

272 CMR 9.00: INVESTIGATIONS, COMPLAINTS AND BOARD ACTIONS

Section

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9.01: Purpose

272 CMR 9.00 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 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. It also establishes the standards and procedures for summary suspensions.

9.02: Investigations, Formal Docketed Complaints and Certificate Holder'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 certificate holder to the offices of the Board. The Board may direct or authorize that one or more of following actions be taken on its behalf:

- (a) Review all information that they receive alleging or indicating acts or omissions by a certificate holder and to identify whether such acts or omissions, if true, constitute grounds for Board action pursuant to 272 CMR 9.03;
- (b) Request the certificate holder who is alleged to have engaged in the alleged acts or omissions to submit a written response to the allegations and any documents or other evidence in the certificate holder'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 certificate holder based on evidence that the certificate holder has engaged in specific acts or omissions that constitute grounds for board action.

(2) Certificate Holder's Response. Except as otherwise provided by law, a certificate holder who is asked for a written response to a pending investigation or docketed complaint pursuant to 272 CMR 9.02(1) shall provide such response within twenty-one days of the certificate holder's receipt of the request. The certificate holder's written response shall be signed by the certificate holder. A certificate holder who claims that he or she is 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 that that one or more of the following actions be taken on its behalf:

- (a) Close the investigation for any of the reasons set forth in 9.04(1)(a)(1) through (3);
- (b) Send an advisory letter in accordance with 272 CMR 9.06(1) to the certificate holder who is the subject of an investigation;
- (c) Reopen a closed investigation on the receipt of new or previously unavailable evidence.

9.03: Grounds for Board Action

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

- (a) The certificate holder fails to comply with any provision of M.G.L. c. 112, §§ 260 and 262;
- (b) The certificate holder fails to comply with any provision of 272 CMR, or any rule, advisory ruling or policy adopted by the Board;

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- (c) The certificate holder fails to comply with any order of the Board;
- (d) The certificate holder fails to comply with the terms of any Consent Agreement entered into with the Board;
- (e) The certificate holder engages in conduct prohibited by the Code of Conduct set forth at 272 CMR 8.09;
- (f) The certificate holder engages in conduct outside the certificate holder's scope of practice, except as may be otherwise authorized by law or licensing authority;
- (g) The certificate holder continues to practice as a Certified Community Health Worker after the expiration, revocation, suspension, surrender or retirement of his or her certificate, or after the certificate holder has entered into a consent agreement in which he or she agreed to refrain from engaging in practice;
- (h) The certificate holder knowingly permits, aids or abets a person who is not a certificate holder to perform activities that requires a certificate issued by the Board;
- (i) The certificate holder fraudulently procures a certificate or its renewal;
- (j) In connection with any examination related to certification, the certificate holder:
 - 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.
- (k) The certificate holder knowingly provides false information to the Board, either directly or through another person acting on the certificate holder's behalf;
- (l) The certificate holder fails, without cause, to appear before the Board when so requested as part of the Board's review of a matter concerning the certificate holder, including but not limited to an investigation, complaint or application;
- (m) The certificate holder fails, without cause, to provide a written response to a pending investigation or complaint or to provide documents or other evidence in the certificate holder's possession or control that may be relevant to the allegations, in accordance with 272 CMR 9.02(2) and 9.06(2);
- (n) Another government licensing or authorizing agency, within or outside the Commonwealth, imposes discipline against any professional certificate, registration, license or authorization held by the certificate holder for reasons that are substantially the same as grounds for Board action in 272 CMR 9.03;
- (o) The certificate holder has been convicted of a crime;
- (p) The certificate holder engages in conduct that demonstrates a lack of Good Moral Character;
- (q) The certificate holder engages in practice while his or her ability to practice is impaired by alcohol, drug, physical disability or mental instability;
- (r) The certificate holder obtains or uses any drug in an unlawful manner;
- (s) The certificate holder engages in behavior that is likely to have an adverse effect upon the health, safety or welfare of the public; or
- (t) The certificate holder engages in conduct that undermines public confidence in the integrity of the profession.

(2) Nothing in 272 CMR 9.03 shall limit the Board's adoption of additional grounds for discipline through adjudication and rulemaking.

9.04: Board Actions on Formal, Docketed Complaints

(1) Dismissal

- (a) The Board may direct or authorize the dismissal of a complaint for the following reasons:
 - 1. The Board lacks jurisdiction;
 - 2. There is insufficient evidence to support a finding that the certificate holder engaged in acts or omissions that constitute grounds for Board action; or
 - 3. There may be sufficient evidence to support a finding that the certificate holder engaged in acts or omissions that constitute grounds for Board action; however the Board concludes that even if true, the alleged acts or omissions in the specific circumstances presented, do not warrant action against the certificate.

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(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 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

(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 272 CMR 9.06(1) to the certificate holder.

(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 certificate holder to appear and show cause why the Board should not take action against his or her certificate. 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 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. 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 1.00: *Standard Adjudicatory Rules of Practice and Procedure*, the Board makes or adopts findings that one or more of the grounds for board action specified in 272 CMR 9.03 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 certificate on stayed probation, which does not constitute discipline and allows the certificate holder to engage in practice subject to temporary conditions set by the Board and specified in the order;

2. Reprimand. The Board may reprimand the certificate. 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 certificate on probation, which constitutes discipline and allows the certificate holder to engage in the practice of Certified Community Health Worker subject to temporary conditions set by the Board and specified in the order;

4. Suspension. The Board may suspend a certificate, which constitutes discipline and prohibits the certificate holder from engaging in practice as a Certified Community Health Worker for a specific period, or until specific conditions have been met, or both;

5. Revocation. The Board may revoke a certificate, which constitutes discipline and prohibits the certificate holder from engaging in practice as a Certified Community Health Worker.

(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 certificate or a petition for reinstatement of the certificate.

2. The Board order may authorize the Executive Director to take additional actions against a certificate 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 certificate by a certificate holder who is the subject of a complaint. A certificate holder may offer to permanently surrender his or her certificate by submitting to the Board a signed, written statement that asserts his or her intent to permanently relinquish the right to hold or renew his or her certificate. The Board's acceptance of a certificate holder's permanent surrender constitutes discipline and resolution of the complaint. The Board may deem the complaint allegations to be true and to constitute grounds for discipline.

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(4) Consent Agreements. The Board may enter into a Consent Agreement with a certificate holder for the purpose of resolving the complaint. In a Consent Agreement, the Board and the certificate holder may agree that the board will take one or more of the board actions specified in 272 CMR 9.04, or may agree that the certificate holder 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 certificate shall apply to the right to renew such certificate.

(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 272 CMR 9.04 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.

9.05: Summary Suspension

(1) Purpose. 272 CMR 9.05 establishes parameters for the summary suspension of a license, in advance of a hearing, by either the full Board or by 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 certificate holder's practice. It 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 Order of Summary Suspension to the Board or, if the next scheduled meeting of the Board is more than 48 hours into the future, 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, or both.

(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 that certificate holder's continued practice presents an immediate and serious threat to the public health, safety or welfare, and that 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 certificate of a certificate holder.

(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 that certificate holder's continued practice presents a serious threat to the public health, safety or welfare, and that 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 certificate holder to file opposing affidavits or other evidence within three business days. If, upon review of the information presented in both the request for an Order of Summary Suspension and the evidence submitted by the certificate holder, the Board, or Board Chair, again determines that certificate holder's continued practice presents a serious threat to the public health, safety or welfare, and that 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 certificate of a certificate holder.

(3) Order of Summary Suspension: Content, Notice and Enclosures.

(a) An Order of Summary Suspension shall notify the certificate holder that his or her certificate has been suspended and that he or she is prohibited from engaging in practice until further notice by the Board, effective upon the certificate holder'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 certificate holder 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.

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(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 certificate holder's continued practice presents an immediate and serious threat to the public health, safety or welfare, and that 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 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. 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 certificate holder 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 certificate holder and prosecuting counsel. The summary suspension shall remain in effect during the time that the post-suspension hearing is continued at the certificate holder'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 certificate holder; and
3. relevant evidence presented by prosecuting counsel that was unknown, or unavailable, or both, at the time the Order of Summary Suspension issued, provided that prosecuting counsel disclosed such evidence to the certificate holder 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.

(5) 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 decision, which shall include findings of fact on the allegations that the certificate holder's practice presents an immediate and serious threat to the public health, safety or welfare, and that summary suspension is necessary to prevent that threat.

(b) Default. If the certificate holder fails to appear and defend at the hearing, the administrative hearings counsel shall issue a notice of default to the certificate holder, 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 certificate holder'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 certificate 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 certificate holder's practice presents an immediate and serious threat to the public health, safety and welfare, and that 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.

9.06 Additional Provisions Applicable to Investigations, Complaints and Board Actions

- (1) Advisory Letters. An advisory letter is not a formal Board action against a certificate holder and makes no determination or finding on whether the recipient engaged in alleged acts or omissions. It constitutes a public record of notice to the recipient that:
 - (a) identifies the reason for closure of an investigation or dismissal of a complaint;
 - (b) identifies 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) includes a reminder of the general requirement to comply with the identified provisions.

- (2) Receipt by a Certificate Holder. The Board may deem a certificate holder 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 certificate holder. In the event that delivery is not possible at such address because the certificate holder has moved and left no forwarding address or because the address is otherwise invalid, the Board may deem receipt by the certificate holder 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 specific to a particular certificate holder, or a general policy that sets parameters for action on the Board's behalf, or a combination of both.
 - (b) In the event that the Board Chair has a conflict of interest, an appearance of a conflict of interest, or that the Board Chair is incapacitated or inaccessible for a period of time that exceeds the reasonable time frame in which the Board Chair would be expected to act pursuant to 272 CMR 9.06 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 that the Executive Director has a conflict of interest, an appearance of a conflict of interest, or that the Executive Director is incapacitated or inaccessible for a period of time that exceeds the reasonable time frame in which the Executive Director would be expected to act pursuant to this section 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

272 CMR 9.00: M.G.L. c. 13, § 108(b); M.G.L. c. 13, § 108(g); M.G.L. c. 112, § 260.