261 CMR 4.00: INVESTIGATIONS, COMPLAINTS AND BOARD ACTIONS ~~DISCIPLINARY PROCEEDINGS~~

Section

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4.01: Purpose ~~Preface~~

261 CMR 4.00 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.

~~261 CMR 4.00 governs the disposition of matters relating to the practice of respiratory care by any person holding or having held a license issued by the Board of Respiratory Care under M.G.L. c. 112, §§ 23R through 23BB, and the conduct of adjudicatory hearings by the Board. 261 CMR 4.00 is based on the principle of fundamental fairness to licensees and patients and shall be construed to secure a speedy and just disposition.~~

4.02: Investigations, Formal Docketed Complaints and Licensee’s Responsibility to Respond Prior to the Issuance of an Order to Show Cause ~~Definitions~~

(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 261 CMR 4.03;

(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 261 CMR 4.02(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 261 CMR 4.04(1)(a)1.- 3.;

(b) Send an advisory letter in accordance with 261 CMR 4.06(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.

~~Adjudicatory Hearing. A formal administrative hearing conducted pursuant to M.G.L. c. 30A.~~

~~Board. The Board of Respiratory Care.~~

~~Complaint. A communication filed with the Board which charges a licensee with misconduct.~~

~~Informal. Not subject to strict procedural or evidentiary rules.~~

~~Licensee. A person holding or having held any type of license or permit issued pursuant to M.G.L. c. 112, §§ 23R through 23BB.~~

~~Order to Show Cause. A paper issued by the Board ordering a licensee to appear before the Board for an adjudicatory proceeding and show cause whythe licensee should not be disciplined.~~

~~Party. A respondent, prosecutor representing the Board, or intervenor in an adjudicatory~~

~~proceeding pursuant to 801 CMR 1.01(9).~~

~~Quorum. A majority of the Board excluding vacancies.~~

~~Respondent. The licensee named in an Order to Show Cause.~~

4.03: Grounds for Board Action ~~General Provisions~~

(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, §§ 23R through 23BB;

(b) The licensee fails to comply with any provision of 261 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 an Order of 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;

(f) The licensee engages in conduct prohibited by the Standards for Conduct set forth at 261 CMR 3.10;

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

(h) The licensee engages in conduct that violates recognized standards of care;

(i) 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;

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

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

(l) 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;

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

(n) 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;

(o) 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 261 CMR 4.02(2) and 261 CMR 4.06(2);

(p) 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 this section;

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

(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 engages in practice while his or her ability to practice is impaired by alcohol, drugs, physical disability or mental instability;

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

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

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

(2) Nothing in this section shall limit the Board’s adoption of additional grounds for discipline through adjudication and rulemaking.

~~(1) Communications. All written correspondence should be addressed to and filed with theBoard of Respiratory Care, 239 Causeway Street, 2nd Floor, Boston, Massachusetts 02114.~~

~~(2) (a) Service. The Board shall provide notice of its actions in accordance with the Standard Adjudicatory Rules, 801 CMR 1.01(4)b and (5)(f), or otherwise with reasonable attempts at in-hand service, unless the Respondent otherwise has actual notice of the Board's action. Where 261 CMR 4.00 provides that the Board must notify parties, service may be made by first class mail. A notice of appearance on behalf of a Respondent shall be deemed an agreement to accept service of any document on behalf of the Respondent, including a Final Decision and Order of the Board. When a Hearing Officer has jurisdiction over an adjudicatory proceeding, proper service by the Respondent includes filing copies of all papers and exhibits with the Board, care of its Counsel, the Hearing Officer assigned to the adjudicatory proceeding, and the Prosecutor assigned to the adjudicatory proceeding. All papers served must be accompanied by a certificate of service.~~

~~(b) Notice to Board Members. A respondent (or his representative) and other persons shall not engage in ex parte communications with individual Board members regarding a disciplinary proceeding. Communications to Board members regarding disciplinary proceedings shall be in writing and directed to Board members as follows: Six copies to the Chair of the Board, one copy to the Board Counsel, and one copy to the Prosecutor assigned to the disciplinary proceeding.~~

~~(3) Date of Receipt. Communications are deemed received on the date of actual receipt by the Board.~~

~~(4) Computation of Time. The Board shall compute time in accordance with 801 CMR 1.01(4)(c).~~

~~(5) Extension of Time. The Board in its discretion may extend any time limit prescribed or allowed by 261 CMR 4.00.~~

~~(6) Identification and Signature; Paper Size. All papers filed with the Board in the course of a disciplinary proceeding must contain the name, address, and telephone number of the party making the filing and must be signed by either the party or an authorized representative. Paper size shall be 8½" by 11".~~

~~(7) Decisions by the Board; Quorum. Unless 261 CMR 4.00 provides otherwise, a majority of members present and voting at a Board meeting shall make all decisions and the Board shall record its decisions in the minutes of its meetings. A quorum is a majority of the Board, excluding vacancies.~~

~~(8) Availability of Board Records to the Public.~~

~~(a) The availability of the Board's records to the public is governed by the provisions of the Public Records Law, M.G.L. c. 66, § 10, and M.G.L. c. 4, § 7, clause 26, as limited by the Board's regulations. A file or some portion of it is not a public record if the Board determines that disclosure may constitute an unwarranted invasion of personal privacy, prejudice the effectiveness of law enforcement efforts (if the records were necessarily compiled out of public view), violate any provision of state or federal law, or if the records are otherwise legally exempt from disclosure.~~

~~(b) Before the Board issues an Order to Show Cause, dismisses a complaint, or takes other final action, the Board's records concerning a disciplinary matter are confidential.~~

~~(c) The Board's records of disciplinary matters, as limited by 261 CMR 4.03(8)(a) and (b), include the following:~~

~~1. Closed complaint files, which contain the complaint and other information, are public records. The name of the complainant or patient and relevant medical records shall be disclosed to the respondent, but this information is otherwise confidential. The names of reviewers and the contents of complaint reviews shall be confidential.~~

~~2. Board Prosecutor's files, which contain portions of complaint files (and related confidential files) as well as papers related to adjudicatory proceedings and attorney work product, are not public records and are confidential.~~

~~3. The Board's files, which contain each paper filed with the Board in connection with an adjudicatory proceeding, are public records, unless otherwise impounded or placed under seal by the Hearing Officer or the Board.~~

~~(9) Public Nature of Board Meetings Under These Rules.~~

~~(a) All meetings of the Board are open to the public to the extent required by M.G.L. c. 30A, § 11A.~~

~~(b) As provided by M.G.L. c. 30A, § 11A, a Board meeting held for the purpose of making a decision required in an adjudicatory proceeding is not open to the public. Evidentiary hearings before individual hearing officers are generally open to the public, but the Board may carry out its functions under these rules in closed session if these functions affect an individual licensee or patient, the licensee or patient requests that the Board function in closed session, and the Board or hearing officer determines that functioning in closed session would be consistent with law and in the public interest.~~

4.04: Board Actions on Complaints ~~Dispositions of 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 *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 261 CMR 4.06(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 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 261 CMR 4.03 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 licenseor 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 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.

~~(1) Initiation. Any person, organization, or member of the Board may make a complaint to the Board which charges a licensee with misconduct. A complaint may be filed in any form. The Board, in its discretion, may investigate anonymous complaints.~~

~~(2) Complaint Committee. The Board may establish a Complaint Committee to review complaints charging a licensee with misconduct. If the Complaint Committee or a Board investigator determines that a communication does not relate to any of the matters set forth in M.G.L. c. 112, § 23X and 261 CMR 4.04(5), the Complaint Committee or the investigator may refer the communication to the proper authority or regulatory agency.~~

~~(3) Investigations.~~

~~(a) Preliminary Investigation. A Board investigator shall conduct such preliminary investigation, which may include a request for an answer from the licensee, as is necessary to allow the Board or the Complaint Committee to determine whether a complaint is frivolous or lacking in either merit or factual basis.~~

~~(b) Subsequent Inquiry, Investigation. After receipt and review of a complaint, if the Board or the Complaint Committee determines that the complaint is frivolous or lacking in either legal merit or factual basis, it may close the complaint. As to other complaints, the Board or the Complaint Committee shall conduct, or cause to be conducted, any reasonable inquiry or investigation it deems necessary to determine the truth and validity of the allegations set forth in the complaint.~~

~~(4) Conference. To facilitate disposition, the Board or the Complaint Committee may request any person to attend a conference at any time prior to the commencement of an adjudicatory proceeding. The Board or Complaint Committee shall give timely notice of the conference with reference to the complaint or a statement of the nature of the issues to be discussed.~~

~~(5) Grounds for Complaint.~~

~~(a) Specific Grounds for Complaints Against Licensees. A complaint against a licensee may be based on any of the following: Fraudulent or deceptive procurement, or attempt at fraudulent or deceptive procurement, of a license or Limited Permit or its renewal; commitment of an offense against any provision of the laws of the Commonwealth relating to the practice of respiratory care, or any rule or regulation adopted thereunder; conduct which places into question the licensee's competence to practice respiratory care; practicing respiratory care while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability; knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license; conviction of a felony or of a crime involving moral turpitude; continuing to practice while his license or Limited Permit is lapsed, suspended, or revoked; having been disciplined in another jurisdiction in any way by the proper licensing authority, institution, society, credentialing board, agency, or court for reasons substantially the same as those set forth in M.G.L. c. 112, § 23X and 261 CMR 4.04(5); failing to report any disciplinary action within 30 days of the date of that action; cheating on or attempting to compromise the integrity of any licensing examination; having acted in a manner which is professionally unethical according to ethical standards of the profession of respiratory care.~~

~~(b) Other Grounds for Complaints Against Licensees. Nothing herein shall limit the Board's adoption of policies and grounds for discipline through adjudication as well as through rule-making.~~

~~(6) Order for Answering and Answer. The Board or Complaint Committee may order that the licensee, who is the subject of a complaint, respond to a complaint or order within 21 days. A licensee shall respond to an order or complaint either personally or through his attorney, in compliance with 261 CMR 4.03(6). An answer must address the substantive allegations set forth in the complaint or order.~~

~~(7) Dismissal by Board or Complaint Committee. Upon receipt of a licensee's answer or at any point during the course of investigation or inquiry into a complaint, the Board or Complaint Committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a licensee may be sanctioned by the Board. In such event, the Board or Complaint Committee shall close the complaint.~~

~~(8) Board Action Required. If a licensee fails to answer within the 21 day period or if the Complaint Committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a licensee may be sanctioned by the Board, the Complaint Committee may recommend that the Board issue an Order to Show Cause.~~

~~(9) Disposition by the Board. The Board shall review each recommendation which the Complaint Committee forwards to it and shall require an adjudicatory hearing if it determines that there is reason to believe that the acts alleged occurred and constitute a violation of any provision of 261 CMR 4.04(5) or M.G.L. c. 112, § 23X. The Board may take such informal action as it deems a complaint warrants. If the Board requires an adjudicatory hearing, it may appoint a Hearing Officer to preside in the adjudicatory proceeding.~~

4.05: Summary Suspension ~~Adjudicatory Hearing~~

(1) Purpose. 261 CMR 4.05 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. 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.

(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.

(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 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 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:

(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.

(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.

(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.

~~After the Board issues an Order to Show Cause, the Board shall conduct all hearings in accordance with the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00.~~

4.06 Additional provisions applicable to Investigations, Complaints and Board Actions ~~Final Decision and Order and Miscellaneous Provisions~~

(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 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 s 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 the Board staff, shall be authorized to act in the Executive Director’s stead.

~~(1) In General. Every Final Decision and Order of the Board requires the concurrence of a majority of the Board. If the Hearing Officer is a member of the Board, the Hearing Officer's vote counts only in the event the Board is not otherwise able to reach a final decision.~~

~~(2) Sanctions. In disposition of disciplinary charges brought by the Board, the Board may revoke, suspend, cancel the license or Limited Permit, or place on probation, reprimand, censure, require the performance of public service in a manner and at a time and place to be determined by the Board, require a course of education or training or otherwise discipline or limit the practice of a licensee.~~

~~(3) Reinstatement. A person previously licensed by the Board may apply for reinstatement as ordered by the Board. An application for reinstatement addressed to the Board, must be made in the form the Board prescribes, must be filed in original with six copies, and will be granted only if the Board determines that doing so would advance the public interest. Applicants for reinstatement are required to explain in detail to the Board why favorable action on the reinstatement request is warranted and provide a detailed summary of how the applicant spent time during the non-licensed period including professional activities, personal psychotherapy or other remediative activities, and academic or other continuing education activities. An applicant for reinstatement must also provide to the Board notarized statements from at least three persons (one of whom must be a respiratory therapist) who have read the Board's Final Decision and Order regarding the applicant and attest to the character of the applicant, including any history of substance abuse, and the applicant's work and professional history since the license revocation. An applicant for reinstatement may also be required to appear before the Board and achieve a passing score on the current licensure examination. If the Board denies a petition for reinstatement, the applicant shall not re-petition the Board for reinstatement until at least one year after the date of denial, unless the Board orders otherwise.~~

~~(4) Resignation.~~

~~(a) A licensee who is named in a complaint or who is the subject to an investigation by the Board or who is the respondent in a disciplinary action may submit his resignation to the Board in writing stating that: he desires to resign; his resignation is tendered voluntarily; he realizes that resignation is a final act which deprives a person of all privileges of registration and is not subject to reconsideration or judicial review; and that he is not currently licensed to practice in any other state or jurisdiction, will make no attempt to gain licensure elsewhere, or will resign any other licenses contemporaneously with his resignation in the Commonwealth.~~

~~(b) If a complaint, investigation, or Order to Show Cause arises solely out of a disciplinary action in another jurisdiction, within the meaning of 261 CMR 4.04(5)(a)11., the licensee may submit a resignation pursuant to 261 CMR 4.06(4)(a), but need not make any representation regarding licensure status in other jurisdictions, is permitted to gain licensure elsewhere, and need not resign any other licenses contemporaneously with the resignation.~~

~~(5) Unauthorized Respiratory Care Practice. The Board may refer to the appropriate District Attorney or other appropriate law enforcement agency any incidents of unauthorized respiratory care practice which comes to its attention.~~

~~(6) Imposition of Restrictions. Consistent with 261 CMR 4.00 and M.G.L. c. 30A or otherwise by agreement with the licensee, the Board may impose restrictions to prohibit a licensee from performing certain respiratory care procedures, or from performing certain respiratory care procedures except under certain conditions, if the Board determines that:~~

~~(a) the licensee has engaged in a pattern or practice which calls into question his competence to perform such procedures; or~~

~~(b) the restrictions are otherwise warranted by the public health, safety and welfare.~~

~~(7) Ethical Standards and Professional Conduct. The Board adopts as its official guide the American Association for Respiratory Care Code of Ethics as amended from time to time.~~

4.07: (Reserved) ~~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.~~

REGULATORY AUTHORITY:

261 CMR 4.00: M.G.L. c~~hs~~. 13 ~~and~~, § 11B; c. 112, §§23R through 23BB