**Section 1110.190 Burden of Proof**

a) The burden of proof rests with the Division in all cases instituted by the Division by the filing of a Complaint or Notice of Intent to Refuse to Renew. A recommendation for discipline may be made by the Administrative Law Judge only when the Division establishes by clear and convincing evidence that the allegations of the Complaint or Notice are true.

b) The burden of proof in all cases instituted by the filing of a Petition for Hearing rests with the Petitioner except as provided in this Section. The Petitioner must prove by a preponderance of the evidence that the license should be restored.

c) An action may be commenced by the Division by the filing of a Notice of Intent to Deny issuance of a license or other credential.

1) If the Notice of Intent to Deny alleges that the applicant has violated a disciplinary provision of the applicable professional Act, the Division has the burden of proof to prove by clear and convincing evidence that the alleged violation occurred. Upon the Division meeting this burden of proof, the Applicant then has the burden to prove by a preponderance of the evidence that the license or other credential should be granted. In any contested case in which the Notice of Intent to Deny alleges that the applicant has violated a disciplinary provision of the applicable professional Act, the sequence of the formal hearing shall be as if the Division has the burden of proof. This provision does not apply in any situation in which the relevant statute provides that no hearing shall be held.

2) If the Notice of Intent to Deny notifies the applicant that he or she does not meet the minimum qualifications for a license or other credential and does not otherwise allege applicant has violated a disciplinary provision of the applicable professional Act, the applicant has the burden of proof to prove by a preponderance of the evidence that the qualifications have been met. This provision does not apply in any situation in which the relevant statute provides that no hearing shall be held.

3) Upon a finding that the applicant was previously convicted of a felony or misdemeanor that may be grounds for refusing to issue a license or certification or to grant registration, the Administrative Law Judge or Board making a recommendation regarding a Notice of Intent to Deny shall consider the mitigating factors and evidence of rehabilitation contained in the applicant's record, when allowed by the DFPR Law, to determine whether a prior conviction will impair the ability of the Applicant to engage in the practice for which a license, certificate or registration is sought.

4) Upon review of a previous conviction of an initial applicant for the purpose of determining good moral character, the ALJ or Board making a recommendation regarding a Notice of Intent to Deny shall consider evidence of rehabilitation and mitigating factors in the applicant's record, when allowed by the DFPR Law.

d) Except as otherwise provided in this Section, a case instituted by the filing of a Notice to Refuse to Renew shall be handled in the same manner as a Complaint.

e) The burden of proof rests with the Division to prove by clear and convincing evidence that the alleged violation has occurred when a licensee files a Request for Hearing after he or she has been subject to an automatic suspension or other discipline due to a violation of a term of a previous Director's Order or Consent Order.

f) No burden of proof applies in hearings conducted for the sole purpose of determining the length of an automatic indefinite suspension imposed pursuant to Section 2105-170 of the DFPR Law.

(Source: Amended at 43 Ill. Reg. 9969, effective September 13, 2019)