

**TITLE 545. STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
CHAPTER 25. SUSPENSION/REVOCAION**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

545:25-1-7. Hearing [AMENDED]

545:25-1-8. Report of proceeding, expenses, preservation [AMENDED]

**SUMMARY:**

The amendment to **OAC 545:25-1-7. Hearing**, deletes language requiring the board to either suspend or revoke a license or to dismiss the case. The Board, under Title 59 O.S. Section 147, has the authority to impose penalties other than just suspension or revocation including disapproval of an application for renewal of license, imposition of a fine, censure or reprimand, placement on probation, restriction of practice and payment of costs.

Amendments to **OAC 545:25-1-8. Report of proceeding, expenses, preservation**, deletes the requirement that a record of hearings be made by a court reporter. It adds language saying the proceedings will be recorded and transcribed upon request. It allows the defendant to hire a court reporter should they so choose.

**AUTHORITY:**

TITLE 59 O.S., Section 141, State Board Podiatric Medicine Practice Act

**COMMENT PERIOD:**

The comment period will run from November 15, 2013 to December 17, 2013. Written comments may be sent to the office of the Board, 101 N.E. 51st Street, Oklahoma City, OK 73154-0256.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on December 17, 2013, 5:00 P.M. at the office of the Board, 101 N.E. 51<sup>st</sup> Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than December 13, 2013.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained at the office of the Board, 101 N.E. 51<sup>st</sup> Street, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and available after November 15, 2013 at the office of the Board, 101 N.E. 51<sup>st</sup> Street, Oklahoma City, Oklahoma, 73015.

**CONTACT PERSON:**

Kathy Plant, Executive Secretary (405) 962-1400, ext. 122

## Proposed Rules

(Underline denotes new language. Strikeouts denote deleted language.)

### TITLE 545. STATE BOARD OF PODIATRIC MEDICAL EXAMINERS CHAPTER 25. SUSPENSION/REVOCAION

#### 545:25-1-7. Hearing

- (a) Whether or not the licensee appears, the Board may proceed and determine the truthfulness of the charge or charges.
- (b) Opportunity shall be afforded all parties to respond and present evidence and arguments on all relevant issues involved. The Board shall allow the licensee reasonable opportunity to appear in person or by counsel or both, and to present evidence in refutation of the charge or charges.
- (c) Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order or default.
- (d) The record in an individual proceeding shall include:
- (1) All pleadings, motions and intermediate rulings.
  - (2) Evidence received or considered.
  - (3) A statement of matters officially noted.
  - (4) Questions and offers of proof, objections and rulings thereon.
  - (5) Proposed findings and exceptions.
  - (6) Any decision, opinion or report by the officer presiding at the hearing.
  - (7) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case.
- ~~(e) Oral proceedings or any part thereof shall be transcribed on request of any involved party or his representative.~~
- ~~(f) Findings of fact shall be based exclusively on the evidence and on matters officially noted.~~
- ~~(g) No action by the Board shall be taken against the licensee until the foregoing procedures have been complied with.~~
- ~~(h) If, upon such hearing, the Board shall determine the charge or charges to be true wholly or in substantial part, and if under the applicable laws the license may, and in the opinion of the Board should, be suspended or revoked upon the evidence adduced, the Board shall determine which:~~
- ~~(1) If the determination be for suspension, the Board shall determine also the duration of the suspension, for a specified time not to exceed three (3) years. The suspension of a license to be reinstated following a specified period of time shall in no way exempt the licensee from maintaining his or her appropriate hours of continuing education or paying annual biennial renewal fees.~~
  - ~~(2) Suspension shall during the time of suspension take from the licensee all rights and privileges acquired by virtue of the license.~~
  - ~~(3) If the determination be for revocation, this shall take from the licensee, permanently, all rights and privileges acquired by virtue of the license.~~
  - ~~(4) If the Board shall determine that the charge or charges themselves, if true, are insufficient to justify suspension or revocation, it shall so order and withhold further proceeding thereon except to dismiss the same.~~

If, upon such hearing, the Board finds the charge or charges to be true by clear and convincing evidence, the Board may issue an order imposing one or more of the following penalties:

- (1) Disapproval of an application for a renewal license;
  - (2) Suspension of a license by the Board for a specified time not to exceed three (3) years;
    - (i) the suspension of a license to be reinstated following a specified period of time shall in no way exempt the licensee from maintaining his or her appropriate hours of continuing education or paying biennial renewal fees;
    - (ii) suspension shall during the time of suspension take from the licensee all rights and privileges acquired by virtue of the license;
  - (3) Revocation of a license, either permanently or with the right to reapply after a period of time specified by the Board; revocation shall take from the licensee all rights and privileges acquired by virtue of the license;
  - (4) An administrative fine for any amount up to and not to exceed One Thousand Dollars (\$1,000.00) for each count or separate violation;
  - (5) A censure or reprimand;
  - (6) Placement on probation for a period of time and under such terms and conditions as deemed appropriate by the Board, including supervision;
  - (7) Restriction of the practice of a podiatric physician under such terms and conditions as deemed appropriate by the Board, including supervision; and
  - (8) Payment of costs associated with a disciplinary proceeding.
- (h) Procedures before this Board shall comply with the Administrative Procedures Act of the State of Oklahoma.
- (i) The standard of proof used by the Board in disciplinary actions under the Act shall be clear and convincing.
- (j) In any action by the Board in which a person licensed by the Board has been suspended or revoked with the right to reapply, the Board may at any time, upon motion of any member of the Board reconsider such suspension or revocation if given the right to reapply.
- (k) In addition, the person whose license has been suspended or revoked with the right to reapply may petition the Board for reinstatement in accordance with applicable law.
- (l) In any case in which a person whose license has been suspended or revoked with the right to apply is considered by the Board for reinstatement, it shall be the burden of that person to show compliance with all terms and conditions imposed by the Board in the disciplinary action. The Board may deny reinstatement to any such person who does not satisfy the Board of compliance with any Board requirement or condition imposed by the Board in disciplinary action or may approve reinstatement without restriction or may approve reinstatement with terms of probation or restrictions as deemed necessary to protect the health, safety and well-being of the public.
- (m) Upon the completion of any term of suspension imposed by the Board, the person whose license was suspended shall bear the burden to show compliance with all requirements and conditions imposed by the Board prior to reinstatement by the Board.
- (n) An application for reinstatement shall be filed with the Board in writing and shall set forth action taken by the applicant to comply with conditions and requirements imposed by the Board, including all documents in support thereof. Such application or motion shall be reviewed by the Secretary prior to being scheduled for action by the Board at a meeting of the Board. If the Secretary determines the applicant has met the requirements and conditions imposed by the Board, the matter shall be scheduled for Board action. If the Secretary determines the applicant has not complied with requirements and conditions imposed by the Board, the Secretary shall advise the applicant of the noncompliance in writing and the matter shall not be scheduled for Board action. In the event an applicant disagrees with the determination of the Secretary, the

applicant may move in writing for the original application to be reviewed by the Board, upon payment of the appropriate fee.

(o) An applicant for reinstatement after suspension or revocation pursuant to 59 O.S. § 147 shall meet all application requirements in effect at the time reinstatement is requested, be of good moral character and have reimbursed the Board for taxed costs or worked out a repayment plan satisfactory to the Board. In addition, the Board may require the applicant to meet the continuing education requirements.

(p) In the event the Secretary determines that a person has not complied with an order of the Board, the Secretary may initiate additional disciplinary action against that person and may seek to have the Board impose additional penalties for failure to comply with a Board order.

#### **545:25-1-8. Report of proceeding, expenses, preservation**

~~A stenographic record shall be made by a certified court reporter of any and all proceeding to suspend or revoke a license.~~

~~(1) The record shall be reduced to typewritten form.~~

~~(2) The record shall be certified by the presiding officer of the hearing as being true and accurate.~~

~~(3) The record shall be preserved by the secretary treasurer of the Board for a period of five (5) years.~~

(a) A record of the hearing, by means of audio recording will be made of all hearings conducted by the Board. The record of the proceeding shall not be transcribed except upon written application and a deposit sufficient in the amount to pay for having the record transcribed. The staff shall then make appropriate arrangements with a certified court reporter to transcribe the hearing from the audio recording.

(b) A defendant may, at his or her expense, arrange for a record of the hearing to be made by a court reporter.