



## Ohio Administrative Code

### Rule 4734-4-07 Depositions in lieu of testimony at hearing and transcripts of prior testimony for submission at hearing.

Effective: August 12, 2002

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(A) Upon written motion of any representative of record or the hearing officer's or presiding board member's own motion, and upon service of that motion to all other representatives, the hearing officer or presiding board member may order that the testimony of a witness be taken by deposition in lieu of live testimony under such conditions and terms as the hearing officer or presiding board member shall set, and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

- (1) The witness will be unavailable to attend or will be prevented from attending a hearing; and
- (2) The testimony of the witness is material; and
- (3) The testimony of the witness is necessary in order to prevent a failure of justice.

In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for the hearing officer's or presiding board member's consideration of the motion of a representative to take a deposition in lieu of live testimony.

(B) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the hearing officer or presiding board member shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. The hearing officer or presiding board member has the discretion to be present at the deposition in lieu of testimony at hearing.

(C) Unless requested due to the sudden unavailability of a witness, a deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and shall be offered into evidence at hearing by the representative requesting the deposition, in lieu of the witness' live



testimony at hearing. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor. Any motion for a post-hearing deposition arising from the sudden unavailability of a witness shall be ruled upon by the hearing officer or presiding board member.

(D) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition of prior testimony is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.

(E) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.

(F) The content of investigative depositions taken by the board as part of its investigatory process may be introduced into evidence at hearing upon the motion for counsel for the state, if the respondent was given notice and an opportunity to attend the deposition. If the respondent was not given an opportunity to attend the deposition, the hearing officer may admit the deposition if the interests of justice require that it be so introduced.