

## **VIII. COMPLAINTS**

### **A. General.**

This Rule sets out the procedures for making and processing complaints and/or inquiries against applicants for licensure and licensed social workers and marriage and family therapists where the complaints and/or inquiries are within the jurisdiction of the Mississippi State Board of Examiners for Social Workers and Marriage and Family Therapists (Board).

### **B. Filing of Complaints.**

Any person, firm, corporation, member of the Board or public officer may make a complaint to the Board. Complaints will be addressed by the Board upon receipt of a written, signed complaint, or upon the Board's own action.

1. Upon receipt of an inquiry, the Board's administrative staff will forward or advise the potential complainant how to obtain, a complaint form with instructions on how to file the complaint. Except for complaints initiated by the Board, complaints must be submitted in writing under oath upon the official form prescribed by the Board. Only those complaints that are in writing will be formally addressed by the Board. The complaint must specify the statute or rule allegedly violated and must contain a statement of the acts or omissions constituting the alleged violation including the dates of said acts or omissions. Forms are available on the Board's website.
2. Anonymous complaints will not be investigated.
3. Voluntary surrender of license. If a licensee who is the subject of a Board investigation or disciplinary proceeding voluntarily surrenders his or her license, absent unusual circumstances as determined by the Board, the Board will not discontinue the investigation or disciplinary proceeding unless the licensee consents to entry of an order limiting or prohibiting his or her practice of social work and marriage and family therapy in Mississippi.

### **C. Procedures for Processing Complaints.**

1. Upon receipt of a written complaint, or upon the Board's own initiative if the Board has reasonable cause to believe the laws, rules and regulations governing social workers and/or marriage and family therapists are being violated, the Board's Executive Director shall:
  - a. Log in the date the complaint is received in the Board office;

- b. Assign a complaint number and set up an individual complaint file. Complaint numbering shall begin in January of each year;
  - c. Determine whether the subject of the complaint is a licensed social worker, a marriage and family therapist or applicant or person otherwise within the jurisdiction of the Board;
  - d. Forward the complaint to the professional board member who has been designated to review the complaint; and
  - e. Send a letter to the complainant confirming receipt of the complaint.
2. If the subject of the complaint is within the jurisdiction of the Board, the Executive Director shall send a copy of the complaint by certified mail to the licensee or applicant in question for his or her written comment. The subject of the complaint (the respondent) will be provided twenty (20) calendar days from the date of the Executive Director's letter or notice in which to file a written response to the complaint together with all documents and exhibits in support of his or her position on the complaint.
3. Requests for the licensee or applicant's response to a complaint shall be considered properly served by the Executive Director when sent to the licensee or applicant's last known address of record at the Board's office. It is the responsibility of the licensee or applicant to keep the Board informed of his or her current address.
4. At the discretion of the Complaint Committee (investigating Board member and Executive Director) in consultation with Board council, the complainant may be given an opportunity to review and comment upon the response of the licensee or applicant.
5. The Executive Director may grant a reasonable request for extension of time within which a licensee or applicant or affected party may respond to a complaint and/or within which a complainant may comment upon response of the licensee or applicant.

**D. Complaint Committee Process.**

The Executive Director and the investigating Board member will comprise the Complaint Committee and will review the complaints filed in accordance with this Rule.

1. The investigating Board member will review the complaint and meet with the Executive Director and such other personnel as needed.

2. If the allegations in the complaint raise an issue addressed by the Board's laws, rules and/or regulations, the Complaint Committee will recommend a course of action regarding investigation of the complaint.
3. If the Complaint Committee determines that further assistance is needed, the Committee may retain the services of experts, consultants, or private investigators to assist in the investigations of complaints. At any point in its investigation of a complaint, the Complaint Committee may, at its discretion, assign the matter to an expert, consultant or private investigator for review and investigation.
4. The purpose of the investigation is to gather further data regarding the complaint and to verify facts surrounding the complaint. All complaints, unless dismissed for lack of jurisdiction, will be investigated. Investigations may include, but not be limited to: writing letters seeking further information; making phone calls; making onsite visits; and requesting pertinent documents.
5. The Complaint Committee shall oversee the investigation of the complaint.
6. The expert, consultant, or private investigator and/or Complaint Committee shall review and investigate the complaint and prepare a report concerning the complaint. The report shall contain a statement of the allegations, a statement of the facts, and an analysis of the complaint including a description of the circumstances surrounding the complaint, the records reviewed, the witnesses interviewed, and a statement of the expert, private investigator, consultant or Complaint Committee.
7. If the Complaint Committee determines that the Board does not have jurisdiction, both the Complainant and the licensee, applicant or affected party will be notified in writing by certified letter. The letter will explain why the case cannot be accepted for investigation and/or action by the Board or it may state that the complaint can be referred to another agency. The letter will come from the Board and may be signed by the Board chair, the investigating Board member, the Executive Director or other Board designee.
8. To facilitate the disposition of a complaint, the Board or Complaint Committee may provide any person with the opportunity to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. Statements made at any informal conference may not be introduced at any subsequent hearing before the Board on the merits of the complaint without the consent of all parties to the hearing.

### **E. Review by the Full Board**

1. A case summary including the alleged violations of the Board's laws, rules and/or regulations will be presented to the Board by the Complaint Committee along with recommendation(s) for disposition of the complaint. Reasonable attempts will be made to not disclose the identity of the licensee or applicant and the complainant by the Complaint Committee until the matter comes before the Board for hearing or final resolution.
2. The investigating Board member shall not vote on the decision regarding the disposition of the complaint and shall not participate in any adjudicatory or administrative hearing before the Board against the applicant or licensee arising out of the Complaint Committee's investigation.
3. The Board's review shall include the case summary presented by the Complaint Committee and determine if reasonable cause exists to issue a notice of contemplated action or notice of hearing and complaint. If the Board determines that there is not reasonable cause for the issuance of a notice of contemplated action or notice of hearing and complaint, a certified letter from the Board will be sent within thirty (30) calendar days of the Board's decision to the complainant and the licensee or applicant. The letter will set forth the Board's action and reason for its decision.
4. If the Board determines that there is reasonable cause to believe that the licensee or applicant has violated the Board's laws, rules, and/or regulations, the Board may cause a notice of contemplated action or notice of hearing and complaint to be issued for the licensee or applicant.
5. Following the issuance of a notice of contemplated action or notice of hearing and complaint, the Board may authorize the Complaint Committee to confer with the applicant or licensee for the purpose of seeking settlement of the complaint. Such settlement will be subject to approval by the Board, must be with the consent of the applicant or licensee, and must (among other things) include a knowing and intentional waiver by the applicant or the licensee of his or her rights to an administrative hearing and of the Board's ability to act as arbiter in an administrative hearing should settlement fail.

### **F. Administrative Hearings**

1. Pursuant to Chapters 53 and 54 of Title 73 of the Mississippi Code of 1972, as amended, every licensee or applicant shall be afforded notice and an opportunity to be heard before the Board when the Board has cause to believe that he or she has violated any of the laws, rules, or regulations of the Board.

2. The Board's Executive Director's duties shall include:
  - a. Issuing a notice of hearing and complaint or notice of contemplated action in the case.
  - b. Executing notices, scheduling orders, subpoenas, and other routine procedural documents that facilitate the conduct of the administrative proceedings.
  - c. Maintaining the official record of all papers and pleadings filed with the Board in any matter.
  - d. Preparing, certifying and filing with the appellate court the record of the case on appeal or review.
3. All hearings shall be conducted by the Board or by a hearing officer designated by the Board.
4. If a hearing officer is designated to hear a case, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post hearing matters in accordance with the requirements of the case in a manner that ensures due process and an efficient and orderly hearing and resolution of the case. If a hearing officer is not designated to hear the case or if the hearing officer is unavailable or unable to proceed, the Board chair or other designee of the Board shall have the authority to decide pre-hearing or preliminary matters.
5. The original of any papers, pleadings or other documents shall be filed with the Board office. Copies must be sent to the hearing officer and attorneys or parties of record.
6. The hearing officer or designee of the Board shall issue appropriate orders to control the course of the proceedings.
7. The hearing officer or the Board designee may order the filing of briefs or other documents and may set oral argument on any matter.
8. No more than two (2) continuances of the hearing will be granted without the approval of the Board for good cause shown.
9. No proposed settlement, consent agreement, voluntary surrender of a license, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the Board and executed by the Board and the licensee or applicant. The hearing officer or Board shall have the authority to seek information from the administrative

prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of a proposed settlement or clarification of the proposed terms and conditions. No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending disciplinary or licensure case.

10. A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or the Board designee upon the filing of a timely motion for continuance.
11. At the conclusion of the hearing, a final decision and order shall be entered by the Board. A Board member hearing officer, the Board chair, or designated Board member shall have the authority to sign the written decision of the Board.
12. The Board Executive Director shall serve the decision of the Board on the licensee or applicant.
13. If a license is restricted, suspended or revoked by the Board, the licensee shall immediately surrender his or her license to the Board as directed by the Board or Board designee.
14. If the licensee's scope of practice is restricted or limited or otherwise conditioned, the license may reflect such restriction, limitation or condition.

## **IX. DISCIPLINARY SANCTIONS**

### **A. General:**

The Board, upon recommendation of the Discipline Specific Committee, after a properly noticed and conducted due process hearing may, by majority vote, impose sanctions, singly or in combination, when it determines that violations have occurred and sanctions are in order. All decisions by the Board will be conveyed to the licensee, in writing, by the Board Chair.

### **B. Specific Sanctions:**

1. Revocation of the license.
2. Suspension of the license, for any period of time.
3. Censure of the licensee.
4. Written reprimand to the licensee.

5. Imposition of a monetary penalty of not more than Two Hundred Dollars (\$200.00).
6. Placement of a licensee on probationary status and requirement that the licensee submit to any or all of the following:
  - a. Regular reports to the board regarding matters which are the basis of probation.
  - b. Continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are basis of probation.
  - c. Such other reasonable requirement or restrictions as are proper.
7. Refusal to renew a license.
8. Revocation of probation which has been granted previously and imposition of any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated.
9. Disposition of any formal complaint may be made by consent order or stipulation between the Board and the licensee.

**C. Summary Suspension:**

The Board may summarily suspend a license without a hearing, simultaneously with the filing of a formal complaint and notice of hearing, if the Board determines that the health, safety, or welfare of the general public is in immediate danger.

Suspension of license without a hearing with simultaneous filing of a formal complaint and notice for a hearing provided under this section if the Board finds that the continued practice in the profession would constitute an immediate danger to the public. If the Board summarily suspends a license under the provisions of this subsection, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee or extraordinary conditions.

The Board may order a licensee to submit to a reasonable physical or mental examination, if the licensee's physical or mental capacity to practice safely is an issue in a disciplinary proceeding. All licensees consent to this procedure as a condition of licensure.

Failure to comply with a Board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described above.

## **X. ADMINISTRATIVE HEARINGS PROCEDURE**

### **A. Basis For Hearing:**

Any person who feels he/she has been aggrieved by a decision regarding the initial application for licensure or renewal of licensure or other decision which adversely affects licensure status or practice shall have the right to an administrative hearing.

### **B. Notification:**

Written notice will be provided on all decisions affecting licensure status. The notice will contain the reason for the Board's position and will provide instructions on how to request an administrative hearing, if desired, and the conditions under which it will be conducted. Upon receipt of notification the applicant/licensee will have fifteen (15) calendar days from the date of mailing, to request a hearing before the Board.

### **C. Hearing:**

If requested in writing within the allotted time frame, a hearing will be convened. Individuals may represent themselves or be represented by an attorney and have witnesses present and relevant written documentation presented at the hearing. Subpoenas may be issued and all matters required by law must be observed.

The hearing shall be conducted by the full Board or by a quorum of Board members as specified by law. The Board Chair or a designated Hearing Officer, will act as moderator for the hearing and individual Board members may question the applicant/licensee and witnesses. The applicant/licensee or his/her representative may likewise question witnesses and present oral arguments on his/her behalf. An official record will be made of the proceedings and kept on file along with all other documents related to the hearing. Transcripts of the proceedings will be made available upon written request accompanied by payment of the cost of each original transcript or for each copy.

Within thirty (30) days of the hearing, or other such time frame as may be determined necessary, a vote of presiding Board members will determine the course of action to take. A simple majority vote will be required on the decision made, with the Board Chair voting in case of a tie. Written notification will be provided by the Board Chair of the findings of fact by the Board and a final decision on the issue before the Board.



