

**TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS
DRUGS CONTROL
CHAPTER 1. ADMINISTRATIVE OPERATIONS
Subchapter 1 - General Provisions**

475:1-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Agent" means a peace officer appointed by and who acts on behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act. With regard to an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances, the term "agent" does not include contractors, subcontractors, or their employees.

"Applicant" means the person(s) seeking registration with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and includes all beneficial owners of any legal entity where ownership disclosure is a legal requirement or condition to any licensing or registration.

"Beneficial Owner" means the natural person(s) who ultimately own or control a legal entity, as well as the natural person(s) on whose behalf a business is conducted including those natural persons who exercise ultimate effective control over a legal entity or arrangement. This includes, but is not limited to, all natural persons:

- (A) Who contribute cash, property, or services to receive a membership or ownership interest in a legal entity;
- (B) Who becomes a member of the legal entity without acquiring a membership or ownership interest;
- (C) Who are managers of the legal entity;
- (D) Who have voting rights in the legal entity;
- (E) Who receive profits, losses, or distributions of the legal entity;
- (F) Who make capital contributions to the legal entity; or
- (G) Who receive capital interest from the legal entity.

"Registrant" means a person, persons, corporation or other entity who has been issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control a registration pursuant to Section 2-302 of Title 63 of the Oklahoma Statutes and includes all beneficial owners of any legal entity where ownership disclosure is a legal requirement or condition to any licensing or registration.

**TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS
DRUGS CONTROL**

CHAPTER 1. ADMINISTRATIVE OPERATIONS

Subchapter 5 - Administrative Actions

475:1-5-1. Purpose

The rules of this Subchapter explain the administrative hearing process at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control when said agency seeks to limit, condition, suspend, revoke or deny the renewal of an OBN registration and/or impose a fine.

475:1-5-2. Burden of proof

At any hearing for the limitation, conditioning, denial of renewal application, suspension or revocation of a registration, or the assessing of a fine the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall have the burden of proving by clear and convincing evidence, except where statute has expressly provided for a different burden of proof, that the requirements for such registration are not satisfied pursuant to Title 63 O.S. §§ 2-302 through 2-304.

475:1-5-9. Report and record

(a) As soon as practicable after the time for the parties to file proposed findings of fact and conclusions of law has expired, the hearing officer shall prepare a report containing the following:

- (1) His/Her findings of fact and conclusions of law with the reasons therefor.
- (2) His/Her recommendation.

(b) The hearing officer shall certify to the Director the record, which shall contain the recording of the testimony, exhibits, the findings of fact and conclusions of law proposed by the parties, and his/her report. Upon receipt of the certified record, the Director shall cause one (1) copy of the report of the hearing officer to be delivered to each party to the hearing.

(c) The hearing officer may announce his/her decision orally at the close of the hearing without requesting that the parties file proposed findings of fact and conclusions of law. The hearing officer shall prepare a written report containing his/her findings and recommendation to the Director in the same manner as above.

475:1-5-10. Final order

(a) As soon as practicable after the hearing officer has certified the record to the Director, as required in 475:1-5-9, the Director shall issue his/her order in the proceeding, which shall set forth the final rule or decision and the findings of fact and conclusions of law upon which the rule or decision is based. This order shall specify the date on which it shall take effect, which shall not be less than thirty (30) days from the date of the order unless the Director finds that emergency conditions exist necessitating an earlier effective date, in which event the Director shall specify in the order his/her findings as to such conditions. Any reportable action taken as the result of a Final Order from a hearing or an Agreed Order shall be reported to the National Practitioner Data Bank pursuant to *45 CFR §60.1 et seq.*

(b) Any respondent who fails to request a hearing, after notice of a written order, or who fails to appear after requesting a hearing, may be determined to have waived the right to appear and present a defense. Failure to request a hearing shall result in the written order becoming the Final Order of the agency. If a hearing is requested, the Director may enter a default judgment against any party who fails to participate in the administrative hearing.

475:1-5-11. Surrender of Registration in Lieu of Administrative Action

(a) Any registrant of the OBN may surrender the registration in lieu of or in addition to administrative action at any time before such action is taken. In such a case, the registrant will waive the right to reapply for an OBN registration for a period of six (6) months from the effective date of the surrender. In such case, the OBN Director may approve or deny any application from the registrant following this six (6) month period based on the impact issuing the requested registration may have on the general public safety. A surrender of an OBN registration made in lieu of further administrative action shall be reported to the National Practitioner Data Bank pursuant to *45 CFR §60.1 et seq*, if required.

(b) In the event a registration is revoked, suspended, or surrendered, either voluntarily or following administrative action, the registrant may not, at any time, utilize the registration of another individual and/or institution. Any effort to utilize the registration of another may be considered an unlawful dispensation, administration, distribution, and/or prescription of a controlled dangerous substance as set forth under Title 63 of the Oklahoma Statutes.

(c) For registered businesses, any owner, manager, board member, officer, or legal counsel may surrender the applicable registration on behalf of the registered business.

475:1-5-12. Service in administrative proceedings

(a) Notice of any written order initiating administrative proceedings, other than an immediate suspension order, shall be given according to one of the following methods:

(1) Upon the respondent by personal service in any manner authorized by the law of this State for the personal service of summons.

(2) Upon the respondent by mailing a copy of the notice by certified mail to the last known mailing address of the respondent or to the registered agent of the respondent.

(b) In addition to one of the above methods, the OBN may give notice by electronic mail to the respondent at the last known electronic mail address provided to the Bureau or by publication to the Bureau's public website or by publication to the public OBN Registrant Verification website.

(c) Service shall be deemed effective either on the date of personal service or on the date of receipt of certified mail or if refused, on the date of refusal.

(1) Registrants are required to keep information current and up to date with the Bureau. If either personal service or service by certified mail fails, service shall be deemed effective when the Bureau gives notice via both electronic mail and publication to one of the online sites above.

(2) Service of notice shall be reasonably calculated, under all circumstances, to apprise the interested parties of the pendency of the action and to afford them an opportunity to present their objections.

(d) Service of subsequent pleadings, as prescribed herein, upon a respondent shall be deemed adequate upon mailing, by regular mail, postage prepaid, to the address provided by the party or registered address of the party or to the attorney of record of the party or by electronic mail when the party has consented to service by electronic mail.

475:1-5-13. Request for hearing and default

(a) A request for a hearing shall be submitted in writing, on a form prescribed by the OBN. This form is available at the Bureau's principal place of business located at 419 NE 38th Terrace, Oklahoma City, OK 73105 or online at www.obndd.ok.gov. Hearing requests may only be submitted in person or by mail to the Bureau's principal place of business. Hearing requests

submitted other than in person or by mail on the prescribed form shall not be accepted. Hearing requests must be made within thirty (30) calendar days of the date of issuance of the written order, not inclusive of the day of issuance of the written order. Hearing requests made or postmarked after the deadline for requesting a hearing will not be granted. The Request for Hearing Form shall be addressed to the Oklahoma Bureau of Narcotics, Legal Division, 419 NE 38th Terrace, Oklahoma City, OK 73105.

(b) Respondent shall file a verified answer responding to each allegation of fact contained within the written order. Failure to file a verified answer refuting an allegation of fact shall be deemed an admission of the allegation of fact.

(c) Any respondent who fails to appear, after requesting a hearing, will be determined to have waived the right to appear and present a defense. All allegations of fact shall be deemed admitted and the written order providing notice of the violations shall become the Final Order by default. Notice of taking default shall not be required.

(d) Respondents who are entities must appear in any administrative proceeding through an attorney licensed to practice law in the State of Oklahoma. Any timely request for hearing by an entity shall be accompanied by an Entry of Appearance by a licensed attorney of the State of Oklahoma. If no attorney enters their appearance in the administrative proceeding within ten (10) business days following the request for hearing, the respondent will be determined to have waived the right to a hearing and present a defense. Any respondent who fails to appear, after requesting a hearing, will be determined to have waived the right to appear and present a defense. All allegations of fact shall be deemed admitted and the written order providing notice of the violations shall become the Final Order by default. Notice of taking default shall not be required.

(e) Only the registrant or the registrant's legal counsel may request a hearing on behalf of the registrant. For registered businesses, only an owner, manager, board member, officer, or legal counsel may request a hearing on behalf of the registered business.

475:1-5-14. Discovery in administrative proceedings

(a) Disclosure of Evidence by the Bureau.

(1) Upon written request of the respondent, the Bureau shall disclose the following:

(A) The name and addresses of witnesses which the prosecuting attorney intends to call at the hearing, together with a statement identifying which allegations of fact each witness may possess relevant knowledge.

(B) Any books, papers, documents, photographs, or tangible objects which the prosecuting attorney intends to use in the hearing.

(C) Administrative reports made for the enforcement of regulatory functions. The Bureau, in its discretion, may not include criminal investigative reports associated with the administrative action.

(b) Disclosure of Evidence by the Respondent.

(1) Upon written request of the Bureau, the respondent shall disclose the following:

(A) The name and addresses of witnesses which the respondent intends to call at the hearing, together with a statement identifying which allegations of fact of which each witness may possess relevant knowledge.

(B) Any books, papers, documents, photographs, or tangible objects which the respondent intends to use in the hearing.

(c) Continuing Duty to Disclose.

(1) If, prior to or during the hearing, a party discovers additional evidence or material previously requested or ordered, such party shall promptly notify the other party, and the hearing officer of the existence of the additional evidence or material.

(2) The hearing officer may determine what evidence is necessary and proper for the purposes of the proceeding.

(d) Time of Discovery.

(1) Any request of motions for discovery may be made at any time after the respondent has filed a Request for Hearing, including an Entry of Appearance for any entity, in the case and requested a hearing provided that the Bureau may request discovery in the Order to Show Cause. The hearing officer may specify the time, place, and manner of taking the discovery and may prescribe such terms and conditions as are just.

(2) All discovery shall be completed no less than three (3) business days prior to the scheduled hearing unless otherwise ordered by the hearing officer. Any exhibit or discovery not turned over shall not be admitted at the hearing without compelling reason. This provision does not apply to any hearing on immediate suspension resulting in revocation.

(e) Subpoenas:

(1) The Bureau may require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding or investigation. The Hearing Officer does not have authority to quash any subpoena or subpoena duces tecum issued by the Director.

(2) The Bureau, or any party to a proceeding before it, may take the depositions of witnesses in the same manner as is provided by law for the taking of depositions in civil actions in courts of record.

(A) Witnesses must have knowledge of the facts necessary and proper for adjudication of the proceeding, or be designated as an expert witness, to be deposed. The hearing officer shall determine whether a witness is necessary and proper.

(B) Any requested depositions of Bureau personnel shall take place at an OBN designated location by non-video means unless the hearing officer finds a compelling reason to order otherwise. This shall be construed strictly to protect the health, safety, and welfare of Bureau personnel and their identities.

(C) Any witness, other than a named party, may testify in the administrative hearing via telephone or videoconference at the discretion of the hearing officer with notice provided to all parties at least three (3) business days prior to the scheduled hearing.

(3) At the request of the respondent, or any other party, the hearing officer shall:

(A) Issue subpoenas for the attendance of witnesses with knowledge of facts necessary and proper for adjudication.

(B) Issue subpoenas duces tecum to compel the production of books, records, papers, or other things necessary and proper for adjudication.

(C) Quash a subpoena or subpoena duces tecum so issued with notice to all parties. The hearing officer may not quash a subpoena or subpoena duces tecum if any party objects. This does not limit the hearing officer's authority to exclude or deny requests for irrelevant, immaterial, or unduly repetitious evidence considering the scope of the administrative hearing and the seriousness of the violations.

(D) All witnesses and evidence sought must be necessary and proper for the purposes of the proceeding. The hearing officer shall determine what is necessary and proper and will receive, admit, limit, or exclude evidence accordingly. All evidence which is irrelevant, immaterial, or unduly repetitious may not be admitted.

(f) Regulation of Discovery:

(1) Upon motion of either party, the hearing officer may at any time order that specified disclosures be restricted or make any other protective order. If the hearing officer enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the Bureau to be made available to the appellate court in the event of an appeal.

(2) If at any time during the course of the proceedings it is brought to the attention of the hearing officer that a party has failed to comply with discovery, the court may order such party to permit the discovery or inspection, grant continuance, or it may enter such other order as it deems just under the circumstances including admission or denial of the evidence.

(3) Any discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.