

OHIO BOARD OF PSYCHOLOGY POLICY AND PROCEDURE MANUAL

SECTION 12: ENFORCEMENT

POLICY 12.2: ENFORCEMENT POLICIES AND STANDARD OPERATING PROCEDURES

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REVIEWED AND APPROVED



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PURPOSE

The purpose of this policy is to document the general framework and specific procedures relative to the responsibilities of the Ohio Board of Psychology (“Board”) to enforce ORC 4732.17 and ORC 4783.09 and all rules promulgated thereunder. The Board is authorized to regulate the practice of psychology, school psychology, and applied behavior analysis in Ohio. It is authorized by state law to regulate its licensees, Certified Ohio Behavior Analysts (COBA), supervisees, and applicants, as well as to seek to enjoin the unlicensed practice of psychology, school psychology, and applied behavior analysis.

The Board may refuse to issue a license or certificate to any applicant under ORC 4732 or ORC 4783, or may issue a reprimand or suspend or revoke the license of any licensed psychologist or school psychologist or the certificate of any COBA for violations consistent with any enumerated under the relevant professional conduct rules.

Responsible enforcement requires procedures specific to handling complaints, conducting investigations, affording due process to license holders, certificate holders, and applicants, conducting hearings and deliberations, and writing and approving orders and consent agreements.

SOP 1: COMPLAINT RECEIPT AND PROCESSING

Complaints are frequently received initially by telephone, although formal complaints must be submitted on forms prescribed by the Board and completion of forms serving to release confidential records of service provided. Each complaint form is accompanied by a minimum of one release of information form and may need to be accompanied by a second release for “psychotherapy notes” under HIPPA.

SOP 2: ACKNOWLEDGEMENT OF COMPLAINTS

Receipt of a written complaint is acknowledged by the designated investigator within a reasonable amount of time following receipt in the Board office, generally five (5) business days. Complainants are advised and instructed early in the process with written information describing the Board's procedures, including a description of possibilities in the event that the complaint leads to a formal administrative hearing ("COMPLAINANT INVESTIGATION PROCESS SUMMARY").

SOP 3: INITIAL EVALUATION OF COMPLAINTS/BOARD MEMBER ASSIGNMENT

Complaints shall be hand signed with adequate releases for a case to be opened as a formal investigation. All cases are documented and tracked in a confidential file maintained and accessed only by the Board's investigators and executive director. Written complaints are initially reviewed by an investigator, who in conjunction with the executive director and/or the Board's assigned Assistant Attorney General (AAG) from the Office of the Attorney General, determines if the complaint alleges violations of ORC 4732.17 or OAC 4783.09. Interviews and data review may be conducted to make such a determination. If a complaint, even if true, would not be a violation of law, the complaint is deemed to not provide a basis to conduct additional investigation. In such cases, the complaint shall be closed "No Basis to Proceed" upon the concurrence of the investigator, the executive director, a supervising member of the Board, and the AAG.

Each opened investigation shall be assigned to a member of the Board for supervision of the investigation ("supervising member"). The executive director may delegate the case assignment process to the investigators, who assign cases to Board members based on caseload numbers and specialty areas.

SOP 4: NOTIFYING A LICENSEE OR APPLICANT OF A COMPLAINT

Circumstances specific to each investigation determine when and in what manner the subject of a complaint is contacted. Initial correspondence may be by telephone to arrange an interview, or in writing, to request records and/or a formal written reply to complaint allegations. Written correspondence is generally handled by certified mail, given the requirement to track response time under rules requiring a written response to Board correspondence within 60 days. Letters to licensee or certificate holders or applicants requesting a written response to a complaint are accompanied by a document that describes the Board's investigation processes.

SOP 5: INVESTIGATORY INTERVIEWS AND INFORMAL MEETINGS

The Board occasionally employs an informal meeting procedure, whereby the subject of an investigation can discuss the charges or allegations in any pending complaint or investigation with the investigator, supervising member, the executive director, and the Board's AAG. An informal meeting is voluntary and may be conducted at the request of the license or certificate holder or his/her attorney or by the Board. Under the direction of the supervising member an informal meeting may be held to facilitate the fact-finding necessary to reach an appropriate disposition of a complaint.

SOP 6: CASE CLOSURE CORRESPONDENCE

In cases determined to not provide a basis to proceed to formal investigation, the subject shall be notified by mail of: the receipt of the formal complaint; the identity of the complainant; the Board's closure of the matter; and a description of the confidential nature of the complaint, under law.

When an investigation is conducted because allegations provide a basis to proceed, the supervising member may recommend that the file be closed with no formal Board action

indicated. This generally occurs when the allegations are determined to be untrue or the matter is determined to reflect minor technical problems that can be responsibly addressed through education. In such cases, the supervising member shall return the case with recommendations to the assigned investigator, who will refer it to another member for a second member case review. This process may result in continued investigation or concurrence for case closure. Files are not closed without action without the concurrence of a second member of the Board. Once a "Second Member Review" is completed without a recommendation to pursue formal action, the staff is authorized to close the case. In cases in which the Second Member does not authorize closure, that member assumes the role of Supervising Member and directs the staff in additional investigation as deemed necessary to move toward formal action or to close the case.

SOP 7: SETTLEMENT BY CONSENT AGREEMENT

Most complaints can be addressed via actions protective of the public through a process leading to the signing of a Consent Agreement by the Board and the subject of the complaint (and typically that person's attorney), rather than proceeding to a formal administrative hearing.

It is within the Board's discretion to enter into Consent Agreements. It is an option representing mutual consent between the applicant/licensee and the State Board of Psychology to resolve disciplinary matters without proceeding to hearing. Therefore, such an agreement is a specific document that addresses and resolves the issues between the Board and the applicant/licensee. Each Consent Agreement will be specifically written to address the particular facts/issues pertaining to the matter(s) at issue.

SOP 8: NOTICE OF OPPORTUNITY FOR HEARING

In the event that the supervising member, in conjunction with the executive director, assigned investigator, and the AAG, recommends that formal charges are deemed necessary, charges may be drafted for review, revision, and approval by the AAG. Once finalized, the charges are presented to the Board in Executive Session in the form of a Notice of Opportunity for Hearing. When charges are presented, the identity of the applicant/licensee is concealed by redaction of identifying information in the Notice, as is the identity of any client or evaluatee. A vote to approve the Notice shall take place in public session. The supervising member does not vote on the issuance of formal charges. After the vote is taken, if the Board votes to proceed with charges, the identity of the applicant/licensee can be revealed as a matter of public record and the subject's name is read into the minutes of the meeting.

While ORC section 4732.06 authorizes any one or more of the Board members to conduct any proceeding, hearing, or investigation necessary to the Board's purposes (including matters related to COBA's), care is always taken to assure that no member other than the Supervising Member has knowledge about a particular investigative case. Such a procedure is necessary so that the Board can maintain a quorum (a majority of the Board) to hear the case or review the report and recommendations of a hearing officer, in the event charges are brought against an applicant or license or certificate holder.

Section 119.07 of the Revised Code requires that an affected party shall be given notice of a right to hearing by registered (certified) mail with return receipt requested. The Notice shall include the charges or other reasons for such proposed action, the law(s) or rule(s) directly involved, and a statement to the party that s/he is entitled to a hearing if requested within thirty (30) days of the time of mailing the notice.

The Notice must also inform the party that s/he may appear in person or with his/her attorney at the hearing, that the party may present his/her position, arguments, or contentions in writing, and that at the hearing s/he may present evidence and examine witnesses appearing for and against the party. The Notice must include the allegations the state intends to prove during its case.

SOP 9: MAILING THE NOTICE

Procedures for mailing a Notice of Opportunity for Hearing are outlined in Section 119.06 of the Revised Code. Pre-hearing rules are outlined in OAC 4732-17-03.

SOP 10: CONDUCTING HEARINGS

Hearings shall be conducted by: a hearing officer, who shall be a licensed attorney; or, by a quorum of the Board with the assistance of an attorney hearing facilitator or a board member attorney. The Board may at its discretion refer any request for hearing to a hearing officer to convene an administrative proceeding under Chapter 119 of the Revised Code.

Any Board member who has substantially participated in the investigation will not participate in the hearing or in the deliberation following the hearing.

When the matter is under deliberation, neither the Board's Assistant Attorney General nor any member of the Board's staff are allowed to participate and shall generally be excluded from the room. This is done to avoid any appearance of prejudice or undue influence. Board staff may be required to respond to the Board relative to procedural issues, scheduling issues, and other issues relative to the completion of the Board's business.

SOP 11: POST-HEARING PROCESSES

The use of a hearing officer and procedures and timelines for the issuance of a written Report and Recommendations (R&R), setting forth the findings of fact, conclusions of law, and the recommended action to be taken by the Board are outlined in Section 119.09 of the Revised Code. A photocopy of the hearing officer's R&R is served by certified mail upon the subject and his/her attorney within five (5) days of the filing of the R&R with the Board. The subject is granted fifteen (15) days in which to file written objections with the Board, which shall be considered by the Board before deliberating and subsequently approving, modifying, or disapproving the R&R.

The subject of a hearing submitting a timely written reply to the R&R shall be afforded the opportunity to address the Board in person prior to the onset of deliberations. The subject and/or counsel may address the Board for no longer than fifteen minutes total. The AAG representing the State shall be afforded equal time to address the Board after listening to any presentation made by the subject and/or that person's counsel. The presentations shall be transcribed for the record.

Following a hearing, the quorum of the Board deliberating on a given matter shall draft the Board's Decision and Order. This document should reference the R&R, and indicate acceptance, rejection, or amendments. The R&R may be relied upon to provide a summary of the evidence, findings of fact, conclusions of law, and the Order concerning what discipline, if any, should be taken. The Board shall carefully determine which aspects of the R&R to revise/amend, if any.

If the Board accepts the recommendation of the hearing officer without any modifications, then it should indicate in its Order that the R&R is "affirmed and approved."

If the hearing officer's findings of fact or recommended disciplinary action(s) are modified or rejected in whole or part by the Board, the reasons for the modification/rejection must be clearly

expressed and set forth in the Board's Order. An effective date of any disciplinary action shall be established in the Board's Order.

The Order should be sufficiently detailed so that a reviewing court will be able to ascertain the analysis and reasoning behind the decisions. It is often appropriate to specifically refer to the portions of the transcript or specific testimony at the hearing supportive of the findings of fact and the reasoning or analysis underlying any decision. The Board's AAG shall not interact with the Board during deliberations, although the Office of the Attorney General will generally provide an attorney to give procedural/technical assistance regarding matters that must be in the Order.

The decision, including the findings of fact, the conclusions of law, and the Order of the Board, must be formally written, must bear the signature or signature stamp of the members who voted to adopt the action, certified by the Executive Director, and include the date any disciplinary action is to take effect. The Board authorizes the Executive Director or designee to use signature stamps in lieu of an original Member signature when an Order is prepared for mailing and approved by said member (for example, by email or telephone).

A certified photocopy of the Order, including Findings of Fact and Conclusion of Law, and motions adopting it are forwarded to the applicant/licensee and his/her attorney by certified mail. The Board shall retain the original of all Orders.

SOP 12: DENIAL OF ADMISSION TO EXAMINATION FOR LICENSURE/CERTIFICATION

OAC 4732-9-01 outlines the requirements for admission to the examination for a psychologist license, and OAC 4732-9-02 outlines the requirements for admission to the examination for a school psychologist license. OAC 4783-4-01 and 4783-4-02 outline requirements for certification as a COBA.

On occasion, the Board entrance examiner will determine that an applicant has not met all the requirements for admission to examination for licensure or certification. The entrance examiner resolves any related issues on a case by case basis in consultation with the Board's AAG. When the entrance examiner judges that an applicant does not meet requirements for admission to the appropriate examination, s/he drafts a Notice of Opportunity for Hearing in the form of a letter proposing to deny the application including the reason(s) for the proposed denial and the required explanation of rights to a hearing. The AAG reviews the letter prior to presenting the Notice of Opportunity for Hearing to the Board for approval.