

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 234 CMR 9.00: INVESTIGATIONS, ~~OF COMPLAINTS, DISPOSITION OF COMPLAINTS, GROUNDS FOR DISCIPLINE AND BOARD ACTIONS~~

#### Section

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#### 9.01: Purpose

~~234 CMR 9.00 sets forth the actions the Board may take on any complaint received by the Board concerning a Board licensee or the practice of dentistry, dental hygiene or dental assisting in the Commonwealth. The Board may take disciplinary action for any violation of M.G.L. c. 112, §§ 43 through 53 and 61 or 234 CMR, or any rule, advisory, or written policy adopted by the Board related to the practice of dentistry, dental hygiene, or dental assisting.~~

234 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 Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 *et seq.* It also establishes the standards and procedures for summary suspensions.

#### 9.02: Investigation and Initiation of Formal of Complaints

(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 section 9.03;

(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.

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(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 section 9.02(1) shall provide such response within twenty-one 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 9.04(1)(a)(1)-(3);

(3);

(b) Send an advisory letter in accordance with section 9.06(1) to the licensee who is the subject of an investigation.

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

~~(1) Response by Licensee. Upon receipt of a written complaint from the Board, a licensee shall submit to the Board a written response addressing the allegations set forth in the complaint. Said response shall include any information requested by the Board and shall be signed by the licensee. The response shall be submitted to the Board within the time frame specified by the Board.~~

~~(2) Complaint Committee. The Board may establish a Complaint Committee, comprised of a minimum of two members of the Board, one of whom must be a dentist, to review complaints alleging misconduct by a licensee and to make recommendations regarding disposition of the matter to the full Board.~~

~~(3) Investigative Conference. To facilitate disposition of any complaint, the Complaint Committee, acting on behalf of the Board, or 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, including a general statement of the nature of the complaint and issues to be discussed.~~

~~(4) Ex Parte Communication with Board Members. Neither a party nor the representative of a party shall make or knowingly cause to be made an *ex parte* communication with Board members regarding a complaint and/or adjudicatory proceeding.~~

### 9.03: Disposition of Complaints

~~The actions set forth in 234 CMR 9.03 constitute the non-disciplinary and disciplinary dispositions the Board may impose on a licensee or on a licensee's right to renew his or her license.~~

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(1) ~~Non-disciplinary Actions.~~

(a) ~~Dismissal.~~ The Board may dismiss a complaint by ~~Dismissal with Prejudice, Dismissal without Prejudice, or Dismissal with an Advisory Letter~~ where it determines that:

1. ~~The Board lacks jurisdiction over the person named in the complaint;~~
2. ~~There is insufficient evidence to support the complaint;~~
3. ~~There are no violations of laws, rules and regulations governing the practice of dentistry;~~
4. ~~The conduct complained of does not warrant disciplinary or other remedial action.~~

(b) ~~Dismissal with Prejudice.~~ A complaint may be dismissed with prejudice when the alleged conduct does not violate the Board's statutes or regulations or the Board lacks jurisdiction over the licensee.

(c) ~~Dismissal without Prejudice.~~ A complaint may be dismissed without prejudice when the Board determines that the facts supporting the alleged conduct have not been or cannot be proven due to lack of evidence or insufficient evidence. The complaint may be revisited by the Board if new evidence becomes available.

(d) ~~Dismissal with an Advisory Letter.~~ Dismissal with an Advisory Letter is an official written notice retained in the Board's files delineating the Board's concerns with the licensee's professional practice. An advisory letter does not constitute formal disciplinary action.

(e) ~~Stayed Probation.~~ Stayed Probation is a non-disciplinary agreement between the licensee and the Board and consists of a period of time during which a dentist, registered dental hygienist, or dental assistant who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. Stayed Probation does not constitute formal discipline, but may include provisions for the Board to subject the licensee to disciplinary action if the Board finds that the licensee has failed to comply with the terms and conditions of his or her agreement with the Board.

(2) ~~Disciplinary Actions.~~ The disciplinary actions set forth in 234 CMR 9.03(2)(a) through (g) constitute disciplinary actions the Board may impose on a licensee of the Board, or on the right of a licensee to renew his or her license. The Board may only impose disciplinary action as part of a final decision and order issued in connection with the adjudication of a complaint, or under the terms of an agreement entered into between a licensee and the Board in resolution of any complaint or complaints.

Where the Board initiates adjudicatory proceedings, the Board shall conduct such proceeding in accordance with M.G.L. c. 30A: ~~State Administrative Procedure Act~~ and 801 CMR 1.00: ~~Standard Adjudicatory Rules of Practice and Procedure.~~

The Board may, after a hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.00: ~~Standard Adjudicatory Rules of Practice and Procedure~~ or by agreement of the parties, reprimand, place on probation, censure, suspend, or revoke any license, registration or permit issued by the Board and/or otherwise limit the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth as the Board deems necessary and appropriate.

A disciplinary action against a license to practice dentistry, dental hygiene, or dental

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~~assisting in the Commonwealth constitutes a public record and is reportable by the Board to other licensing entities and to the appropriate national disciplinary reporting systems as a disciplinary action on a license to practice dentistry, dental hygiene, or dental assisting or on the right to renew such license.~~

~~(a) Reprimand. A Reprimand is a written statement issued by the Board which describes the manner in which the licensee has failed to comply with M.G.L. c. 112, §§ 43 through 53 and 61, or 234 CMR, or any rule, advisory or written policy adopted by the Board related to the practice of dentistry, dental hygiene, or dental assisting. A reprimand may include terms or conditions specified by the Board. Failure of a licensee to comply with such terms or conditions may result in further disciplinary action by the Board.~~

~~(b) Probation. Probation consists of a period of time during which a licensee who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. A licensee whose license is subject to probation must comply with the terms and conditions of probation in order to continue to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's failure to comply with terms and conditions may result in the imposition of a suspension or other discipline, as deemed appropriate by the Board.~~

~~(c) Censure. Censure is a severe reprimand.~~

~~(d) Voluntary Surrender. Pursuant to an agreement with the Board, a licensee may surrender his or her license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's Voluntary Surrender of a license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.~~

~~(e) Suspension. Suspension of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, is the temporary denial by the Board of the right of a licensee to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, and represent himself or herself by title or other designation as a licensed dentist, dental hygienist, or dental assistant.~~

~~(f) Stayed Suspension. A stayed suspension is a period of suspension on a license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth which suspension the Board does not activate pending compliance by a licensee with specified terms and conditions described in a Final Decision and Order or in a consent agreement between the licensee and the Board.~~

~~(g) Revocation. A revocation of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth, and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.~~

### 9.04: Suspension Prior to a Hearing

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~~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 pursuant to M.G.L. c. 112, § 52F.~~

### ~~9.05: Grounds for Discipline~~

~~The Board may impose disciplinary action against an individual licensed by the Board to practice dentistry, dental hygiene, or dental assisting on one or more of the following grounds for discipline:~~

- ~~(1) Engaging in misconduct in the practice of dentistry, unprofessional conduct, and/or conduct that undermines public confidence in the integrity of the dental profession;~~
- ~~(2) Violating any of the duties and standards set out in 234 CMR or any rule, advisory, or written policy adopted by the Board pursuant to its authority under M.G.L. c. 112, §§ 43 through 53 and 61;~~
- ~~(3) Failing to provide services and maintain the dental office, in compliance with the *CDC Guidelines* and the requirements of the Occupational Safety and Health Regulations at 29 CFR described in 234 CMR 5.05: *Infection Control, Occupational Safety and Health Standards, and Radiation Control Requirements*;~~
- ~~(4) Practicing while the ability to practice is impaired by substance abuse, or any physical or mental condition;~~
- ~~(5) Engaging in the illegal use or abuse of prescription drugs or controlled substances;~~
- ~~(6) Continuing to practice dentistry, in the Commonwealth, after his or her license is expired, suspended, revoked or surrendered;~~
- ~~(7) Violation of a consent agreement, Final Decision and Order, or any other order of, or agreement with, the Board;~~
- ~~(8) Engaging in conduct that places the public health, safety, or welfare at risk;~~
- ~~(9) Being convicted of any crime, except minor traffic offenses, including any guilty verdict or finding of guilt and any admission to or finding of sufficient facts, a continuance without a finding, and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed;~~
- ~~(10) Fraudulently procuring a certificate of licensure or a permit or its renewal;~~
- ~~(11) Providing false information on an application for registration or renewal of a~~

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~~license or permit;~~

~~(12) Cheating or attempting to compromise the integrity of any dental licensing or certification examination;~~

~~(13) Failing to comply with 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;~~

~~(14) Committing an act that violates recognized standards of care;~~

~~(15) Failing to maintain professional dentist, dental hygienist, or dental assistant patient boundaries;~~

~~(16) Engaging in conduct with a patient which is sexual or may be reasonably interpreted by the patient as sexual or engaging in behavior, gestures, or expressions, verbal or nonverbal, that are seductive, suggestive or sexually demeaning to a patient;~~

~~(17) Failing to comply with established ethical standards of the profession and/or specialty;~~

~~(18) Falsifying, altering or willfully making incorrect entries or failing to make essential entries in patient records;~~

~~(19) Violating M.G.L. c. 94C: *Controlled Substances Act*;~~

~~(20) Issuing a prescription for medication(s) or prosthesis (pursuant to M.G.L. c. 112, § 50), including but not limited to, internet or other electronic process, without a medical history or without conducting an appropriate dental examination or without recording a corresponding diagnosis and treatment plan;~~

~~(21) Any disciplinary action against a licensee in another state or jurisdiction for conduct similar to conduct that would constitute grounds for discipline by the Board;~~

~~(22) Charging a patient or third party payor for a service not performed;~~

~~(23) Failing, without just cause, to refund a prepayment for treatment and services not completed and/or not performed;~~

~~(24) Offering, giving or receiving commissions, rebates or other forms of remuneration for the referral of patients;~~

~~(25) Failing to file any report required pursuant to M.G.L. chs. 19A, 19C, or 119, § 51A;~~

~~(26) Failing to report or failing to accurately report to the Board in writing, within 30 days, any disciplinary action, as defined by 234 CMR 9.00, taken against the licensee by~~

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~~an entity or its agent, including but not limited to, a governmental authority, a health care facility, an employer, a dental insurance company, or a professional dental or medical society (international, national, state or local);~~

~~(27) Failing to report to the Board, in writing, within 30 calendar days, any final action taken regarding one's license to practice dentistry, dental hygiene, dental assisting or other health care related professional license by any other governmental authority in this state or another jurisdiction;~~

~~(28) Failing to report to the Board, in writing, within 30 calendar days any criminal charge or conviction as defined in 234 CMR 2.03: *Definitions* in Massachusetts or any other jurisdiction.~~

~~(29) Failing to comply with a plan for corrective action required by an agreement with or an order of the Board;~~

~~(30) Nothing in 234 CMR 9.00 shall limit the Board's adoption of policies and grounds for discipline through adjudication and rule-making.~~

### ~~9.06: Civil Administrative Penalties for Unlicensed Practice of Dentistry, Dental Hygiene, or Dental Assisting~~

~~A civil administrative penalty may be assessed for unlicensed practice of dentistry, dental hygiene, or dental assisting in the Commonwealth pursuant to M.G.L. c. 112, §§ 65(b) and 65A.~~

### 9.03: 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, §§ 43 through 53, or any provision of M.G.L. c. 94C;

(b) The licensee fails to comply with any provision of 234 CMR, or any rule, advisory ruling or policy adopted by the Board;

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

(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.

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(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 any provision of 105 CMR 700.000, 720.000, 721.000, 722.000 or 724.000, or any rule, advisory ruling or policy adopted by the Department of Public Health, Drug Control Program;

(h) The licensee fails to provide services and maintain the dental office in compliance with the CDC Guidelines and OSHA Standards.

(i) The licensee fails to comply with established ethical standards of the profession or specialty including, but not limited to, the standards identified at 234 CMR 5.19.

(j) The licensee engages in conduct that violates recognized standards of care.

(k) The licensee engages in conduct outside the licensee's scope of practice, except as may be otherwise authorized by law or licensing authority;

(l) 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;

(m) The licensee knowingly permits, aids or abets an unlicensed person to perform activities that requires a license issued by the Board;

(n) The licensee fraudulently procures a license or its renewal;

(o) In connection with any examination related to licensure, 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;

(p) The licensee knowingly provides false information to the Board, either directly or through another person acting on the licensee's behalf;

(q) 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;

(r) 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 9.02(2) and 9.06(2);



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(s) Another government licensing or authorizing agency, within or outside the Commonwealth, imposes discipline against any professional certificate, registration, permit, license or authorization held by the licensee for reasons substantially the same as grounds for Board action in this section;

(t) The licensee has been convicted of a crime;

(u) The licensee engages in conduct that demonstrates a lack of good moral character;

(v) The licensee fails to maintain professional dentist, dental hygienist, or dental assistant patient boundaries;

(w) The licensee engages in conduct with a patient which is sexual or may be reasonably interpreted by the patient as sexual or engaging in behavior, gestures, or expressions, verbal or nonverbal, which are seductive, suggestive or sexually demeaning to a patient;

(x) The licensee engages in practice while his or her ability to practice is impaired by alcohol, drug, physical disability or mental instability;

(y) The licensee obtains or uses any drug in an unlawful manner;

(z) The licensee engages in behavior that is likely to have an adverse effect upon the health, safety or welfare of the public; or

(aa) The licensee engages in conduct that undermines public confidence in the integrity of the profession.

(bb) The licensee falsifies, alters or willfully makes incorrect entries or failed to make essential entries in patient records;

(cc) The licensee issues a prescription for medication(s) or prosthesis (pursuant to M.G.L. c. 112, § 50), including but not limited to, internet or other electronic process, without a medical history, without conducting an appropriate dental examination or without recording a corresponding diagnosis and treatment plan;

(dd) The licensee charges a patient or third party payor for a service not performed;

(ee) The licensee fails, without just cause, to refund a prepayment for treatment and services not completed and/or not performed;

(ff) The licensee offers, gives or receives commissions, rebates or other forms of remuneration for the referral of patients;

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(gg) The licensee fails to file any report required pursuant to M.G.L. chs. 19A, 19C, or 119, § 51A;

(hh) The licensee fails to accurately report to the Board in writing, within 30 days, any disciplinary action, as defined by 234 CMR 9.00, taken against the licensee by an entity or its agent, including but not limited to, a governmental authority, a health care facility, an employer, a dental insurance company, or a professional dental or medical society (international, national, state or local);

(ii) 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 dentistry, dental hygiene, dental assisting or other health care related professional license by any other governmental authority in this state or another jurisdiction;

(jj) The licensee fails to accurately report to the Board, in writing, within 30 calendar days any criminal charge or conviction as defined in 234 CMR 2.03: Definitions in Massachusetts or any other jurisdiction.

(2) Nothing in this section 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 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 constituting 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 *et seq.*

(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 section 9.06(a) 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 Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 et seq. 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 Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 et seq., the Board makes or adopts findings that one or more of the grounds for Board action specified in section 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 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;

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.

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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 their 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 this section 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 this section 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.

### 9.05: Summary Suspension

(1) Purpose. 234 CMR 9.05 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. This section 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.

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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.

(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.

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### (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.

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### (3) 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 Standard Adjudicatory Rules of Practice and Procedure at 801 CMR

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1.01. 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 hearings 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:

(i) the Executive Director's request for an order of Summary Suspension and its supporting affidavits and documentary evidence;

(ii) relevant evidence presented by the licensee; and

(iii) 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.

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(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 decision, 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.

(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

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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.

### 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 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 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

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such time exceed 30 days, or as otherwise authorized by the Board, the next most senior member of the Board staff, shall be authorized to act in the Executive Director's stead.

REGULATORY AUTHORITY

234 CMR 9.00: M.G.L. c. 13, § 19; c. 112, §§ 43 through 53, 61, 65 and 65A; c. 30A, § 13A.