

POSSIBLE COURSES OF BOARD ACTION

ARIZONA STATE BOARD OF RESPIRATORY CARE EXAMINERS

Possible Courses of Board Action

ARS 41-1091 (B)

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I. Allegation Stage (Section R-4 on Board Meeting Agenda):

- a) No questions can be asked of Licensee by the Board Members*
- b) Licensee has opportunity to state his/her case.*
- c) Board discussion of the issue*

B. Board options:

1. Possible Actions

- a) Dismiss the complaint – (Non-disciplinary)*
 - (1) Found to be without merit.*
- b) File a Letter of Concern – (Non-disciplinary)*
 - (1) Insufficient evidence to support direct action but sufficient evidence for Board to notify Licensee that continuation of said action may result in Board action.*

c) Request an “Informal Interview” or issue a Complaint for a “Formal Hearing.”

d) Enter into a Stipulated Order, or a Consent Order.

2. Since the Board cannot take disciplinary action at the Allegation stage, a stipulated agreement is the only way to achieve resolution of a case where the Board believes an individual has committed an act of unprofessional conduct.

3. A non-disciplinary agreement can be utilized to achieve resolution of a case where the Board believes rehabilitation is required, but does not make a finding of unprofessional conduct.

**II. Informal Interview (Section R-5 on Board Meeting Agenda):
Information provided at the Allegation Stage is of concern or may be true.**

a) Board members can ask questions.

b) Board discussion

A. Board options:

1. Dismiss the complaint – (Non-disciplinary)

a) Found to be without merit.

2. File a Letter of Concern – (Non-disciplinary)

a) Insufficient evidence to support direct action but sufficient evidence for the board to notify the licensee that continuation of said action may result in Board action.

3. Decree of Censure – (Disciplinary)

a) Constitutes official action against license of practitioner.

b) This is instituted because of unprofessional conduct.

4. Restrict the licensee's practice to specific settings - (Disciplinary)

a) This is instituted because of unprofessional conduct. This is geared to prevent conduct that harmed a previous patient or resulted in psychological duress in the practitioner, from happening again.

5. Fix a period of probation best adapted to protect the public health and safety, and rehabilitate or educate the Licensee.

a) Types of probation

(1) Disciplinary - Instituted because of unprofessional conduct. Geared toward overseeing licensee's practice, to educate the licensee, and/or to rehabilitate a licensee with substance abuse problems that affected the person's practice.

- (2) **Non-disciplinary - Geared toward overseeing licensee's practice and/or to rehabilitate a licensee with substance abuse problems.**
- (3) **It is possible for the Board to enter into a Consent Agreement at this juncture, in lieu of proceeding to a Formal Hearing.**

- b) Can set requirements for completion of an ethics course*
- c) Can model a court-ordered term of probation, including documentation of compliance with the court's requirements, payment schedules and furnishing of receipts.*
- d) Please see the document entitled, "EXAMPLE OF PROBATIONARY TERMS" for a list of standard probationary terms.*

III. FORMAL HEARING (Section R-6 on Board Meeting Agenda):

- a) *Case called by Board Chair*
- b) *All Board members identify themselves for the Record*
- c) *Roll call vote on all Disciplinary actions*

1. Case is presented on behalf of the State of Arizona by the Assistant Attorney General, who:

- a) *Explains the procedures to Licensee*
- b) *Provides an Opening Statement*
- c) *Licensee also has a right to provide an opening statement*
- d) *Calls the Executive Director and any other witnesses*
 - (1) The Licensee has the right to cross-examine the State's witnesses
- e) *Requests the admission of any documentary evidence to the State's case as exhibits*
- f) *Cross-examines Licensee and any witnesses called by the Licensee*
- g) *Provides a closing statement*
 - (1) The Licensee, has the opportunity to provide a Closing Statement

2. Witnesses sworn in as follows:

"State your full name _____" "Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?"

3. Once both parties have presented their cases, the Board discusses the matter.

- a) *If a preponderance of the evidence supports the State's case, a motion is made to "Accept the Findings of Fact (means the Board agrees with the reason for the Complaint) and Conclusions of Law (means the Board agrees that the Laws and Rules have been violated) as set forth in the Complaint and Notice of Hearing."*
 - (1) The Board must relate reasons for its acceptance of the facts and conclusions back to the Complaint.

A. Board options:

1. **Dismiss the complaint – (Non-disciplinary)**
 - a) *Found to be without merit.*
2. **File a Letter of Concern – (Non-disciplinary)**
 - a) *Insufficient evidence to support direct action but sufficient evidence for the board to notify the licensee that continuation of said action may result in Board action.*
3. **Decree of Censure – (Disciplinary)**
 - a) *Constitutes official action against license of practitioner*
 - b) *Instituted because of unprofessional conduct*
4. **Restrict the licensee’s practice to specific settings - (Disciplinary)**
 - a) *Instituted because of unprofessional conduct*
 - b) *Geared to prevent conduct that harmed a previous patient or resulted in psychological or physical duress in the practitioner, from happening again*
5. **Fix a period of probation best adapted to protect the public health and safety, and rehabilitate or educate the Licensee.**
 - a) *(Disciplinary) - Instituted because of unprofessional conduct*
 - (1) Geared toward overseeing licensee’s practice, to educate the licensee, and/or to rehabilitate a licensee with substance abuse problems that affected the person’s practice
 - b) *(Non-disciplinary)*
 - (1) Geared toward overseeing licensee’s practice and/or to rehabilitate a licensee with substance abuse problems
 - c) *It is possible for the Board to enter into a Consent Agreement at this juncture, in lieu of proceeding to a Formal Hearing*
 - d) *Can set requirements for completion of an ethics course*
 - e) *Can model after a court-ordered term of probation, including documentation of compliance with the court’s requirements, payment schedules and furnishing of receipts*

f) Please see the document entitled, "EXAMPLE OF PROBATIONARY TERMS" for a list of standard probationary terms

6. Suspension of License - (Disciplinary)

7. Revocation of License - (Disciplinary)