Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS

10.40.05 Hearing Procedures

Authority: Health Occupations Article, §§16–313 and 16–314; State Government Article, §10–206; Annotated Code of Maryland

.01 Scope.

This chapter governs procedures for disciplinary matters and hearings before the State Board of Podiatric Medical Examiners.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" means the hearing officer assigned to preside over a hearing in a case the Board has delegated to the Office of Administrative Hearings.

(2) "Administrative Procedure Act" means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, which governs contested cases arising from charges brought by the Board.

(3) "Administrative prosecutor" means the attorney assigned by the Office of the Attorney General to prosecute disciplinary charges for the Board.

(4) "Board" means the State Board of Podiatric Medical Examiners.

(5) "Case resolution conference" means an informal, confidential meeting between the parties to a contested case and the Board's case resolution conference committee to discuss possible settlement of a disciplinary matter pending before the Board.

(6) "Case resolution conference committee" means a committee composed of one or more members of the Board that makes recommendations to the Board regarding settlement of disciplinary matters.

(7) "Cease and desist letter" means an informal action consisting of a nonpublic letter issued by the Board ordering:

(a) A licensee to cease a specified activity; or

(b) An unlicensed individual to cease the unauthorized practice of podiatry.

(8) "Charging document" means a nonpublic record issued by the Board which:

(a) Alleges conduct by a licensee which the Board believes constitutes a violation under the Maryland Podiatry Act;

(b) Sets forth provisions of the Maryland Podiatry Act that the Board believes were violated; and

(c) Provides notice to the licensee of disciplinary proceedings before the Board.

(9) "Complaint" means a written allegation received by the Board that a licensee may have violated the Maryland Podiatry Act and which may be grounds for an investigation or disciplinary action by the Board.

(10) "Consent order" means a public record issued by the Board that is a final order of the Board that has been negotiated and agreed to by both the licensee and the Board to resolve a disciplinary matter.

(11) "Contested case" means a proceeding conducted under the Administrative Procedure Act.

(12) "Disposition agreement" means a nonpublic agreement entered into with a licensee instead of formal disciplinary action, in which the licensee agrees to comply with certain conditions.

(13) "Final order" means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:

(a) Denies a license;

(b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;

(c) Summarily suspends a license;

(d) Dismisses charges;

(e) Surrenders a license; or

(f) Takes any other action that the Board may do by law.

(14) "Imperatively requires emergency action" means a finding by the Board that an emergency action be taken against a licensee under State Government Article, §10-226(c)(2), Annotated Code of Maryland, based on investigative

facts that raise a substantial likelihood of risk of harm to the public health, safety, or welfare before a full evidentiary hearing can be held.

(15) "Informal action" means that the Board closes a case without taking formal disciplinary action or without issuing a final order, by imposing a disciplinary sanction consisting of a:

(a) Letter of education;

(b) Letter of admonishment;

(c) Cease and desist letter; or

(d) Disposition agreement.

(16) "Investigation" means the gathering of information to assist the Board in determining if there is reasonable cause to charge a licensee with a violation of the Maryland Podiatry Act.

(17) Letter of Admonishment.

(a) "Letter of admonishment" means informal action consisting of a nonpublic letter issued by the Board closing a case, if the Board believes a licensee has engaged in conduct that violates the Maryland Podiatry Act, admonishing the licensee not to repeat the conduct.

(b) "Letter of admonishment" may include an agreement that the licensee perform certain conditions instead of the Board taking formal disciplinary action.

(18) "Letter of education" means informal action consisting of a nonpublic letter to a licensee:

(a) Issued by the Board if the Board does not believe that conduct rose to the level of a violation of the Maryland Podiatry Act; and

(b) In which the Board educates the licensee concerning the laws and standards of the practice of podiatry.

(19) Letter of Surrender.

(a) "Letter of surrender" means a public letter accepted by the Board in which the licensee agrees to surrender the license to practice podiatry.

(b) "Letter of surrender" may include conditions for the Board's acceptance of the surrender as a resolution of the case.

(20) "Licensure" means permission to engage in the practice of podiatry which is evidenced by a license issued by the Board.

(21) "Maryland Podiatry Act" means Health Occupations Article, Title16, Annotated Code of Maryland.

(22) "Notice of initial denial" means a nonpublic record issued by the Board by which an applicant or licensee is notified that the Board intends to deny a license, a change in licensure status, or some other benefit sought by the licensee.

(23) "Preliminary review" means the gathering of information to be used by the Board to determine if the Board should dismiss a complaint or conduct further investigation to determine if there is reasonable cause to charge a licensee with a violation of the Maryland Podiatry Act.

(24) "Probation" means a sanction imposed by the Board in a public final order in which the licensee is:

(a) Monitored by the Board for a period of time; and

(b) Required to comply with certain conditions to avoid further disciplinary action.

(25) "Public record" means a document that the Board is permitted or required to disclose to the public under General Provisions Article, Title 4, Annotated Code of Maryland.

(26) "Recommended decision" means a nonpublic record issued to the Board by an administrative law judge that sets out proposed findings of fact, proposed conclusions of law, a proposed sanction, or any combination of them.

(27) "Recusal" means the disqualification of a member of the Board to participate in a proceeding because of interest, bias, or some other reason that may interfere with the Board member's participation in a case.

(28) "Respondent" means a licensee, subject to the jurisdiction of the Board, that has been:

(a) Given notice to answer allegations concerning violations of the Maryland Podiatry Act;

(b) Notified as to a potential emergency suspension under State Government Article, §10-226(c), Annotated Code of Maryland; or

(c) Notified as to potential violation of Health Occupations Article, §16-501 or §16-502, Annotated Code of Maryland.

(29) "Revocation" means the removal of a podiatrist's license to practice podiatry.

(30) "Sanction" means an action by the Board, including a:

(a) Reprimand;

(b) Placement on probation;

(c) Fine; or

(d) Suspension or revocation of a license.

(31) "Show cause hearing" means a nonevidentiary hearing before the Board in which the licensee has the opportunity to demonstrate to the Board why the Board should not issue a proposed order or take an action that the Board may take.

(32) "Summary suspension" means the indefinite suspension of a license under State Government Article, §10-226(c)(2), Annotated Code of Maryland, taken if the Board believes the action is necessary to protect the public health, safety, or welfare.

(33) "Surrender" means the voluntary relinquishing of a license to practice podiatry that may be subject to certain conditions set by the Board.

(34) "Suspension" means a temporary denial of the right to use a license and is usually defined by:

(a) A specific period of time;

(b) Specific dates; or

(c) Specific conditions.

(35) "Violation" means an act or omission prohibited under Health Occupations Article, §16-311, Annotated Code of Maryland.

.03 Confidentiality of Proceedings.

A. Except as otherwise provided by law, the proceedings of the Board are confidential. The parties may not waive the confidentiality provided by this regulation.

B. The Office of Administrative Hearings' proceedings involving the adjudication of a Board-contested case and the administrative law judge's recommended decision are confidential. The respondent may not waive the confidentiality of the proceedings or of the patients whose medical records or care are reflected in the record of the proceedings.

C. To the extent possible, even after a final order is entered into by the Board, the parties shall refrain from revealing legal documents, oral statements, or information that would reveal the identity of any patients referred to in the Board's order.

.04 Representation by Counsel.

A. A respondent may be represented by counsel at any stage of a formal disciplinary action.

B. If a hearing is held on a matter, the respondent shall be represented:

(1) In proper person; or

(2) By an attorney who has been:

(a) Admitted to the Maryland Bar; or

(b) Specially admitted to practice law under Maryland Rules, Rules Governing Admission to the Bar of Maryland, Rule 14, Annotated Code of Maryland.

C. The Board may request the Office of the Attorney General to participate in a hearing to present the case on behalf of the State.

D. The member of the Office of the Attorney General presenting the case on behalf of the State has the same rights as any party with regard to:

(1) Submission of evidence, examination, and cross-examination of witnesses; and

(2) The filing of objections, exceptions, and motions.

E. The Board may request a member of the Office of the Attorney General to act as legal advisor to the Board on questions of:

(1) Procedure;

(2) Evidence; and

(3) Law.

.05 Proceedings under Health Occupations Article, §16-311, Annotated Code of Maryland.

A. Investigation of Complaints.

(1) The Board may:

(a) Make a preliminary review of each complaint; and

(b) Recommend that cases involving complaints over which the Board lacks jurisdiction be closed.

(2) The Board may send a copy of the complaint, either in its entirety or redacted, to the licensee that is the subject of the complaint in order to obtain a response to the allegations made in the complaint.

(3) Board subpoenas may be issued by the Board over the signature of the administrator.

B. Prosecution of Complaint.

(1) After reviewing any completed investigative information or reports for each complaint, the Board shall:

(a) Dismiss the complaint;

(b) Close the case with informal action;

(c) Issue a cease and desist order;

(d) Refer the matter for further investigation; or

(e) Vote to:

(i) Charge a licensee with a violation of Health Occupations Article, §19-311, Annotated Code of Maryland;

(ii) Consider the matter as a basis for summary suspension if the Board finds that the matter imperatively requires emergency action under State Government Article, §10-226(c)(2), Annotated Code of Maryland;

(iii) Initially deny licensure or reinstatement of a license; or

(iv) Accept the surrender of a license subject to conditions acceptable to the Board.

(2) The Board may refer a complaint or other disciplinary matter to the administrative prosecutor at any time, regardless of whether it has voted to charge a licensee with violations of the Maryland Podiatry Act.

C. Charges and Notice of Initial Denial.

(1) If the Board issues charges or a notice of initial denial, the document shall be:

(a) Served upon the respondent by certified mail at the address the respondent is required to maintain with the Board;

(b) Hand-delivered in person; or

(c) Served by other means reasonable to effect service.

(2) Charges or a notice of initial denial shall:

(a) Inform the respondent of the statutory basis for the charges or denial of licensure;

(b) Allege sufficient facts which the Board believes constitute either a basis for:

(i) Violation of the Maryland Podiatry Act; or

(ii) Denial of licensure;

(c) Notify the respondent of:

(i) Any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time; and

(ii) The consequences of failing to appear for scheduled proceedings or failing to request a hearing; and

(d) Be accompanied by a letter of procedure notifying respondent of the applicability of the Administrative Procedure Act to the Board's proceedings.

(3) If the Board is unable to serve the charges or notice of initial denial upon the respondent as described in §C(1) of this regulation, the Board may nevertheless proceed in prosecuting the case.

(4) If the Board issues a notice of initial denial to an applicant for a license, the applicant may not withdraw the application without approval of the Board.

D. Discovery.

(1) Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days:

(a) A list of the witnesses to be called;

(b) Copies of all documents intended to be produced at the hearing; or

(c) Both §D1(a) and (b) of this regulation.

(2) Mandatory Discovery.

(a) Each party shall provide to the other party, not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

(i) The name and curriculum vitae of any expert witness that will testify at the hearing; and

(ii) A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.

(b) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of §D(2)(a) of this regulation, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

(c) The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments on the sufficiency of the report:

(i) At the prehearing conference, if scheduled; or

(ii) Immediately before the scheduled hearing.

(d) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in §D(2)(a)(ii) of this regulation.

(3) Parties are not entitled to discovery of items other than those listed in §D(1) and (2) of this regulation.

(4) Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

(5) Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list after:

(a) The prehearing conference, if scheduled; or

(b) 15 days before the hearing, if no prehearing conference is scheduled.

(6) The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

(7) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall be construed, whenever possible, as supplementing and in harmony with COMAR 28.02.01.

(b) In a conflict between this regulation and COMAR 28.02.01, this regulation applies.

E. Case Resolution Conference.

(1) After service of charges or notice of initial denial, the Board shall offer a respondent the opportunity for a case resolution conference.

(2) At any other time during disciplinary proceedings, the Board may offer or the respondent may request a case resolution conference to discuss a disciplinary matter.

(3) Except as provided in Regulation .05E(1) of this chapter, the Board may deny a respondent's request for a case resolution conference.

(4) Matters admitted, revealed, negotiated, or otherwise discussed at a case resolution conference are without prejudice and may not be used by the respondent, administrative prosecutor, or the Board in any subsequent proceedings, unless the information is otherwise discovered or available through another source.

(5) Recommendations of the case resolution conference are not binding on the Board, which may:

(a) Modify a proposed settlement;

(b) Require additional conditions; or

(c) Reject the recommendation and require the respondent to proceed to a hearing.

(6) If the respondent and the administrative prosecutor are unable to reach an agreement for settlement that is recommended by the case resolution conference committee and ratified by the Board, the matter shall proceed to a hearing on the charges or notice of initial denial.

(7) If the respondent disagrees with the recommendation of the case resolution conference committee, the respondent may elect to proceed to a hearing in the matter, regardless of whether the Board has ratified the recommendation of the case resolution conference committee.

(8) Participation in a case resolution conference is not ordinarily a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings in a case.

.06 Sanctions, Hearings, and Final Order.

A. Surrender of License.

(1) The Board may require conditions for surrender of a license, including:

(a) An admission of a violation of the Maryland Podiatry Act;

(b) An admission of facts;

(c) A statement of the circumstances under which the surrender was offered or accepted;

(d) Restrictions on future licensure;

(e) Conditions for reinstatement of the license; or

(f) An agreement that the respondent may not apply for reinstatement of the license.

(2) Unless the Board determines that disclosure of the surrender is not in the public interest, a letter of surrender is a final order of the Board and is a public record under the General Provisions Article, § 4-101 et seq., Annotated Code of Maryland.

B. Hearings on Charges or Notice of Initial Denial.

(1) Hearings shall be conducted under State Government Article, Title 10, Annotated Code of Maryland.

(2) The Board may delegate its authority to hear contested cases to the Office of Administrative Hearings.

(3) Proceedings may not be open to the public.

(4) All records, including the recommended decision, shall be confidential and sealed.

(5) If a matter has been delegated to the Office of Administrative Hearings, the administrative law judge presiding over the proceedings shall issue to the Board a recommended decision containing:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) A proposed sanction; or

(d) A combination of §B(5)(a)—(c) of this regulation pursuant to the Board's delegation.

C. Burden of Proof.

(1) A licensee to whom the Board has issued a notice of initial denial has the burden to demonstrate by a preponderance of the evidence that the licensee is entitled to licensure or to receive the benefit sought which the Board has initially denied.

(2) The Board has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Podiatry Act.

D. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings, a party may file exceptions to the administrative law judge's proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision, before the Board makes a final decision.

(2) Unless otherwise permitted by the Board, within 15 days after the issuance of the recommended decision, or as otherwise specified by the administrative law judge in the recommended decision, either party may file written exceptions with the Board.

(3) Unless otherwise permitted by the Board, a party's written exceptions may not be longer than 25 double-spaced pages, and shall state with particularity the finding of fact, conclusion of law, or other matter excepted to, and the relevant portions of the record supporting the party's exception.

(4) Unless otherwise permitted by the Board, within 10 days after a party's exceptions are filed with the Board, the opposing party may file an answer to exceptions.

(5) Unless otherwise permitted by the Board, a party's answer to exceptions may not be longer than 25 double-spaced pages, and shall state with particularity a response to an exception and the relevant portions of the record supporting that response.

(6) Unless otherwise permitted, the Board may not consider a party's response to an answer to the exceptions.

(7) Unless otherwise agreed by the parties and permitted by the Board, an exceptions hearing shall be scheduled for the next meeting of the Board after receipt of the parties' exceptions and any answer to exceptions.

(8) Exceptions Hearing.

(a) An exceptions hearing shall be held before the Board.

(b) The hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the exceptions and answers to exceptions.

(c) The Board member presiding at the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(d) The presiding Board member shall make rulings reasonably necessary to facilitate the effective and efficient progress of the hearing.

(e) The respondent and the administrative prosecutor each may not exceed 30 minutes to present oral argument.

(f) The party who filed the exceptions shall proceed first and may reserve part of the allotted time for rebuttal.

(9) Unless otherwise agreed by the parties and permitted by the Board, the parties may not, in an answer to exceptions or in the hearing on exceptions, reference any document or other evidence or offer an exhibit that is outside the record of the evidentiary hearing before the administrative law judge.

(10) If neither party files exceptions within the time specified in §D(2) of this regulation, the Board shall consider only the recommended decision of the administrative law judge and the record of the evidentiary hearing in making its final decision.

E. Board Final Decision and Order.

(1) After review of the record and deliberation, the Board shall issue a final order consisting of findings of fact, conclusions of law, and the sanction or disposition to be imposed.

(2) Upon a finding that there has been a violation of the Maryland Podiatry Act, the Board may order that the licensee be fined, reprimanded, placed on probation, or the license suspended or revoked.

.07 Probation and Violation of Probation Proceedings.

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board considers appropriate, including but not limited to:

(1) Reeducation or completion of approved courses;

(2) Payment of a fine;

(3) Providing free podiatry services in a Board-approved program;

(4) Practicing under supervision;

(5) Monitoring by the Board or by an individual or entity approved by the Board, with periodic reporting to the Board;

(6) Periodic review of a licensee's clinical practices or billing;

(7) Periodic audits of a licensee's billing practices;

(8) An examination by a physician or other appropriate health care provider;

(9) Limitation of the licensee's practice;

(10) Obtaining a passing score on an appropriate examination; or

(11) Any other condition the Board considers appropriate for the rehabilitation or retraining of a licensee.

B. A term of probation may be defined by a specific period of time or the successful completion of certain conditions or acts by the licensee.

C. A licensee seeking termination of probation shall do so only by petitioning the Board to lift the probation when:

(1) The specific period of time has passed; or

(2) The licensee has successfully completed the conditions or acts required for termination.

D. If the Board determines that the licensee is not in compliance with the conditions of probation, the Board shall:

(1) Charge the licensee with a violation of probation;

(2) Take any action the final order or consent order provides for a violation of probation, including suspension of the license;

(3) Consider a summary suspension of the license; or

(4) Take any other action the Board considers appropriate and may take by law.

E. Charges for Violation of Probation.

(1) If the Board issues charges for a violation of probation, the service shall be as provided for in Regulation .05C(1) and (3) of this chapter.

(2) The charging document for a violation of probation shall:

(a) Inform the respondent of the statutory provision, condition of probation, or provision of the Board's order which the Board believes has been violated;

(b) Allege facts that constitute a basis for a violation of probation; and

(c) Notify the respondent of:

(i) Any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time; and

(ii) The consequences of failing to appear for those proceedings or failing to request a hearing.

(3) If the respondent requests a hearing on the charge of a violation of probation, the Board shall, before the hearing, provide the respondent with a case resolution conference as provided in Regulation .05E of this chapter, to discuss settlement of the matter.

F. Violation of Probation Hearing. A hearing for a violation of probation shall be held as set out in Regulation .05E of this chapter.

G. If the Board determines that a respondent has violated probation, the Board shall:

(1) Take any action the consent order or final order provides for a violation of probation;

(2) Impose additional conditions of probation; or

(3) Impose a sanction or take any other action the Board considers appropriate and may take by law.

.08 Post-Disciplinary Reinstatement of a License.

A. Reinstatement.

(1) A licensee shall petition the Board for a termination of a suspension of a license or a reinstatement after revocation or surrender of a license.

(2) A licensee that petitions the Board for reinstatement under the terms and conditions for reinstatement set out in a final order, letter of surrender, or other order of the Board, shall apply for reinstatement only under those terms and conditions.

(3) A licensee whose license has been revoked or surrendered for 5 or more years before filing a petition for reinstatement is ineligible for reinstatement but may apply for initial licensure.

(4) In addition to complying with any conditions for reinstatement ordered by the Board, an applicant for reinstatement shall:

(a) File an application for reinstatement with the Board; and

(b) Meet the requirements for reinstatement.

B. Consideration of a Petition for Reinstatement

(1) In considering a petition for reinstatement, the Board may review the licensee's entire Board file, including any information the Board received after the licensee's suspension, revocation, or surrender.

(2) The Board may require the licensee to undergo medical, psychological, psychiatric evaluations, and/or require drug and alcohol testing to determine the licensee's fitness to have their license reinstated.

(3) It is the licensee's burden, as an applicant for reinstatement, to demonstrate that the licensee meets all of the Board's requirements for reinstatement of the license at the time of the submission of the petition for reinstatement.

C. If the Board grants reinstatement of a license, it may impose any restrictions or conditions on the license or the licensee's practice that it considers appropriate.

.09 Judicial Review.

A final order of the Board is subject to judicial review as provided in Health Occupations Article, §16-315 and State Government Article, §10-222, Annotated Code of Maryland.

.10 Cost Recovery.

If after a hearing, a licensee is found to have violated any of the provisions of Health Occupations Article, §16-311, Annotated Code of Maryland, the Board shall be entitled to reimbursement of costs by the licensee including any or all of the following items:

A. Services rendered by court reporters;

B. Transcription of the hearing record by court reporters;

C. Expenses related to witnesses appearing for the State;

D. Obtaining or reproducing documents, exhibits, or other evidentiary items;

E. Hearing-related per diems and expenses for Board members; and

F. Other expenses directly related to the investigation and prosecution of the disciplinary action against the licensee.

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