

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 31 HEALTH OCCUPATION BOARDS

Chapter 01 Code of Conduct for Board Members and Investigators

Authority: Health-General Article, §2-104; Health Occupations Article, §§1-203, 1A-205, 2-205, 3-205, 4-205, 5-205, 6-205, 7-205, 9-205, 10-205, 11-205, 12-205, 13-206, 14-205, 16-205, 17-205, 18-206, and 19-205; Annotated Code of Maryland

01 Scope.

A. This chapter establishes a code of conduct for members of health occupation boards within the Department of Health and Mental Hygiene and for investigators employed by the health occupation boards.

B. This chapter does not apply to the Board of Nursing. The Board of Nursing's Code of Conduct regulations are set forth in COMAR 10.27.23.

02 Definitions.

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

B. Terms Defined.

(1) "Board" means a health occupation board regulated under the Health Occupations Article or the Health-General Article, Annotated Code of Maryland, with the exception of the Board of Nursing.

(2) "Board member" means an individual appointed by the Governor to serve on a Board.

(3) "Charging document" means the notice from the board pursuant to State Government Article, §10-208, Annotated Code of Maryland, which informs a licensee of an alleged violation or violations of a board's statute by the licensee.

(4) "Complaint" means a communication to a board of a possible violation of the disciplinary provisions of a Maryland licensing statute by a licensee.

(5) "Conflict of interest" means a situation in which a personal interest of a board member or a board investigator presents a potential conflict with the public interest in connection with an anticipated public action or decision.

(6) "Ex parte communication" means a direct or indirect communication between a board member and another party regarding the merits of an issue in a pending contested disciplinary case if the communication is made outside the presence of the opposing party in the case.

(7) "Investigator" means an individual who investigates complaints received by a health occupation board.

(8) Liaison.

(a) "Liaison" means a board member designated by the board to provide practitioner expertise to the investigator or prosecutor, or both, pertaining to a specific complaint.

(b) "Liaison" does not mean a board member who participates only in a preliminary review of a complaint.

(9) "Recusal" means nonparticipation of a board member in a specific matter before the Board.

.03 Recusal of Board Members.

A. Standards for Recusal.

(1) A Board member shall recuse himself or herself from board proceedings which involve situations in which the board member:

(a) Has a conflict of interest; or

(b) Cannot participate fairly and impartially.

(2) Personal familiarity with a respondent does not, of itself, require recusal of a board member.

B. Board Counsel Advice. A board member may seek the advice of the board's counsel in determining the need for recusal on a specific matter.

C. Requirements Following Recusal.

(1) The board member who is recused from a matter before the board may not:

(a) Participate in the board's discussion or vote on the matter; or

(b) Discuss the matter with other members of the board or discuss the board's review of the matter with other individuals.

(2) If the matter before the board is a disciplinary matter, the board member who is recused shall physically leave the room to ensure nonparticipation.

(3) The board shall document the recusal of the board member in the minutes of the board meeting.

D. Complaint Against a Board Member.

(1) A board member against whom a complaint is filed shall follow §C of this regulation for all discussion and voting concerning the complaint filed against the board member.

(2) If the board determines that there is an additional matter before the board which is reasonably related to the complaint filed against the board member, the board member against whom the complaint is filed shall follow §C of this regulation for the additional matter also.

(3) If, after investigation of the complaint, the board refers the case to the Attorney General's Office, the board member shall recuse himself or herself from all board activities until the final disposition of the case.

E. Liaison.

(1) A board member may not serve as a liaison on a complaint in which the board member has a conflict of interest.

(2) A board member who serves as the liaison on a specific complaint may:

(a) Participate in discussion of the complaint;

(b) Vote on the decision regarding charges based on the complaint; and

(c) Participate in the case resolution conference for the complaint.

(3) A board member who serves as the liaison on a specific complaint may not:

(a) Participate in a hearing on the complaint conducted by the board; or

(b) Participate in the discussion or vote on the complaint following the hearing conducted either by the board or by the Office of Administrative Hearings (OAH) through authority delegated from the board.

.04 Investigator.

A. An investigator may not conduct or participate in an investigation of a complaint in which the investigator has a conflict of interest.

B. In the investigation of a complaint against a member of a board, the board may consider using an investigator other than the one who is regularly assigned to conduct investigations for the board.

.05 Confidentiality.

A. A board member or investigator may not discuss disciplinary or other confidential matters with an individual other than:

(1) A board member;

(2) Board staff;

(3) The Attorney General's Office;

(4) A witness; or

(5) Another individual authorized by law to be involved in the case.

B. In the case of an ex parte communication, the board member shall follow the provisions of State Government Article, §10-219, Annotated Code of Maryland

Administrative History

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