

103 CMR 431.00: OBSERVATION OF BEHAVIOR REPORTS

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431.01: Purpose

It is a basic tenet of sex offender treatment that sex offenders are responsible for their behavior and that they are responsible for knowing and conforming to laws set down by society. To further the goals of a sex offender treatment program while ensuring fairness to all individuals subject to these regulations, 103 CMR 431, institutes a clear set of rules linked to a clear set of sanctions, which may be modified according to mitigating or aggravating circumstances.

431.02: Statutory Authorization

103 CMR 431, is issued pursuant to M.G.L. c. 124, § 1(b), (i) and (q), M.G.L. c. 127, § 33 and M.G.L. c. 123A, § 2. 103 CMR 431 is not intended to confer any procedural or

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substantive rights not otherwise granted by state or federal law.

431.03: Cancellation

103 CMR 431 cancels and supersedes all previous policies governing the observation of behavior review reports and proceedings at the Massachusetts Treatment Center to the extent they are inconsistent with 103 CMR 431.

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431.04: Applicability

103 CMR 431 is applicable to all persons committed under M.G.L. c. 123A and confined at the Massachusetts Treatment Center, including persons residing in the transition house or participating in a community access program, and to all employees. The discipline of inmates (i.e., persons not civily committed under M.G.L. c. 123A) admitted to the Massachusetts Treatment Center or any modular extension of the Massachusetts Treatment Center will be governed by the provisions of 103 CMR 430.

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431.05: Access to Regulations

103 CMR 431 shall be maintained in the Superintendent's policy file, institutional policy file, ~~the~~ institutional library, ~~on~~ each housing unit, ~~and~~ the Minimum Privilege Unit (MPU).

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431.06: Definitions

Aggravated Assault - an assault where aggravating factors exist, ~~to include~~including, but not limited to: use of a weapon; biting; using a shod foot; multiple participants conducting the assault; seriousness of bodily injury; or, any other factors that manifests extreme indifference to life.

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Automatic ~~Discovery~~ Discovery - evidence which the Disciplinary Officer shall provide to the resident automatically, and without request by the resident, ~~no less than twenty four (24) hours prior to the hearing on the observation of behavior report.~~

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Behavior Review Committee (BRC) - A three-member board, ~~appointed~~ appointed to conduct hearings for observation of behavior reports.

Branch of the Massachusetts Treatment Center - Any correctional facility designated by the Commissioner of Correction as a branch of the Massachusetts Treatment Center pursuant to M.G.L. c. 123A, § 2.

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Business Day - Monday through Friday, excluding holidays.

Chairperson - a hearing officer from the Central Inmate Disciplinary Unit (CIDU) as defined in 103 CMR 430, Inmate Discipline, who shall facilitate the observation of behavior process and sit as the Chairperson for an observation of behavior hearing. The person should have knowledge and experience in the conduct of BRC proceedings.

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Commissioner - the Commissioner of Correction.

Deputy Commissioner of the Prison Division – the executive staff person who reports to the Commissioner, and whose duties include, but are not limited to, the management of the Assistant Deputy Commissioner(s), the Community Work Crew Central Division, Office of Investigative Services, the ~~Central Inmate Disciplinary Unit~~CIDU, and the Central Transportation Unit.

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Department- Department of Correction.

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Director of Inmate Discipline (Director or Director of Discipline) - the administrative manager appointed by the Commissioner to oversee all inmate disciplinary functions within the Department pursuant to 103 CMR 430, Inmate Discipline, and 103 CMR 431, Observation of Behavior Reports.

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Disciplinary Officer - an officer of supervisory rank or function appointed by the Superintendent in consultation with the Director to oversee Observation of Behavior Report (OBR) processing at the Massachusetts Treatment Center.

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Exculpatory Evidence - evidence which is potentially helpful to the resident in either proving innocence or in establishing lesser responsibility for the offense(s) as charged.

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Hearing Officer- an officer of supervisory rank who is appointed by and reports to the Director of Discipline to conduct O-B-R hearings.

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Inmate Management System (IMS) - The Department's automated information system that provides processing, storage and retrieval of inmate-related information needed by Department personnel and other authorized users within the criminal justice system.

Intimate Acts - Any behavior not defined as sexual abuse or harassment of an inmate/resident, and includes kissing, touching parts of the body not defined under sexual abuse, or other related acts such as sending/receiving personal letters/cards/gifts or engaging in phone calls with an inmate/resident. ~~Intimate relationships between staff and inmates/residents are expressly prohibited.~~

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Massachusetts Treatment Center (Treatment Center) - a medium security facility that houses three populations of adult male sex offenders: (i) persons civilly committed as "sexually dangerous persons" (SDP) for an indefinite period of one day to life pursuant to M.G.L. c. 123A; (ii) persons awaiting disposition of petitions to commit them as SDPs pursuant to M.G.L. c. 123A; and (iii) inmates committed to DOC's custody who are participating in DOC's voluntary sex offender treatment program.

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Minimum Privilege Unit (MPU) - A Special Management Unit that is a separate housing area from general population within the Treatment Center in which (a) an SDP/temporary civil commitment may be confined for reasons of administrative segregation, protective custody, or serving a sanction imposed under 103 CMR 431, Observation of Behavior Reports (OBRs); and (b) inmates may be confined for reasons of administrative segregation, protective custody or disciplinary detention.

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Observation of Behavior Report (OBR) - A report written by a staff member, ~~on the~~

~~appropriate form~~ concerning inappropriate behavior of a resident.

Offer of Proof - a brief description of expected testimony or evidence.

Preponderance of Evidence - a belief, formed after weighing the evidence, that the proponent's contention is more likely true than not true.

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Proponent - the staff member seeking a guilty finding against a ~~—~~resident, or supporting an OBR against a resident.

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Resident- a person committed to the Massachusetts Treatment Center or a branch thereof pursuant to M.G.L. c. 123A either (1) for one day to life as a ~~sexually dangerous person~~**SDP** or (2) pending the disposition of a petition for commitment as an ~~sexually dangerous person~~**SDP**.

Stalking - The willful and malicious engagement in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress.

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Superintendent - The chief administrative officer of the Massachusetts Treatment Center.

431.07: Self-injurious Behavior

OBRs solely for self-injurious behavior are prohibited. OBRs for behavior directly and wholly related to self-injurious behavior, such as destruction of state property, are also prohibited. Likewise, OBRs for reporting to the Department or contract staff feelings or intentions of self-injury or suicide are prohibited. Whenever a staff person becomes aware of a resident's self-injurious behavior, the staff person shall prepare an incident report and communicate the matter to the appropriate mental health staff in accordance with 103 DOC 650, Mental Health.

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431.08: OBR Personnel

~~(1)~~ —The Superintendent, in consultation with the Director of Discipline, shall appoint a Disciplinary

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~~(1)~~ Officer who is of supervisory rank or function, and who shall perform the functions of that office, as set forth in 103 CMR 431. The Superintendent may appoint one or more ~~—~~Assistant Disciplinary Officers, who are of equal or lesser rank to the Disciplinary Officer, for the purpose of performing the functions of that office as set forth in 103 CMR 431.

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(2) For each hearing, the BRC shall consist of three members. One member, who will serve as the Chairperson, shall be a hearing officer from the ~~Central Inmate Disciplinary Unit~~**CIDU** as defined in 103 CMR 430, Inmate Discipline. ~~—~~The Superintendent shall appoint the other two members, one of whom shall be a sex offender treatment program clinician and one of whom shall be a correctional program officer.

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431.09: Detection and Reporting

- (1) Informal handling of lesser offenses in accordance with existing practices is not precluded or discouraged by 103 CMR 431, Observation of Behavior Reports. Where an employee reasonably believes that formal disciplinary action is not necessary, the employee may, with the approval and review of the employee's supervisor, within twenty-four (24) hours, issue a written warning or take other appropriate action and handle the matter informally. ~~Self injurious behavior shall never result in informal sanctioning. Whenever staff become aware of a resident's self injurious behavior a staff person shall prepare an incident report and communicate the matter to the appropriate mental health staff in accordance with 103 DOC 650, Mental Health.~~ When informal sanctions are imposed, the resident shall be notified through an Informal Sanction Form. Additionally, the Disciplinary Officer shall record this information in the unit/IMS Informal Sanction Screen within twenty-four (24) hours to monitor and track informal sanctions being issued within the institution. Residents may challenge the informal handling of an OBR and request that the matter be handled formally, and that an OBR be written. If a resident refuses to sign the Informal Sanction Form, which refusal acts as the resident's exercise of a challenge to informal handling, the employee may proceed as provided in 103 CMR 431.11.

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Informal Sanctions are limited to one of the following:

- (a) Written warning;
- (b) One to five hours of extra duty, to be assigned as needed by the Unit Officer;
- (c) One to three days of room restriction, other than for attendance at scheduled programs, appointments and meals, to begin within 24 hours of the incident;
- (d) One to three days of unit restriction, other than for attendance at scheduled programs, appointments and meals, to begin within 24 hours of the incident;
- (e) One to three days of loss of a specified leisure activity, to begin within 24 hours of the incident.

- (2) ~~Where~~ Where informal handling is not appropriate, an employee, who has reason to believe that an offense has been committed by a resident, shall write an OBR and submit it to the employee's supervisor for review within twenty-four (24) hours of the incident or the completion of any related investigation.

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- (3) ~~Within twenty-four (24) hours of Upon~~ Upon receipt of ~~the an~~ OBR, a supervisor shall further investigate the matter if deemed necessary, within twenty-four (24) hours and necessary and recommend one of the following:

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- (a) That the matter be handled informally in consultation with the reporting staff person;

- (b) ~~That the~~ matter be dismissed, if warranted, after further investigation, or discovery of additional facts; or mitigating circumstances ~~change the facts as originally presented~~; or
 - (c) ~~That f~~Formal action be taken, and at which time the supervisor shall forward the report to the Shift Commander.
- (4) Upon receipt of the OBR, the Shift Commander shall within twenty-four (24) hours recommend one of the following:
- (a) Further investigation;
 - (b) That the matter be handled informally in consultation with the reporting staff person's supervisor;
 - (c) ~~That the~~ matter be dismissed, if warranted, after further investigation, ~~or discovery of~~ additional facts, ~~or~~ mitigating circumstances ~~change the facts as originally presented~~; or
 - (d) ~~That f~~Formal action be taken, and at which time the Shift Commander shall forward the report to the Disciplinary Officer.
- (5) At all levels of review, the OBR shall be reviewed for accuracy, while ensuring adherence to applicable time frames.
- (6) ~~All~~OBRs shall be reviewed ~~in accordance with~~ as required by 103 DOC 650, Mental Health Policy.

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~~(7) Self injurious behavior shall never result in informal sanctioning. Whenever staff become aware of a resident's self injurious behavior, the a staff person shall prepare an incident report and communicate the matter to the appropriate mental health staff in accordance with 103 DOC 650, Mental Health.~~

431.1009: Restrictions Prior to Hearing

-Restrictions prior to hearing shall be governed by 103 CMR 423, Special Management and Awaiting Action, and the Massachusetts Treatment Center Procedural Attachment to ~~103 CMR 423~~, Special Management and Awaiting Action.

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431.11:0 Responsibilities of the Disciplinary Officer

(1) Within two (2) business days of receipt of ~~the an~~ OBR, the Disciplinary Officer, or designee, shall review the OBR, or make any further investigation the Disciplinary Officer deems necessary, including a review of informant information if applicable, and do one of the following:

- (a) Dismiss the OBR;
- (b) Reduce the OBR to an incident report;
- (c) With the approval of the Superintendent, take no immediate action on the OBR pending the receipt of further information; or
- (d) Proceed with formal disciplinary action and assign offenses as set forth in 103 CMR 431.21.

(2) In cases which the Disciplinary Officer determines restitution may be an appropriate sanction, the ~~Disciplinary~~ Officer shall provide the resident with an itemized list of damages or costs associated with or resulting from the resident's actions. The itemized list of damages or costs shall be provided to the resident within a reasonable time, but not less than 48 hours before the resident's scheduled BRC hearing.

431.12:4 Proceedings in Formal Disciplinary Matters: Notice and Scheduling of Hearing Before the BRC

(1) Within two (2) business days of assigning offenses to the OBR, a copy of the OBR, a notice of hearing, a request for representation/witness form and a request for evidence form, shall be served upon the resident by the Disciplinary Officer or a designee. Automatic discovery shall ordinarily be served on the resident at this time, but ~~not in any event not less~~ than forty-eight (48) hours before the BRC hearing.

Automatic discovery includes:

- (a) Copies of incident reports concerning the incident alleged to have occurred in the OBR;
- (b) Copies of, or access to, all exculpatory evidence;
- (c) Copies of, or access to, all documentary, photographic, audio, or video graphic evidence referred to in the ~~disciplinary report-OBR~~, or, which the Disciplinary Officer intends to introduce at the hearing; and
- (d) Informant information checklist with applicable sections completed by the Disciplinary Officer.

(2) The Disciplinary Officer or designee shall approve or deny with good cause and in writing any requests made by the resident for witnesses or evidence. This response shall be served on the resident no less than forty-eight (48) hours prior to the hearing. The factors that the Disciplinary Officer or designee may consider when ruling on these requests shall include, but not be limited to, the following:

- (a) Relevance;
- (b) Whether the evidence is cumulative or repetitive;
- (c) Unavailability of the reporting staff person ~~and~~/or other staff person for a

prolonged period of time due to illness, authorized absence or for other good cause;

- (d) ~~Failure of Whether~~ the resident ~~to provide~~ provided a ~~sufficient~~ offer of proof of the expected testimony of a proposed witness or the need for requested evidence.

(3) The Disciplinary Officer shall schedule a hearing before the BRC within a reasonable time. ~~The hearing shall not be held less than twenty-four (24) hours after the resident has been served with both the OBR and the notice specifying the date and time of the BRC hearing.~~ The Disciplinary Officer or the BRC may continue a hearing. The resident shall be given written notice of such continuance and the new date and time for the hearing. The resident shall be entitled to one (1) continuance for good cause provided that any request for a continuance must ordinarily be made at least twenty-four (24) hours prior to the scheduled time of the BRC hearing. Requests for continuances shall not be unreasonably denied.

(4) A resident may waive the right to twenty-four (24) hours' notice of the disciplinary hearing. A resident may waive the right to appear before the BRC. Such waivers shall be documented in writing and signed by the resident.

(5) A resident may waive the right to a BRC hearing and enter a guilty plea or agree to a continuance without a finding pursuant to 103 CMR 430.243 before the Disciplinary Officer or ~~the~~ BRC. If the resident pleads guilty, the Disciplinary Officer or the BRC shall conduct an interview with the resident and may assess mitigating circumstances presented by the ~~resident~~. The Disciplinary Officer or the BRC shall then recommend sanction(s) in accordance with 103 CMR 431.232. A resident may appeal the sanction(s) in accordance with 103 CMR 431.198.

(6) If a resident wishes to be represented in accordance with the provisions of 103 CMR 431. 132 (1) and (2), or if the resident wishes to have the reporting staff person or other witnesses present in accordance with the provisions of 103 CMR 431.14 (4) and (5), the resident must complete the request for representation and witness form and submit it to the Disciplinary Officer within twenty-four (24) hours of receipt of the request for representation and witness form. The resident must submit the request for evidence form within twenty-four (24) hours of receipt of the request for evidence form. The resident's unexcused failure to submit a request for representation and witness form or evidence form may, at the discretion of the Disciplinary Officer, constitute a waiver of the resident's rights to call witnesses, request additional evidence and to be represented at the hearing. Such a failure to submit forms shall not deny the resident the right to receive automatic discovery.

(7) Contraband evidence that is deemed to constitute a risk to the safety or security of the institution, its staff, inmates, residents or any participant in the hearing process, shall not be presented at the hearing or be provided to the resident. The Disciplinary Officer or designee shall make reasonable attempts to supply the resident with either photographs or photocopies of the evidence, unless the photographs or photocopies of the evidence would themselves be contraband, constitute a security risk, or be contrary to the therapeutic mission

of the Treatment Center (for example, pornography). In such a case, the resident may request to view the contraband evidence prior to the hearing by notifying the Disciplinary Officer at least forty-eight (48) hours prior to the hearing. The Disciplinary Officer shall grant or deny the request with a written explanation should the request be denied. Attorneys or law students who represent the resident may request in writing, to view contraband evidence prior to the hearing by notifying the Disciplinary Officer at least forty-eight (48) hours prior to the hearing. The Disciplinary Officer shall act on the request and, if the request is denied, provide a written explanation.

431.13:2 Representation of Residents, Special Accommodations and the Recording of Proceedings

(1) A resident may be represented by an attorney or a law student in OBR proceedings ~~in accordance with 103 CMR 431~~. It is the resident's responsibility to secure such representation. The resident shall be allowed to make, or have made on the resident's behalf, a telephone call for that purpose. If a representative agrees to represent a resident, the representative shall provide written notice to the Disciplinary Officer. Provided written notice is received, a Disciplinary Officer shall allow a continuance request unless the Disciplinary Officer determines the continuance would cause undue delay or is otherwise unreasonable. The resident's representative shall be entitled to make one (1) amended written request for witnesses, evidence or the reporting staff person's presence, provided that such amended request is communicated to the Disciplinary Officer at least three (3) business days prior to the scheduled time for the hearing.

(2) Where a resident is illiterate or non-English speaking, or where the issues presented are complex, the resident shall be afforded the right to be assisted by a staff member designated by the Disciplinary Officer or by the Department's designated telephonic interpreter service. It shall be the resident's responsibility to request such assistance within a reasonable time prior to the scheduled hearing.

(3) A resident, either verbally or in writing, may seek an accommodation pursuant to 103 DOC ~~207408~~, Special Accommodations for Inmates, for any of the procedures set forth herein. Whenever said request is made, the Institution's Americans with Disability Act ("ADA") Coordinator shall determine what accommodations, if any, are reasonable pursuant to the procedures set forth in 103 DOC ~~207408~~.

(4) A resident shall be permitted to record a hearing before the BRC through use of tape or electronic recording equipment provided by the resident or the resident's representative. Upon timely request by the resident to the Disciplinary Officer, ordinarily to be made along with the resident's request for representation/witness form, but in no case less than forty-eight (48) hours prior to the hearing, the BRC shall record the hearing electronically and provide a copy of the hearing for the resident's use with a reasonable charge to be paid by the resident. An indigent resident, as defined by 103 CMR 481, shall be afforded a recorded copy of the hearing upon prior written request by the resident or the resident's representative. The resident shall be required to deliver any recordings, so used, to the BRC at the close of the OBR hearing. The Chairperson shall deliver such recording(s) to the Disciplinary Officer who shall be responsible for the

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safekeeping of the recordings. The resident or the resident's representative shall have access to the recording(s) for future reference and the representative shall be permitted to make and retain a duplicate recording at the hearing.

431.143: Behavior Review Committee General Powers

(1) The Chairperson shall govern the conduct of every phase of the hearing including, but not limited to, the interpretation and construction of 103 CMR 431 and the conduct of all parties. On his/her own initiative, or at the request of another BRC member, the Chairperson may, for good cause, go into executive session at any time to consider procedures and reconvene the hearing at a reasonable date and time.

(2) The BRC members shall be impartial. If the resident or resident's representative challenges the impartiality of any member of the BRC, the Director or a designee shall determine if the resident/representative has stated substantial reasons to support the claim. For ~~example,~~ a witness to the event at issue shall not sit as a BRC member. If the Director removes the Chairperson, the Director shall designate a replacement as soon as practicable. If the Director removes another member of the BRC, the Superintendent shall designate a replacement as soon as practicable.

(3) The BRC shall not be bound by the rules of evidence or privilege observed by the courts of the Commonwealth.

(4) All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. The Chairperson may take whatever appropriate actions are necessary to conduct a hearing when confronted with the improper conduct of any participant.

(5) The BRC cannot compel the attendance of non-Department of Correction staff.

(6) The BRC shall make written findings of fact, determine guilt or innocence, and make sanction recommendations.

431.154: Fact Finding Aspects of a Hearing before the BRC

(1) At the beginning of a hearing on an OBR which is designated as a referral to the District Attorney for prosecution, prior to the reading of offenses to the resident, the Chairperson shall first advise the resident that the resident has the right to remain silent and that anything the resident says during the hearing may be used against the resident in a court of law prior to the reading of offenses to the resident.

~~At the beginning of a~~For any ~~other~~ hearing on an OBR, at the beginning of the hearing the Chairperson shall read the offenses to the resident and ask if the resident wishes to admit or deny the offenses. If the resident admits to the

offenses, the BRC may immediately consider mitigating evidence when recommending the sanction(s). ~~At the beginning of a hearing on an OBR which is designated as a referral to the District Attorney for prosecution, the Chairperson shall first advise the resident that the resident has the right to remain silent and that anything the resident says during the hearing may be used against the resident in a court of law prior to the reading of offenses to the resident.~~

(2) If the resident does not admit to the offenses, the BRC shall conduct a fact finding hearing at which the BRC may consider written, oral and physical evidence. All evidence considered by the BRC shall be presented in the presence of the resident except certain informant information, which shall be presented handled in accordance with the provisions of 103 CMR 431.165.

(3) ~~The Chairperson shall begin the hearing by identifying the date, time and place of the hearing, the parties present, and reading the OBR aloud. The Chairperson shall ask the resident for a plea of guilty or not guilty. After the reading of the OBR and the resident's plea, the BRC shall consider any preliminary matters. The Disciplinary Officer, or the Assistant Disciplinary Officer, upon the request of the BRC, or the Reporting Officer upon his/her own initiative, shall present the case at issue. Evidence shall ordinarily be presented first by the proponent(s) of the OBR(s), with an opportunity for cross-examination allowed by the resident or the resident's representative. The resident or the resident's representative shall be provided an opportunity to cross-examine the staff member presenting the OBR and other witnesses testifying in support of the OBR. When requested by the Hearing Officer or the Reporting Officer, or upon his/her own initiative, the Disciplinary Officer or the Assistant Disciplinary Officer shall present the case at issue. Evidence shall ordinarily be presented first by the proponent(s) of the OBR, with an opportunity for cross-examination of witnesses allowed by the resident or the resident's representative.~~ The resident shall then be allowed, but is not required, to present testimony or evidence in support of the resident's case. A resident's silence may be used to draw an adverse inference against the resident, but silence shall not be the sole basis for a guilty finding. A resident's request for sequestration of witnesses shall not be unreasonably denied, although the BRC may have appropriate staff present throughout the hearing as required by security or safety concerns. ~~The foregoing procedure in no way limits the authority of the BRC as set forth in 103 CMR 431.13.~~

(4) The resident may call and question witnesses in his/her defense, or to present other evidence, when permitting him/her to do so will not be unduly hazardous to personal or institutional safety. The factors that the BRC may consider when ~~considering-reviewing~~ a resident's request to call witnesses, questioning of witnesses, or offer of other documentary or physical evidence shall include, but shall not be limited to, the following:

- (a) Relevance;
- (b) Whether the evidence or witness testimony is cumulative or repetitive;
and
- (c) Hazards presented by an individual

case.

(5) The reporting staff person shall, when requested by the resident or the BRC, attend the hearing unless the Superintendent or designee determines that good cause exists for the officer's unavailability. Any determination of unavailability shall be in writing and shall be completed prior to the commencement of the hearing. The Superintendent or a designee may approve the determination or disapprove it and/or require rescheduling of the hearing at a time when the reporting staff person will be available. If the resident does not request the presence of the reporting staff person at the disciplinary hearing, the BRC may accept the reporting staff person's statement in the report as true, provided that the report is based on the staff person's eyewitness account or other personal knowledge and is otherwise credible. Further, such statements in the report may be considered by the BRC in making findings pursuant to 103 CMR 431.154.

(6) The BRC may call and question witnesses on the BRC's own motion. The BRC may also continue a hearing.

431.165: Procedures for the Use of Informant Information

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(1) In cases involving informant information, the BRC may consider documentary evidence and/or testimony which is not presented in the presence of the resident or the resident's representative only if, after viewing or hearing such documentary evidence or testimony, the Chairperson has made a finding that the informant is reliable and that the information is credible. This finding shall be included in the record and should contain the following information:

(a) The facts upon which the Chairperson based the conclusion that the informant was reliable and that the information was credible. These facts should ordinarily not be general and must be specific, as set forth in 103 CMR 431.165(2).

(b) A statement of the information provided by the informant with as much specificity as is possible, without creating a substantial risk of disclosing the identity of the informant. The statement ~~should~~ must demonstrate that the informant had personal knowledge of the information provided.

(2) ~~In making the foregoing findings, the~~ Chairperson shall record the findings on a form approved by the Commissioner, ~~consistent with these regulations, and The Chairperson must~~ focusing on the personal knowledge, reliability, and credibility of the informant and the specificity of the information supplied. A separate inquiry and finding shall be made for each informant. Each form with these findings shall be given to the resident at a reasonable time before the resident is given an opportunity to question the reporting officer or other witnesses and to present the resident's case; and-

(3) The Chairperson must also have made a finding that the disclosure of the documentary evidence or testimony provided by the informant to the resident or

the resident's representative would create a substantial risk of harm to the informant, to any other person, or to the security of the institution.

(4) ~~The Chairperson may consider informant information and base the findings under 103 CMR 431.15 on information which is limited to oral or written hearsay evidence subject to the foregoing provisions.~~ The BRC Chairperson shall not be required to interview the informant in person.

(5) The Chairperson shall present a written summary of the information provided by the informant to the resident at the hearing, which shall be included with the form required by 103 CMR 431.12~~1~~. ~~Such a presentation may, however, be foregone in cases where disclosure of the information in any greater detail than that which is contained in the OBR itself would create a substantial risk of disclosing the identity of the informant.~~ If the Chairperson determines that the disclosure of information in any greater detail than that which is contained in the OBR itself to a resident or a resident's representative would create a substantial risk of disclosing the identity of the informant, ~~in such a case,~~ the Chairperson shall justify this non-disclosure with specific written findings included in the form given to the resident.

(6) The resident or the resident's representative may question the ~~staff person completing the informant checklist reporting officer~~ subject to the provisions of ~~103 CMR 431.11 and 103 CMR 431.12~~ with regard to the reliability and credibility of the informant.

(7) The form required by 103 CMR 431.12~~1~~ and any written summary of informant information shall be included in the BRC's written record of the proceedings. ~~This standard form may from time to time be revised with the approval of the Commissioner. In such case, any prior form(s) shall be discontinued and the revised form shall be used in all OBR hearings until it is replaced.~~

431.176: Deliberation and Decision by the BRC

(1) After the close of the presentation of the evidence, the BRC shall consider and determine the guilt or innocence of the resident on each charge contained in the OBR. Evidence relied upon by the BRC shall be of a quality that on which reasonable persons ~~are accustomed to rely~~ upon in the conduct of serious affairs. The proponent(s) of the OBR shall have the burden of proving the offense(s) by a preponderance of the evidence. A determination of guilt or innocence on ~~the each~~ charge(s) shall be made by a majority vote of the BRC.

(2) If the resident is found guilty, the BRC may recommend one or more of the sanctions listed in 103 CMR 431.23~~2~~. The resident's disciplinary history/chronology shall not be considered by the BRC in determining the guilt or innocence of the resident, but it may be considered in deciding the appropriate sanction. The BRC may recall the resident after reaching a guilty finding but prior to recommending a sanction to discuss issues related to the decision on sanction(s). Upon a rehearing, the BRC should not increase the sanction previously recommended without good cause.

- (3) Findings requiring the payment of an amount of restitution shall be supported by a preponderance of the evidence.

431.187: Record of OBR Proceedings

- (1) If a guilty finding is reached, the BRC shall prepare and sign a written decision containing the following:
 - (a) Description of the evidence relied upon in reaching the guilty finding;
 - (b) A statement of the reason(s) for the sanction recommendations, including any mitigating circumstances;
 - (c) An explanation for the exclusion of evidence and witnesses, if applicable;
 - (d) A notice of the right of appeal.

This written decision shall be given to the resident within five (5) business days of the close of the hearing. A copy of the findings and sanctions (if any) shall also be sent directly to the resident's representative at the OBR hearing via mail, facsimile or electronic means, at the request of the resident/representative.

- (2) The evidence relied upon for the guilty finding and the reasons for the sanction recommendation shall be set out in specific terms. Where the hearing has involved the use of informant information, the statement of the evidence shall be set out in accordance with 103 CMR 431.165.

- (3) The Disciplinary Officer shall maintain all OBR decisions, dispositions and appeal results. ~~The Disciplinary Officer shall regularly confer with supervisory staff regarding the disciplinary decisions and appeals resulting from disciplinary reports written by their subordinate staff, to benefit and learn from this feedback.~~

- (4) Regardless of the outcome of the OBR proceedings, all reports, notices, correspondence, requests and any other related documents shall be kept in the resident's institutional records. Informant information shall be handled as provided for in 103 CMR 431.165.

431.19:8 Appeal Procedures

- (1) A resident may appeal the finding and/or sanction(s) of the BRC to the Superintendent within fifteen (15) days following the resident's receipt of the BRC's written decision. If the 15th day of this appeal period does not fall on a business day, this day will not count and the next business day shall be counted as the 15th day.
- (2) The Superintendent or designees, s as the appellate authority, may sustain the finding and sanction recommendation of the BRC, order a rehearing, reduce or suspend the recommended sanction, dismiss the offenses, or take ~~whatever other~~ remedial action the Superintendent deems appropriate. A Superintendent may take into consideration a

resident's documented disability upon appeal. ~~—~~In no event shall the Superintendent increase any sanction recommendation on an appeal from a decision of the BRC ~~but~~, ~~may decrease the recommended sanctions as defined in 103 CMR 431.22.~~ The Superintendent shall normally decide an appeal within thirty (30) days of its receipt and notify the resident in writing of the decision with supporting reasons. If a rehearing is ordered, the BRC process shall recommence from re-service of the OBR. Three new BRC members shall be assigned to conduct the rehearing.

(3) The Commissioner or a designee may appoint an individual or group of individuals to serve as the appellate authority in place of the Superintendent in any OBR case or class of cases.

431.2019: Review of Dispositions

The Deputy Superintendent of Operations shall conduct a procedural review of all OBR dispositions within ten (10) business days of the conclusion of the appeal process, to ensure that all dispositions have been in compliance with the procedural guidelines established in accordance with 103 CMR 431.14, ~~have been complied with.~~ This review shall be documented, and such documentation shall be kept by the Deputy Superintendent of Operations.

431.210: Time Limits

The procedural time limits set forth in 103 CMR 431 are directory and may be waived by the Superintendent, Commissioner or their designees for good cause and in writing.

431.224: Code of Offenses

Category One

- 1-1 Killing of another.
- 1-2 Aggravated assault on a staff member, contract employee, member of the public, volunteer or animal.
- 1-3 Aggravated assault of another inmate, resident or parolee.
- 1-4 Aggravated assault on a visitor.
- 1-5 Taking or holding any person hostage.
- 1-6 Escape or attempted escape.
- 1-7 Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 1-8 Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, ~~or~~ poison or any component thereof.
- 1-9 Sexual assault on a staff member, contract employee, member of the public, volunteer or animal.
- 1-10 Sexual assault on, sexual abuse of or sexual contact with another inmate or resident.
- 1-11 Sexual assault on a visitor.
- 1-12 Rioting.
- 1-13 Inciting others to riot or inciting others to participate in a major group demonstration in any

institution.

- 1-14 Setting a fire, using or placing a bomb or incendiary device.
- 1-15 Introduction, distribution or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 1-16 Engaging in or inciting an organized work stoppage.
- 1-17 Fighting with, assaulting or threatening another person, due to security threat group activities or gang activities.
- 1-18 Engaging, encouraging, recruiting or pressuring others to engage in security threat group activities.
- 1-19 Exercising a leadership position in a security threat group.
- 1-20 Fighting with or assaulting any person in an area designated for visiting, while visits are occurring.
- 1-21 Attempting to commit any of the above offenses, making plans to commit any of the above offenses, or aiding another person in the commission of any of the above offenses, shall be considered the same as the commission of the offense itself.

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Category Two

- 2-1 Unauthorized possession of items or material likely to be used in an escape.
- 2-2 Causing a valid threat of transmission of a contagious disease to any person due to intentional or reckless action.
- 2-3 Assault on a staff member, contract employee, member of the public, volunteer, or animal.
- 2-4 Assault on another inmate, resident or parolee.
- 2-5 Assault on a visitor.
- 2-6 Making, or using a bomb threat, a hoax device, or a hoax substance.
- 2-7 Fighting with any person.
- 2-8 Refusing to submit to urinalysis, breathalyzer, or other standard sobriety test or altering or interfering with any such test, or failing to provide a urine sample when ordered to do so by a staff member without medical or mental health justification.
- 2-9 Refusing or failing to submit to testing required by statute or order, such as DNA blood tests, when ordered to do so by a staff member.
- 2-10 Engaging in or inciting a group demonstration inside the correctional institution or a hunger strike inside the correctional institution.
- 2-11 Unauthorized use or possession of drugs, narcotics, illegal drugs, unauthorized drugs or drug paraphernalia.
- 2-12 Possession, manufacture or introduction of unauthorized keys.
- 2-13 Indecent exposure or masturbation in the view of another person.
- 2-14 The introduction and/or distribution of any photographic, or hand drawn material and/or unauthorized publication that depicts sexually explicit acts, and/or nudity.
- 2-15 Receiving a positive test for use of unauthorized drugs, alcohol or other intoxicants.
- 2-16 Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties during an emergency.
- 2-17 Tampering with, damaging, blocking or interfering with any locking or security device or window.
- 2-18 Impersonating any staff member, contract employee, volunteer or visitor.
- 2-19 Causing an inaccurate count by means of unauthorized absence, hiding, concealing oneself or other form of deception or distraction.
- 2-20 Possessing, Making, introducing or transferring intoxicants and alcohol, or possession of ingredients, equipment, formula, or instructions that are used in making intoxicants and alcohol.
- 2-21 Possession of the clothing of a staff member, contract employee, or visitor.
- 2-22 Causing injury to another person by resisting orders, resisting forced movement or physical efforts to restrain.
- 2-23 Making a false fire alarm or tampering with, damaging, blocking or interfering with fire alarms, fire

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- extinguishers, fire hoses, fire exits, or other fire-fighting equipment or devices.
- 2-24 Counterfeiting, committing forgery, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.
 - 2-25 Conduct which interferes with the security or orderly running of the institution.
 - 2-26 Wearing or displaying colors or any type of emblem, insignia or logo suggesting possible membership or affiliation with a gang, group party or other association whenever such wearing or display may, when the Superintendent has reasonable cause to believe, pose a threat to the security, good order or safety of the institution.
 - 2-27 Possessing, wearing or using security threat group paraphernalia or photographs.
 - 2-28 Failure to timely report to a location or program assignment resulting in a declaration of escape status.
 - 2-29 Distribution or sale of tobacco.
 - 2-30 Engaging in intimate acts -and/or sexual acts with another.
 - 2-31 Possession of a cell phone, unauthorized electronic device, or paraphernalia for a cell phone or unauthorized electronic device, regardless of whether the cell phone/device is operable.
 - 2-32 Stalking, ~~defined as (1) the willful and malicious engagement in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) the making of a threat or threats with the intent to place the person in imminent fear of death or bodily injury, in violation of M.G.L. c. 265, or any other applicable law of the Commonwealth.~~
 - 2-33 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

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Category Three

- 3-1 Lying to or providing false information to a staff member.
- 3-2 Receipt or possession of contraband or items not authorized for retention by residents.
- 3-3 Possession of any photographic, or hand drawn material and/or unauthorized publication that depicts sexually explicit acts, and/or nudity.
- 3-4 ~~Unauthorized possession of any alcoholic or intoxicating beverage.~~ RESERVED FOR FUTURE USE
- 3-5 Threatening another with bodily harm or with any offense against another person, the person's property or the person's family.
- 3-6 Refusing a direct order by any staff member.
- 3-7 Impersonating another inmate or resident.
- 3-8 Refusing a transfer to another institution.
- 3-9 Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 3-10 Throwing objects, materials, substances, or spitting at another.
- 3-11 Theft of property or possession of stolen property.
- 3-12 Unauthorized accumulation or misuse of prescribed medication.
- 3-13 Possession, manufacture, or introduction of an unauthorized tool.
- 3-14 Organizing or participating in an unauthorized group activity or meeting.
- 3-15 Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or resident or an inmate's or resident's friend(s) or family.
- 3-16 Flooding a cell or other area of the institution.
- 3-17 Refusing a cell or housing assignment.
- 3-18 Causing an individual to be penalized or proceeded against by providing false information.

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- 3-19 Gambling and/or possession of gambling paraphernalia.
- 3-20 Giving, receiving or offering any person a bribe or anything of value for an unauthorized favor or service.
- 3-21 Receiving a tattoo while incarcerated, tattooing another, or possessing tattoo paraphernalia and/or body piercing.
- 3-22 Fraud, embezzlement, or obtaining goods, services, money or anything of value under false pretense.
- 3-23 Creating an emergency by feigning illness or injury.
- 3-24 Possession of tobacco products and/or an incendiary device.
- 3-25 Being out of place or in an unauthorized area outside of the resident's unit.
- 3-26 Communicating, directly or indirectly with any staff member, contract employee, volunteer or such person's relatives at the person's home address, home telephone number, email address, social media accounts or for non-official business.
- 3-27 Use of obscene, abusive or insolent language or gesture.
- 3-28 Conduct which disrupts the normal operation of the facility, program, service or unit.
- 3-29 Possession of an altered appliance.
- 3-30 Engaging in an unauthorized visit while on a community access program.
- 3-31 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category Four

- 4-1 Receipt or possession of contraband.
- 4-2 Mutilating, defacing or destroying state property or the property of another person.
- 4-3 Unauthorized possession of money or other negotiable items.
- 4-4 Use of mail or telephone in violation of established rules or regulations.
- 4-5 Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary action.
- 4-6 Misuse or waste of issued supplies, goods, services, or property.
- 4-7 Failure to maintain acceptable hygiene.
- 4-8 Failure to maintain acceptable hygiene or appearance of a housing area.
- 4-9 Violating any departmental rule or regulation, or any other rule, regulation, or condition of an institution, program or community based program.
- 4-10 Failure to comply with standing count procedures.
- 4-11 Being out of place or in an unauthorized area within a unit.
- 4-12 ~~Possession of an altered appliance~~. RESERVED FOR FUTURE USE
- 4-13 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

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431.232: Sanctions

- (1) Sanctions for each Category 1 offense are as follows:
 - (a) Loss of statutory good time, not to exceed 360 days loss for all charges arising out of any one incident or substantially related incidents;
 - (b) Minimum Privilege Unit for up to 30 days;
 - (c) 60-120 days loss of a privilege, including, but not limited to, one of the following: television, radio, multi-media player, canteen, visits, phone privileges, hot pots, or -leisure programs;

- (d) Cell or unit restriction other than for meals and attendance at scheduled programs or appointments for up to 20 days;
- (e) Restitution.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than five sanctions (excluding restitution) may be imposed for all offenses arising out of any one or substantially related incidents in which the highest offense(s) alleged is from Category 1.

(2) Sanctions for each Category 2 offenses are as follows:

- (a) Loss of statutory good time, not to exceed 180 days loss for all charges arising out of any one incident or substantially related incidents;
- (b) Minimum Privilege Unit for up to 15 days;
- (c) 30-90 days loss of a privilege, including, but not limited to, one of the following: television, radio, multi-media player, canteen, visits, phone privileges, hot pots, or leisure programs;
- (d) Cell or unit restriction other than attendance at scheduled programs, meals or appointments for up to 15 days;
- (e) Restitution.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than four sanctions (excluding restitution) may be imposed for all offenses arising out of any one or substantially related incidents in which the highest offense(s) alleged is from Category 2.

(3) Sanctions for each Category 3 offense are as follows:

- (a) Minimum Privilege Unit for up to ten days;
- (b) Up to 60 days loss of a privilege, including, but not limited to, one of the following: television, radio, canteen, visits, phone privileges, hot pots or leisure programs;
- (c) Room or housing restriction other than attendance at scheduled programs, meals or appointments for up to ten days;
- (d) Restitution;
- (e) Prohibition from replacing any altered appliance for up to four months;
- (f) Up to 15 hours of extra duty.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than three sanctions (excluding restitution) may be imposed for all offenses arising out of any one or substantially related incidents in which the highest offense(s) alleged is from Category 3.

(4) Sanctions for each Category 4 offense are as follows:

- (a) Up to 30 days loss of a privilege, including, but not limited to, one of the following: television, radio, canteen, visits, phone privileges, hot pots, and leisure programs;
- (b) Restitution;
- (c) Room or unit restriction other than for attendance at scheduled programs, meals or appointments up to five days;
- (d) Prohibition from replacing any altered appliance for up to four months;

- (e) Up to ten hours of extra duty;
- (f) Written reprimand.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than two sanctions (excluding restitution) may be imposed for all offenses arising out of any one or substantially related incidents in which the highest offense(s) alleged is from Category 4.

(5) No more than a total of 30 days ~~of in the~~ Minimum Privilege Unit or 40 days of room or unit restriction may be imposed for all violations arising out of one incident or substantially related incidents.

(6) Unless authorized by the Commissioner, a resident may not simultaneously be sanctioned to a loss of visits and phone privileges.

(7) Imposition of a sanction(s) under 103 CMR 431 does not prevent the Department from taking action that may constitute a collateral consequence arising from the underlying conduct at issue in the OBR(s), including, but not limited to, loss of job, loss of leisure program, ~~or a change in housing assignment,~~ or a change in treatment level or assignment.

~~431.243:~~ Continuance Without a Finding

(1) Disciplinary Officers, ~~BRC,~~ and any appellate authority under these regulations may wholly within their discretion, and with the consent of the resident, continue the resident's OBR(s) without a finding for a period not to exceed one (1) year or any shorter period as may be set by the Disciplinary Officer, BRC, or appellate authority. ~~Regardless of Notwithstanding~~ the foregoing, if at the conclusion of any such continuance without a finding the resident ~~has pending but~~ unresolved OBR charges, the continuance without a finding shall be extended until after a hearing is held; and findings issued for ~~any such all~~ pending charges which arose during the period of continuance without a finding. At the end of any such continuance, the OBR, which was continued without a finding, shall be filed, unless prior to such time the resident is charged with, and later found guilty of, an offense committed during the period of the continuance without a finding. If the resident has been found guilty of an offense committed during the period of the continuance without a finding, guilty findings shall automatically enter on all charges ~~in the continued on the~~ OBR that was continued without a finding and the resident shall be allowed to be heard only on the question of sanctions. A request to be heard on the question of sanctions shall be directed to the Superintendent.

(2) A resident agreeing to a continuance without a finding shall be informed in writing that the resident is waiving the right to a hearing or appeal under 103 CMR 431, other than the right to be heard on the question of sanctions if sanctions are later imposed. The resident in such a case shall have no right to appeal the guilty findings or sanction entered under this procedure. Such waiver shall be on a form consistent with these regulations and approved by the Commissioner or designee and shall be signed by the resident and staff.
~~A request to be heard on sanctions shall be directed to the Superintendent.~~

(3) ~~A c~~Continuances without a finding under 103 CMR 431.23 shall not ordinarily be granted for Category 1 offenses.

~~431.254:~~ Emergencies

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent an emergency exists which requires the suspension of part or all of 103 CMR 431, such suspension may be ordered, provided that any such suspension beyond 48 hours must be authorized by the Commissioner for good cause.

~~431.265:~~ Responsible Staff

The Superintendent of the Treatment Center, and the Superintendent(s) of any branches of the Treatment Center, in consultation with the Director of Inmate Discipline shall implement and monitor 103 CMR 430 at the Treatment Center and any branches thereof.

~~431.276:~~ Annual Review

103 CMR 431 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

~~431.287:~~ Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 431 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, clause or phrase of 103 CMR 431.

~~431.298:~~ Private Right of Action:

Nothing contained herein is intended to confer, or shall be interpreted as conferring, a private right of action for enforcement or damages.

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REGULATORY AUTHORITY

103 CMR 431.: M.G.L. c. 124, § 1(b), (i) and (q) and c. 127, § 33; M.G.L. c. 123A, § 2.

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