TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 1. ORGANIZATION OF BOARD AND PROCEDURES FOR HANDLING COMPLAINTS

Section
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[**Authority:** 59 O.S., Sections 1351 thru 1360 and 1370 et seq; 75 O.S., Sections 302, 305, and 307]

575:1-1-1. Purpose

The rules of this chapter set forth the kinds of meetings to be held by the Board, the notice to be given of these meetings, and the procedure to be followed during these meetings. They also set forth general procedures for communicating with the Board and for obtaining Board records, as well as procedures for the conducting of the Board's duties and responsibilities, including the handling of complaints against licensed psychologists.

575:1-1-2. Organization and proceedings of the Board; petitions for rule making; declaratory rulings

(a) **Meetings.** In accordance with the 1977 Open Meeting Law [Title 25, Sections 301 thru 314, of state statutes], all meetings of the Board are open to the public and votes of each member are to be publicly cast and recorded.

(1) **Regularly scheduled meetings.** The Secretary of State shall be given notice of all regularly scheduled meetings by December 15 of each calendar year, showing the date, time and place of such meetings for the following calendar year. If any change is to be made in the date, time, or place of regularly scheduled meetings, then notice in writing shall be given to the Secretary of State not less than 10 days prior to the implementation of such change. At least 24 hours prior to regularly scheduled meetings, excluding Saturdays, Sundays, and holidays legally declared by the State of Oklahoma, public notice will be given setting forth thereon the date, time, place, and agenda for said meeting. Such notice shall not preclude the consideration of new business providing such was not known about or could not have been reasonably foreseen prior to the time of posting. If a meeting is to be continued or reconvened, public notice of the date, time, and place shall be given by announcement at the original meeting, and only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting.

(2) **Special meetings.** Special meetings shall not be held without public notice, indicating the date, time, and place, being given to the Secretary of State at least

48 hours prior to said meeting. In addition, at least 24 hours prior to such a meeting, public notice giving the time, place, and agenda shall be posted in prominent public view in the building containing the office of the Board. In exceptional circumstances, emergency meetings without public notice may be called.

(3) **Minutes.** The proceedings of all meetings shall be kept in the form of written minutes and shall be open to public inspection.

(b) **Official office; Board records.** The official office of the Board shall be designated by the Board and all records of the Board shall be kept at the official office.

(c) **Submissions to the Board to be in writing.** All communications with the Board must be in writing before official consideration will be given to issues, requests, or submissions brought before the Board.

(d) **Board monies.** The monies received by the Board shall be kept in the Psychologists Licensing Fund, No. 200. Expenditures from said fund shall be subject to the approval of the Board.

(e) **Reimbursement for travel expenses.** Each Board member, staff member, or other persons who are performing substantial and necessary services for the Board may be reimbursed for expenses incurred under authorized official travel [Pursuant to 74 O.S., Section 500.2 et seq].

(f) **Formal and informal procedures.** The Board shall have both formal and informal procedures for use, as appropriate, in conducting the business of the Board. Such procedures may involve, but are not limited to, hearings for individuals, questions of legal policy, inquiries concerning Board policies or decisions, or other Board business.

(g) **Forms.** The Board shall have such forms as are required for the conduct of Board business. Such forms shall include, but are not limited to, application for licensure, application for private practice under supervision, and applications for a psychologist to hire a psychological technician in his/her private practice.

(h) **Petitions regarding rules; declaratory rulings.** Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a rule. Petitions requesting declaratory rulings as to the applicability of any rule or order of the Board may also be submitted. The Board shall make prompt disposition of all such petitions.

(i) **Distribution of rules and regulations; annual directory.** The Board shall distribute all regulations and procedures established by the Board to each licensed psychologist and psychologist practicing under supervision. Such distribution shall occur not less than annually, and may be accomplished by inclusion of said rules in the Annual Directory. The Annual Directory shall contain, in addition to those items required by law [59 O.S., Section 1369], a verbatim copy of the licensing law as well as all rules and regulations duly established by the Board.

(j) **Board secretary.** The secretary of the Board, as described in 59 O.S., Sections 1358 and 1360, shall be employed by the Board.

(k) **Psychological consultant.** A qualified individual may be employed by the Board to perform certain activities to further the purposes of the Board. Such activities may include, but are not limited to: issues concerning training, credentialing, professional practice, regulation, ethical matters, and receiving and/or reviewing requests for inquiries; advising the chair in the informal conduct of the Board's procedures and providing consultation to the Board during its regular and special meetings.

575:1-1-3. Investigation of requests for inquiry

(a) **Choice of investigative mode when unlicensed individuals are involved.** When violations of the law by unlicensed individuals are brought to the attention of the Board, the Board may conduct an investigation in its own behalf, request investigation by appropriate state agencies, and/or refer the matter to the Office of the Attorney General. The choice of an investigative mode shall depend on the circumstances of the case and shall be made at the discretion of the Board.

(b) **Investigative procedure.** The following is the procedure for investigation of requests for inquiry against licensed psychologists:

(1) **Requirements for requests for inquiry.** The investigation of a request for inquiry about a licensed psychologist may be initiated only when the request for inquiry is in writing, signed, notarized, and filed with the Board. The notarized request for inquiry must contain a brief statement setting forth the allegations of fact and naming the licensee or licensees about whom the request for inquiry is filed. The request for inquiry provides the basis for the chairperson and/or vice chairperson of the Board to request an informal meeting with the licensee, whose participation is voluntary, and/or for appointment of an investigator for the case. The Board may receive, accept, process, investigate, act upon, and otherwise dispose of written requests for inquiry which are not in substantial compliance with this subsection if the Board, in its discretion, determines that the request for inquiry otherwise contains sufficient indicia of reliability and/or the allegations can be independently verified by the Board.

(2) **Independently verified allegations – written request for inquiry may not be required.** In all inquiries, the Board shall require the request for inquiry to be in writing, signed, and notarized. However, alleged violations of the Psychologists Licensing Act which can be independently verified by the Board may not require written request for inquiry.

(3) **Selection of investigator.** The Board shall select a member or other qualified individual to investigate any request for inquiry regarding any psychologist~~s~~. This selection may be by majority vote of the Board or by appointment by the chairperson, ~~or~~ vice chairperson~~.~~, or executive officer.

(4) **Compensation for expenses.** The investigator shall be compensated by the Board for necessary and prudent expenses which are properly documented and approved by the Board.

(5) **Investigator's gathering of information.** The Board member or other individual authorized to receive and investigate requests for inquiry shall gather all information necessary to adequately apprise a Probable Cause Committee. The investigation may include interviews with the requesting party, the licensee named in the request for inquiry, and others as appropriate. The licensee will have the opportunity during the investigator's interview to show compliance with all lawful requirements for the retention of the license. The gathering of information to assist the Board in its disposition of requests for inquiry is the only designated function of the investigator during the conduct of the investigation. Any investigative reports prepared and submitted to the Board's Probable Cause Committee, the prosecutorial arm of the Board, are to be used solely to determine whether or not to recommend the

pursuit of disciplinary action, and thus constitute confidential and privileged work product material, not subject to disclosure. The investigator shall not offer his/her opinions to the requesting party and/or to the licensee. Such opinions shall include but not be limited to the merits of the request for inquiry and/or whether an ethical violation has occurred.

(6) **Subpoenas Investigative.** The Board may issue subpoenas for the purpose of investigating a request for inquiry following the same procedure as set forth at 575:1-1-4.

(7) **Presentation of Probable Cause Committee's summary and recommendation.** The Probable Cause Committee, comprised of the investigator, counsel to the Board and other appropriate individuals, is an advisory body whose function is to summarize the requests for inquiry and to make an informed recommendation regarding disposition of the requests for inquiry to the Board. The Probable Cause Committee's recommendation will be presented at an open meeting of the Board. The requesting party and the licensee will be given prior written notification of the date, time, and place of that meeting. During the Probable Cause Committee's presentation, no questions will be posed by or to the licensee or the complaining witness pertaining to the substance of the case. Such questions may be submitted in writing to the representative of the Attorney General's office following the Board meeting.

(8) **Dismissal of request for inquiry by majority vote.** Upon consideration of the recommendation of the Probable Cause Committee, the Board may decide not to pursue further the allegations, and may dismiss the request for inquiry by an approving vote of a majority of the members present in open meeting.

(9) **Informal disposition of certain requests for inquiry.** In some situations including, but not limited to, cases where the inquiry does not allege conduct as described in the Psychologists Licensing Act in Section 1370 or conduct punishable by suspension or revocation of a license, probation, or formal reprimand, the matter may be handled informally. However, no matter can be considered closed until so voted by a majority of the Board in open meeting.

(10) **Recusal of Board member.** A Board member, acting as the appointed investigator or Probable Cause Committee member, shall be recused from all Board decisions relating to the request for inquiry.

(c) **Notification of the disposition of requests for inquiry against licensed psychologists and investigations of them.** At the point at which any request for inquiry and/or investigation is resolved, the Board shall inform the requesting party and the psychologist in writing of the disposition of the matter as well as the supporting rationale based on known facts and applicable laws or rules. The Board shall also notify the Attorney General's Office.

575:1-1-4. Hearings for psychologists

(a) **Issuance of formal complaint; setting date for formal hearing.** If the request for inquiry and/or the summary and recommendation of the Probable Cause Committee appear to the Board to warrant and support such action, and upon the affirming vote of a majority of the members present in open meeting, the Board shall file its own complaint (the Board vs. the licensee) and the Chair of the Board or Executive Officer shall set the

date, time, and place for a formal hearing. Notice shall be served as specified in Section 1370 (C and E) of the Psychologists Licensing Act, except that notice shall be served twenty (20) days before the date of the hearing.

(b) **Purpose of formal hearing.** The formal hearing will be an administrative proceeding held to determine whether or not a licensee should be disciplined due to alleged improper conduct. The purpose of the proceeding will be that of insuring the overall public interest inherent in such matters and not that of vindicating a private wrong alleged to have occurred to the complaining witness. As such, the complaining witness will become a witness only in the Board's proceedings and is not a party to the Board's action.

(c) **Notice to licensee.** The chairperson or vice chairperson of the Board shall then notify the licensee named in the Board's complaint by certified or registered mail. This notification shall include a copy of the Board's complaint, an explanation of rights, and the date, time, and location of the Board meeting at which the Board will hold its formal hearing regarding the complaint. The notice shall also include other information as required in the Administrative Procedures Act. The explanation of rights shall include the following alternatives regarding the licensee's response to the Board's complaint: The licensee may be represented at the hearing in writing, in person, or by counsel. If the licensee does not so appear, the Board may, within its discretion, summarily revoke or suspend the accused's license or may issue a formal reprimand. The Board shall record its findings and order in writing.

(d) **Notice to other persons.** The Board shall also notify other persons whose presence is required of the date, time, and place of the hearing. Notice shall be served as specified in Section 1370 (C and E) of the Psychologists Licensing Act.

(e) **Discovery**. Discovery by either the Board or the licensee shall be limited to the forms of discovery permitted by the Oklahoma Administrative Procedures Act. Requests for discovery under this section must be made at least 10 days before the hearing.

(f) **Subpoenas**

(1) **Issuance of subpoenas for witnesses and physical evidence.** The Board may compel the attendance of witnesses, and the production of physical evidence before it from witnesses, upon whom process is served by subpoena anywhere within the state. Such subpoenas will be issued over the signature of the chairperson or vice chairperson and the seal of the Board.

(2) **Service of subpoenas.** From the institution of formal Board proceedings, subpoenas will be issued on behalf of the licensee or the Board as specified in Section 1370(E) of the Psychologists Licensing Act. Service of the subpoena will be the responsibility of the requesting party. Subpoenas shall be served and return made in the manner prescribed by general civil law.

(g) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(1) Opening statements by legal counsel of both parties;

(2) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members;

(3) Closing arguments by legal counsel of both parties; and

(4) Submission of case to the Board for decision.

(h) **Rules of evidence.** Formal rules of evidence shall not apply**.** Rules of evidence shall be those specified in the Administrative Procedures Act.

(i) **Hearing officer.** In accordance with 1370 (D), the Board or the presiding member of the Board may direct that the board utilize a hearing officer to hear matters specified by the Board or by the presiding member. The duties of the hearing officer shall be specified in writing prior to the assumption of the duties. The duties may include, but are not limited to, any of the following:

(1) to hear and rule upon pretrial discovery disputes.
(2) to hear and rule on Motions in Limine.
(3) to review Motions to Dismiss in order to advise the Board on questions of law therein.
(4) to hear and rule on Motions for Continuance of a hearing.
(5) to hear and rule on other preliminary motions.
(6) to hear and rule on motions to have a Board member recused from a hearing.
(7) to mark, identify and admit or deny exhibits.
(8) to rule upon objections made during the hearing.

(j) **Questioning of witnesses.** Notwithstanding subsection (i), a quorum of the Board shall be present at the hearing and may, in accordance with the procedures noted in the Administrative Procedures Act, direct questions to the witnesses.

(k) **Administration of oaths.** The Board may administer oaths through the chairperson, vice chairperson, or the hearing officer.

(l) **Evidentiary rulings.** Subject to subsection (i), the presiding member of the Board shall rule on the admissibility of evidence. The rulings of the presiding member shall be the rulings of the Board unless reversed by a majority vote of the Board.

(m) **Attorneys.** A representative of the Attorney General's Office or, if the Board chooses, a private attorney licensed in the State of Oklahoma and engaged by the Board, shall serve as the prosecutor of the Board's case. The respondent psychologist may be represented by a personally engaged attorney.

(n) **Majority vote.** Disciplinary action to be taken as a result of the hearing shall require a majority vote of the Board members present.

(o) **Record of hearing.** A record of the formal hearing will be made by audio recording or by a court reporter. A written transcript shall be provided by the secretary of the Board upon written application and a deposit sufficient in amount to have the record transcribed or copied, the deposit to be paid by the individual requesting the written transcript. The audio file and/or transcript shall be kept on file in the Board office for one year.

(p) **Order setting forth findings of fact and conclusions of law.**

(1) The Board shall establish the findings of fact and conclusions of law in summarizing the outcome of a hearing. The Board will issue and record its order as authorized in Section 1370(D) of the Psychologists Licensing Act.
(2) The order of the Board will be effective immediately.
(3) The Board may revoke a license, suspend it for a period of time, place the psychologist on probation with specific conditions of time, place the psychologist on probation with specific conditions of probation, reprimand the psychologist, or

impose a combination of such sanctions. The Board may revoke the probation for failure to comply with the conditions and exact the penalty.

(4) Copies of the order shall be sent by certified mail to the licensee and to the licensee's attorney, kept in the permanent Board file, and made available to other psychologist licensing jurisdictions.

(q) **Petitions for rehearing.** A petition for rehearing, reopening, or reconsideration of an adverse final order may be filed with the Board within 10 days from the day upon which the licensee is served with the written order of the Board. It must be signed by the penalized licensee, or that licensee's attorney, and must set forth with particularity the statutory ground upon which it is based. However, a petition for rehearing based upon fraud by any party or procurement of the order by perjured testimony or fictitious evidence may be filed at any time. Such petition must be accompanied by sworn affidavit. Upon receipt of such petition, it shall be turned over to the Board member or other authorized individual responsible for complaints, who shall proceed to investigate in the manner prescribed in 575:1-1-3 for investigation of complaints.

(r) **Monitoring compliance with Board order.** The Board shall be responsible for monitoring compliance with an order of the Board.

(s) **Procedure for appeal of Board rulings.** A psychologist who feels aggrieved by reason of the suspension or revocation of his/her license, or of a probation or reprimand, may file suit within thirty (30) days after receiving notice of the Board's order in the district court of Oklahoma County, or in the district court of the county of his residence, to annul or vacate the order of the Board. The suit shall be filed against the Board as defendant, and service of process shall be upon either the chairperson or secretary of the Board. The suit shall be tried by the court without a jury and shall be a review of the record, but the burden of proof and the cost of transcribing the record are upon the plaintiff assailing the order of the Board. The judgment of the district court may be appealed to the Supreme Court of Oklahoma in the same manner as other civil cases.