- Program Director, Colorado Medical Board, 1560 Broadway, Suite 1300, Denver, CO 80202, or via electronic mail to timothyj.martinez@state.co.us regarding any of the above-listed rulemaking matters no later than Friday, April 28, 2017. In addition, at the time and place designated in this notice, the Board will afford interested parties an opportunity to submit written information, data, views or arguments. The Board also will afford interested parties an opportunity to make brief oral presentations unless the Board in its discretion determines that such oral presentations are unnecessary. All submissions will be considered. The rules under consideration may be changed or modified after public comment and hearing.

BY ORDER OF THE COLORADO STATE MEDICAL BOARD

Karen M. McGovern
Deputy Director of Programs & Legal Affairs
Division of Professions and Occupations

Dated this 10th day of April, 2017



RULES AND REGULATIONS REGARDING SUSPENSIONS

Basis: The authority for the promulgation of these rules and regulations by the Colorado Medical Board (“Board”) is set forth in Sections 24-4-103, 12-36-104(1)(a), and 12-36-118, C.R.S.

Purpose: The purpose of these rules and regulations is to provide a procedural safeguard for licensees whose licenses are suspended by the Board pursuant to sections 24-4-104(4), 24-60- 3602(10), 12-36-118(5)(g)(IV), 12-36-118(8), or 12-36-118(9)(a), C.R.S. These rules are not intended to apply to the case of suspensions pursuant to Section 12-36-118(5)(g)(III), C.R.S. The procedures set forth in this rule are in addition to those provided by the Medical Practice Act and the Administrative Procedure Act.

I. SUSPENSIONS PURSUANT TO SECTION 24-4-104(4), C.R.S.

When an Inquiry Panel determines that the suspension of a license is appropriate pursuant to section 24-4-104(4), C.R.S., it shall offer the licensee an opportunity to appear before the Inquiry Panel to offer evidence supporting why the licensee should not be suspended. This hearing does not substitute for the hearing afforded by section 24-4-104(4), C.R.S., but is in addition to such hearing. The Inquiry Panel shall determine whether the opportunity for a hearing may occur before the Inquiry Panel’s consideration of whether to suspend, or whether the opportunity for hearing shall occur after the entry of an order suspending a license. The determination of whether to offer a licensee notice of the right to a pre-suspension hearing or to offer a post-suspension hearing shall be in the sole discretion of the Inquiry Panel and shall not be subject to review.

A. Pre-Suspension Notice

In the event that the Inquiry Panel believes that suspension may be indicated, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee’s address of record pursuant to Board Rule 270;
2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,
3. Include the following information:
 - a. A statement of the general nature of the issues that may warrant suspension. Such statement of the general nature of the issues that may warrant suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;
 - b. A statement instructing that the Inquiry Panel may suspend the licensee’s license at its next meeting;
 - c. A statement that the licensee may request a hearing before the Inquiry Panel at its next meeting, but must do so prior to the Panel’s next agenda deadline;
 - d. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;
 - e. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline; and,

- f. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting;
- g. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

B. Suspension After Pre-Suspension Notice

In the event that the licensee chooses not to request a pre-suspension hearing and is subsequently suspended, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;
2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,
3. Include within the notice a statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act.

C. Post-Suspension Notice

In the event that the Inquiry Panel determines that suspension without pre-suspension notice and hearing is warranted, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;
2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,
3. Include the following information:
 - a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;
 - b. A statement instructing that the licensee may request a hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;
 - c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;
 - d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;
 - e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,
 - f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

II. SUSPENSIONS PURSUANT TO SECTION 12-36-118(5)(g)(IV), C.R.S.

In the event that the board determines that the suspension of a license is appropriate pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board may order suspension of the licensee's license until such time as the licensee complies with all conditions of the Final Agency Order.

In making the determination to suspend a license, the Board may take into consideration the licensee's prior disciplinary record. If the Board does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

In the event that the Board orders suspension of a license pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;
2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and
3. Include the following information:
 - a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;
 - b. A statement instructing that the licensee may request a hearing before the Board for the limited purpose of showing that his or her failure to comply with the Stipulation and Final Agency Order was due to circumstances beyond his or her control, and that therefore his or her license should not be suspended. The licensee must make the request for hearing prior to the Panel's next agenda deadline;
 - c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;
 - d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;
 - e. A statement that written material submitted by this deadline will be provided to the Board prior to the meeting; and,
 - f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

III. SUSPENSIONS PURSUANT TO SECTION 12-36-118(8), C.R.S.

In the event that any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters an Order making findings of such a degree that a licensee is incapable of continuing to practice, the Board shall automatically suspend the licensee's license pursuant to section 12-36-118(8), C.R.S.

Any suspension shall continue until the licensee is found by such court to be competent to practice.

- A. When the Board orders suspension of a license pursuant to section 12-36-118(8), C.R.S., the Board shall:
 1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;
 2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

- a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;
- b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the limited purpose of providing evidence that the licensee either has not been determined or is no longer determined to be incompetent or insane by a court and to request that the Suspension Order be set aside;
- c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;
- d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;
- e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting;
- f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion; and,
- g. A statement that the licensee may make a request for a hearing at any time after the court makes a determination that the licensee is no longer determined by the court to be incompetent or insane. Such request, with any accompanying documents, shall be placed onto the agenda for the next regularly scheduled agenda deadline.

IV. SUSPENSIONS PURSUANT TO SECTION 12-36-118(9)(a), C.R.S.

In the event that an Inquiry Panel issues an Order to a licensee for the reasons articulated in section 12-36-118(9)(a), C.R.S., the licensee must submit to mental or physical examinations as determined by the Board.

When a licensee fails to comply with the Order for examination pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel may suspend the licensee's license until such time as the licensee complies with such conditions.

A. When the Inquiry Panel orders suspension of a license pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;
2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,
3. Include the following information:
 - a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;
 - b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;

- c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;
- d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;
- e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,
- f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

V. SUSPENSIONS PURSUANT TO SECTION 24-60-3602, C.R.S.

- A. Section 24-60-3601, C.R.S. et seq. applies to licensees who have obtained expedited licensure through the Interstate Medical Licensure Compact.
- B. Where Colorado is the licensee's state of principal license, as that term is identified in Section 24-60-3602, C.R.S., any suspension proceeding shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.
- C. In the event that another state is the licensee's state of principal license, and that principal state suspends the license of a Colorado licensee, then the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(b), C.R.S.
 - 1. In the event that the state of principal license terminates or otherwise reinstates the license issued by the principal state, an Inquiry Panel will review the matter at its next regularly-scheduled panel meeting.
 - 2. In the event that the Inquiry Panel does not terminate the suspension of the Colorado license following its review, the Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the ongoing suspension action is based.
- D. Where another member state, as that term is identified in Section 24-60-3602, C.R.S., acts to suspend its license of a licensee, the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(d), C.R.S.
 - 1. The Inquiry Panel may maintain its suspension of the licensee's Colorado license for ninety (90) days in order to investigate the basis for the action.
 - 2. The Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.
 - 3. The Inquiry Panel may terminate the suspension of the licensee's Colorado license prior to the conclusion of the ninety (90) day period.

VI. GENERAL RULES APPLICABLE TO ALL HEARINGS

A. Licensee's Right To Hearing

Except as otherwise limited by Section V of this Rule, a—licensee may request a hearing after any Suspension Order enters. The licensee shall make his or her request for a hearing in conformance with the scope and process described within this rule, based on the statutory basis for the suspension which has entered against the licensee.

B. Notice Of Time And Place Of Hearing

Upon timely receipt of a request for a hearing, whether before or after a suspension, Board staff shall notify the licensee of the time and place for the hearing. No licensee shall be permitted a hearing at any Board meeting absent written notice to do so from Board staff.

C. The Nature Of The Hearing

The hearing, whether before or after a suspension, shall be conducted by the Chair of the Inquiry Panel and shall be entirely informal. The hearing need not conform to the requirements of section 24-4-105, C.R.S. The hearing shall not be transcribed or recorded either by the Inquiry Panel or the licensee. The licensee may appear with counsel. Both the licensee and counsel may present argument and may comment on the previously submitted written material. The licensee may offer evidence through witnesses. Such testimony may be written or in person (including testimony by telephone) and need not be sworn. If the licensee intends to present testimony by telephone, it shall be coordinated with Board staff prior to the date of the hearing. Cross examination of the witnesses by the Panel members or counsel for the Panel may be permitted in the discretion of the Inquiry Panel's chair. No hearing shall exceed 30 minutes, unless, in the discretion of the Inquiry Panel's Chair, additional time is necessary in the interests of a fair hearing. Following the presentation of evidence and argument, the licensee, counsel to the licensee, and any witnesses or persons associated with the licensee shall depart the meeting room. The Inquiry Panel shall then deliberate. Following its deliberations, the Inquiry Panel shall instruct its counsel to communicate the Inquiry Panel's decision to the licensee in writing within 72 hours of the decision (excluding interim weekends and state holidays from the calculation).

The hearing conducted pursuant to these rules shall be a "hearing" as set forth in section 12-36-118(10), C.R.S. Nothing in these rules shall waive or limit the Inquiry Panel's ability to communicate with its counsel, orally or in writing, at any time, in confidence. Nothing in these rules or in the hearing called for by these rules shall waive any privilege on the part of the Board, Hearings Panel or Inquiry Panel. Specifically, but not by way of limitation, the Board, Hearings Panel or Inquiry Panel shall not be deemed to have waived its attorney-client or deliberative process privileges. The decision of the Inquiry Panel is not subject to appeal and shall not constitute "final agency action" as set out in section 24-4-102(1), C.R.S.

Effective: ~~04~~/01/99; Revised: 9/30/00; Revised: 8/15/02; Effective: 10/30/02; Revised 8/19/10; Effective 10/15/10; Revised 11/19/2015, Effective 1/14/2016; Revised 5/18/17.
Effective 7/15/2017