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4775-3-02 Date, time and place of hearing.

Upon written request by an applicant whose registration has not been renewed or issued, which request must occur within thirty days after receipt of the notice of opportunity for hearing, the board must set the date, time and place of hearing, and immediately notify the registration applicant or his/her appointed representative. The date, time and place for such hearing shall be determined by the board. Notice to the registration applicant as to the date, time and place for hearing shall be provided by the board within seven to fifteen days after the party has requested a hearing. If the registration applicant fails to respond to the notice of opportunity for hearing within thirty days, the board may consider the violation(s) as proven and may, in its discretion and without a hearing, disapprove the registration application, levy administrative fines and enter decisions in its journal.

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4775-3-03 Appointment of hearing examiner or referee; report of findings and recommendations.

(A) The board, in its discretion, may appoint a referee or examiner to conduct the hearing. The referee or examiner shall have the same powers and authority in conducting the hearing as is granted to the agency. Such referee or examiner shall have been admitted to the practice of law in the state and be possessed of such additional qualifications as the agency requires.

(B) Upon the conclusion of an adjudicatory hearing the referee or examiner shall submit to the agency a written report setting forth his/her findings of fact and conclusions of law and a recommendation of the action to be taken by the agency. A copy of such written report and recommendations of the referee or examiner shall within five days of the date of filing thereof, be furnished to the party or his/her attorney or other representative of record, by certified mail, return receipt requested or other means of registered receipt delivery.

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4775-3-06 Stenographer's record.

(A) Only at adjudication hearings in which the record may be the basis of an appeal to a court, will a stenographic record of the testimony and other evidence submitted be taken. The stenographic recording in those instances shall be taken at the expense of the board.

(B) If an adjudication order is made without a stenographic record of the hearing, the board shall, upon request of the party, afford a hearing or rehearing for the purpose of making such a record which may be the basis of an appeal to court.

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4775-3-07 Hearing procedure.

In all hearings before the board, the procedure shall be as follows:

(A) The board or it's referee or examiner may request or permit the filing of briefs and attached exhibits.

(B) The attorney general concisely may state his/her case, and may briefly state his/her evidence to sustain it.

(C) The registration applicant or his/her attorney, may then briefly state his/her case, and briefly may state his/her evidence in support of it.

(D) The attorney general first must produce and submit his/her evidence, and the registration applicant or his/her attorney must then produce and submit his/her evidence.

(E) The attorney general may offer evidence in rebuttal.

(F) The board or its appointed referee or examiner may hear arguments.

(G) The attorney general and the applicant or his/her attorney may produce, examine, cross-examine, and take testimony from witnesses. Witnesses may also be produced, examined, and testimony taken from to rebut the testimony of other witnesses.

(H) The attorney general and the applicant or his/her attorney may present closing or summary arguments.

(I) The board, if presiding at a hearing, shall then retire to weigh and consider the evidence and shall timely deliver a decision to the applicant. If, in its discretion, the board has appointed a referee or examiner to preside at the hearing, the appointed representative shall then retire to weigh and consider the evidence presented and shall prepare a report and recommendation(s) to be timely delivered to the board for its consideration.

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4775-3-08 Board approval, modification, or disapproval of referee's or examiner's findings and recommendation.

(A) No recommendation of the referee or examiner may be approved, modified, or disapproved by the agency until after ten days after service of such report and recommendation upon the registrant. The recommendation of the referee or examiner may be approved, modified, or disapproved by the board, and the order of the board based on such report, recommendation, transcript of testimony and evidence, or objections of the parties, and additional testimony and evidence shall have the same effect as if such hearing had been conducted by the board.

(B) No such recommendation shall be final until confirmed and approved by the board as indicated by the order entered on its record of proceedings, and if the board modifies or disapproves the recommendation of the referee or examiner it shall include in the record or its proceedings the reasons for such modification or disapproval.

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4775-3-09 Decision of the board.

(A) After submission of the referee's or examiner's recommendation to the board, the board may retire and deliberate immediately or take the case under advisement.

(B) The decision of the board shall be written and a copy of such decision shall be mailed to the party by certified mail, return receipt requested, and a copy mailed to the attorney for the party, if any. A copy shall be forwarded to the attorney general.

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4775-3-10 Party's objections to board's, referee's or examiner's findings and recommendations.

(A) The party may, within ten days of receipt of the board's, referee's or examiner's written report and recommendation, file with the agency written objections to the report and recommendation, which objections shall be considered by the agency before approving, modifying, or disapproving the recommendation.

(B) The board may grant extensions of time to the registrant within which to file such objections.

4775-3-11 Appeal by party adversely affected.

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying the issuance or renewal of a license or registration may appeal from the order of the agency to the court of common pleas.

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4775-5-02 Procedures for accessing confidential personal information.

For personal information systems, whether manual or computer systems, that contain confidential personal information, the board shall do the following:

(A) Criteria for accessing confidential personal information. Personal information systems of the board are managed on a need-to-know basis whereby the information owner determines the level of access required for an employee of the board to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The board shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.

(B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:

(1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;

(2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and

(3) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.

(C) Notice of invalid access.

(1) http://schemas.microsoft.com/office/word/2003/wordml013f(1)Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

Investigation as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.

(2) Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.

(3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(D) Appointment of a data privacy point of contact. The board director shall designate an employee of the board to serve as the data privacy point of contact. The date privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both the implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and rules adopted pursuant to the authority provided by that chapter.

(E) Completion of a privacy impact assessment. The board director shall designate an employee of the board to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

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4775-5-03 Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system.

(A) Performing the following functions constitute valid reasons for authorized employees of the board to access confidential personal information:

(1) Responding to a public records request;

(2) Responding to a request from an individual for the list of CPI the board maintains on that individual;

(3) Administering a constitutional provision or duty;

(4) Administering a statutory provision or duty;

(5) Administering an administrative rule provision or duty;

(6) Complying with any state or federal program requirements;

(7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;

(8) Auditing purposes;

(9) Licensure or eligibility for examination processes;

(10) Investigation or law enforcement purposes;

(11) Administrative hearings;

(12) Litigation, complying with an order of the court, or subpoena;

(13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);

(14) Complying with an executive order or policy;

(15) Complying with a board policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or

(16) Complying with a collective bargaining agreement provision.

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4775-5-04 Confidentiality statutes.

The following federal statutes or regulations or state statutes make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by this board in accordance with section 1347.15 of the Revised Code:

(A) Social security numbers: 5 U.S.C. 552a., unless the individual was told that the number would be disclosed.

(B) Bureau of criminal investigation and information criminal records check results: section 4776.04 of the Revised Code.

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4775-5-05 Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

(A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.

(B) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.

(C) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.

(D) Logging requirements regarding confidential personal information in existing computer systems.

(1) The agency shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access.

(2) Access to confidential information is not required to be entered into the log under the following circumstances:

(a) The employee of the board is accessing confidential personal information for official board purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(b) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(c) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(d) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual request confidential personal information about himself/herself.

(ii) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The board shall issue a policy that specifies the following:

(1) Who shall maintain the log;

(2) What information shall be captured in the log;

(3) How the log is to be stored; and

(4) How long information kept in the log is to be retained.

Nothing in this rule limits the board from requiring logging in any circumstance that it deems necessary.

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4775-5-06 Personal information systems.

(A) The board executive director shall be directly responsible for each personal information system maintained by the section. The director shall:

(1) Inform all employees who have any responsibility for the operation or maintenance of said system or the use of personal information maintained in the system, of the applicable provisions of Chapter 1347. of the Revised Code and rules adopted there under; and,

(2) Inform all persons requested to supply personal information for a system whether or not they are legally required to provide such information; and,

(3) Restrict the collection, maintenance and use of personal information to only that which is necessary and relevant to functions of the board as required or authorized by statute, ordinance, code or rule; and,

(4) Provide all persons, asked to supply personal information that will be placed in an interconnected or combined system, with information relevant to the system, including the identity of all other agencies or organizations that have access to the information in the system; and,

(5) Allow a person who is the subject of a record in a personal information system to inspect the record pursuant to section 1347.08 of the Revised Code. Upon the request and verification that the person requesting access to the record is the subject of information contained in the system, the employee shall:

(a) Inform the person of any personal information in the system of which they are the subject;

(b) Permit the person, or their legal guardian, or an attorney who presents a signed authorization made by the person, to inspect all personal information in the system of which they are the subject, except where prohibited by law;

(c) Inform the person of the uses made of the personal information and identify other users who have access to the system;

(d) Allow a person who wishes to exercise his/her rights as provided by the rule to be accompanied by an individual of their choice;

(e) Provide, for a reasonable charge, copies of any personal information the person is authorized to inspect.

(6) Investigate disputes concerning the accuracy, relevance, timeliness or completeness of personal information pursuant to section 1347.09 of the Revised Code and paragraph (D) of this rule.

(B) The board shall reprimand in writing any employee who initiates or otherwise contributes to any disciplinary or other punitive action taken against another individual who brings to the attention of appropriate authorities, the press, or a member of the public, any evidence of unauthorized use of any material contained in the personal information system. A copy of the reprimand shall be entered in the employee's personal file.

(C) The executive director shall monitor its personal information system by:

(1) Maintaining the personal information system with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination made by the physical therapy section which is based on information contained in the system; and,

(2) Eliminating unnecessary information from the system.

(D) The board shall investigate, upon request, the accuracy, relevance, timeliness or completeness of personal information, which is disputed by the subject of a record contained in the system, within ninety days after receipt of a request from the disputant; and,

(1) Notify the disputant of the results of the investigation and any action the board intends to take with respect to the disputed information; and,

(2) Delete any information that the section cannot verify or finds to be inaccurate; and,

(3) Permit the disputant, if they are not satisfied with the determination made by the board, to include within the system:

(a) A brief statement of the persons position on the disputed information; or,

(b) A brief statement that the person finds the information in the system to be inaccurate, irrelevant, outdated, or incomplete.

(4) The board shall maintain a copy of all statements made by a disputant.

(E) The board shall not place personal information into an interconnected and combined system, unless said system contributes to the efficiency of the agencies or organizations authorized to use the system in implementing programs which are required or authorized by law.

(F) The board shall not use personal information placed into an interconnected or combined system by another state or local agency or an organization, unless the personal information is necessary and relevant to the performance of a lawful function of the section.

(G) The board shall make available, upon request, all information concerning charges made by the section for reproduction of materials contained in its personal information system.