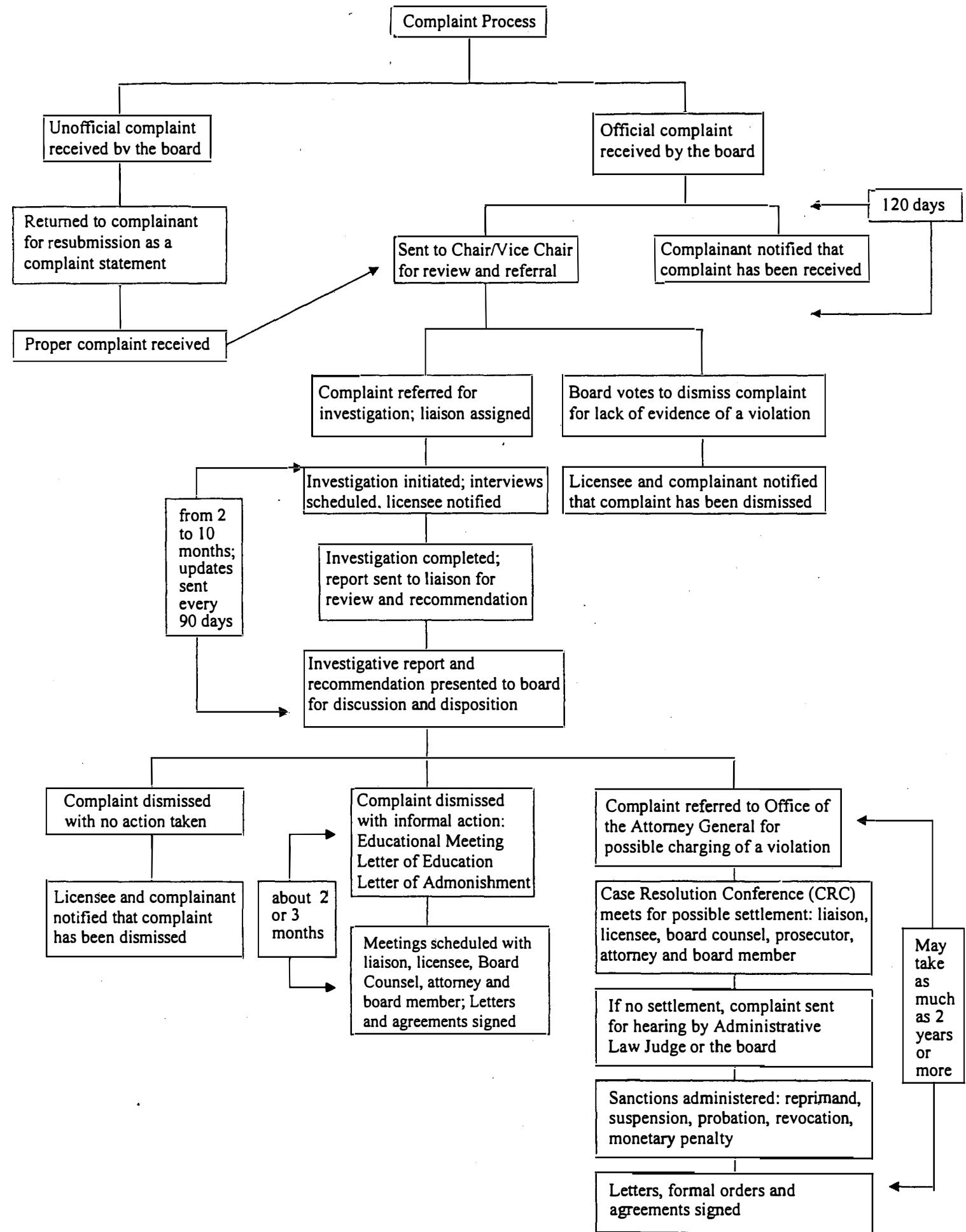


Board of Examiners of Psychologists

COMPLAINT PROCESS



COMPLAINT PROCESS

Licensees and complainants may be unfamiliar with the process followed by the Board when responding to a complaint about the practice of a licensed psychologist. The following description of the complaint process has been reprinted and edited from the Spring 1999 and Fall-Winter 1999 issues of the Board's FYI Newsletters.

Complaint

The Board is required to respond expeditiously to every complaint about the practice of a Maryland licensed psychologist. In any given year, 1% to 2% of the 2,281 licensed psychologists (as of 4/21/03) have complaints lodged against them. As many as six separate complaints have been brought against a licensee in the same year, although multiple complaints in the same year are the exception. The complaint may come from any source. A client, a family member or relative of a client, an insurance company, a colleague, or an agency involved with the licensee in some way may send a complaint to the Board. The Board itself can initiate a complaint when issues of unethical or incompetent practice come to its attention. For example, allegations of malpractice in civil suits involving psychologists are often sent to the Board.

When the Board receives a question or complaint about the practice of a licensee, the person is sent an information packet. Included within the packet are the Code of Ethics and Professional conduct and a complaint statement to be returned to the Board should the person decide to go forward with the complaint. Notice is given about the constraints and limits on confidentiality, particularly if any subsequent proceedings become a matter of public record.

The complainant must provide a detailed written description of the complaint. Witnesses or others involved in the matter must be identified. If the complaint was discussed with the licensee, the results of that discussion must be provided. The complainant must also note whether the complaint has been filed with any other official or organization. The complainant must agree to release records to the Board and must attest under penalty of perjury that the matters and facts set forth in the statement are true and correct, to the best of the person's knowledge and belief. In some cases, the Board may prepare its own complaint statement based on information that it receives.

Regardless of the source of the complaint, the Board process begins as soon as the formal complaint statement is received. The statement is usually reviewed by the Board chair or vice-chair to determine whether the alleged facts could constitute a violation under the *Maryland Psychologists Act*. Violations of the Act include violations of the Code of Ethics and Professional Conduct and other regulations of the Board. Even though the matter may be of grave concern to the complainant, the alleged misconduct may not have been a violation of the Act. If, on the face of the complaint, a violation could have occurred, the complaint is referred to the Board's investigator. In cases where the issues are unclear, the decision to investigate is delayed so that the entire Board can consider the matter at the next monthly meeting. Board members recuse themselves from cases when their relationship with the complainant, the licensee, or a witness would create a conflict of interest if they were to render an opinion or vote on the matter.

The current practice of the Board is to withhold notification to the licensee that a complaint has been received for 120 days. Should the investigation be completed within those 120 days and the Board has determined there has been no violation of the Act, therefore no action is taken against the licensee, the complainant is notified of the Board's decision. In this instance the licensee is not notified that a complaint had been filed. Should the investigation exceed 120 days or the licensee is to be interviewed by the Board investigator, the licensee is notified of the complaint and will receive a copy of that complaint, unless to do so would prejudice the investigation. The Board must formally determine that release of the complaint would prejudice the investigation and inform the respondent if it has made such a determination.

Initial Investigation

When the alleged facts could constitute a violation of the Act, the Board initiates an investigation. All significant persons named in the complaint are contacted and interviewed by the investigator. Relevant documents and supporting materials are subpoenaed and reviewed. The investigation is monitored by the Board's complaint review committee which meets monthly. When the initial investigation is complete, the investigator's report and exhibits are reviewed by a Board member designated as the liaison on the case. The liaison presents the case to the full Board during the closed (non-public) portion of the next monthly meeting, leading the discussion and making a recommendation on the disposition of the case.

The time needed to complete the investigation is quite variable. The investigator maintains contact with the licensee and the complainant, who are notified every 90 days of the status of the case. The number of allegations, the gravity of the alleged misconduct, the number of witnesses who must be interviewed, the preparation and receipt of materials needed for the investigation (e.g., getting illegible treatment notes typed or transcribing audio tapes), and the availability of parties to meet with the investigator are all factors affecting the length of the investigation, which can take several months or more. Not infrequently, parties or their attorneys postpone appointments with the investigator or subsequent meeting with Board members. These delays can be compounded by the Board and the complaint review committee, which usually meet only monthly. Thus, interim decisions on how to proceed are often delayed several weeks.

3. Initial Board Vote

When the Board hears the results of the completed investigation, an initial determination is made concerning the disposition of the case. By a majority vote the Board may **dismiss the case** if the results of the investigation do not substantiate a violation of the Act. The Board may find that **additional investigation** is necessary, postponing further decision on the case.

The Board may request an **informal meeting** between a few Board members and the respondent to discuss the allegations and circumstances of the case. At that meeting suggestions may be offered for avoiding similar situations in the future. The liaison reports the results of the meeting to the full Board, which may vote to **dismiss the case** or to **refer the case for charging and prosecution** by the Office of the Attorney General, as discussed below.

More often, after an informal meeting the Board votes to issue the respondent a letter of education or a letter of admonishment. A **letter of education** reviews the practice or conduct at issue. The respondent may be required to agree to corrective measures in order for the case to be dismissed. For more serious allegations, the Board may issue a **letter of admonishment**. This letter is also educative and may require corrective action. In addition, if the respondent is found to have violated the Act under similar circumstances in the future, existence of the prior letter of admonishment may result in a more severe licensing sanction.

At this stage in the process, the existence of the complaint remains a confidential licensing matter and is not publicly disclosed by the Board. This is true even if the case is dismissed with a letter of education or admonishment. Although no action was taken against the licensee, which remains in good standing, the respondent may be obligated to reveal the existence of the complaint and investigation when queried by insurers or credentialing committees.

When the allegations are substantial and a majority of Board members present find that there is probable cause the Act was violated, the Board may **refer the case for charging and prosecution** by the Office of the Attorney General. The Board forwards its investigative report, evidence, and a recommendation that the respondent be charged with specific violation of §18-313 of the Act, including any violations of the Code of Ethics and Professional Conduct. This next phase of the process is almost always the longest, and it is the phase over which the Board has least control.

4. Prosecution and Hearing

The prosecution and hearing of the case is governed by the regulations of the Board, COMAR 10.36.03, Procedure for Board Hearings and by the Maryland *Administrative Procedures Act*. An Assistant Attorney General (AAG) is assigned to the case. The AAG receives all the information that the Board has and may discuss the case with the Board liaison. The AAG often retains its own expert psychologist, who is not a Board member, to review the evidence. The AAG may ask the Board's investigator to obtain additional evidence. Witnesses may be re-interviewed. The AAG and the Board liaison confer over adding or deleting alleged violations.

If the AAG believes a preponderance of the evidence will show that the *Act* was violated and prosecution is warranted, a formal charging document is prepared. This letter serves as a formal notice to the respondent that a hearing on the matter has been scheduled. It enumerates the facts of the case that the State expects to prove, the corresponding violations of the *Maryland Psychologists Act* that occurred, and possible licensing sanctions that could be imposed by the Board for those violations. The respondent is informed of the right to a prehearing or case resolution conference (CRC), which may settle the matter prior to a formal hearing.

Even though the respondent is formally charged, the case is still a confidential licensing matter. The fact that the respondent has been charged with a violation of the *Act* is not disclosed by the Board to the public, which includes the complainant and any witnesses. Before the charge letter can be sent to the respondent, the full Board must review the document and vote to approve, approve with modification, or reject the charge letter. Although Board members became familiar with the alleged facts of the case when they voted to recommend charging, the charge letter may allege additional, or fewer, facts and violations.

The CRC is held a few weeks before the scheduled start of the formal hearing. Prior to that, the AAG and the respondent's attorney confer to consider how the case might be settled in a manner that would be acceptable both to the State and to the respondent. At the CRC, there are three parties: the State, represented by the AAG, the respondent with legal counsel, and the Board, which directs the CRC and is represented by the Board liaison along with the Board counsel. The AAG and the respondent propose their settlement of the matter, if they were able to agree upon one. The Board liaison and counsel hear the proposed settlement, or if there is no proposed settlement, hear which issues are obstacles to settlement. The liaison may propose a settlement with the respondent, if none was reached before the AAG and the respondent.

Regardless of the outcome of the CRC, any proposed settlement with the respondent must still be heard and approved by a majority of Board members. If a settlement is approved and the respondent consents, the case can be closed. A settlement may result in a Consent Order, which specifies the disciplinary action or license sanction imposed by the Board and accepted by the respondent. A Consent Order may also include agreed upon facts and conclusions of law.

If no settlement is proposed, or if the Board rejects any proposed settlement, a contested case hearing follows. The Board infrequently holds this formal hearing. The Board usually delegates its authority to hear the case to an Administrative Law Judge with a request that the ALJ hear the case and propose finding of facts, conclusions of law, and recommendations for license sanctions, if any. The Board could request that the ALJ decide, rather than propose, these findings and conclusions. However, the Board typically reserves for itself the role of final decision-maker in the matter.

Whether the hearing is conducted by an ALJ or by the Board, the State has the burden of producing evidence and showing by a preponderance of the evidence that a violation of the *Act* has occurred. Fact and expert witnesses for the State and the respondent give sworn testimony under both direct and cross examination. There are liberal rules of evidence, and hearsay is generally admissible. Documents may be submitted into evidence. The respondent may choose to testify. A transcript of the proceedings is made.

The ALJ is an experienced attorney and an employee of the executive branch of government, unlike state judges who are part of the judicial branch. Although the Board has expertise in deciding that certain conduct violates the Code of Ethics and Professional Conduct, the Board must give deference to an ALJ's findings of fact when the demeanor of witnesses is cited as a basis for giving more credibility to one version of events over another. Findings of fact are statements about what happened, for example, "The Respondent met with Patient A for reasons unrelated to the professional practice of psychology." An example of a conclusion of law is: "The Respondent entered into a dual relationship with Patient A, in violation of COMAR 10.36.05.05B(2)(b)."

Even when the case is heard by an ALJ, the Board almost always decides what disciplinary action or license sanction will be imposed when there is a finding that the *Act* was violated. The Board's decision is published as an Order, which includes findings of fact and conclusions of law. If by a majority vote the Board finds that the *Act* was not violated, the charges are dismissed, the licensee exonerated, and the record of the proceeding expunged.

Board Orders are public documents that may be obtained from the Board. There are compelling public policy reasons against issuing confidential Board Orders. Information about Orders is provided to the Maryland Psychological Association, the Association of State and Provincial Psychology Boards, licensing Boards of bordering states, and other parties upon written request.

5. Appeal

The respondent is entitled to an appeal or judicial review of an adverse final decision by the Board. Effective 10/1/99, the Board's decision to suspend or revoke a license may not be stayed pending judicial review. Judicial review is by a judge of the State Circuit Court where the respondent lives or has a principal place of business. The review is based on the record or transcript of evidence made at the ALJ or Board hearing, although the court could order that additional evidence be taken in certain circumstances. If a disputed finding of fact is supported by substantial evidence, which is evidence that is adequate to support a conclusion, the reviewing court may not substitute its judgement for that of the ALJ or the Board. The court has wider discretion in reversing or modifying a final decision if there is an error of law. The respondent and the Board are both entitled to appeal an adverse decision by the Circuit Court to the Court of Special Appeals.

6. License Sanctions

Revocation, suspension, probation, and reprimand are sanctions the Board may impose on a respondent. When a license is revoked, the respondent is prohibited from employment that requires a license to practice psychology. The Board has discretionary authority to reinstate a revoked license but will not consider reinstatement until at least 5 years have elapsed since the date of revocation. When a license is suspended, the respondent is also prohibited from employment that requires a license to practice psychology. The suspension is for a specified duration of time. A suspension is sometimes stayed to permit the respondent to continue working or to resume working after a portion of the suspension period has passed. The respondent is usually placed on **probation**, and any violation of the probationary conditions or new misconduct could result in a hearing and a Board decision to lift the stay of suspension. If the Board finds that there are grounds to suspend or revoke a license or to reprimand a licensee, the Board may impose a monetary penalty not exceeding \$10,000.

When a respondent is **reprimanded**, the Board's Order states that the *Act* was violated and additionally may place the respondent on **probation**. When a respondent is placed on probation, the Board places conditions on the respondent's practice of psychology until a specified period of time has passed, until certain requirements are met, or both. The most frequent probationary condition is supervision by a Board-approved psychologist. Supervision focuses on the conduct and services that were at issue in the case. Other probationary conditions include taking a Board-approved ethics course or obtaining other approved education and training. If the Board finds that the respondent had a mental disorder that was a factor in the misconduct, the respondent may be directed to enter into or continue with therapy. The respondent ordinarily must consent to permitting the supervisor or therapist to make required quarterly reports to the Board.