

Alabama Board of Examiners in Counseling
Administrative Code

Chapter 255-X-8
Contested Cases Involving Refusal, Revocation or Suspension
Of License; Initiation Of Proceedings; Complaint Procedure; Appeal And Judicial
Review; Emergencies; Reprimand; Public Records

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255-X-8-.01 Contested Cases.

(1) An applicant, licensed professional counselor (LPC) or associate licensed counselor (ALC) is entitled to an evidentiary hearing before the Board when any action is brought against that person.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civic actions or by certified mail, return receipt requested, or by registered mail. Delivery of the notice of the hearing shall constitute commencement of the contested case proceeding.

(3) The notice shall include:

(a) A statement of the time, place, and nature of the hearing which must be not less than thirty (30) days nor more than sixty (60) days from the date of mailing or service of the notice.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

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(4) In a contested case, on motion of a party, the presiding officer conducting the hearing may issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure.

(5) Nonappearance of the person against whom action is taken shall not prevent a hearing from being conducted by the Board on charges brought provided proof of service of the notice of Board action is shown. The presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

(6) Parties shall have the right to be represented by counsel and to conduct cross-examination of witnesses.

(7) The Board shall have the authority to administer oaths, to issue subpoenas, and to summon witnesses to take testimony in all matters relating to its duties.

(8) The Board shall have the authority to enter into settlement negotiations with the party against whom action is taken.

(9) The record of proceedings before the Board shall include:

- (a) All pleadings, motions, and intermediate rulings.
- (b) All evidence received or considered and all other submissions; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information.
- (c) A statement of all matters officially noticed.
- (d) All questions and offers of proof, objections, and rulings thereon.
- (e) All proposed findings and exceptions.
- (f) All decision, opinion, or report by the hearing officer at the hearing.
- (g) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration or privilege, provided, if such memoranda or data contain information of a proprietary and confidential nature, it shall be protected by the Board from public disclosure.

(10) The proceedings before the Board shall be open to the public. Oral proceedings shall be recorded either by mechanized means or by qualified shorthand reporters. The records or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the Board for at least five years from the date of decision and shall be made available for inspection by the public, except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.

(11) On the basis of any hearing or upon default of applicant, LPC, or ALC, the board shall make a determination specifying its findings of fact, based solely on the evidence in the record and on matters officially noticed in the record, and conclusions of law.

(12) The board may withhold, deny, revoke, or suspend any license upon proof by proper hearing that the applicant or licensee has violated the Code of Alabama 1975, §34-8A-16(a) 1 through (a)9. In addition to any other disciplinary action, the board may levy and collect administrative fines in an amount not to exceed one thousand dollars (\$1,000) for each violation. The board may also assess all legal costs for the preparation and execution of a disciplinary action.

(13) Results of the proceeding shall be mailed to the applicant, LPC or ALC by registered mail, or certified mail, return receipt requested, or by personal service.

(14) Every order and judgment of the Board shall take effect immediately on its promulgation unless the Board in such order or judgment fixes a probationary period for the applicant, LPC, or ALC. Such order and judgment shall continue in effect unless upon appeal the courts by proper order or decree terminate it earlier.

(15) The Board may make public its orders and judgments in such manner and form as it deems proper, and for such periods as it may direct.

(16) The results of the Board action shall become final in thirty (30) days following their entry unless appealed. After thirty (30) days, a party's right of appeal is waived unless extended under the provisions of §41-22-20(d), Code of Ala. 1975.

(17) The Board shall have the authority to reinstate suspended or revoked licenses.

(18) The Board shall have the authority to furnish evidence to assist prosecutors in the prosecution of violations of the act and to investigate complaints regarding possible violations of the act.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §§34-8A-1 et seq.

History: Filed September 30, 1982. **Amended:** Filed November 26, 1996; effective December 31, 1996. **Amended:** Filed September 22, 2000; effective October 27, 2000. **Amended:** Filed November 9, 2006; effective December 14, 2006.

255-X-8-.02 Initiation Of Proceedings.

(1) The Board may initiate such action as it deems appropriate to investigate and determine the applicant's, associate licensed counselors' (ALC) and licensed professional counselors' (LPC) compliance with the provisions of the Act or the Board's regulations.

(2) Unless the board initiates proceedings on its own motion, it shall take action only upon receipt of a complaint made in writing, stating in detail the activities that the party complained of is alleged to have engaged in, and presenting the evidence of when, where and how a violation occurred. The complaint, which must be signed, shall be filed with the Executive Officer of the Board.

(3) Any person submitting a complaint may be required to support it by personal appearance before the board.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §§34-8A-1 et seq.; §§41-22-1 et seq.

History: New Rule: Filed November 26, 1996; effective December 31, 1996. **Amended:** Filed September 22, 2000; effective October 27, 2000.

255-X-8-.03 Complaint Procedure.

(1) In the event a complaint is filed against an applicant, ALC, or LPC, or the Board determines from other information that an investigation is necessary, the procedure for investigation of complaint shall be as follows:

(a) The Board's investigative committee consists of no less than three (3) members, two (2) of which may be the Executive Director and a member of the Board. A third member of the investigative committee may be another member of the board, a contract employee of the board (e.g., consultant), or another person appointed by the Executive Director and acceptable to legal counsel to the board. The committee shall investigate said information or complaint to determine whether there is probable cause for disciplinary proceedings.

(b) The investigative committee may exercise subpoena power in investigating any complaint or information obtained regarding an applicant, ALC, or LPC.

(c) The investigative committee may enter into informal settlements with the applicant, ALC, or LPC under investigation provided said settlement is ratified by the Board.

(d) Upon completion of the investigation, the investigative committee, in consultation with Board's legal counsel, shall determine whether probable cause exists for the Board to issue a summons and complaint and initiate a formal disciplinary proceeding. If the investigative committee determines at this time that no probable cause exists, the proceedings will terminate at that point.

(2) In the event the investigative committee determines that probable cause exists for the filing of a summons and complaint, the Board's attorney shall prepare the summons and complaint.

(3) The notice of proposed Board action, summons and complaint shall be mailed by registered or certified mail, return receipt requested, to the most recent address of the respondent on file with the Board. The notice, summons and complaint may also be sent by personal service as in civil actions, and shall be mailed or served not less than thirty (30) days nor more than sixty (60) days from the date of the hearing.

(4) The Board may, and in its discretion, appoint some impartial person to act as a Hearing Officer at disciplinary hearings. In the event a Hearing Officer is appointed, the Hearing Officer shall assist the Board in presiding at the disciplinary proceeding, and in ruling on all questions of evidence and procedure, notwithstanding any other provisions of these rules to the contrary.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-1 et seq; §41-22-1, et seq

History: New Rule: Filed November 26, 1996; effective December 31, 1996. **Amended:** Filed September 22, 2000; effective October 27, 2000. **Amended:** Filed May 30, 2003; effective July 4, 2003. **Amended:** Filed November 9, 2006; effective December 14, 2006. **Amended:** Filed July 14, 2016; effective August 18, 2016.

255-X-8-.04 Appeal and Judicial Review.

(1) Appeals of the final action or order of the Board shall be made in accordance with the provisions of the Alabama Administrative Procedures Act governing judicial review of final decisions in contested cases.

(2) All proceedings for appeal may be instituted by filing a notice of appeal and a cost bond with the Board to cover the reasonable costs of preparing the transcript of the proceeding under review.

(3) The notice of appeal shall be filed within thirty (30) days after the receipt of the decision of the Board denying, revoking or suspending a license.

(4) No such appeal, while pending appropriate court action, shall stay or supersede the Board's denial, revocation or suspension of a license.

(5) The petition for judicial review shall be filed in the circuit court of Montgomery County within thirty (30) days after the filing of the notice of appeal. Copies of the petition shall be served upon the Board and all parties of record.

(6) Within thirty (30) days after receipt of the notice of appeal or within such additional time as the court may allow, the Board shall transmit to the reviewing court the original or a certified copy of the entire record and transcript of the proceedings under review.

(7) The petition for judicial review shall name the board as respondent and shall comply with the provisions of the Alabama Administrative Procedures Act, Section 41-22-20, Code of Ala. 1975.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §§34-8A-1, et seq., §41-22-20

History: New Rule: Filed November 26, 1996; effective December 31, 1996. **Amended:** Filed September 22, 2000; effective October 27, 2000.

255-X-8-.05 Emergencies.

(1) The Board may suspend a license in an emergency situation, without a hearing or upon an abbreviated hearing, if it finds that danger to the public health, safety, or welfare requires an emergency suspension, the Board shall state in writing its reasons for that finding. The suspension shall become effective immediately, unless otherwise stated therein, and may be effective for a period of not more than one hundred twenty (120) days.

(2) When a summary suspension is ordered by the Board, a formal hearing shall be promptly instituted, in compliance with the provisions of the Alabama Administrative Procedures Act and this chapter.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-1 et seq. ; §41-22-19

History: New Rule: Filed November 1996; effective December 31, 1996

255-X-8-.06 Reprimand.

(1) The Board may issue written reprimands to licensees as an alternative to a formal hearing before the board. The Board shall determine the procedures for a written reprimand that shall authorize the investigative committee and members of the board to deliberate and issue written reprimands. No less than two members of the board, one of whom must be a practitioner, along with the investigative committee shall participate in deliberations leading to a written reprimand. All other members of the board shall remain available for possible appeal. The written reprimand shall not be published by the board, unless required by law, though a copy of the reprimand will be entered into the permanent file of the licensee for a period of time determined by the investigative committee and the members of the board issuing the reprimand.

(2) Licensees wishing to appeal the written reprimand may demand a formal hearing before the board members who were not involved in the original reprimand decision. The result of such an appeal may lead to withdrawal of the reprimand, retention of the reprimand, or imposition of additional penalties on the licensee by the board.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-1 et seq.

History: New Rule: Filed September 22, 2000; effective October 27, 2000. **Amended:** Filed November 9, 2006; effective December 14, 2006.

255-X-8-.07 Disciplinary Oversight. The Board shall exercise its jurisdiction for disciplinary oversight of licensees during the period of their licensure. The Board shall not accept voluntary surrender of a license on the part of a licensee to avoid possible disciplinary actions by the Board. Securing inactive status of a license shall not negate jurisdiction of the board for a licensee's actions during any period of active licensure. If a former licensee or a licensee with inactive status is found to be in violation of the relevant state law or regulations a public announcement of the decision of the Board shall be proffered in a manner to be determined by the Board.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-18

History: New Rule: Filed November 9, 2006; effective December 14, 2006.

255-X-8-.08 Legal Counsel. The Attorney General or representative of the Attorney General shall be the attorney of the Board, but the Board may in its discretion employ other counsel.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code Ala. 1975, §34-8A-18

History: New Rule: Filed November 9, 2006; effective December 14, 2006

255-X-8-.09 Complaint and Investigation Files. Except as provided in Code of Alabama 1975, §§34-8A-16(b)(2) and 34-8A-16(e)(3) and (4), all records, reports, documents, photographs, and information contained in a complaint and investigation files shall be confidential, shall not be public record, and shall not be available for court subpoena or for discovery in civil proceedings.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-16

History: New Rule: Filed September 28, 2009; effective November 2, 2009.

255-X-8-.10 Public Records. The board shall release the following information to the public regarding complaint files and disciplinary action proceedings:

- a. A settlement agreement adopted and ratified by the board that closes a complaint file and represents the board's final decision in the disciplinary action proceedings.
- b. The formal charges or orders to show cause against an associate licensed counselor or a licensed professional counselor filed by the board's executive director and any amendments thereto.
- c. The board's final decision in disciplinary action proceedings entered after a formal disciplinary action hearing.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §34-8A-16

History: New Rule: Filed September 28, 2009; effective November 2, 2009.

