

Hearing Guide

I. Before starting the hearings, state

1. In these administrative proceedings, the Board takes official notice of:
 - a. The files and records of the agency
 - b. The Oklahoma Administrative Procedures Act
 - c. The State Board of Examiners for Long Term Care Administrators Act
 - d. The Board's administrative rules, title 490
 - e. The general statutes of Oklahoma
2. The Board has jurisdiction to hear the cases on the agenda.

II. For each case, state

1. Call Case No. and Name
2. Ask parties and their attorneys to state names for the record. If Respondent is appearing without an attorney, state "You have the right to have an attorney. Are you choosing to appear without an attorney?"
3. Determine who will be recusing. The Probable Cause Committee must recuse as well as the agency representative (if the case came from the Health Dept. or DHS). Determine that there is still a quorum. Then state, "These persons will leave the room during Board deliberations and not participate in the deliberations."
4. Ask, "Are there any matters or motions pending in this case?"
5. Pass out complaint. State, "The members of the Board have not seen the complaint." Give the Board time to read the complaint.
6. Ask the attorneys to name their witnesses. Swear in the Respondent and the witnesses. Have them hold up their right hands. Say, "State after me. I swear to tell the truth, the whole truth and nothing but the truth, so help be God."
7. As Mr. Mildren to proceed with his case. The parties might give an opening statement. Mr. Mildren will call a witness. The Respondent will cross examine the witness. Mr. Mildren might redirect. The Board can then ask questions of the witness.
8. Then ask Respondent's attorney to proceed with his case. The same thing as above will happen.
9. Each attorney will offer exhibits into evidence during his case. Say, "If there is no objection, Exh. No. ___ is admitted into the record." If there is an objection, Brinda will help you rule on the objection.

10. After all of the evidence is presented, the attorneys might give closing statements.
11. After the parties rest, the Board should move to go into executive session.
12. The Board deliberates in executive session. Everyone should leave except for the Board members who are not recusing and the Board's attorney. Say, "Board members _____ are recusing and are leaving the room."
13. In open session, a motion and vote to come out of executive session is made.
14. A motion must be made on guilt and, if the Board finds the Respondent guilty, a second motion must be made on the penalty. The Board must vote on each motion.

On guilt – "I move that the Board find Respondent guilty, by clear and convincing evidence, as charged." Or "I move that the Board find Respondent not guilty as charged." ("Clear and convincing evidence" is "that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.")

On penalty – "I move that the Board impose a penalty of ____ on the Respondent."