



Certification Page Regular and Emergency Rules

<u>1. General Information</u>		
a. Agency/Board Name <i>See attached list for references</i> Board of Nursing		
b. Agency/Board Address 130 Hobbs Ave., Suite B	c. Agency/Board City Cheyenne	d. Agency/Board Zip Code 82002
e. Name of Contact Person Cynthia LaBonde	f. Contact Telephone Number 307-777-8504	
g. Contact Email Address cynthia.labonde@wyo.gov		h. Adoption Date: April 10, 2013
i. Program(s) <i>See attached list for references</i> Agency, Board or Commission Rules		
<u>2. Rule Type and Information</u>		
a. These rules are: <input type="checkbox"/> Emergency Rules <i>(After completing all of Section 2, proceed to Section 5 below)</i> <input checked="" type="checkbox"/> Regular Rules		
b. Choose all that apply: <input type="checkbox"/> New Rules* <input checked="" type="checkbox"/> Amended Rules <input type="checkbox"/> Repealed Rules <i>* "New" rules means the first set of regular rules to be promulgated by the Agency after the Legislature adopted a new statutory provision or significantly amended an existing statute.</i>		
If "New," provide the Enrolled Act number and year enacted:		
c. Provide the Chapter Number, and Short Title of Each Chapter being Created/Amended/Repealed <i>(if more than 5 chapters are being created/amended/repealed, please use the Additional Rule Information form and attach it to this certification)</i>		
Chapter Number: 8	Short Title: Practice and Procedures	
Chapter Number:	Short Title:	
d. <input checked="" type="checkbox"/> The Statement of Reasons is attached to this certification.		
e. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:		
<u>3. State Government Notice of Intended Rulemaking</u>		
a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State:		
		February 20, 2013
b. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Legislative Service Office:		
		February 20, 2013
c. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Attorney General:		
		February 20, 2013

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. Yes No N/A

b. A public hearing was held on the proposed rules. Yes No

If "Yes:"	Date:	Time:	City:	Location:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature: April 15, 2013

b. Date on which final rules were sent to the Legislative Service Office: April 15, 2013

c. Date on which a PDF of the final rules was electronically sent to the Secretary of State: April 15, 2013

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual	
Printed Name of Signatory	Cynthia LaBonde
Signatory Title	Executive Director
Date of Signature	April 15, 2013

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Distribution List:

- Attorney General**
1. Statement of Reasons;
 2. Original Certification Page;
 3. Summary of Comments (regular rules);
 4. Hard copy of rules: clean and strike/underscore; and
 5. Memo to Governor documenting emergency (emergency rules).

- LSO**
1. Statement of Reasons;
 2. Copy of Certification Page;
 3. Summary of Comments (regular rules);
 4. Hard copy of rules: clean and strike/underscore;
 5. Electronic copy of rules: clean and strike/underscore; and
 6. Memo to Governor documenting emergency (emergency rules).

- SOS**
1. PDF of clean copy of rules; and
 2. Hard copy of Certification Page as delivered by the AG.



Matthew H Mead
Governor

Wyoming

STATE BOARD OF NURSING

Cynthia LaBonde MN, RN
Executive Director

130 Hobbs Ave., Suite B • Cheyenne, Wyoming 82002 • Phone: 307-777-7601 • FAX: 307-777-3519 • <http://nursing.state.wv.us>

Chapter 8 – Practice and Procedure

Updated Statement of Principal Reasons

The Wyoming State Board of Nursing (WSBN) is submitting revisions to Chapter 8 which relates to Practice and Procedure. The principle reasons for the revisions are to address the **Matrix Process, Summary Suspension and Reinstatement procedures**. The principle reasons for the revisions were addressed in the initial Statement of Principal Reasons, previously submitted.

WSBN was alerted to the possibility of impermissible delegation as related to the Matrix Process. Specifically, in discipline matters, the Executive Director is authorized to engage in preliminary decision-making, including dismissals of complaints, issuance of a notice of warning, recommend settlement agreements for letters of reprimand, and initiating summary suspension proceedings if necessary. In application matters, preliminary decision-making also is permitted, for example, when negative disclosures might prompt the issuance of a notice of warning in connection with granting an application for licensure or a reprimand when unlicensed practice has occurred.

Ultimately, the Board retains final decision-making authority which include reviewing, evaluating and making the final determination on any recommendation, settlement agreement or other action proposed by either the Executive Director in matrix process matters, Application Review Committee or Disciplinary Committee comprised of a subset of Board members.

As such, we are requesting that the revisions to Chapter 8 be approved.

Respectfully submitted,

Cynthia LaBonde MN, RN
Executive Director, WSBN



Matthew H Mead
Governor

Wyoming

STATE BOARD OF NURSING

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Chapter 8 – Practice and Procedure

Concise Summary of Comments and Responses

The Wyoming State Board of Nursing (WSBN) is submitting revisions to Chapter 8 which relates to Practice and Procedure. The principle reasons for the revisions are to address the Matrix Process, Summary Suspension and Reinstatement procedures.

On February 19, 2013, the WSBN posted Chapter 8 – Practice and Procedure revisions on the Board of Nursing website for a 45- day period of public comment in addition to posting a public notice regarding same in the Casper Star Tribune, a newspaper with statewide-circulation.

During the public comment period, WSBN received **NO written comments**. However, two (2) verbal comments regarding grammar changes were received during the Chapter 8 revisions review process with the Governor's Office staff and the Legislative Service Office staff. Specifically, suggested changes included changing "shall be" to "is" on Pg. 8-2, Section 4(a)(i) and changing "of" to "or" on Pg. 8-9, Section 7(d). The comment period ended April 8, 2013.

The WSBN Board members reviewed those comments in an open meeting on April 9, 2013. The Board discussed the changes, decided that they were grammatical and non-substantive, revised the rule to reflect those changes and adopted the revised Chapter 8.

I believe WSBN has appropriately addressed the only comments (verbal) regarding the proposed revisions and as such we are requesting that the revisions to Chapter 8 be approved.

Respectfully submitted,

Cynthia LaBonde MN, RN
Executive Director, WSBN

CHAPTER 8

PRACTICE AND PROCEDURE FOR

DISCIPLINARY, APPLICATION AND LICENSURE MATTERS

Section 1. Statement of Purpose.

(a) These rules and regulations are adopted to implement the Board's authority to conduct investigations, hearings and proceedings concerning alleged violations of the Wyoming Nurse Practice Act ("Act") or the Board's rules and regulations, and to determine and administer appropriate disciplinary action against any person(s) issued a license, certificate or permit by the Board. These rules are also adopted to implement the Board's authority to conduct investigations, hearings and proceedings concerning action related to an application for a license or certificate, including granting or denial of licensure or certification.

(b) For purposes of this chapter, any individual holding a current license, certificate or permit issued by the Board, and providing the individual the opportunity to practice a profession in accordance with the Act and the Board's rules and regulations, shall be referred to as a "licensee". Any person not currently licensed or certified by the Board, but applying for any type of license, certificate or permit issued by the Board shall be referred to as "applicant".

Section 2. Enforcement of Court Order for Non-Payment of Child Support.

(a) The Board shall comply with court orders issued pursuant to Wyo. Stat. § 20-6-112(a), pertaining to an applicant, and/or licensee who is arrears in child support payments.

Section 3. Administrative Complaint Form.

(a) Any complaint filed against a licensee shall be made in writing and contain the signature and address of the person or persons making the complaint. For purposes of these rules, such complaint shall be referred to as the "administrative complaint," and is to be distinguished from the Petition and Complaint described in Section 6 below.

(b) To initiate the investigatory process, the administrative complainant should provide the following:

(i) The name, address, place of employment and position of the individual alleged to have violated the Act or Board's rules and regulations;

(ii) The nature of the complaint and a description of the incidents involved, including dates, times, and locations, and any observed behavior of the individual;

(iii) Supportive documentation of the allegations which may include, but is not limited to:

(A) Statements of witnesses, preferably signed, which may provide information regarding the alleged violations. Such statements should include names and contact information of witnesses;

- (B) Medical releases, medical records, or both;
- (C) Law enforcement records, including court documents;
- (D) Investigatory data and reports relevant to the allegations, which were conducted or compiled by the complainant or other parties;
- (E) Work schedules, employment policies and procedures, workplace assignments, staffing at the time of the alleged incident, documentation of prior employment discipline which may be helpful in substantiating the violation; and
- (F) Any other data or documentation potentially relevant to the complainant's allegation(s).

(iv) A copy of the administrative complaint, including any accompanying documentation not otherwise subject to privacy protection or other laws precluding disclosure, shall be sent to the licensee by regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The licensee may be required to provide a preliminary response to the administrative complaint to assist in investigation or provide explanation for the allegations contained in the administrative complaint.

Section 4. Disciplinary Committee and Investigations of the Administrative Complaint.

(a) Disciplinary Committee. Complaints submitted to the Board office in conformity with Section 3 of this chapter or initiated on behalf of the Board shall be investigated by the Disciplinary Committee or the Board's designate.

(i) These rules do not preclude the Board from delegating the authority to the Executive Director or other designate to engage in specified decision-making and recommendations based upon investigation of disciplinary complaints by directive or policy duly adopted by the Board at a regular meeting, including utilization of a matrix process to facilitate prompt resolution of complaints ("discipline matrix process"), which is published on the Board's website.

(ii) Initial investigative activity shall be performed by Board staff dedicated to investigation of disciplinary complaints. The purpose of the investigation shall be to determine if there are grounds for and sufficient evidence to warrant any disciplinary action against the licensee. Board staff shall have the authority to obtain criminal background data where otherwise permitted by law, to obtain documentary information, including but not limited to law enforcement, personnel, medical or mental health records, to obtain witness statements, to interview witnesses, to issue investigative subpoenas authorized by Wyo. Stat. § 33-21-122(c)(ix), and to obtain prescription profiles from the Board of Pharmacy pursuant to Wyo. Stat. § 35-7-1060(c)(ii) and applicable rules related to the licensee.

(iii) After initial investigation, an administrative complaint may be directed to a discipline matrix process, in which an administrative complaint may be dismissed, or if grounds for discipline are sufficiently supported, certain disciplinary sanctions, including a notice of

warning pursuant to Wyo. Stat. § 33-21-122(e), may be proposed to the licensee for voluntary resolution. The licensee may also be requested to submit to an informal conference or interview to assist in investigation.

(iv) After initial investigation, if a determination has been made by the Executive Director that the licensee also presents a clear and immediate danger to the public health, safety and welfare if allowed to continue to practice as a nurse or nursing assistant within the meaning of Wyo. Stat. § 33-21-147, an administrative complaint may be acted upon in accordance with the discipline matrix process in order to promptly initiate proceedings for a summary suspension order.

(v) Any administrative complaint that cannot be processed or resolved by the discipline matrix process, along with all related investigatory data and information, shall be submitted to a Disciplinary Committee, consisting of at least one (1) or more designated Board members assigned to review the matter. Any Board staff reviewing or compiling information relating to the administrative complaint may also be deemed a committee member.

(vi) The Executive Director in discipline matrix process matters or the Disciplinary Committee may request that the licensee submit to an informal conference to assist in further investigation or to attempt to resolve an administrative complaint in lieu of a hearing.

(b) In cases where the physical or mental condition or competence of a licensee is at issue, the Executive Director in matrix process matters or the Disciplinary Committee, on behalf of the Board, may request that the licensee submit to a physical or mental examination, including but not limited to a psychological, psychiatric, substance abuse, fitness for duty, or competency evaluation, by a qualified provider selected or approved by the Executive Director in discipline matrix process matters or the Disciplinary Committee. The examination shall be provided at the sole expense of the licensee. In selecting a qualified provider, the Executive Director or Disciplinary Committee shall consider the provider's credentials.

(i) Unless otherwise agreed, the request for a physical or mental examination, or for competency evaluation, shall provide the following:

- (A) Reasonable notice to the licensee to be examined;
- (B) The time, place, manner, conditions, and scope of exam; and
- (C) Identification of the person or persons who will perform the exam.

(ii) The Disciplinary Committee, Board staff, or both shall receive the original detailed, written report of the examiner which includes the examiner's findings, identification and results of all tests performed on the licensee. The report shall further include the examiner's diagnoses and conclusions, which shall include a determination of competency or fitness for safe practice, together with like reports of any prior examinations of the same, similar, or other relevant condition revealed to, or known by the examiner, as part of the examiner's intake consideration of the licensee's medical/treatment history;

(iii) Board staff shall provide a copy of examiner's report to the examined licensee;

(iv) When submitting to an examination requested by the Executive Director in discipline matrix process matters or the Disciplinary Committee, pursuant to these rules, the licensee must, prior to the exam, submit a written authorization or release to the provider waiving any patient-clinician privilege or other basis of confidentiality regarding the examination and any subsequent examinations relative to the same issue; the licensee must further provide the Board office with a copy of the authorization or release prior to any examination. Failure to comply with a request for evaluation, failure to waive the privilege, in writing, or failure to provide the Board office with a copy of the authorization or release as required herein, shall constitute a violation of Wyo. Stat. § 33-21-146(a)(xi).

(c) Upon completion of the investigation and review of the administrative complaint form and all investigatory materials, including mental, physical or competency examination reports as set forth in this section, the Executive Director in discipline matrix process matters or the Disciplinary Committee may:

(i) Dismiss the administrative complaint;

(ii) Issue a notice of warning as provided in Wyo. Stat. § 33-21-122(e);

(iii) Recommend the Board approve a settlement agreement in accordance with the Board's authority set forth in the Act, the Board's rules and regulations, and the Wyoming Administrative Procedure Act. Such agreements may include a voluntary surrender or a combination of suspension, the imposition of restrictions, conditions, reprimand, or other discipline;

(iv) Initiate formal disciplinary proceedings and recommend the Board impose disciplinary action against the licensee including revocation, suspension, reprimand, restrictions of or conditions to continued practice or a combination thereof, or non-renewal of the license or certificate;

(v) Recommend the Board issue an order summarily suspending a license if the Executive Director in discipline matrix process matters or the Disciplinary Committee finds the licensee presents a clear and immediate danger to the public health, safety and welfare if allowed to continue to practice.

(d) The Board may resolve an administrative complaint by:

(i) Approving the recommendations of the Executive Director in discipline matrix process matters or of the Disciplinary Committee;

(ii) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:

(A) Dismiss the complaint due to lack of clear and convincing evidence;

(B) Not impose discipline due to significant mitigating factors and issue a notice of warning as provided in Wyo. Stat. § 33-21-122(e);

(C) Impose discipline by revocation, suspension, reprimand, restriction, condition, non-renewal, or a combination thereof, for violation of any provision of the Act or the Board's rules and regulations.

(e) Disciplinary Committee members shall not take part in the consideration or deliberation of any contested case in which they have participated in the investigation. Disciplinary Committee members and Board staff may testify in a contested case hearing.

(f) Members of the Disciplinary Committee or Board staff may attend a contested case hearing.

(g) Any Board order imposing discipline against a licensee shall be deemed a public record and be available for inspection and dissemination in accordance with all federal and state laws.

(h) Any Board order imposing discipline against a licensee may be published in a regular publication of the Board and the Board's website, to provide notice of disciplinary action to the public and interested persons, in addition to complying with other federal law reporting requirements.

Section 5. Service of Notice of Intent and Opportunity to Show Compliance

(a) Except as otherwise provided for a matter involving a summary suspension proceeding, prior to commencing formal proceedings for discipline of a licensee, Board staff on behalf of the Executive Director in discipline matrix process matters or the Disciplinary Committee, shall send a notice of intent to initiate formal disciplinary action by mail to the last indicated address of the licensee, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The notice of intent shall include a brief description of the facts or conduct which warrant the intended action, and provide the licensee an opportunity to show compliance with all lawful requirements for the retention of the license.

(b) The opportunity to show compliance shall expire fifteen (15) days from the date of mailing the notice of intent.

(c) A licensee may request an informal conference to provide any additional information or to resolve an administrative complaint without a hearing.

(d) For matters involving a summary suspension proceeding, prior to commencing formal proceedings, Board staff on behalf of the Executive Director in discipline matrix process matters or the Disciplinary Committee shall send a notice of intent to initiate formal action for summary suspension by mail to the last indicated address of the licensee, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The notice of intent shall include a brief description of the facts or conduct

which warrant the intended action, and provide the licensee, an opportunity to respond. Given the urgency of complaints involving a summary suspension proceeding, the opportunity to respond shall provide for a shorter period of time not less than five (5) days from the date of the notice of intent.

Section 6. Notice of Hearing and Formal Petition and Complaint

(a) Formal proceedings for disciplinary action against a licensee shall be commenced by serving a notice of hearing and petition and complaint by certified or regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee, or personal service to the last indicated address provided to the Board by the licensee and, except in matters involving a summary suspension proceeding, at least twenty (20) days prior to the date set for hearing. Matters involving a summary suspension proceeding shall be set for hearing at the earliest opportunity a quorum of Board members may be assembled.

(b) There shall be a presumption of lawful service when the notice of hearing and petition and complaint are:

(i) Sent to the last indicated address of the licensee by certified or regular mail, or

(ii) Sent by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee.

(c) The Notice of Hearing shall contain:

(i) The name and last address of the licensee;

(ii) A statement in ordinary and concise language of the matters asserted, which shall contain the nature of the complaint filed with the Board, the facts upon which the complaint is based, the specific statutory provisions and the specific Board rules and regulations that the licensee is alleged to have violated;

(iii) The time, place and nature of the hearing;

(iv) The legal authority and jurisdiction under which the hearing is being held; specifically, that the hearing is being held pursuant to the Board's authority under Wyo. Stat. § 33-21-122(c)(viii), and for summary suspension proceedings, under Wyo. Stat. § 33-21-147;

(v) In matters not involving a summary suspension proceeding, a statement indicating that failure to respond to the complaint within twenty (20) days of its receipt may result in a default judgment.

(vi) In matters involving a summary suspension proceeding, a statement indicating that failure to respond to the complaint within ten (10) days of its receipt, or failure to participate in any hearing on a request or motion for an order for summary suspension, may result in an order by default.

Section 7. Default.

(a) The Board may enter an order of default judgment based on the allegations contained in the petition and complaint in any case where the licensee has not responded to the petition and complaint or in any case in which the licensee or the licensee's representative has not appeared at a scheduled, properly noticed hearing.

Section 8. Application Review and Investigation Process.

(a) Investigations of Applications. Every application, including renewal, relicensure, reinstatement or reactivation applications, for a license, certificate or permit issued by the Board is subject to investigation to determine if the licensee or applicant satisfies the requirements set forth in the Act and these rules and regulations. Accordingly, each application is subject to an investigative process and recommendations provided in this chapter by an Application Review Committee, Disciplinary Committee or the Board's designate.

(i) These rules do not preclude the Board from delegating the authority to engage in specified decision-making or recommendations of application matters following investigation by directive or policy duly adopted by the Board at a regular meeting to the Executive Director or other designate, including a matrix process, to facilitate prompt processing of applications for licensure where any potentially negative information is not considered a significant risk to public health or safety, or otherwise a barrier to issuance of a license or certificate ("application matrix process"), which shall be published on the Board's website.

(ii) Initial investigative activity shall be done by Board staff dedicated to investigation of applications. The purpose of the investigation shall be to determine if the applicant has met all requirements to obtain approval for a license or certificate, or of grounds to warrant denial of a license or certificate, or other actions permitted by this chapter. Such staff shall have the authority to obtain criminal background data where otherwise permitted by law, to obtain documentary information, including medical or mental health records, obtain witness statements, interview witnesses, issue investigative subpoenas authorized by Wyo. Stat. § 33-21-122(c)(ix), obtain prescription profiles from the Board of Pharmacy pursuant to Wyo. Stat. § 35-7-1060(c)(ii) related to the applicant.

(iii) After initial investigation, an application may be directed to an application matrix process, in which a license or certificate may be subject to reprimand, restrictions or conditions in accordance with this chapter.

(b) Types of applications:

(i) New Applications. A "new applicant" is an individual, who is attempting to obtain an initial license, certificate or permit, issued by the Board, whether by endorsement or exam. This category also includes licensees previously issued a license, certificate or permit by this Board, but whose previously issued license, certificate or permit expired or lapsed.

(A) If the new application reveals any information which merits further investigation, the matter shall be assigned to the Application Review Committee or the Board's designate, and the application review investigative process set forth in this chapter shall apply.

(B) An applicant has the obligation to notify the Board office of any change in contact information, including but not limited to current mailing address or physical address, current home or cellular telephone number, and current e-mail address as well as preferred method of communication, in order to facilitate service or communication of any action requiring notice to an applicant or licensee under this chapter.

(ii) Incomplete Applications. An incomplete application requires no action by the Application Review Committee or Board, until such time as the application is deemed "complete" by Board staff, on behalf of the Board, and has been reviewed for recommendations by the Application Review Committee or the Board's designate. Any new application, which remains incomplete, one year from the date of its original receipt by the Board office, shall expire. An application is "incomplete", when material and requisite information has not been provided as part of the application process. Such information, may include, but is not limited to:

(A) Failure by the applicant to complete or answer any information requested on the application form;

(B) Failure by the applicant to demonstrate lawful presence in accordance with Federal Law;

(C) Failure by the applicant to respond to any Application Review Committee inquiry or to produce any documents or information requested by the Application Review Committee;

(D) Failure by the applicant to provide payment for application fees. If any payment is made by the applicant, processed, and rejected or returned to the Board, regardless of the reason, the applicant has failed to provide proper payment for application fees;

(E) Any form of "insufficient funds" constitutes failure of the applicant to provide proper payment of fees;

(F) Failure by the applicant to provide the Board with any document or information needed or requested by the Board to assess whether the applicant meets all requisites for licensure and poses no risk of harm to the public.

(G) Failure by the applicant to provide the Board with the preferred method of communication, in order to facilitate service or communication of any action requiring notice to an applicant or licensee under this chapter.

(iii) Renewal Applications. A renewal applicant is an individual who currently holds a license or certificate, and has timely and sufficiently submitted an application for renewal of the license or certificate. "Temporary permit" holders are not "renewal applicants", as temporary

permits expire and are not renewed. A temporary permit may be subject to revocation and the Board reserves the right to revoke a temporary permit at any time.

(A) If the renewal application of a licensee or certificate reveals any information which merits further investigation, the matter shall be assigned to the Executive Director for discipline matrix process matters or the Disciplinary Committee, and the disciplinary investigative process shall apply as if a written complaint form had been filed against the licensee, subject to procedures for contested case hearing in application matters.

(B) The licensee may continue to practice on the license subject to renewal pending investigation or further action of the Board.

(C) Failure to timely renew, resulting in a expired or lapsed license, shall constitute the unauthorized practice of nursing or nursing assistant practice in violation of the Act and a further or independent ground for discipline of a licensee.

(iv) Reinstatement or Reactivation Applications. Any reinstatement or reactivation application by a licensee or an applicant who was the subject of prior disciplinary action shall be assigned to the Executive Director, if the prior discipline was imposed in accordance with the discipline matrix process, or otherwise to the Disciplinary Committee, and the investigative process shall apply as if a written complaint form had been filed against the applicant or licensee. This process also shall apply to a person whose license or certificate was subject to restrictions or conditions, or was surrendered or revoked.

(A) To the extent possible, if the licensee or applicant was subject to prior disciplinary action, the Disciplinary Committee should consist of the same Board member(s) who originally participated in the matter, or to the Executive Director in discipline matrix process matters;

(B) The Executive Director in discipline matrix process matters or the Disciplinary Committee shall make a preliminary determination to recommend or deny reinstatement or reactivation, which may also include recommended restrictions or conditions to practice;

(C) A licensee or applicant who disagrees with or disputes the recommendation by the Executive Director or by the Disciplinary Committee shall be entitled to a hearing as in other application matters.

(c) Application Review Committee. Any application for new license, license renewal or relicensure that cannot be processed by the application matrix policy, and all related investigatory data and information, shall be submitted to an Application Review Committee, consisting of at least one (1) or more designated Board members assigned to review the matter. Any Board staff reviewing or compiling information related to the application may also be deemed an Application Review Committee member.

(d) In cases where the physical or mental condition or competency of an applicant is at issue, the Executive Director in application matrix process matters or the Application Review

Committee, on behalf of the Board, may request that the applicant submit to a physical or mental examination, including but not limited to a psychological, psychiatric, substance abuse evaluation, fitness for duty, or a competency evaluation, by a qualified provider selected by the Application Review Committee at the sole expense of the applicant. In selecting a qualified provider, the committee, on behalf of the Board, shall consider the provider's credentials.

(i) Unless otherwise agreed, the request for a physical or mental examination shall provide the following:

- (A) Reasonable notice to the applicant to be examined;
- (B) The time, place, manner, conditions, and scope of exam; and
- (C) Identification of the person or persons who will perform the exam.

(ii) The Application Review Committee, Board staff, or both shall receive the original, detailed, written report of the examiner which includes the examiner's findings, identification and results of all tests performed on the applicant. The report shall further include the examiner's diagnoses and conclusions, together with like reports of any prior examinations of the same, similar, or other relevant condition(s) revealed to, or known by the examiner, as part of the examiner's intake of the applicant's medical/treatment history;

(iii) Board staff shall provide a copy of examiner's report to the examined applicant;

(iv) When submitting to an examination requested by the Application Review Committee pursuant to these rules, the applicant must, prior to the exam, submit a written authorization or release to the provider waiving any patient-clinician privilege or other basis of confidentiality regarding the requested examination and any subsequent examinations relative to the same issue; the applicant must further provide the Board office with a copy of the authorization or release prior to any examination. Failure to comply with a request for evaluation, failure to waive the privilege, in writing, or failure to provide the Board office with a copy of the authorization or release as required herein, shall constitute a violation of Wyo. Stat. § 33-21-146(a)(xi).

(e) Upon completion of the investigation and review of the application and all investigatory material, including mental, physical or competency examination report(s), the Executive Director in application matrix process matters or the Application Review Committee may:

(i) Approve and recommend a license, certificate, or permit be issued;

(ii) Recommend the Board approve a settlement agreement in accordance with the Board's authority as established in the Act, the Board's rules and regulations, and the Wyoming Administrative Procedure Act. Such agreements may include the issuance of a license or certificate with the imposition of restrictions, conditions, reprimand or a combination thereof;

(iii) Preliminarily deny the application by sending a letter of preliminary denial to the applicant's last indicated address by certified or regular mail, or by electronic mail to the e-mail

address provided by and indicated to be the preferred method of communication by the licensee. The letter of preliminary denial shall notify the applicant of the right to request a contested case hearing regarding the denial of the application;

(iv) Table any recommendation or action on any application if the application is incomplete, or the Application Review Committee determines further information and investigation is necessary.

(f) Applicant's Request for Hearing.

(i) If the Executive Director in application matrix process matters or the Application Review Committee denies the application with a letter of preliminary denial or that the applicant's license or certificate should be subject to restrictions, conditions or reprimand, the applicant may request a contested case hearing regarding the preliminary denial of the application or proposed restrictions, conditions or reprimand.

(ii) The applicant's request for a hearing must be submitted to the Board, in writing, and must be received by the Board within thirty (30) days from the date of mailing of the letter of preliminary denial. If a written request for a contested case hearing is not received by the Board office from the applicant within the thirty (30) day period, the Application Review Committee's preliminary denial of the application shall be final.

(iii) The Executive Director in application matrix process matters or the Application Review Committee may request that the applicant submit to an informal conference to provide additional information that may be favorable to granting of the license or certificate, or to attempt to otherwise resolve issues that may negatively influence license or certificate approval to avoid a hearing.

(g) If the Executive Director in application matrix process matters or the Application Review Committee recommends a denial, or otherwise proposes that the licensure or certification be subject to conditions, restrictions or reprimand, the preliminary denial letter must contain:

(i) A brief description of the facts or conduct which warrant the denial of licensure or certification;

(ii) A statement, in ordinary and concise language of the nature of the actions which warrant the denial or other authorized action, the facts upon which the denial or other action is based, the specific statutory provisions or the specific Board rules and regulations involved;

(iii) Notice of the right to a hearing if a written request is received in the Board office within thirty (30) days of the date of mailing the letter of the denial.

Section 9. Notice of Hearing for Denied Applicants.

(a) If a written request for hearing is received by the Board office from the applicant within the thirty (30) day period, the Board office, on behalf of the Application Review Committee shall serve a Notice of Hearing by certified or regular mail, or by electronic mail to the e-mail

address provided by and indicated to be the preferred method of communication by the applicant, or personal service to the applicant at least twenty (20) days prior to the date set for hearing. Such service shall be made to the last indicated address provided to the Board by the applicant.

(b) There shall be a presumption of lawful service when the Notice of Hearing is:

(i) Sent to the last address of the applicant by certified or regular mail, or

(ii) Sent by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the applicant.

(c) The Notice of Hearing shall contain:

(i) The name and last address of the applicant;

(ii) A statement in ordinary and concise language, of the matters asserted, which shall contain the nature of the issues relating to the denial of the application, the facts upon which the denial is based, the specific statutory provisions, and the specific Board rules and regulations the applicant is alleged to have violated or with which the applicant has failed to comply;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction under which the hearing is being held; specifically, that the hearing is being held pursuant to the Board's authority under Wyo. Stat. § 33-21-122(c)(viii).

(d) Application Review Committee members shall not take part in the consideration or deliberation of any contested case if they have participated in the investigation or denied the application. Application Review Committee members and Board staff may testify at a contested case hearing.

(e) Members of the application review committee or board staff may attend a contested case hearing.

(f) The Board may enter an order dismissing an applicant's hearing in any case where the applicant or the applicant's representative has not appeared at a scheduled, properly noticed hearing.

Section 10. Motions in Contested Cases.

(a) All written motions made to the Board prior to the contested case hearing, shall be submitted to the Board office at least ten (10) days prior to the date set for the hearing, or otherwise in accordance with an order issued by a hearing officer or the Office of Administrative Hearings.

(b) The Board may, within its discretion and upon good cause shown, consider a written motion filed after the deadline has passed or at any time.

(c) For purposes of this rule, any request for settlement of a contested case shall be considered a motion before the Board.

Section 11. Docket.

(a) When formal contested case proceedings are initiated, the case shall be assigned a number and entered upon a docket provided for such purpose.

(b) A separate file shall be established for each docketed case and shall contain all papers, pleadings, documents, transcripts, evidence, and exhibits pertaining to the case.

(c) If the Board refers a contested case matter to the Office of Administrative Hearings, any pleading or other written submission filed shall include the docket number assigned by the Office of Administrative hearings and the hearing shall also be subject to any orders or rules of the Office of Administrative Hearings.

Section 12. Discovery.

(a) In all formal contested case proceedings before the Board, discovery shall occur in accordance with the Wyoming Administrative Procedure Act.

(b) Copies of all written requests for discovery and written discovery responses shall be sent to the Board office to the attention of the Executive Director.

(c) Requests for discovery from the Board shall be made in writing and directed to the Executive Director.

Section 13. Subpoenas.

(a) All matters relating to the issuance and enforcement of subpoenas shall be governed by the Wyoming Administrative Procedure Act.

(b) The Executive Director or the Office of Administrative Hearing shall issue a subpoena for appearance or for production of documents upon receipt of the written application for same by any party to the case:

(i) Written requests for subpoenas for production of documents shall describe, with particularity, the materials requested.

Section 14. Witnesses.

(a) All persons testifying at a hearing before the Board shall stand and be administered a standard oath.

(b) No testimony will be received from a witness except under oath or affirmation.

(c) The party calling a witness shall bear the costs associated with the witness's appearance.

Section 15. Representation.

(a) Any licensee or applicant may represent self or be represented by counsel that is licensed to practice law in the State of Wyoming.

(b) Any attorney representing a licensee or applicant shall submit a written entry of appearance immediately following the commencement of the attorney-client relationship. The entry of appearance shall deem the attorney an attorney of record.

(c) A motion to withdraw from representation of a licensee or applicant shall be made by an attorney of record in writing and submitted to the Board no less than ten (10) days prior to a contested case hearing.

(d) An attorney assigned by the Attorney General's Office to litigate on behalf of any of the Board committees or designate shall present all matters enumerated in any petition and complaint or notice of hearing.

(e) An attorney assigned by the Attorney General's Office to advise the Board shall advise the adjudicating Board members during, and following, any contested case proceeding.

Section 16. Order of Procedure.

(a) As nearly as practicable the order of procedure at any hearing before the Board shall be as follows:

(i) The presiding officer of the Board shall call the meeting to order and turn the meeting over to the hearing examiner or assigned hearing officer from the Office of Administrative Hearings. The hearing examiner or officer shall convene the hearing and announce the docket number and title of the matter and case to be heard. The hearing examiner or officer shall identify the quorum Board members deciding the matter and shall hear and rule upon all preliminary issues submitted to the hearing examiner or officer not previously decided;

(ii) Each party to the contested case proceeding, or the party's legal representative, may present an opening statement. The Board may direct the hearing examiner limit the time permitted for opening statements;

(iii) The assigned litigating attorney representing the Disciplinary Committee shall proceed first, by presenting evidence in support of the petition and complaint. When the assigned litigating attorney is representing the Application Review Committee, the applicant (or the applicant's attorney of record) shall proceed first by presenting evidence in support of the application. All exhibits offered by and on behalf of the Disciplinary or Application Review Committees shall be identified by letters of the alphabet beginning with "A", and all exhibits offered by or on behalf of the licensee or applicant shall be identified with numbers commencing with "1";

(iv) All witnesses may be examined and cross-examined by the parties or by their respective attorneys;

(v) Rebuttal evidence may be allowed at the discretion of the hearing examiner or officer;

(vi) Each party or their attorney may present a closing argument. The Board may direct that the hearing examiner or officer limit the time permitted for closing arguments;

(vii) At the conclusion of the contested case hearing, the hearing examiner or officer shall dismiss and excuse all witnesses and declare the hearing closed. The case shall then be taken under advisement for the Board's hearing panel, excluding any investigating committee members, to deliberate upon the matter.

Section 17. Decision and Order.

(a) The Board shall make and enter a written decision and order containing findings of fact and conclusions of law, stated separately.

(i) The decision and order shall be sent by certified mail to the licensee or applicant or their attorneys.

(ii) This rule does not preclude the Board from giving preliminary, non-binding notice to the parties prior to the filing of the Board's written decision and order.

(iii) Unless otherwise ordered by the Board, all decisions of the Board shall be effective at the time of the filing of the written decision and order.

Section 18. Record of Proceedings.

(a) In a contested case the proceedings including all testimony, shall be reported verbatim by a competent reporter or by other methods deemed sufficient by the Board.

Section 19. Surrender of Recognition, License or Certificate.

(a) In the event that a licensee is disciplined, the Board staff, on behalf of the Board, may require the licensee to surrender the unencumbered license, permit or certificate to the Board office.

Section 20. Appeals.

(a) Appeals from decisions of the Board are governed by the Wyoming Administrative Procedure Act and Wyoming Rules of Appellate Procedure.

(b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.

CHAPTER 8

PRACTICE AND PROCEDURE FOR

DISCIPLINARY, APPLICATION AND LICENSURE MATTERS

Section 1. Statement of Purpose.

(a) These rules and regulations are adopted to implement the ~~b~~Board's authority to conduct investigations, hearings and proceedings concerning alleged violations of the Wyoming Nurse Practice Act ("Act") or the ~~b~~Board's rules and regulations, and to determine and administer appropriate disciplinary action against any person(s) issued a license, certificate or permit by the ~~b~~Board. These rules are also adopted to implement the Board's authority to conduct investigations, hearings and proceedings concerning action related to an application for a license or certificate, including granting or denial of licensure or certification.

(b) For purposes of this chapter, any individual holding a current license, certificate or permit ~~or certificate~~ issued by the ~~b~~Board, and providing the individual the opportunity to practice a profession in accordance with the ~~Wyoming Nurse Practice Act~~ and the ~~b~~Board's rules and regulations, shall be referred to as a "licensee". Any person not currently licensed or certified by the ~~b~~Board, but applying for any type of license, certificate or permit ~~or certificate~~ issued by the ~~b~~Board shall be referred to as "applicant".

Section 2. Enforcement of Court Order for Non-Payment of Child Support.

(a) The ~~b~~Board shall comply with court orders issued pursuant to Wyo. Stat. § 20-6-112(a), pertaining to an applicant, and/or licensee who is arrears in child support payments.

Section 3. Administrative Complaint Form.

(a) Any complaint filed against a licensee shall be made in writing and contain the signature and address of the person or persons making the complaint. For purposes of these rules, such complaint shall be referred to as the "administrative complaint," and is to be distinguished from the Petition and Complaint described in Section 6 below.

(b) To initiate the investigatory process, the administrative complainant should provide the following ~~with the complaint~~:

(i) The name, address, place of employment and position of the individual alleged to have violated the ~~Wyoming Nurse Practice Act~~ or ~~b~~Board's rules and regulations;

(ii) The nature of the complaint and a description of the incidents involved, including dates, times, and locations, and any observed behavior of the individual;

(iii) Supportive documentation of the allegations which may include, but is not limited to:

(A) Statements of witnesses, preferably signed, which may provide information regarding the alleged violations. Such statements should include names and contact information of witnesses;

(B) Medical releases, medical records, or both;

(C) Law enforcement records, including court documents;

(D) Investigatory data and reports relevant to the allegations, which were conducted or compiled by the complainant or other parties;

(E) Work schedules, employment policies and procedures, workplace assignments, staffing at the time of the alleged incident, documentation of prior employment discipline which may be helpful in substantiating the violation; and

(F) Any other data or documentation potentially relevant to the complainant's allegation(s).

(iv) A copy of the administrative complaint, including any accompanying documentation not otherwise subject to privacy protection or other laws precluding disclosure, shall be sent to the licensee by regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The licensee may be required to provide a preliminary response to the administrative complaint to assist in investigation or provide explanation for the allegations contained in the administrative complaint.

Section 4. Disciplinary Committee and ~~Review Investigations of the Original Administrative~~ Complaint.

(a) Disciplinary ~~e~~Ccommittee. Complaints submitted to the ~~b~~Bboard office in conformity with Section 3 of this chapter or initiated on behalf of the Board shall be investigated by the Disciplinary Committee or the ~~b~~Bboard's designate. All investigatory data and information shall be submitted to a disciplinary committee, consisting of at least one (1) or more designated board members assigned to review the matter. Any board staff member reviewing or compiling information relating to the complaint, may also be deemed a committee member.

(i) These rules do not preclude the Board from delegating the authority to the Executive Director or other designate to engage in specified decision-making and recommendations based upon investigation of disciplinary complaints by directive or policy duly adopted by the Board at a regular meeting, including utilization of a matrix process to facilitate prompt resolution of complaints ("discipline matrix process"), which shall be published on the Board's website.

(ii) Initial investigative activity shall be performed by Board staff dedicated to investigation of disciplinary complaints. The purpose of the investigation shall be to determine if there are grounds for and sufficient evidence to warrant any disciplinary action against the licensee. Board staff shall have the authority to obtain criminal background data where otherwise permitted by law, to obtain documentary information, including but not limited to law

enforcement, personnel, medical or mental health records, to obtain witness statements, to interview witnesses, to issue investigative subpoenas authorized by Wyo. Stat. § 33-21-122(c)(ix), and to obtain prescription profiles from the Board of Pharmacy pursuant to Wyo. Stat. § 35-7-1060(c)(ii) and applicable rules related to the licensee.

(iii) After initial investigation, an administrative complaint may be directed to a discipline matrix process, in which an administrative complaint may be dismissed, or if grounds for discipline are sufficiently supported, certain disciplinary sanctions, including a notice of warning pursuant to Wyo. Stat. § 33-21-122(e), may be proposed to the licensee for voluntary resolution. The licensee may also be requested to submit to an informal conference or interview to assist in investigation.

(iv) After initial investigation, if a determination has been made by the Executive Director that the licensee also presents a clear and immediate danger to the public health, safety and welfare if allowed to continue to practice as a nurse or nursing assistant within the meaning of Wyo. Stat. § 33-21-147, an administrative complaint may be acted upon in accordance with the discipline matrix process in order to promptly initiate proceedings for a summary suspension order.

(v) Any administrative complaint that cannot be processed or resolved by the discipline matrix process, along with all related investigatory data and information, shall be submitted to a Disciplinary Committee, consisting of at least one (1) or more designated Board members assigned to review the matter. Any Board staff reviewing or compiling information relating to the administrative complaint may also be deemed a committee member.

~~(+)~~(vi) The Executive Director in discipline matrix process matters or the Disciplinary Committee may request that the licensee submit to an informal conference to assist in further investigation or to attempt to resolve an administrative complaint in lieu of a hearing.

(b) In cases where the physical or mental condition or competence of a licensee is at issue, ~~the Executive Director in matrix process matters or the d~~Disciplinary ~~e~~Committee, on behalf of the ~~b~~Board, may ~~issue an order for the request that the~~ licensee ~~to~~ submit to a physical or mental examination, including but not limited to a psychological, psychiatric, substance abuse, fitness for duty, or competency evaluation, by a qualified provider selected or approved by the Executive Director in discipline matrix process matters or by the dDisciplinary eCommittee. The examination shall be provided at the sole expense of the licensee. In selecting a qualified provider, the Executive Director or Disciplinary eCommittee ~~, on behalf of the board,~~ shall consider the provider's credentials.

(i) Unless otherwise agreed, ~~T~~the order requiring request for a physical or mental examination, or for competency evaluation, shall provide the following:

- (A) Reasonable notice to the licensee to be examined;
- (B) The time, place, manner, conditions, and scope of exam; and
- (C) Identification of the person or persons who will perform the exam.

(ii) The ~~d~~Disciplinary ~~e~~Committee, ~~b~~Board staff, or both shall receive the original detailed, written report of the examiner which includes the examiner's findings, identification and results of all tests performed on the licensee. The report shall further include the examiner's diagnoses and conclusions, which shall include a determination of competency or fitness for safe practice, together with like reports of any prior examinations of the same, similar, or other relevant condition revealed to, or known by the examiner, as part of the examiner's intake consideration of the licensee's medical/treatment history;

(iii) ~~The b~~Board ~~office staff~~ shall provide a copy of examiner's report to the examined licensee;

(iv) When submitting to an competency examination ordered-requested by the Executive Director in discipline matrix process matters or the dDisciplinary eCommittee, pursuant to ~~W.S. 33-21-146(a)(xi) and~~ these rules, the licensee must, prior to the exam, submit a written authorization or release to the provider waiving ~~the any~~ patient-clinician privilege or other basis of confidentiality regarding the ~~ordered~~ examination and any subsequent examinations relative to the same issue; the licensee must further provide the ~~b~~Board office with a copy of the waiver-authorization or release prior to any examination. Failure to comply with a request for evaluation, failure to waive the privilege, in writing, or failure to provide the ~~b~~Board office with a copy of the waiver-authorization or release as required herein, ~~or both,~~ shall ~~constitute conclusive evidence that the licensee has failed to submit to a competency evaluation in-constitute a~~ violation of Wyo. Stat. § 33-21-146(a)(xi).

(c) Upon completion of the investigation and review of the original-administrative complaint form and all investigatory materials, including mental, physical or competency examination reports as set forth in this section, the Executive Director in discipline matrix process matters or the dDisciplinary eCommittee may:

(i) Dismiss the administrative complaint;

(ii) Issue a notice of warning as provided in Wyo. Stat. § 33-21-122(e);

~~(ii)-(iii)~~ (iii) Recommend the ~~b~~Board approve a settlement agreement in accordance with the ~~b~~Board's authority set forth in the ~~Wyoming Nurse Practice~~ Act, the Board's rules and regulations, and the Wyoming Administrative Procedure Act. Such agreements may include a voluntary surrender or a combination of suspension, the imposition of restrictions, conditions, reprimand, or other discipline, ~~or a combination thereof~~;

~~(iii)-(iv)~~ (iv) Initiate formal disciplinary proceedings and recommend the ~~b~~Board impose disciplinary action against the licensee including revocation, suspension, reprimand, restrictions of or conditions to continued practice or a combination thereof, or non-renewal of the license or certificate;

~~(iv)-(v)~~ (v) Recommend the ~~b~~Board issue an order summarily suspending a license if the Executive Director in discipline matrix process matters or the Disciplinary eCommittee finds the licensee presents a clear and immediate danger to the public health, safety and welfare if allowed to continue to practice.

(d) The ~~b~~Board may resolve an administrative complaint by:

(i) Approving the recommendations of the Executive Director in discipline matrix process matters or of the ~~D~~isciplinary ~~e~~Committee's recommendations;

(ii) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the ~~b~~Board may:

(A) Dismiss the complaint due to lack of clear and convincing evidence;

(B) Not impose discipline due to significant mitigating factors and issue a notice of warning as provided in Wyo. Stat. § 33-21-122(e);

(C) Impose discipline by revocation, suspension, reprimand, restriction, condition, non-renewal, or a combination thereof, for violation of any provision of the ~~Wyoming Nurse Practice~~ Act or the Board's rules and regulations.

(e) Disciplinary ~~e~~Committee members shall not take part in the consideration or deliberation of any contested case in which they have participated in the investigation. Disciplinary ~~e~~Committee members and ~~b~~Board staff may testify in a contested case hearing.

(f) _____ Members of the ~~e~~Disciplinary ~~e~~Committee or ~~b~~Board staff may attend a contested case hearing.

(g) _____ Any ~~b~~Board order imposing discipline against a licensee shall be deemed a public record and be available for inspection and dissemination in accordance with all federal and state laws.

~~(g)-(h)~~ Any Board order imposing discipline against a licensee may be published in a regular publication of the Board and the Board's website, to provide notice of disciplinary action to the public and interested persons, in addition to complying with other federal law reporting requirements.

Section 5. Service of Notice of Intent and Opportunity to Show Compliance

(a) Except as otherwise provided for a matter involving a summary suspension proceeding, Prior to commencing formal proceedings for discipline of a licensee, ~~b~~Board staff on behalf of the Executive Director in discipline matrix process matters or the ~~e~~Disciplinary ~~e~~Committee, shall send a notice of intent to initiate formal disciplinary action by mail to the last indicated address of the licensee, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The notice of intent shall include a brief description of the facts or conduct which warrant the intended action, and provide the licensee an opportunity to show compliance with all lawful requirements for the retention of the license.

(b) _____ The opportunity to show compliance shall expire fifteen (15) days from the date of mailing the notice of intent.

(c) A licensee may request an informal conference to provide any additional information or to resolve an administrative complaint without a hearing.

~~(b)-(d)~~ For matters involving a summary suspension proceeding, prior to commencing formal proceedings, Board staff on behalf of the Executive Director in discipline matrix process matters or the Disciplinary Committee shall send a notice of intent to initiate formal action for summary suspension by mail to the last indicated address of the licensee, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The notice of intent shall include a brief description of the facts or conduct which warrant the intended action, and provide the licensee, an opportunity to respond. Given the urgency of complaints involving a summary suspension proceeding, the opportunity to respond shall provide for a shorter period of time not less than five (5) days from the date of the notice of intent.

Section 6. Notice of Hearing and Formal Petition and Complaint

(a) Formal proceedings for disciplinary action against a licensee shall be commenced by serving a notice of hearing and petition and complaint by certified ~~and or~~ regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee, or personal service to the last indicated address provided to the ~~b~~Board by the licensee and, except in matters involving a summary suspension proceeding, at least twenty (20) days prior to the date set for hearing. Matters involving a summary suspension proceeding shall be set for hearing at the earliest opportunity a quorum of Board members may be assembled.

(b) There shall be a presumption of lawful service when the notice of hearing and petition and complaint are:

(i) Sent to the last indicated address of the ~~respondent~~/licensee by certified or regular mail, ~~or~~

~~(i)-(ii)~~ Sent by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee.

(c) The Notice of Hearing shall contain:

(i) The name and last address of the ~~respondent~~/licensee;

(ii) A statement in ordinary and concise language of the matters asserted, which shall contain the nature of the complaint filed with the ~~b~~Board, the facts upon which the complaint is based, the specific statutory provisions and the specific ~~b~~Board rules and regulations that the ~~respondent~~/licensee is alleged to have violated;

(iii) The time, place and nature of the hearing;

(iv) The legal authority and jurisdiction under which the hearing is being held; specifically, that the hearing is being held pursuant to the ~~b~~Board's authority under Wyo. Stat. § 33-21-122(c)(viii), and for summary suspension proceedings, under Wyo. Stat. § 33-21-147;

(v) A-In matters not involving a summary suspension proceeding, a statement indicating that failure to respond to the complaint within twenty (20) days of its receipt may result in a default judgment.

(v)(vi) In matters involving a summary suspension proceeding, a statement indicating that failure to respond to the complaint within ten (10) days of its receipt, or failure to participate in any hearing on a request or motion for an order for summary suspension, may result in an order by default.

Section 7. Default.

(a) The ~~b~~Board may enter an order of default judgment based on the allegations contained in the petition and complaint in any case where the ~~respondent~~/licensee has not responded to the petition and complaint or in any case in which the ~~respondent~~/licensee or the ~~respondent~~/licensee's representative has not appeared at a scheduled, properly noticed hearing.

Section 8. Application Review and Investigation Process.

(a) Investigations of Applications. Every application, including renewal, relicensure, reinstatement or reactivation applications, for a license, certificate or permit ~~or certificate~~ issued by the ~~b~~Board is subject to investigation to determine if the licensee or applicant satisfies the requirements set forth in the ~~Wyoming Nurse Practice~~ Act and these rules and regulations. Accordingly, each application is subject to an investigative process and recommendations provided in this chapter by an Application Review Committee, Disciplinary Committee or the Board's designate.

(i) These rules do not preclude the Board from delegating the authority to engage in specified decision-making or recommendations of application matters following investigation by directive or policy duly adopted by the Board at a regular meeting to the Executive Director or other designate, including a matrix process, to facilitate prompt processing of applications for licensure where any potentially negative information is not considered a significant risk to public health or safety, or otherwise a barrier to issuance of a license or certificate ("application matrix process"), which shall be published on the Board's website.

(ii) Initial investigative activity shall be done by Board staff dedicated to investigation of applications. The purpose of the investigation shall be to determine if the applicant has met all requirements to obtain approval for a license or certificate, or of grounds to warrant denial of a license or certificate, or other actions permitted by this chapter. Such staff shall have the authority to obtain criminal background data where otherwise permitted by law, to obtain documentary information, including medical or mental health records, obtain witness statements, interview witnesses, issue investigative subpoenas authorized by Wyo. Stat. § 33-21-122(c)(ix), obtain prescription profiles from the Board of Pharmacy pursuant to Wyo. Stat. § 35-7-1060(c)(ii) related to the applicant.

~~(i)-(iii)~~ After initial investigation, an application may be directed to an application matrix process, in which a license or certificate may be subject to reprimand, restrictions or conditions in accordance with this chapter.

(b) Types of applications:

~~(i) — Renewal Applications. A renewal applicant is an individual who currently holds a license or certificate, and has timely and sufficiently submitted an application for renewal of the license or certificate. “Temporary permit” holders are not “renewal applicants”, as temporary permits expire and are not renewed.~~

~~(A) — If the renewal application reveals any information which merits further investigation, the matter shall be assigned to the disciplinary committee, and the disciplinary investigative process shall apply as if a written complaint form had been filed against the licensee.~~

~~(ii)-(i) New Applications. A “new applicant” is an individual, who is attempting to obtain an initial license, certificate or permit, or certificate issued by the bBoard, whether by endorsement or exam. This category also includes licensees previously issued a license, certificate or permit or certificate by this bBoard, but whose previously issued license, certificate or permit, or certificate expired, or lapsed, was surrendered by the licensee, or was revoked by the board.~~

~~(A) — If the new application reveals any information which merits further investigation, the matter shall be assigned to the aApplication rReview eCommittee or the Board's designate, and the application review investigative process set forth in this chapter, shall apply.~~

~~(A)-(B) An applicant has the obligation to notify the Board office of any change in contact information, including but not limited to current mailing address or physical address, current home or cellular telephone number, and current e-mail address as well as preferred method of communication, in order to facilitate service or communication of any action requiring notice to an applicant or licensee under this chapter.~~

~~(iii)-(ii) Incomplete Applications. An incomplete application requires no action by the aApplication rReview eCommittee or bBoard, until such time as the application is deemed “complete” by bBoard staff, on behalf of the bBoard, and has been reviewed for recommendations by the aApplication rReview eCommittee or the Board's designate. Any new application, which remains incomplete, one year from the date of its original receipt by the bBoard office, shall expire. An application is “incomplete”, when material and requisite information has not been provided as part of the application process. Such information, may include, but is not limited to:~~

~~(A) Failure by the applicant to complete or answer any information requested on the application form;~~

(B) Failure by the applicant to demonstrate lawful presence in accordance with Federal Law;

(C) Failure by the applicant to respond to any ~~a~~Application ~~r~~Review ~~e~~Committee inquiry or to produce any documents or information requested by the ~~a~~Application ~~r~~Review ~~e~~Committee;

(D) Failure by the applicant to provide payment for application fees. If any payment is made by the applicant, processed, and rejected or returned to the ~~b~~Board, regardless of the reason, the applicant has failed to provide proper payment for application fees;

(E) Any form of "insufficient funds" constitutes failure of the applicant to provide proper payment of fees;

(F) Failure by the applicant to provide the ~~b~~Board with any document or information needed or requested by the ~~b~~Board to assess whether the applicant meets all requisites for licensure and poses no risk of harm to the public.

(G) Failure by the applicant to provide the Board with the preferred method of communication, in order to facilitate service or communication of any action requiring notice to an applicant or licensee under this chapter.

(iii) Renewal Applications. A renewal applicant is an individual who currently holds a license or certificate, and has timely and sufficiently submitted an application for renewal of the license or certificate. "Temporary permit" holders are not "renewal applicants", as temporary permits expire and are not renewed. A temporary permit may be subject to revocation and the Board reserves the right to revoke a temporary permit at any time.

(A) If the renewal application of a licensee or certificate reveals any information which merits further investigation, the matter shall be assigned to the Executive Director for discipline matrix process matters or the Disciplinary Committee, and the disciplinary investigative process shall apply as if a written complaint form had been filed against the licensee, subject to procedures for contested case hearing in application matters.

(B) The licensee may continue to practice on the license subject to renewal pending investigation or further action of the Board.

(C) Failure to timely renew, resulting in a expired or lapsed license, shall constitute the unauthorized practice of nursing or nursing assistant practice in violation of the Act and a further or independent ground for discipline of a licensee.

(iv) Reinstatement or Reactivation Applications. Any reinstatement or reactivation application by a licensee or an applicant who was the subject of prior disciplinary action shall be assigned to the Executive Director, if the prior discipline was imposed in accordance with the discipline matrix process, or otherwise to the Disciplinary Committee, and the investigative process shall apply as if a written complaint form had been filed against the applicant or

licensee. This process also shall apply to a person whose license or certificate was subject to restrictions or conditions, or was surrendered or revoked.

(A) To the extent possible, if the licensee or applicant was subject to prior disciplinary action, the Disciplinary Committee should consist of the same Board member(s) who originally participated in the matter, or to the Executive Director in discipline matrix process matters;

(B) The Executive Director in discipline matrix process matters or the Disciplinary Committee shall make a preliminary determination to recommend or deny reinstatement or reactivation, which may also include recommended restrictions or conditions to practice;

(F)-(C) A licensee or applicant who disagrees with or disputes the recommendation by the Executive Director or by the Disciplinary Committee shall be entitled to a hearing as in other application matters.

(c) ~~Application Review Committee. Any matter relating to the application which board staff determines merits further investigation shall be assigned to an application review committee. All such matters shall be investigated by the board's designate. The application, any relevant documentary inclusions with the application and all investigatory information obtained as part of the investigation shall be submitted to an application review committee, consisting of at least one (1) or more designated board members, assigned to review the matter. Any application for new license, license renewal or relicensure that cannot be processed by the application matrix policy, and all related investigatory data and information, shall be submitted to an Application Review Committee, consisting of at least one (1) or more designated Board members assigned to review the matter.~~ Any ~~b~~Board staff ~~member~~ reviewing or compiling information related to the application may also be deemed an ~~a~~Application ~~r~~Review ~~e~~Committee member.

(d) In cases where the physical or mental condition or competency of an applicant is at issue, the Executive Director in application matrix process matters of the aApplication ~~r~~Review ~~e~~Committee, on behalf of the ~~b~~Board, may ~~issue an order for request that~~ the applicant ~~to~~ submit to a physical or mental examination, including but not limited to a psychological, psychiatric, substance abuse evaluation, fitness for duty, or a competency evaluation, by a qualified provider selected by the ~~a~~Application ~~r~~Review ~~e~~Committee at the sole expense of the licensee/applicant. In selecting a qualified provider, the committee, on behalf of the ~~b~~Board, shall consider the provider's credentials.

(i) Unless otherwise agreed, tThe Order requiring request for a physical or mental examination shall provide the following:

- (A) Reasonable notice to the applicant to be examined;
- (B) The time, place, manner, conditions, and scope of exam; and
- (C) Identification of the person or persons who will perform the exam.

(ii) The ~~a~~Application ~~r~~Review ~~e~~Committee, ~~b~~Board staff, or both shall receive the original, detailed, written report of the examiner which includes the examiner's findings, identification and results of all tests performed on the applicant. The report shall further include the examiner's diagnoses and conclusions, together with like reports of any prior examinations of the same, similar, or other relevant condition(s) revealed to, or known by the examiner, as part of the examiner's intake of the applicant's medical/treatment history;

(iii) ~~The b~~Board ~~office staff~~ shall provide a copy of examiner's report to the examined applicant;

(iv) When submitting to an ~~competency~~ examination ~~ordered requested~~ by the ~~a~~Application ~~r~~Review ~~e~~Committee pursuant to ~~W.S. 33-21-146(a)(xi) and~~ these rules, the applicant must, prior to the exam, submit a written authorization or release to the provider waiving ~~the any~~ patient-clinician privilege or other basis of confidentiality regarding the ~~ordered requested~~ examination and any subsequent examinations relative to the same issue; the applicant must further provide the ~~b~~Board office with a copy of the ~~waiver authorization or release~~ prior to any examination. Failure to comply with a request for evaluation, failure to waive the privilege, in writing, or failure to provide the ~~b~~Board office with a copy of the ~~waiver authorization or release~~ as required herein, ~~or both~~, shall constitute ~~conclusive evidence that the applicant has failed to submit to a competency evaluation in a~~ violation of Wyo. Stat. § 33-21-146(a)(xi).

(e) Upon completion of the investigation and review of the application and all investigatory material, including mental, physical or competency examination report(s), the Executive Director in application matrix process matters or the aApplication ~~r~~Review ~~e~~Committee may:

(i) Approve and recommend a license, certificate, or permit be issued;

(ii) Recommend the ~~b~~Board approve a settlement agreement in accordance with the ~~b~~Board's authority as established in the ~~Wyoming Nurse Practice~~ Act, the ~~b~~Board's rules and regulations, and the Wyoming Administrative Procedure Act. Such agreements may include the issuance of a license or certificate with the imposition of restrictions, conditions, ~~discipline, reprimand~~ or a combination thereof;

(iii) ~~Preliminarily D~~deny the application by sending a letter of preliminary denial to the applicant's last indicated address by certified ~~and or~~ regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the licensee. The letter of preliminary denial shall notify the applicant of the right to request a contested case hearing regarding the denial of the application;

(iv) Table any recommendation or action on any application if the application is incomplete, or the ~~a~~Application ~~r~~Review ~~e~~Committee determines further information and investigation is necessary.

(f) Applicant's Request for Hearing.

(i) If the Executive Director in application matrix process matters or the aApplication Review eCommittee denies the application with a letter of preliminary denial or that the applicant's license or certificate should be subject to restrictions, conditions or reprimand, the applicant may request a contested case hearing regarding the preliminary denial of the application or proposed restrictions, conditions or reprimand.

(ii) The applicant's request for a hearing must be submitted to the bBoard, in writing, and must be received by the bBoard within thirty (30) days from the date of mailing of the letter of preliminary denial. If a written request for a contested case hearing is not received by the bBoard office from the applicant within the thirty (30) day period, the aApplication Review eCommittee's preliminary denial of the application shall be final.

~~(i)-(iii)~~ The Executive Director in application matrix process matters or the Application Review Committee may request that the applicant submit to an informal conference to provide additional information that may be favorable to granting of the license or certificate, or to attempt to otherwise resolve issues that may negatively influence license or certificate approval to avoid a hearing.

(g) If the Executive Director in application matrix process matters or the Application Review eCommittee recommends a denial, or otherwise proposes that the licensure or certification be subject to conditions, restrictions or reprimand, the preliminary denial letter must contain:

(i) A brief description of the facts or conduct which warrant the denial of licensure or certification;

(ii) A statement, in ordinary and concise language of the nature of the actions which warrant the denial or other authorized action, the facts upon which the denial or other action is based, the specific statutory provisions or the specific bBoard rules and regulations involved;

(iii) Notice of the right to a hearing if a written request is received in the bBoard office within thirty (30) days of the date of mailing the letter of the denial.

Section 9. Notice of Hearing for Denied Applicants.

(a) If a written request for hearing is received by the bBoard office from the applicant within the thirty (30) day period, the bBoard office, on behalf of the aApplication Review eCommittee shall serve a Notice of Hearing by certified and-or regular mail, or by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the applicant, or personal service to the applicant at least twenty (20) days prior to the date set for hearing. Such service shall be made to the last indicated address provided to the bBoard by the applicant.

(b) There shall be a presumption of lawful service when the Notice of Hearing is:

(i) Sent to the last address of the applicant by certified or regular mail-, or

~~(i)-(ii)~~ Sent by electronic mail to the e-mail address provided by and indicated to be the preferred method of communication by the applicant.

(c) The Notice of Hearing shall contain:

(i) The name and last address of the applicant;

(ii) A statement in ordinary and concise language, of the matters asserted, which shall contain the nature of the issues relating to the denial of the application, the facts upon which the denial is based, the specific statutory provisions, and the specific ~~b~~Board rules and regulations the applicant is alleged to have violated or with which the applicant has failed to comply;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction under which the hearing is being held; specifically, that the hearing is being held pursuant to the ~~b~~Board's authority under Wyo. Stat. § 33-21-122(c)(viii).

(d) Application ~~r~~Review ~~e~~Committee members shall not take part in the consideration or deliberation of any contested case if they have participated in the investigation or denied the application. Application ~~r~~Review ~~e~~Committee members and ~~b~~Board staff may testify at a contested case hearing.

~~(e)~~ Members of the application review committee or board staff may attend a contested case hearing.

~~(e)-(f)~~ The Board may enter an order dismissing an applicant's hearing in any case where the applicant or the applicant's representative has not appeared at a scheduled, properly noticed hearing.

Section 10. Motions in Contested Cases.

(a) All written motions made to the ~~b~~Board prior to the contested case hearing, shall be submitted to the ~~b~~Board office at least ten (10) days prior to the date set for the hearing, or otherwise in accordance with an order issued by a hearing officer or the Office of Administrative Hearings.

~~(b)~~ The ~~b~~Board may, within its discretion and upon good cause shown, consider a written motion filed after the deadline has passed or at any time.

~~(b)-(c)~~ For purposes of this rule, any request for settlement of a contested case shall be considered a motion before the Board.

Section 11. Docket.

(a) When formal contested case proceedings are initiated, the case shall be assigned a number and entered upon a docket provided for such purpose.

(b) A separate file shall be established for each docketed case and shall contain all papers, pleadings, documents, transcripts, evidence, and exhibits pertaining to the case.

~~(b)-(c)~~ If the Board refers a contested case matter to the Office of Administrative Hearings, any pleading or other written submission filed shall include the docket number assigned by the Office of Administrative hearings and the hearing shall also be subject to any orders or rules of the Office of Administrative Hearings.

Section 12. Discovery.

(a) In all formal contested case proceedings before the ~~b~~Board, discovery shall occur in accordance with the Wyoming Administrative Procedure Act.

(b) Copies of all written requests for discovery and written discovery responses shall be sent to the ~~b~~Board office to the attention of the Executive Director.

~~(b)-(c)~~ Requests for discovery from the Board shall be made in writing and directed to the Executive Director.

Section 13. Subpoenas.

(a) All matters relating to the issuance and enforcement of subpoenas shall be governed by the Wyoming Administrative Procedure Act.

(b) The ~~e~~Executive ~~d~~Director or the Office of Administrative Hearing shall issue a subpoena for appearance or for production of documents upon receipt of the written application for same by any party to the case:

(i) Written requests for subpoenas for production of documents shall describe, with particularity, the materials requested.

Section 14. Witnesses.

(a) All persons testifying at a hearing before the ~~b~~Board shall stand and be administered a standard oath.

(b) No testimony will be received from a witness except under oath or affirmation.

(c) The party calling a witness shall bear the costs associated with the witness's appearance.

Section 15. Representation.

(a) Any licensee or applicant may represent self or be represented by counsel that is licensed to practice law in the State of Wyoming.

(b) Any attorney representing a licensee or applicant shall submit a written entry of appearance immediately following the commencement of the attorney-client relationship. The entry of appearance shall deem the attorney an attorney of record.

(c) A motion to withdraw from representation of a licensee or applicant shall be made by an attorney of record in writing and submitted to the **bB**oard no less than ten (10) days prior to a contested case hearing.

(d) An attorney assigned by the Attorney General's Office to litigate on behalf of any of the **bB**oard committees or designate shall present all matters enumerated in any petition and complaint or notice of hearing.

(e) An attorney assigned by the Attorney General's Office to advise the **bB**oard shall advise the adjudicating **bB**oard members during, and following, any contested case proceeding.

Section 16. Order of Procedure.

(a) As nearly as practicable the order of procedure at any hearing before the **bB**oard shall be as follows:

(i) The presiding officer of the **bB**oard shall call the meeting to order and turn the meeting over to the hearing examiner or assigned hearing officer from the Office of Administrative Hearings. The hearing examiner or officer shall convene the hearing and announce the docket number and title of the matter and case to be heard. The hearing examiner or officer shall identify the quorum **Board** members deciding the matter and shall hear and rule upon all preliminary issues submitted to the hearing examiner or officer not previously decided;

(ii) Each party to the contested case proceeding, or the party's legal representative, may present an opening statement. The **bB**oard may direct the hearing examiner limit the time permitted for opening statements;

(iii) The assigned litigating attorney representing the **dD**isciplinary **eC**ommittee shall proceed first, by presenting evidence in support of the petition and complaint. When the assigned litigating attorney is representing the **aA**pplication **rR**eview **eC**ommittee, the applicant (or the applicant's attorney of record) shall proceed first by presenting evidence in support of the application. All exhibits offered by and on behalf of the **dD**isciplinary or **aA**pplication **rR**eview **eC**ommittees shall be identified by letters of the alphabet beginning with "A", and all exhibits offered by or on behalf of the licensee or applicant shall be identified with numbers commencing with "1";

(iv) All witnesses may be examined and cross-examined by the parties or by their respective attorneys;

(v) Rebuttal evidence may be allowed at the discretion of the hearing examiner or officer;

(vi) Each party or their attorney may present a closing argument. The **bB**oard may direct that the hearing examiner or officer limit the time permitted for closing arguments;

(vii) At the conclusion of the contested case hearing, the hearing examiner or officer shall dismiss and excuse all witnesses and declare the hearing closed. The case shall then be

taken under advisement for the bBBoard's quorum hearing panel, excluding any investigating committee members, to deliberate upon the matter.

Section 17. Decision and Order.

(a) The bBBoard shall make and enter a written decision and order containing findings of fact and conclusions of law, stated separately.

(i) The decision and order shall be sent by certified mail to the licensee or applicant or their attorneys.

(ii) This rule does not preclude the bBBoard from giving preliminary, non-binding notice to the parties prior to the filing of the bBBoard's written decision and order.

(iii) Unless otherwise ordered by the bBBoard, all decisions of the bBBoard shall be effective at the time of the filing of the written decision and order.

Section 18. Record of Proceedings.

(a) In a contested case the proceedings including all testimony, shall be reported verbatim by a competent reporter or by other methods deemed sufficient by the bBBoard.

Section 19. Surrender of Recognition, License or Certificate.

(a) In the event that a licensee is disciplined, the Bboard staff, on behalf of the bBBoard, may require the licensee to surrender the unencumbered license, permit or certificate to the bBBoard office.

Section 20. Appeals.

(a) Appeals from decisions of the bBBoard are governed by the Wyoming Administrative Procedure Act and Wyoming Rules of Appellate Procedure.

(b) Costs of transcripts and any reasonable costs assessed by the bBBoard regarding the record on appeal shall be borne by the party making the appeal.