

## **Title 10 MARYLAND DEPARTMENT OF HEALTH**

### **Subtitle 26 BOARD OF ACUPUNCTURE**

#### **Chapter 04 Rules of Procedure for Board Hearings**

Authority: Health Occupations Article, §§1A-205, 1A-309, 1A-310, and 1A-314; State Government Article, §10-206; Annotated Code of Maryland

##### **.01 Scope.**

This chapter governs procedures for disciplinary matters and hearings before the State Acupuncture Board and establishes the standards for use as a guide for the imposition of disciplinary sanctions against any Maryland licensed acupuncturist or any registered auricular detoxification specialist if, after a hearing, the Board finds that there are grounds under Health Occupations Article, §1A-309, Annotated Code of Maryland, to place a licensee or registered auricular detoxification specialist on probation, reprimand, suspend, fine, or revoke a license. The Board may consider aggravating and mitigating factors in determining sanctions.

##### **.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 cases which 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) "Advisory letter" means an informal action consisting of a nonpublic letter issued by the Board if the Board has a basis to charge the licensee with disciplinary violations, but closes the case by advising the licensee of the laws governing the practice of acupuncture.

(5) "Board" means the State Acupuncture Board.

(6) "Board counsel" means the attorney assigned by the Office of the Attorney General to provide legal advice to the Board, and to represent the Board in legal matters and suits filed against and on behalf of the Board.

(7) "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.

(8) "Case resolution conference committee" means a committee composed of members of the Board who make recommendations to the Board regarding settlement of disciplinary matters.

(9) "Cease and desist letter" means an informal action consisting of a nonpublic letter issued by the Board, ordering a licensee to cease from doing a specified activity or an unlicensed individual to cease the unauthorized practice of acupuncture.

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

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

(b) Sets forth sections of the Maryland Acupuncture Act the Board believes were violated; and

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

(11) Complaint.

(a) "Complaint" means a written document received by the Board which sets out conduct by a licensee which may violate the Maryland Acupuncture Act and which may be grounds for an investigation or disciplinary action by the Board.

(b) "Complaint" includes, but is not limited to:

(i) A consumer complaint;

(ii) A law enforcement report;

(iii) A report from a hospital or related institution;

(iv) A report from another state, country, or jurisdiction, or from the armed services of the United States;

(v) A report from an insurer;

(vi) A malpractice insurance report;

(vii) An advertisement;

(viii) A news article or report;

(ix) A report from a professional association, peer review committee, rehabilitation committee, or medical review committee as defined in Health Occupations Article, §14-501, Annotated Code of Maryland;

(x) A report from another health occupation board or other State agency;

(xi) A report from a court of this or another jurisdiction;

(xii) An application filed with the Board;

(xiii) A written memorandum of the Board alleging conduct by a licensee; and

(xiv) Other information, from any other source, which warrants investigation.

(12) "Complaint review committee" means the committee composed of Board members, Board staff, Board counsel, the administrative prosecutor, and other individuals designated by the Board to:

(a) Review complaints;

(b) Recommend to the Board that a matter be referred for investigation;

(c) Recommend to the Board that a matter be closed;

(d) Recommend to the Board that a licensee be charged with a violation of the Maryland Acupuncture Act or of an order of the Board;

(e) Recommend to the Board that the Board solicit a response from a licensee or respondent before further action; and

(f) Make recommendations to the Board regarding any other disciplinary matter which has been delegated to the complaint review committee by the Board.

(13) "Consent agreement" means informal action taken by the Board consisting of a nonpublic document which has been negotiated and agreed to by both the licensee and the Board to resolve an administrative, nondisciplinary matter.

(14) "Consent order" means a public document issued by the Board which 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.

(15) "Contested case" means a proceeding conducted under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

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

(17) "Final order" means a public document issued by the Board resolving a contested case either by consent or after an adjudication and 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 is authorized to do by law.

(18) "Imperatively requires emergency action" means a finding by the Board that an emergency action must 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.

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

- (a) A letter of education;
- (b) An advisory letter;
- (c) A letter of admonishment;
- (d) A cease and desist letter; or
- (e) A consent agreement.

(20) "Investigation" means the gathering of information after the Board receives a complaint against a licensee, which is necessary for the Board to determine whether there is reasonable cause to charge a licensee with a violation of the Maryland Acupuncture Act.

(21) Letter of Admonishment.

(a) "Letter of admonishment" means informal action consisting of a nonpublic letter issued by the Board, either before or after charges have been issued, if the Board believes a licensee has engaged in conduct which violates the Maryland Acupuncture Act but closes the case by admonishing the licensee.

(b) "Letter of admonishment" may reflect agreement by the Board and the licensee that the licensee shall perform certain conditions instead of the Board taking formal disciplinary action.

(22) "Letter of education" means informal action consisting of a nonpublic letter:

- (a) Issued by the Board if the Board does not believe that conduct rose to the level of a violation of the Maryland Acupuncture Act; and
- (b) In which the Board educates the licensee of the laws and standards of the practice of acupuncture.

(23) "Letter of surrender" means a public letter accepted by the Board in which the licensee agrees to surrender licensure to practice acupuncture, and which may include conditions for the Board's acceptance of the surrender as a resolution of the case instead of the Board taking formal disciplinary action.

(24) "Licensee" means an individual who is licensed to practice acupuncture in Maryland.

(25) "Licensure" means the authority granted to an individual by the Board pursuant to the Board's authority under the Maryland Acupuncture Act to practice acupuncture in this State.

(26) "Maryland Acupuncture Act" means Health Occupations Article, Title 1A, Annotated Code of Maryland.

(27) "Notice of initial denial" means a nonpublic document issued by the Board:

(a) By which an applicant or licensee is notified that the Board intends to deny a license, or a change in licensure status, or some other benefit sought by the licensee, and of the statutory grounds or other reasons for the denial; and

(b) Which provides notice to the licensee of any proceedings scheduled before the Board.

(28) "Post-deprivation hearing" means a contested case hearing scheduled by the Board after the Board has issued an order for summary suspension under State Government Article, §10-226(c)(2), Annotated Code of Maryland, in which the licensee may challenge the Board's basis for issuing the order for summary suspension.

(29) "Predeprivation hearing" means a nonevidentiary, show cause hearing held before the Board at which the licensee has an opportunity to demonstrate to the Board why the Board should not:

(a) Issue an order for summary suspension under State Government Article, §10-226(c)(2), Annotated Code of Maryland; or

(b) Take some other action which the Board is authorized by law to take.

(30) "Preliminary investigation" means the gathering of information necessary for the Board to determine whether 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 Acupuncture Act.

(31) "Probation" means a sanction imposed by the Board in a public final order by which the public is notified that the licensee has violated the Maryland Acupuncture Act and the licensee is monitored by the Board for a period of time and must comply with certain conditions in order to avoid further disciplinary action.

(32) "Prohibited act" means any conduct specified in the Maryland Acupuncture Act which can result in sanctions or penalties.

(33) "Public document" means a document that the Board is permitted or required to disclose to the public under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

(34) "Recommended decision" means a nonpublic document issued to the Board by an administrative law judge which sets out proposed findings of fact, proposed conclusions of law, and a proposed sanction, or any combination of these.

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

(36) "Registered auricular detoxification specialist" means an individual who has been registered by the Board for the purpose of assisting an individual who is undergoing detoxification to remove addictive substances from the body and to restore health.

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

(a) Charged with a violation of Health Occupations Article, §1A-309, Annotated Code of Maryland;

(b) Notified that the Board intends to initially deny a license, change a licensee's status, or deny some other benefit sought by the licensee;

(c) Notified of a potential emergency suspension of the licensee's license; or

(d) Otherwise notified that the licensee has the opportunity to appear before the Board to respond to allegations by the Board in a contested case.

(38) "Reprimand" means a sanction imposed by the Board in a public final order if the Board determines that the licensee has violated the Maryland Acupuncture Act, which:

(a) Does not place the licensee on a period of probation;

(b) Permits the licensee to continue practicing without license suspension; and

(c) May be imposed in addition to any other sanctions authorized by the Act.

#### .03 Confidentiality of Proceedings.

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

B. Office of Administrative Hearing proceedings involving the adjudication of a Board contested case and the administrative law judge's recommended decision are confidential, and 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, both before and 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 in any matter before the Board and at any stage of the proceedings.

B. If the matter goes to a hearing, a respondent shall be represented by the respondent, or by an attorney who is admitted to the Maryland Bar or specially admitted to practice law pursuant to Maryland Rules, Rules Governing Admission to the Bar of Maryland, Rule 14, Annotated Code of Maryland.

C. An administrative prosecutor assigned to the Board by the Office of the Attorney General shall prosecute disciplinary matters in Board proceedings.

D. The Board may be represented by and obtain advice of counsel assigned to it by the Office of the Attorney General in all proceedings.

.05 Proceedings Under Health Occupations Article, §1A-309, Annotated Code of Maryland.

A. Investigation of Complaints.

(1) The Board executive director may make a preliminary review of each complaint and may recommend to the Board that cases involving complaints over which the Board has no jurisdiction be closed.

(2) The Board's complaint review committee shall review complaints over which the Board has jurisdiction and make a recommendation to the Board as to the disposition of each complaint.

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

(4) Participation in review of complaints made to the Board is not ordinarily a basis for recusal of a Board member, Board counsel, or the administrative prosecutor from further proceedings in the case.

(5) The Board may issue subpoenas over the signature of the Board's executive director or a Board member.

.06 Sanctions, Hearings, and Final Order.

A. Surrender of License.

(1) If a respondent offers to surrender licensure after the initiation of an investigation, before or after service of charges, or instead of any or further disciplinary action, the Board may require conditions for the surrender of the license.

(2) The Board may require conditions for surrender of a license, including, but not limited to:

(a) The admission of a violation of the Maryland Acupuncture Act;

(b) The 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 again apply for reinstatement of the license.

(3) A letter of surrender is a final order of the Board and is a public record under State Government Article, §10-611, Annotated Code of Maryland, unless the Board determines that disclosure of the surrender is not in the public interest.

#### 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 of the Board delegated to the Office of Administrative Hearings shall be conducted under this chapter.

(4) Proceedings are not open to the public and all records, including the recommended decision, shall be treated as 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) Any combination of §B(5)(a)—(c) of this regulation under the Board's delegation.

(6) In proceedings before the Board, the Board's counsel may advise the Board on issues of law in the course of the proceedings.

#### C. Burden of Proof.

(1) A licensee against 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 Acupuncture Act.

#### D. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings, each 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) 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. The exceptions shall state with particularity:

(a) The findings of fact, conclusions of law, or other matter excepted to; and

(b) The relevant portions of the record supporting the party's exception.

(4) 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 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 following 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 over 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 any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(e) 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 exceptions, any answer to exceptions, or in the hearing on exceptions, reference any document or other evidence or offer any exhibit that is outside the record of the evidentiary hearing before either the Board or 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.

#### B. Prosecution of Complaint.

(1) For each complaint, after reviewing any completed investigative information or reports and considering the recommendation of the complaint review committee, the Board shall:

- (a) Dismiss the complaint;
- (b) Close the case;
- (c) Refer the case to peer review for mediation;
- (d) Close the case with informal action;
- (e) Issue a cease and desist order;
- (f) Refer the matter for further investigation;
- (g) Refer the matter to the administrative prosecutor; or
- (h) Vote to:
  - (i) Charge a licensee with a violation of Health Occupations Article, §1A-309, Annotated Code of Maryland;
  - (ii) Consider the matter as a basis for summary suspension 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 the Board has voted to charge a licensee with a violation of the Maryland Acupuncture Act.

#### C. Charges and Notice of Initial Denial.

(1) If the Board issues charges or a notice of initial denial, the document shall be served upon the respondent.

(2) Service is completed when the document is:

- (a) Sent by certified mail to the address the respondent is required to maintain with the Board; or
- (b) Hand delivered in person.

(3) 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 Acupuncture Act; or
    - (ii) Denial of licensure;
  - (c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing; and
  - (d) Be accompanied by a letter of procedure notifying the respondent of the applicability of the Administrative Procedure Act to the Board's proceedings.
- (4) If the respondent has not acknowledged receipt of the charges or notice of initial denial, the Board may nevertheless proceed in prosecuting the case if it has complied with §C(2) of this regulation.
- (5) 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, the following:

- (a) A list of the witnesses to be called;
- (b) Copies of documents intended to be produced at the hearing; or
- (c) Both §D(1)(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 who 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.

#### .07 Summary Suspension of a License.

A. Under State Government Article, §10-226(c)(2), Annotated Code of Maryland, the Board may order the summary suspension of a license if it determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare.

## B. Notice of Intent to Summarily Suspend.

(1) Based on information gathered in an investigation or otherwise provided to the Board, the Board may vote to issue:

(a) A notice of an intent to summarily suspend a license; or

(b) An order of summary suspension.

(2) If the Board votes to issue a notice of an intent to summarily suspend a license or an order of summary suspension, it shall refer the matter to the administrative prosecutor for prosecution.

(3) A notice of intent to summarily suspend a license shall include, but is not limited to:

(a) A proposed order of summary suspension which is unexecuted by the Board and which includes:

(i) The statutory authority on which the action has been taken;

(ii) Allegations of fact which the Board believes demonstrate a substantial likelihood that the licensee poses a risk of harm to the public health, safety, or welfare; and

(iii) Notice to the respondent of the right to request a full hearing on the merits of the summary suspension if the Board executes the proposed order of summary suspension; and

(b) An order or summons to appear before the Board to show cause why the Board should not execute the order of summary suspension and which notifies the respondent of the consequences of failing to appear.

(4) Service.

(a) The Board shall serve a respondent with a notice of intent to summarily suspend a license not later than 5 days before a predeprivation show cause hearing is scheduled before the Board.

(b) Service of the notice of intent to summarily suspend shall be made:

(i) Personally upon the respondent;

(ii) By certified mail to the address the respondent is required to maintain with the Board; or

(iii) By any other reasonable means to effect service.

(c) If the Board is unable to serve the notice of intent to summarily suspend a license upon the respondent as described in §B(4)(a) and (b) of this regulation, the Board may nevertheless proceed in prosecuting the case.

## C. Predeprivation Opportunity To Be Heard.

(1) If the Board issues a notice of intent to summarily suspend a license, the Board shall offer the respondent the opportunity to appear before the Board to show cause why the respondent's license should not be suspended before it executes the order of summary suspension.

(2) A Predeprivation Show Cause Hearing before the Board.

(a) The hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension.

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

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

(d) The respondent and the administrative prosecutor shall each be limited to 30 minutes in which to present oral argument.

(e) The respondent shall proceed first and may reserve part of the allotted time for rebuttal.

(3) The Board member who presides over the hearing:

(a) May allow either the respondent or the administrative prosecutor to present documents or exhibits which are relevant and material to the proceedings and which are not unduly repetitious when the presiding Board member believes that the documents or exhibits are necessary in order for a fair hearing; and

(b) May not allow testimony by any witness unless agreed to by the parties and approved by the Board in advance of the hearing.

(4) The members of the Board may be recognized by the presiding member to ask questions of either party appearing before the Board.

D. Summary Suspension of a License without Prior Notice or an Opportunity To Be Heard.

(1) In extraordinary circumstances, the Board may, after consultation with Board counsel, order the summary suspension of a license without first issuing a notice of intent to summarily suspend the license or providing a respondent with an opportunity for a predeprivation hearing if:

(a) The Board determines that the public health, safety, or welfare requires the immediate suspension of the license and that prior notice and an opportunity to be heard is not feasible;

(b) The order of summary suspension is served upon the respondent within 24 hours after its execution; and

(c) The respondent is provided with an opportunity for a hearing before the Board within 15 days after the effective date of the summary suspension.

(2) If the respondent requests a hearing under §D(1)(c) of this regulation, the hearing shall be conducted before the Board as provided in §C(2) of this regulation and shall provide the respondent with an opportunity to show cause why the Board should lift the summary suspension and reinstate the license.

#### E. Burdens of Production and Persuasion.

(1) In a show cause proceeding under §C of this regulation, the respondent may present argument in opposition to the allegations presented in the order for summary suspension or which otherwise demonstrates that the public health, safety, or welfare is not at risk.

(2) The administrative prosecutor bears the burden of demonstrating by a preponderance of the evidence that the public health, safety, or welfare imperatively requires the Board to summarily suspend the respondent's license.

#### F. Disposition.

(1) If the Board issues a notice of intent to summarily suspend a license before summarily suspending a license, the Board may, after the show cause hearing, vote to:

(a) Order a summary suspension;

(b) Deny the summary suspension;

(c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(2) If the Board orders a summary suspension before a show cause hearing, it may, at the conclusion of the hearing, vote to:

(a) Affirm its order of summary suspension;

(b) Rescind the order for summary suspension;

(c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(3) An order for summary suspension or any other order of the Board issued after the initiation of summary suspension proceedings are final orders of the Board and public records under State Government Article, §10-611, Annotated Code of Maryland.

#### G. Post-Deprivation Opportunity for an Evidentiary Hearing.

(1) If the Board orders the summary suspension of a license under §C or D of this regulation, the respondent may have an evidentiary hearing before the Board or before an administrative law judge, if the Board delegates the matter to the Office of Administrative Hearings.

(2) The respondent may request an evidentiary hearing within 10 days after the Board issues the order of summary suspension.

(3) Unless otherwise agreed by the parties, a hearing shall be provided within 45 days after respondent's request.

(4) An evidentiary hearing may be consolidated with a hearing on charges issued by the Board which include the facts which form the basis for the summary suspension.

(5) An evidentiary hearing shall be conducted under the contested case provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(6) If the Board has delegated the matter to the Office of Administrative Hearings, the administrative law judge shall issue to the Board a recommended decision with:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) A proposed disposition; or

(d) Any combination of §G(6)(a)—(c) of this regulation under the Board's delegation of the matter to the Office of Administrative Hearings.

(7) If the hearing is one combined with charges, the administrative law judge's determination as to the merits of the summary suspension shall be based only on those parts of the record that were available to the Board at the time it voted for the summary suspension.

.08 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 determines to be appropriate, including:

(1) Reeducation or completion of approved courses;

(2) Payment of a fine;

(3) Donation to an approved institution providing acupuncture services for the poor, indigent, or handicapped;

(4) Providing free acupuncture services in a Board-approved program;

(5) Entering into and complying with a contract with an addiction treatment program;

- (6) Practice supervision;
- (7) Monitoring by the Board or by an individual or entity chosen or approved by the Board and periodic reporting to the Board;
- (8) Periodic review of a licensee's clinical practice;
- (9) Periodic review or audit, or both, of a licensee's billing practices;
- (10) An examination by a physician or appropriate health care provider;
- (11) Limitation of the licensee's practice;
- (12) Achieving a passing score on an appropriate examination; or
- (13) Any other condition the Board determines to be 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 for probation:

- (1) When the specific period of time has passed; or
- (2) After the licensee has successfully completed the conditions or acts required for termination.

D. If at any time 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 provided for in the final order or consent order in the event of 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 which it is authorized to do 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 which the Board believes 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 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.

(1) Unless otherwise determined by the Board, a hearing for a violation of probation shall be held before the Board.

(2) The hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the charge that the licensee has violated probation.

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

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

(5) The respondent and the administrative prosecutor shall each be limited to 30 minutes in which to present oral argument.

(6) The respondent shall proceed first and may reserve part of the allotted time for rebuttal.

(7) The Board member who presides over the hearing:

(a) May allow either the respondent or the administrative prosecutor to present documents or exhibits which are relevant and material to the proceedings and which are not unduly repetitious when the Board member believes that the documents or exhibits are necessary in order for a fair hearing; and

(b) May not allow testimony by any witness, unless the parties agree and the Board approves before the hearing.

(8) The members of the Board may be recognized by the presiding member to ask questions of either party appearing before the Board.

(9) If the Board believes that the issues in the case warrant it, the Board may provide a respondent with an evidentiary hearing, either before the Board or an administrative law judge if the Board delegates the matter to Office of Administrative Hearings, which may be instead of or after a nonevidentiary violation of probation hearing held before the Board.

(10) The Board may consider the complexity of the case, the need for testimony or admission of other evidence, or any other factor it considers appropriate in determining whether to provide a respondent with an evidentiary violation of probation hearing.

(11) An evidentiary hearing shall be conducted under the contested case provisions of the Administrative Procedure Act.

G. After a hearing, the Board shall issue a final order consisting of findings of fact, conclusions of law, and an order that is a public record under State Government Article, §10-611, Annotated Code of Maryland.

H. If the Board determines that respondent has violated probation, the Board may:

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

(2) Impose additional conditions of probation; or

(3) Impose any sanction or take any other action that the Board considers appropriate and is authorized to do by law.

.09 Reinstatement of a License.

A. Petition for Reinstatement.

(1) A licensee who seeks reinstatement after suspension, revocation, or surrender of a license, or whose reinstatement involves a disciplinary issue, shall petition the Board for reinstatement.

(2) The Board may not consider a petition for reinstatement after the revocation of a license before 1 year after the effective date of the revocation, unless otherwise specified in the final order.

(3) A licensee who petitions the Board for reinstatement under 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.

(4) A licensee whose license has been revoked or surrendered for 3 or more years before filing a petition for reinstatement is not eligible for reinstatement but may apply for an initial license.

(5) 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;

(b) Meet the requirements for reinstatement set out in COMAR 10.26.02; and

(c) Maintain completion of required continuing education credits as if the licensee had been continually licensed.

B. Notice of Intent to Deny Reinstatement and Opportunity for a Hearing.

(1) If the Board issues a notice of intent to deny reinstatement, service shall be as provided for in Regulation .05C(1) and (3) of this chapter.

(2) A notice of intent to deny reinstatement shall:

(a) Inform the applicant of the Board's legal basis for the Board's belief that the respondent is not qualified for reinstatement, including any applicable statutory provision;

(b) Allege any facts which the Board believes supports the Board's reasons for denying reinstatement; 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 to request a hearing.

(3) If the applicant requests a hearing on the notice of intent to deny reinstatement, the Board shall, before the hearing, provide the applicant with a case resolution conference to discuss settlement of the matter as provided in Regulation .05E of this chapter.

(4) A hearing on the notice of denial of reinstatement shall be held before the Board or be delegated to an administrative law judge and conducted under the contested case provisions of the Administrative Procedure Act.

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

.10 Sanctioning Guidelines.

A. General Application.

(1) This regulation shall be used by the Board as a guide for sanctioning licensees pursuant to its authority under Health Occupations Article, §§1A-205 and 1A-309, Annotated Code of Maryland, for violations of the Acupuncture Act and the Board's regulations.

(2) The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.

(3) A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.

(4) Notwithstanding these sanctioning guidelines, in order to resolve a disciplinary matter, the Board and the licensee or registered detoxification specialist may agree to surrender a license or registration or to a Consent Order with terms, conditions, and sanctions agreed upon.

(5) In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation.

(6) If probation is imposed, the Board may impose appropriate terms and conditions of probation, and, if a licensee or registration holder violates the terms or conditions of probation, the Board may take further disciplinary action against the individual.

(7) In the event a violation does not fall within the sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and shall consider, to the extent possible, the factors in the sanctioning guidelines.

B. Range of Sanctions.

VIOLATION MINIMUM SANCTION MAXIMUM SANCTION MINIMUM PENALTY MAXIMUM PENALTY

VIOLATION	MINIMUM SANCTION	MAXIMUM SANCTION	MINIMUM PENALTY	MAXIMUM PENALTY
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;	Reprimand	Revocation/denial of license	\$0	\$5,000
(2) Fraudulently or deceptively: (a) Uses a license; or (b) Solicits or advertises;	Reprimand	Revocation	\$0	\$5,000
(3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;	Reprimand	Revocation	\$0	\$5,000
(4) Incompetent. (a) Is professionally incompetent; or (b) Is physically, or mentally incompetent;	Probation 6 months Reprimand	Revocation Revocation	\$0 \$0	\$5,000 \$5,000
(5) Provides professional services while under the influence of alcohol or any narcotic or controlled; dangerous substance;	Probation 6 months with education	Revocation	\$0	\$5,000
(6) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude;	Probation 3 months or denial of license	Revocation/denial of license	\$0	\$5,000
(7) Practices acupuncture with an unauthorized person or assists an unauthorized person in the practice of acupuncture;	Reprimand	Revocation	\$0	\$5,000
(8) Willfully makes or files a false report or record in the practice of acupuncture;	Reprimand	Revocation	\$0	\$5,000
(9) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;	Reprimand	Revocation	\$0	\$5,000
(10) Submits a false statement to	Reprimand	Revocation/denial	\$100	\$5,000

collect a fee;		of license		
(11) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive;	Reprimand	Suspension 2 years	\$0	\$5,000
(12) Fails to cooperate with a lawful investigation conducted by the Board;	Suspension 1 month	Revocation	\$100	\$5,000
(13) Commits any act of gross negligence, incompetence, or misconduct in the practice of acupuncture;	Reprimand	Revocation	\$0	\$5,000
(14) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture; or	Reprimand	Revocation	\$0	\$5,000
(15) Fails to comply with any Board order.	Suspension 1 year	Revocation	\$0	\$5,000

C. Mitigating and Aggravating Factors. Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following mitigating and aggravating factors in determining whether the sanction in a particular case should fall outside of the range of sanctions established by the guidelines. These factors may include, but are not limited to the following:

(1) Mitigating Factors:

- (a) Absence of a prior disciplinary record;
- (b) The licensee reported the violation to the Board;
- (c) The licensee voluntarily admitted violation, provided full disclosure to the Board, and cooperated during Board proceedings;
- (d) The licensee implemented remedial measures to correct or mitigate harm arising from the violation;
- (e) The licensee made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;
- (f) Evidence of rehabilitation or potential for rehabilitation;
- (g) Absence of premeditation to commit the violation;
- (h) Absence of potential harm to or adverse impact on the public;
- (i) Isolated incident and not likely to recur; and
- (j) The licensee's prior community service and present value to the community.

(2) Aggravating Factors:

- (a) Previous criminal or administrative disciplinary history;
- (b) The violation was committed deliberately or with gross negligence or recklessness;
- (c) The violation had the potential for, or caused, serious patient harm;
- (d) The violation was part of a pattern of detrimental conduct;
- (e) The licensee was motivated to perform the violation by his or her financial gain;
- (f) The vulnerability of the patient;
- (g) The licensee attempted to conceal the violation, falsified or destroyed evidence, or presented false testimony or evidence;
- (h) The licensee failed to cooperate with the Board's investigation; and
- (i) Previous attempts at rehabilitation were unsuccessful.

.11 Judicial Review.

A final order of the Board is subject to judicial review as provided in Health Occupations Article, §1A-311, and State Government Article, §10-222, Annotated Code of Maryland.

.12 Imposition of Penalties.

A. The Board may impose a civil monetary penalty instead of or in addition to a disciplinary sanction authorized by Health Occupations Article, §1A-309, Annotated Code of Maryland.

B. Practicing on an Expired License.

(1) The Board may impose a civil fine against an acupuncturist who practices acupuncture on an expired license in the amount of \$100 per day not to exceed \$5,000.

(2) The Board may not impose a fine under §B(1) of this regulation against an acupuncturist for practicing acupuncture on an expired license if the acupuncturist's license is reinstated within 30 calendar days of the expiration date of the license and the licensee complies with COMAR 10.26.02.05D.

C. Practicing Without a License or Misrepresentation.

(1) The Board may impose a civil fine of no less than \$5,000 and no more than \$50,000 against an individual who practices acupuncture without a license or represents to the public, by description of services, methods, or procedures, or otherwise, that the individual is authorized to practice acupuncture in this State.

(2) Factors determining the amount of the fine include, but are not limited to, the following:

- (a) The extent to which the individual derived any financial benefit from the unauthorized practice;

- (b) The willfulness of the unauthorized practice;
- (c) Actual or potential harm caused by the unauthorized practice;
- (d) The length of time in which the individual engaged in the unauthorized practice; and
- (e) The cost of any Board investigation.

.13 Consideration and Notice of Board Files.

In any matter governed by this chapter, the Board may consider or take official notice, or both, of any information contained in the Board's files.

.14 Hearing Costs.

A. If, after a hearing, a licensee is found to have violated provisions of Health Occupations Article, §1A-309, Annotated Code of Maryland, the Board shall impose a fee on the licensee that shall approximate the Board's cost of bringing the proceedings against the licensee.

B. The hearing costs may include any or all of the following expense items:

- (1) Services rendered by court reporters;
- (2) Transcriptions of the hearing record by court reporters;
- (3) Expenses related to witnesses appearing for the State;
- (4) Obtaining or reproducing documents, exhibits, or other evidentiary items;
- (5) Hearing-related per diems and expenses for Board members; or
- (6) Any other expenses directly related to the investigation and prosecution of the disciplinary action against the licensee.

Administrative History

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