

3701-64-04 Hearing procedure.

- (A) For the convenience of accused individuals or witnesses, the director may consolidate hearings on allegations of abuse, neglect, or misappropriation that involve a common set of circumstances.
- (B) The director shall appoint an attorney who is licensed to practice law in Ohio to serve as hearing officer and to preside at the hearing. The hearing officer shall not have been involved directly with the director's investigation of the allegation and shall have the same powers and authority in conducting the hearing as the director.
- (C) For the purposes of conducting a hearing under this rule, the director may issue subpoenas compelling attendance of witnesses or production of documents.
 - (1) The subpoenas shall be served in the same manner as subpoenas and subpoenas duces tecum issued for a trial of a civil action in a court of common pleas.
 - (2) If a person who is served a subpoena fails to attend a hearing or to produce documents, or refuses to be sworn or to answer any questions put to him or her, the director may apply to the common pleas court of the county in which the person resides, or the county in which the long-term care facility or residential care facility is located, for a contempt order, as in the case of a failure of a person who is served a subpoena issued by the court to attend or to produce documents or a refusal of such person to testify.
 - (3) If the accused desires to compel the attendance of witnesses or the production of documents at the hearing, the accused shall request that the director issue the desired subpoena not later than seven days prior to the hearing. The director shall issue any subpoena which is requested timely under paragraph (C) of this rule.
- (D) The hearing shall be recorded by video or audio tape, or by a stenographer. The method of recording shall be determined by the director. The record shall include all testimony, other evidence, and rulings on objections presented at the hearing.
- (E) The hearing officer may administer oaths and affirmations, shall regulate the conduct of the hearing, shall rule upon the admissibility of evidence and objections. If the hearing officer refuses to admit certain evidence, any proffer of that evidence shall be made a part of the hearing record.
- (F) The hearing officer may call the accused to testify under oath as upon cross-examination.
- (G) The accused is entitled to have an attorney present at the hearing, to present evidence and to cross-examine witnesses. The accused may be represented at the hearing by a person who is not an attorney if the accused does not pay a fee to the person for the representation.
- (H) The hearing officer may be guided by but shall not be bound by the "Ohio Rules of Evidence" (as amended July 1, 2012) when he or she conducts the hearing. The hearing officer shall consider all relevant testimonial and documentary evidence which is admitted into the record during the hearing.

- (I) The hearing officer shall send a written report to the director and the accused by ordinary mail or hand delivery within fifteen days after the conclusion of the hearing. The report shall contain findings of fact, conclusions of law, and a recommendation whether the director should make a finding that the accused abused or neglected a resident or misappropriated property of a resident. The hearing officer's findings shall be based on a preponderance of the evidence adduced at the hearing.
- (J) Either party may file written objections to the report and recommendation of the hearing officer. The objections shall be sent or hand-delivered to the director and the other party within fifteen days after the mailing or hand delivery of the report and recommendation. Either party may file with the director a written response to the objections of the other party within ten days after the objections were mailed or hand-delivered.

Effective: 04/18/2016

Five Year Review (FYR) Dates: 01/05/2016 and 04/15/2021

CERTIFIED ELECTRONICALLY

Certification

04/08/2016

Date

Promulgated Under: 119.03
Statutory Authority: 3721.26
Rule Amplifies: 3721.23
Prior Effective Dates: 1/10/1992, 6/11/01