# 245 CMR 6.00: INVESTIGATIONS, COMPLAINTS AND BOARD ACTIONS

Section



## 6.01: Purpose

245 CMR 6.00 authorizes Board staff to conduct investigations and initiate formal docketed complaints on behalf of the Board. It also establishes the grounds for discipline and the actions that may be taken in resolution of such complaints, by the Board and on behalf of the Board, in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*. It also establishes the standards and procedures for summary suspensions.

## 6.02: Investigations, Formal Docketed Complaints and Licensee's Responsibility to Respond Prior to the Issuance of an Order to Show Cause

(1) Investigations Generally. Any person or organization may submit information, in any form, alleging misconduct by a licensee to the offices of the Board. The Board may direct or authorize one or more of following actions to be taken on its behalf:

(a) Review all information received alleging or indicating acts or omissions by a licensee and identify whether such acts or omissions, if true constitute grounds for Board action pursuant to 245 CMR 6.03;

(b) Request the licensee, who is alleged to have engaged in the alleged acts or omissions, submit a written response to the allegations and any documents or other evidence in the licensee's possession and control that may be relevant to the allegations;

(c) Gather additional information as necessary to determine if the alleged acts or omissions are supported by evidence; and

(d) Initiate a formal docketed complaint against a licensee based on evidence that the licensee has engaged in specific acts or omissions constituting grounds for Board action.

(2) Licensee's Response. Except as otherwise provided by law, a licensee who is asked to submit a written response to a pending investigation or docketed complaint pursuant to 245 CMR 6.02(1) shall provide such response within 21 days of the licensee's receipt of the request. The licensee's written response shall be signed by the licensee. A licensee who claims to be exempt by law from either responding to the Board or from producing requested documents or evidence to the Board shall provide a written statement setting forth the legal authority on which he or she relies.

(3) Closure of Investigation. If a formal, docketed complaint has not been initiated, the Board may direct or authorize one or more of the following actions be taken on its behalf:

(a) Close the investigation for any of the reasons set forth in 245 CMR 6.04(1)(a)1. through 3.;

(b) Send an advisory letter in accordance with 245 CMR 6.06(1) to the licensee who is the subject of an investigation; and

(c) Reopen a closed investigation on the receipt of new or previously unavailable evidence.

## 6.03: Grounds for Board Action

(1) The Board may take action against the license of a licensee based on one or more of the following grounds:

(a) The licensee fails to comply with any provision of M.G.L. c. 112, §§ 108 through 117;

(b) The licensee fails to comply with any provision of 245 CMR, or any rule, advisory ruling or policy adopted by the Board;

(c) The licensee fails to comply with any order of the Board;

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(d) The licensee fails to comply with the terms of any Consent Agreement entered into with the Board;
(e) The licensee fails to comply with a plan for corrective action required by any order of the Board, or any Consent Agreement entered into with the Board;
(f) The licensee fails to comply with an Order of the Commissioner of the Department of Public Health pursuant to a Declaration of Emergency Detrimental to Public Health made in accordance with M.G.L. c. 17, § 2A or pursuant to such other authority as may be vested in the Commissioner;
(g) The licensee fails to comply with established ethical standards of the profession or specialty including, but not limited to, the standards identified at 245 CMR 5.02: *Standards of Conduct for Nursing Home Administrators*;
(h) The licensee engages in conduct that violates recognized standards of care;
(i) The licensee engages in conduct outside the licensee's scope of practice, except as may be otherwise authorized by law or licensing authority;
(j) The licensee continues to practice after the expiration, revocation, suspension, surrender or retirement of his or her license, or after the licensee has entered into a consent agreement in which he or she agreed to refrain from engaging in practice;
(k) The licensee knowingly permits, aids or abets an unlicensed person to perform activities that requires a license issued by the Board;
(l) The licensee fraudulently procures a license or its renewal;
(m) In connection with any examination related to license, the licensee:
1. impersonates or acts as proxy for another individual;
2. discloses the contents of any examination;
3. compromises the integrity of any such examination; or
4. cheats, or assists another person to cheat, on any such examination;

(n) The licensee knowingly provides false information to the Board, either directly or through another person acting on the licensee's behalf;
(o) The licensee fails, without cause, to appear before the Board when so requested as part of the Board's review of a matter concerning the licensee, including but not limited to an investigation, complaint or application;
(p) The licensee fails, without cause, to provide a written response to a pending investigation or complaint or to provide documents or other evidence in the licensee's possession or control that may be relevant to the allegations, in accordance with 245 CMR 6.02(2) and 6.06(2);
(q) Another government licensing or authorizing agency, within or outside the Commonwealth, imposes discipline against any professional certificate, registration, license or authorization held by the licensee for reasons substantially the same as grounds for Board action in 245 CMR 6.03(1)(q);
(r) The licensee has been convicted of a crime;
(s) The licensee engages in conduct that demonstrates a lack of good moral character;
(t) The licensee failed to maintain professional Nursing Home Administrator/resident boundaries;
(u) The licensee engaged in conduct with a resident which is sexual or may be reasonably interpreted by the resident as sexual or engaging in behavior, gestures, or expressions, verbal or nonverbal, which are seductive, suggestive or sexually demeaning to a resident;
(v) The licensee engages in practice while his or her ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
(w) The licensee obtains or uses any drug in an unlawful manner;
(x) The licensee engages in behavior that is likely to have an adverse effect upon the health, safety or welfare of the public;
(y) The licensee engages in conduct that undermines public confidence in the integrity of the profession;
(z) The licensee falsifies, alters or willfully makes incorrect entries or failed to make essential entries in resident records;
(aa) The licensee charges a resident or third party payor for a service not performed;
(bb) The licensee fails to file any report required pursuant to M.G.L. chs. 19A, 19C, or 119, § 51A;

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(cc) The licensee fails to accurately report to the Board in writing, within 30 days, any disciplinary action, as defined by 245 CMR 6.00, taken against the licensee by an entity or its agent, including but not limited to, a governmental authority, a health care facility, an employer, or a professional (international, national, state or local);
(dd) The licensee fails to accurately report to the Board, in writing, within 30 calendar days, any final action taken regarding one's license to practice Nursing Home Administration or other health care related professional license by any other governmental authority in this state or another jurisdiction; or
(ee) The licensee fails to accurately report to the Board, in writing, within 30 calendar days any criminal charge or conviction in Massachusetts or any other jurisdiction.

(2) Nothing in 245 CMR 6.03 shall limit the Board's adoption of additional grounds for discipline through adjudication and rulemaking.

6.04: Board Actions on Formal, Docketed Complaints

(1) Dismissal.
(a) The Board may direct or authorize the dismissal of a docketed complaint for the following reasons:
1. The Board lacks jurisdiction;
2. There is insufficient evidence to support a finding that the licensee engaged in acts or omissions constituting grounds for Board action; or
3. There may be sufficient evidence to support a finding that the licensee engaged in acts or omissions that constitute grounds for Board action; however the Board concludes even if the allegations are true, the alleged acts or omissions in the specific circumstances presented, do not warrant action against the license.
(b) The Board may direct or authorize the reopening of any dismissed complaint upon receipt of new or previously unavailable evidence except when the dismissal follows a formal adjudicatory hearing conducted in accordance with Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01: *Formal Rules*.
(c) When dismissing a complaint, the Board may direct or authorize the Executive Director to send, on the Board's behalf, an advisory letter in accordance with 245 CMR 6.06(1) to the licensee.

(2) Orders.
(a) Order to Show Cause. The Board may authorize prosecuting counsel to initiate and prosecute formal disciplinary proceedings by issuing, on the Board's behalf, an order for the licensee to appear and show cause why the Board should not take action against his or her license. Both the issuance of an Order to Show Cause and the subsequent adjudicatory proceedings shall be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*. The Board may designate an administrative hearings counsel as the Presiding Officer to conduct the adjudicatory proceeding. The Board may authorize prosecuting counsel to file and amend pleadings on the Board's behalf to promote the efficient and expeditious resolution of the adjudicatory proceeding.
(b) Final Orders. If after an adjudicatory hearing, conducted in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*, the Board makes or adopts findings that one or more of the grounds for Board action specified in 245 CMR 6.03 exist, the Board may direct the Executive Director to issue an order on the Board's behalf taking one or more of the following actions:
1. Stayed Probation. The Board may place a license on stayed probation, which does not constitute discipline and allows the licensee to engage in practice subject to temporary conditions set by the Board and specified in the order;
2. Reprimand. The Board may reprimand the license. A reprimand is a formal, public rebuke that constitutes discipline but does not prohibit practice or subject practice to conditions;
3. Probation. The Board may place a license on probation, which constitutes discipline and allows the licensee to engage in practice subject to temporary conditions set by the Board and specified in the order;

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4. Suspension. The Board may suspend a license, which constitutes discipline and prohibits the licensee from engaging in practice for a specific period, or until specific conditions have been met, or both.
5. Revocation. The Board may revoke a license, which constitutes discipline and prohibits the licensee from engaging in practice.

(c) Further Action.

1. The Board order may set conditions or requirements that must be met before the Board will consider a petition to modify or remove any conditions on the license or a petition for reinstatement of the license.
2. The Board order may authorize the Executive Director to take additional actions against a license as a consequence of failing to comply with the terms of the order.

(3) Permanent Surrender. The Board may accept the permanent surrender of a license by a licensee who is the subject of a complaint. A licensee may offer to permanently surrender his or her license by submitting to the Board a signed, written statement asserting his or her intent to permanently relinquish the right to hold or renew the license. The Board's acceptance of a licensee's permanent surrender constitutes discipline and resolution with the Board of the complaint. The Board may deem the complaint allegations true and grounds for discipline.

(4) Consent Agreements. The Board may enter into a Consent Agreement with a licensee for the purpose of resolving the complaint with the Board. In a Consent Agreement, the Board and the licensee may agree the Board will take one or more of the Board actions specified in this section, or may agree the licensee shall refrain from engaging in practice. Consent Agreements may also include other terms as permitted by law.

(5) Except as the Board may otherwise specify in an Order or a Consent Agreement, any action taken against a license shall apply to the right to renew such license.

(6) Except as otherwise provided by law, all Orders and Consent Agreements, whether disciplinary or non-disciplinary in nature, constitute a public record.

(7) Nothing in 245 CMR 6.04 shall limit the Board's ability to resolve a pending complaint by any other action, including but not limited to the imposition of a fine, permitted by law.

(8) Nothing in 245 CMR 6.04 shall limit the authority of other governmental agencies to exercise their enforcement authority against a licensee, nor limit the rights of third parties to bring an action against a licensee, for alleged unlawful conduct.

6.05:   Summary Suspension

(1) Purpose. 234 CMR 6.05 establishes parameters for the summary suspension of a license, in advance of a hearing, by either the full Board or the Board Chair acting on the Board's behalf, in order to prevent an immediate and serious threat to the public health, safety or welfare presented by a licensee's practice. 245 CMR 6.05 also establishes requirements for a post-suspension hearing within seven business days.

(2) Authorization for Order of Summary Suspension.

(a) Request. The Executive Director may present a request for an Order of Summary Suspension to the Board or, if the next scheduled meeting of the Board will not be held for more than 48 hours, to the Board Chair. The Board Chair may either defer to the full Board or act on the Board's behalf. All members of the Board shall receive a copy of the request for an Order of Summary Suspension presented to the Board Chair. The request for an Order of Summary Suspension must be supported by affidavits, or documentary evidence.
(b) Immediate and Serious Threat. If, upon review of the information presented in the request for an Order of Summary Suspension, the Board, or Board Chair, determines the licensee's continued practice presents an immediate and serious threat to the public health, safety or welfare, and summary suspension is necessary to prevent that threat, the Board, or the Board Chair, acting on the Board's behalf, may authorize the Executive Director to issue an order summarily suspending the license of a licensee.

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(c) Serious Threat. If, upon review of the information presented in the request for an Order of Summary Suspension, the Board, or Board Chair, determines the licensee's continued practice presents a serious threat to the public health, safety or welfare, and summary suspension is necessary to prevent that threat, the Board, or the Board Chair acting on the Board's behalf, may authorize the Executive Director to issue an order commanding the licensee to file opposing affidavits or other evidence within three business days. If upon review of all the evidence submitted to the Board, the Board or Board Chair again determines the licensee's continued practice presents a serious threat to the public health, safety or welfare, and summary suspension is necessary to prevent that threat, the Board, or the Board Chair acting on the Board's behalf, may authorize the Executive Director to issue an order summarily suspending the license of a licensee.

(3) Order of Summary Suspension: Content, Notice and Enclosures.
(a) An Order of Summary Suspension shall notify the licensee that his or her license has been suspended and he or she is prohibited from engaging in practice until further notice by the Board, effective upon the licensee's receipt of the order.
(b) The Order of Summary Suspension shall include notice of the date, time and location of the post-suspension hearing.
(c) The Order of Summary Suspension shall be mailed to the licensee by United States Postal Service, first class mail and by either United States Postal Service or a comparable private mail service that delivers within 24 hours.
(d) The Order of Summary Suspension shall be accompanied by a copy of the Executive Director's request for an order of Summary Suspension and its supporting affidavits and documentary evidence.

(4) Post-suspension Hearing.
(a) The Board shall hold a post-suspension hearing in order to determine whether to continue or rescind the Order of Summary Suspension based on findings with respect to whether the licensee's continued practice presents an immediate and serious threat to the public health, safety or welfare, and summary suspension is necessary to prevent that threat. The post-suspension hearing will be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*. The Board may designate an administrative hearings counsel as the Presiding Officer to conduct the post-suspension hearing.
(b) The post-suspension hearing shall take place within seven business days of the issuance of the Order of Summary Suspension. The licensee may submit a written request for a continuance to the administrative hearing counsel assigned with notice to the prosecuting counsel assigned to the summary suspension hearing. The administrative hearings counsel may continue the post-suspension hearing to a date and time mutually agreeable to the licensee and prosecuting counsel. The summary suspension shall remain in effect during the time the post-suspension hearing is continued at the licensee's request.
(c) Administrative hearings counsel may admit into evidence:
1. the Executive Director's request for an Order of Summary Suspension and its supporting affidavits and documentary evidence;
2. relevant evidence presented by the licensee; and
3. relevant evidence presented by prosecuting counsel that was unknown or unavailable at the time the Order of Summary Suspension issued, provided that prosecuting counsel disclosed such evidence to the licensee prior to the hearing.
(d) Administrative hearings counsel shall, within 30 days of the conclusion of the post-suspension hearing, either issue a tentative decision or provide a status report to the Board.

(4) Final Decision and Order of Summary Suspension.
(a) Final Decision. Upon review of the tentative decision and any objections and responses to objections that may be filed, the Board shall issue a Final Decision and Order of Summary Suspension, which shall include findings of fact regarding the allegations the licensee's practice presents an immediate and serious threat to the public health, safety or welfare, and summary suspension is necessary to prevent that threat.

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(b) Default. If the licensee fails to appear and defend at the hearing, the administrative hearings counsel shall issue a notice of default to the licensee, the prosecuting counsel and the Board. The Board shall adopt the facts as alleged in the Request for Summary Suspension as its findings.

(c) Rescission of Order of Summary Suspension. If the Board's Final Decision concludes either that the licensee's practice does not present an immediate and serious threat to the public health, safety or welfare, or that summary suspension is not necessary to prevent that threat, the Board shall rescind the Order of Summary Suspension and restore the license to the status that was in effect immediately before the Order of Summary Suspension issued.

(d) Continuation of Order of Summary Suspension. If the Board's findings include both that the licensee's practice presents an immediate and serious threat to the public health, safety and welfare, and summary suspension is necessary to prevent that threat, the Board shall order the continuation of the Order of Summary Suspension. An Order of Summary Suspension that has been continued shall remain in effect until resolution of the underlying complaint.

## 6.06: Additional Provisions Applicable to Investigations, Complaints and Board Actions

(1) Advisory Letters. An advisory letter is not a formal Board action against a license and makes no determination or finding on whether the licensee engaged in the alleged acts or omissions. It constitutes a public record of notice to the licensee:

(a) identifying the reason for closure of an investigation or dismissal of a complaint;

(b) identifying any applicable statute(s), regulation(s), rules, advisories or policies that are relevant to the alleged acts or omissions that form the subject matter of an investigation or complaint; and

(c) including a reminder of the general requirement to comply with the identified provisions.

(2) Receipt by a Licensee. The Board may deem a licensee to have received a request, notice, order or other correspondence on the date that such item has been delivered to the address of record provided by the licensee. In the event that delivery is not possible at such address because the licensee has moved and left no forwarding address or because the address is otherwise invalid, the Board may deem receipt by the licensee to have occurred on the date that delivery was attempted but failed.

(3) Authority.

(a) The Board may direct or authorize the Board Chair, the Executive Director, investigators, Board staff, Board counsel, prosecuting counsel, or any combination of the same, to act on the Board's behalf by a Board vote detailing the authority to act as to a particular licensee, or a general policy.

(b) In the event the Board Chair has a conflict of interest, an appearance of a conflict of interest, or the Board Chair is incapacitated or inaccessible for a period of time exceeding the reasonable time frame in which the Board Chair would be expected to act pursuant to this section, but in no event shall such time exceed 30 days, or as otherwise authorized by the Board, the authority conferred upon the Board Chair may be exercised by the next most senior member of the Board, in the Board Chair's stead.

(c) In the event the Executive Director has a conflict of interest, an appearance of a conflict of interest, or the Executive Director is incapacitated or inaccessible for a period of time exceeding the reasonable time frame in which the Executive Director would be expected to act pursuant to this section, but in no event shall such time exceed 30 days, or as otherwise authorized by the Board, the next most senior member of Board staff, shall be authorized to act in the Executive Director's stead.

REGULATORY AUTHORITY

245 CMR 6.00: M.G.L. c. 13, § 74.