

CHAPTER 127
FORMERLY
SENATE BILL NO. 159

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING
TO CIVIL ADMINISTRATIVE PROCEDURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE:

Section 1. Amend § 10161, Title 29 of the Delaware Code by adding new subsections (h) and (i) to read as follows:

"(h) At a properly convened board meeting, the board president or chairperson of any professional licensing board governed by Titles 23, 24, or 28 of the Delaware Code and listed in subsection (a) of this Section that is not already authorized by statute to use hearing panels or committees to resolve cases, may nominate at least 3 members of the board, the 3 members being 2 professional members and 1 public member if practical, to serve on a hearing panel to decide disciplinary complaints and complaints of unlicensed practice. Nominees must be approved by a majority vote of the board members present at the properly convened meeting. The board president or chairperson shall designate 1 member of a hearing panel to serve as the hearing panel chair. Hearing panels shall consist of board members only.

(i) Notice of the panel hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29. All hearings shall be informal without use of rules of evidence. A verbatim record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the hearing panel must be made by majority vote of the hearing panel members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(1) If the hearing panel determines that no violation of the applicable provisions of Titles 23, 24, 28 or 29 or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order dismissing the complaint.

(2) If the hearing panel determines that a violation of the applicable provisions of Titles 23, 24, 28 or 29 or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order stating its proposed findings of fact, conclusions of law, and disciplinary sanctions.

(3) If the respondent fails or refuses to appear, the hearing panel may nevertheless proceed to hear the complaint and render a decision.

(j) Orders issued by the hearing panel are not final until approved by the board having jurisdiction. By majority vote of the members present at a properly convened board meeting, the board shall approve or reject the hearing panel's written order based only on the information contained in the order. The board shall overturn the decision of a hearing panel only if it decides that a hearing panel decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If a board does not approve the hearing panel's order, the matter must be remanded to the hearing panel for further proceedings in accordance with the board's written reasons for withholding its approval. Where the respondent is in disagreement with the action of the Board, the respondent may appeal the Board's decision in accordance with the provisions of the Administrative Procedures Act. The Court shall hear the appeal on the record. Stays shall be granted in accordance with § 10144 of Title 29. Copies of orders must be served personally or by registered or certified mail to each party."

Approved July 08, 2009