

# Maine Department of Professional and Financial Regulation

## OFFICE OF LICENSING AND REGISTRATION

### *Administrative Complaint Procedures*

#### **Scope**

The Office of Licensing and Registration (“OLR”) provides administrative and support services to 34 professional and occupational licensing boards, and directly manages five additional licensing programs. This document describes the administrative complaint procedures followed by all boards other than the Manufactured Housing Board, the Board of Pharmacy and the Real Estate Commission.

#### **Overview of the Complaint Process**

The purpose of the licensing system is to protect the public against—

- ✓ Dishonest or unethical practitioners, and
- ✓ Practitioners who have fallen below minimum standards of competence in the practice of their profession.

Violators are subject to disciplinary action that can range from a formal warning to revocation of a license.

Disciplinary action is taken by the board that licensed the practitioner. Administrative support of the complaint process is provided by OLR. The OLR complaint coordinator is also the contact person for assistance and information relating to the complaint process. You can reach complaint coordinator Cathy Neumann at:

Office of Licensing and Registration  
35 State House Station  
Augusta, ME 04333-0035  
(207) 624-8660 (voice)  
kaidena.l.neumann@maine.gov

#### **Filing a Complaint**

To file a complaint against a licensee, visit OLR’s web site at [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing) and click the link entitled “File a complaint.” If you do not have internet access, you may request paper forms from the complaint coordinator.

If the person complained against is a trade licensee (i.e., electrician, plumber, oil burner technician, propane/natural gas technician or boiler operator), the complaint is routed to the chief inspector for the applicable board. Complaints against non-trade licensees are docketed and assigned a complaint number.

## Document Exchange

After the complaint is docketed, the complaint coordinator acknowledges receipt of the complaint and sends a copy to the licensee. The licensee is asked to respond within 30 days. Upon receipt of the licensee's response, a copy is sent to the complainant. The complainant is asked to reply within 10 days, but a reply is not mandatory. The complainant's reply, like the original complaint, is shared with the licensee.

If the complaint is filed against a health care professional, a release form will be sent for the complainant to sign.

## Investigation

Copies of the complaint, the licensee's response, and the complainant's reply are sent to the board's complaint committee. Generally, the complaint committee consists of 1 board member who serves as complaint officer, the OLR administrator of the board, the Assistant Attorney General assigned to the board, and frequently, an OLR investigator. The complaint committee may investigate the complaint beyond the document exchange described above. The complainant, the licensee, or other persons with information pertinent to the complainant may be contacted by a member of the complaint committee as part of this investigation.

## After Investigation

The complaint committee will evaluate the information obtained during the investigation and will make a recommendation to the board. The recommendation will be an agenda item at a regularly-scheduled board meeting. You can check the board's meeting schedule and meeting agendas at OLR's web site, [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing). Please be aware that a recommendation scheduled on short notice may not appear on a posted agenda. Board meetings take place at OLR's offices in Gardiner, Maine.

The recommendation may be to:

1. *Dismiss the complaint*

If there is insufficient evidence to determine whether or not a violation of the board's statute or rules occurred, if the licensee's conduct does not appear to constitute a violation of the board's statute or rules, or if the complaint committee believes that no violation occurred, the complaint committee may recommend dismissal of the complaint. A dismissal cannot be appealed by the complainant, but a dismissed complaint may be reopened if new evidence is received.

2. *Proceed with a consent agreement*

A consent agreement is a voluntary mechanism for resolving enforcement matters without a hearing or further proceedings. A consent agreement is a negotiated settlement between the board, the licensee and the Attorney General in which the licensee admits to one or more violations of board law or rules and agrees upon the sanctions to be imposed.

The complainant is not a party to the consent agreement. Consent agreements are a matter of public record.

3. *Schedule the matter for an adjudicatory hearing*

Adjudicatory hearings are held before the board and are conducted in accordance with the Maine Administrative Procedure Act. The Assistant Attorney General assigned to the board presents the case against the licensee by calling witnesses to testify, presenting documentary evidence, etc. The licensee also has the right to testify, to call other witnesses to testify on his/her behalf, and to present documentary evidence. Many times the complainant will be called as a witness as well. The licensee has the right to be represented by a lawyer and to request the issuance of subpoenas to compel the attendance of witnesses and the production of documents. Each side may cross-examine witnesses called by the other side. All testimony is taken under oath.

At the close of the hearing the board deliberates and votes on whether or not a violation of the board's statute or rules occurred. If the board determines that one or more violations occurred, the board decides on what sanctions to impose. Once the board's decision has been reduced to writing and signed by the board chair, the Decision and Order, so-called, constitutes the final action of the board.

The licensee can appeal the Decision and Order to court. The complaint committee and the complainant cannot appeal.

## **Penalties**

A board may impose any of the following sanctions:

- ✓ Issue a warning, censure or reprimand to a licensee
- ✓ Suspend a license for up to 90 days per violation or occurrence
- ✓ Revoke a license
- ✓ Impose a civil penalty of up to \$1,500 per violation or occurrence
- ✓ Impose conditions of probation on a licensee
- ✓ Assess the licensee for all or part of the actual expenses of the investigation and hearing

## **Confidentiality**

With limited exceptions, complaints and investigative records are confidential during the pendency of an investigation. Complaints are only identified by complaint number on board meeting agendas, and board members avoid referring to the complainant or licensee by name when evaluating the recommendation of the complaint committee. The complaint and the complaint file become public upon the conclusion of an investigation, unless confidentiality is required by some other provision of law. Patient/client treatment records obtained during investigation, such as a chiropractor's chart or a therapist's notes, remain confidential indefinitely.

### **Reporting of Disciplinary Action**

OLR posts on its web site copies of all disciplinary action imposed on licensees via Consent Agreement or Decision and Order. OLR also reports most disciplinary action taken against health care licensees to the Healthcare Integrity and Protection Data Bank maintained by the U.S. Department of Health and Human Services, and to the Maine Department of Health and Human Services. Disciplinary action taken against real estate appraisers is reported to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

### **Recovery of Money Damages**

A board cannot *order* a licensee to pay money damages to a complainant, although a licensee may agree to restitution or reimbursement in a consent agreement. The primary purpose of the OLR complaint process is to protect the public against dishonest or incompetent practitioners by disciplining violators. The penalties listed above protect the public by punishing the licensee, discouraging future violations by the licensee, rehabilitating the licensee, and promoting compliance by other licensees. The OLR complaint process is not designed to redress violations by the recovery of money damages to compensate persons harmed by the licensee's conduct. This is a function of the courts. A complainant is free to file a civil action against a licensee in addition to filing a complaint with OLR.