

247 CMR 10.00: DISCIPLINARY PROCEEDINGS

Section

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10.01: Purpose

The purpose of 247 CMR 10.00 is to outline the procedures used by the Board in order to handle complaints received against Board registrants or licensees. The Board may take disciplinary action against a registered pharmacist, pharmacy technician, pharmacy, pharmacy department, wholesale license, and/or controlled substance registration issued by the Board.

10.02: Definitions

Adjudicatory Hearing means a formal administrative hearing held by the Board conducted to determine the truth and validity of complaints filed against a registrant or licensee. Such hearing is held pursuant to M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*.

Complaint means a communication filed with the Board or the Division of Health Professions Licensure which the Board determines, after investigation, merits further consideration or action.

Conviction shall include any guilty verdict or finding of guilt and any admission to or finding of sufficient facts to warrant a finding of guilt, regardless of adjudication, a continuance without a finding, and any plea of guilty or *nolo contendere*, of or to a crime in any jurisdiction, which has been accepted by the court, whether or not a sentence has been imposed. A conviction of any person licensed or registered by the Board shall be conclusive evidence of the commission of that crime in any disciplinary proceeding against such person based upon the conviction.

Investigative Conference means an informal discussion relating to a complaint held with the Board.

Order to Show Cause means a document served by the Board upon a registrant ordering the registrant or licensee to appear before the Board for a formal adjudicatory hearing.

10.03: Grounds for Discipline

(1) The Board may impose disciplinary action against an individual or entity licensed or registered by the Board, on one or more of the grounds for discipline listed in M.G.L. c. 112, § 61 or one or more of the following grounds:

- (a) Violating any of the duties and standards set out in Board regulations (247 CMR 2.00: *Definitions*) or any rule or written policy adopted by the Board;
- (b) Violating any provision of M.G.L. c. 112, §§ 24 through 42A or any provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession;
- (c) Failing to submit an acceptable plan of correction pursuant to 247 CMR 6.13: *Plans of Correction*;
- (d) Failing to remedy or correct a violation cited in a deficiency statement by the date specified in the plan of correction submitted in accordance with 247 CMR 6.13: *Plans of Correction*, as accepted or modified by the Board, unless the pharmacy or pharmacy department demonstrates to the satisfaction of the Board that such failure was not due to any neglect of duty and occurred despite his/her good faith attempt to remedy or correct the violations(s) by the specified time;
- (e) Engaging in misconduct in the practice of the profession;
- (f) Engaging in conduct beyond the authorized scope of a pharmacist, pharmacy intern or pharmacy technician;

10.03: continued

- (g) Practicing the profession while the ability to practice is impaired by illness, use of alcohol, drugs, chemicals, or any other type of substance, or as a result of any mental or physical condition;
- (h) Engaging in abuse or illegal use of prescription drugs or controlled substances;
- (i) Continuing to practice the profession after a registration is lapsed, suspended or revoked;
- (j) Violating the terms of a Consent Agreement, Final Decision and Order, Surrender Agreement or any other order issued by or agreement entered into with the Board;
- (k) Engaging in conduct that has the capacity or potential to place the public health, safety or welfare at risk;
- (l) Engaging in conduct that has the capacity or potential to deceive or defraud;
- (m) Knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license or registration;
- (n) Being convicted of any crime, entering a plea of guilty to any crime, entering a plea of *nolo contendere* to any crime, or admitting to sufficient facts to warrant a finding of guilty of any crime;
- (o) Fraudulently procuring a license or registration or its renewal;
- (p) Providing false information on an application for a license or registration or its renewal;
- (q) Failing without cause, to cooperate with any request by the Board to appear before it or to provide requested information; failing to respond to a Board subpoena or failing to furnish the Board, its investigators or representatives with records, documents, information or testimony to which the Board is legally entitled;
- (r) Engaging in conduct that demonstrates a lack of good moral character;
- (s) Cheating on or attempting to compromise the integrity of any licensing or registration examination;
- (t) Having been disciplined in another jurisdiction in any way for reasons substantially the same as those set forth in 247 CMR 10.03;
- (u) Engaging in conduct which undermines public confidence in the integrity of the profession;
- (v) Committing an act that violates recognized standards of pharmacy practice;
- (w) Failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice of pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments*;
- (x) Violation of M.G.L. c. 94C or any rules or regulations promulgated thereunder;
- (y) Failing to report or failing to accurately report to the Board within seven business days, in a manner and format determined by the Board, discipline (247 CMR 10.06) on the basis of actions listed in 247 CMR 10.03(1);
- (z) Failing to report to the Board, in a manner and format determined by the Board, within seven business days, any final action (including license surrender or resignation) regarding a registrant or licensee, including any against any other health care related professional registration or license held by a registrant or licensee, by any other governmental authority in this state or another jurisdiction;
- (aa) Failing to report to the Board, in writing, within 30 days, any pending criminal charge or conviction, as defined in 247 CMR 10.02, of a registrant or licensee, in Massachusetts or any other jurisdiction; and
- (bb) Failure to comply with reporting requirements described in 247 CMR 6.15: *Duty to Report Certain Factors of Pharmacy Operations*(2) through (7) or to cooperate fully in the Board's investigation of any such report.
- (cc) Violation of, or failure to comply with, an Order issued by 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.

(2) Nothing in 247 CMR 10.03 shall limit the Board's adoption of policies and grounds for discipline through adjudication as well as through rulemaking.

(3) Notwithstanding the grounds for discipline specified in 247 CMR 10.03, no licensee shall be subject to discipline for providing or assisting in providing, or dispensing medication for, reproductive health care services or gender-affirming health care services, as defined at M.G.L. c. 12, § 11I½, or for any conviction, judgment, discipline, or other sanction arising from such health care services, so long as the services provided would have been lawful in Massachusetts and are consistent with standards for good professional practice in Massachusetts.

10.04: Investigative Conference

To facilitate disposition of any complaint, the Board may schedule an investigative conference at any time prior to the commencement of a formal adjudicatory proceeding. The Board shall give timely notice of the conference, and this notice shall include a general statement of the nature of the issues to be discussed.

10.05: Disposition by the Board

After receipt of a complaint and all related investigative materials, the Board may schedule an investigative conference or may schedule a formal adjudicatory hearing pursuant to M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules* if it determines that one is required.

10.06: Disciplinary Action

Actions which may be taken by the Board are:

- (1) Dismissal of the complaint.
- (2) Advisory Letter. An official written document retained in the Board's files delineating the Board's concerns with the registrant's or licensee's professional practice. An advisory letter does not constitute formal disciplinary action.
- (3) Reprimand or Censure of the Registrant or Licensee. A reprimand constitutes formal disciplinary action. A censure is a severe reprimand.
- (4) Probation. Probation constitutes disciplinary action against the registrant or licensee and consists of a period of time during which the registrant or licensee may practice under conditions imposed by the Board pursuant to a formal adjudicatory hearing or consent agreement.
- (5) Suspension/Revocation of Personal Registration, Pharmacy Permit, License or Controlled Substances Registration. Suspension or revocation of a personal registration, pharmacy permit, license or controlled substance registration may be imposed pursuant to a decision and order of the Board following a formal adjudicatory hearing or following the execution of a consent agreement.
- (6) Consent Agreement. A resolution of a complaint agreed upon by the Board and the registrant or licensee which may contain conditions placed by the Board on the registrant's or licensee's professional conduct and practice and which may include the voluntary suspension or surrender of a personal registration, pharmacy permit, license or controlled substance registration. The voluntary surrender of a personal registration, pharmacy permit, license, or controlled substance registration, may be permanent or for a fixed period of time. The voluntary surrender agreement shall:
  - (a) be in writing and be signed by the registrant or the licensee and the Board;
  - (b) recite the facts upon which the agreement is based and shall include, but not be limited to provisions addressing reinstatement and any conditions the Board may elect to impose;
  - (c) state that the registrant or licensee realizes that the voluntary surrender of his or her personal registration, pharmacy permit, license or controlled substance registration, is an act which deprives him or her of all privileges of registration and is not subject to judicial review; and
  - (d) be placed in the registrant's or licensee's Board file as part of the registrant's or licensee's permanent Board records.
- (7) Disciplinary Action Against a Massachusetts Registrant or Licensee Taken in Another State. Disciplinary action taken against a Massachusetts registrant or licensee by another state or jurisdiction in which that person is also registered or licensed may be the basis for initiation by the Board of disciplinary action against the Massachusetts registrant or licensee provided that the conduct disciplined in another state or jurisdiction constitutes a violation of Massachusetts law.

10.06: continued

(8) Summary Cease and Desist Notice. A summary cease and desist notice may be imposed by the Board or Board President prior to hearing in order to stop or restrict operations by a registrant or licensee to immediately protect the public health, safety or welfare. The Board or Board President may rescind or amend a summary cease and desist notice.

(9) Summary Quarantine Notice. A summary quarantine notice may be imposed by the Board or Board President prior to hearing in order to prevent the use of medications prepared by or in possession of a registrant or licensee to immediately protect the public health, safety or welfare. The Board or Board President may rescind or amend a summary quarantine notice.

10.07: Suspension Prior to Hearing

If, based upon affidavits or other documentary evidence, the Board determines that a licensee is an immediate or serious threat to the public health, safety, or welfare, the Board may suspend or refuse to renew a license pending a final hearing on the merits of the allegations regarding the licensee. A hearing limited to the determination of the necessity of the summary action shall be afforded the licensee within seven days of the Board's action.

10.08: Summary Cease and Desist and Quarantine Notice

(1) If, based upon affidavits or other evidence, the Board or Board President determines that a registrant or licensee or the products prepared by a registrant or licensee are an immediate or serious threat to the public health, safety, or welfare, the Board or Board President may:

- (a) issue a Cease and Desist Notice and/or Quarantine Notice, requiring non-disciplinary cessation or restriction of any and all pharmacy operations, and prohibiting the use of medications prepared by or in possession of a pharmacy; or
- (b) issue a Cease and Desist Notice placing non-disciplinary restrictions on a Board registrant or licensee, to the extent necessary, to avert a continued threat, pending final investigation results.

(2) Requirements of the Cease and Desist Notice and/or Quarantine Notice shall remain in effect until the Board or Board President rescinds or amends such requirements or until such time as the Board takes final action on any related pending complaint and the Board issues a final decision.

(3) A hearing limited to the determination of the necessity of Notices issued pursuant to 247 CMR 10.06(8) and (9), or 247 CMR 10.08(1) shall be afforded the registrant or licensee within 15 business days of the Board or Board President's action.

REGULATORY AUTHORITY

247 CMR 10.00: 801 CMR 1.01; M.G.L. c. 112, §§ 24 and 42A; c. 30A.