

Rule 6.5 Complaint and Administrative Hearings.

1. ***Opportunity for a Licensee or Applicant to have a Hearing.*** Every licensee or applicant shall be afforded notice and an opportunity for a hearing before the Board takes any action, the effect of which would be:
 - a. to deny a license for any cause other than failure to pass an examination or failure to meet educational or administrative requirements for the issuance of a license;
 - b. to refuse to renew license for any cause other than failure to complete the application or pay the required renewal fee;
 - c. to suspend a licensee;
 - d. to revoke a license; and/or
 - e. take any of the action authorized by Miss. Code Ann. Section 73-23-59(1), as amended.
2. ***Complaint Procedures.***
 - a. *Filing a Complaint.* Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board. Only those complaints that are in writing and signed on the official Mississippi State Board of Physical Therapy complaint form will be formally addressed by the Board, unless extenuating circumstances exist. The forms required for an official complaint can be obtained from the Board's website or office.
 - b. *Procedures upon Receipt of a Complaint by the Board's Office.* The Board Executive Director/Administrator or Investigator will act as the Complaint Manager. Upon receipt of the complaint, the Board staff shall:
 - i. log in the date the complaint is received in the Board office;
 - ii. determine whether the person against whom the complaint is made is a current licensee;
 - iii. assign a complaint number and set up an individual file;
 - iv. notify the Board designee ("Complaint Consultant"), if applicable, of receipt of a complaint; and
 - v. send a letter to the complainant confirming receipt of the complaint.
 - c. *Review of the Complaint.*
 - i. The Complaint Consultant and/or Complaint Manager will comprise the Complaint Committee and will review the contents of the complaint to determine whether or not the allegation constitutes a possible violation of the *Mississippi Physical Therapy Law* and the rules and regulations promulgated thereto. If the allegation does not indicate a possible violation under the Board's jurisdiction, the Complaint Committee will recommend that the complaint be dismissed by the Board and thereafter notify the complainant and the subject of the complaint of the outcome of the complaint.
 - ii. If the allegation of the complaint does indicate a possible violation under the Board's jurisdiction, the subject of the complaint ("Respondent") will be provided with written notice, along with a copy of the complaint within thirty (30) calendar days of receipt of the complaint in the Board office, unless the Complaint Committee reasonably determines that disclosure of the complaint at that time may impair, impede, or compromise the efficacy or integrity of the investigation of the complaint. The notice shall be considered properly served when sent to the licensee, applicant, or affected party's last known address of record at the Board's office. It is the responsibility of the licensee, applicant, or affected party to keep the Board informed of his or her current address.

- iii. If the Complaint Committee determines that disclosure of the complaint will impair, impede, or compromise the integrity or efficacy of the investigation, the investigation of the complaint will proceed without notice to the Respondent at the initial stage.
- iv. Unless it has been determined that disclosure of the complaint will impair the integrity or efficacy of the investigation, so that the investigation is proceeding without notice to the Respondent at the initial stage, the Respondent shall be provided twenty (20) calendar days from the date of the Board's notice to the Respondent in which to file a written response to the complaint and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position. The Complaint Manager or Complaint Committee may grant a reasonable request for extension of time within which a Respondent may respond to a complaint and/or within which a complainant may comment upon response of the Respondent.
- v. Upon receipt of the written response of the subject of the complaint, the Complaint Committee will send a copy of the response to the complainant.
- vi. The complainant will have seven (7) working days from the date that the written response is sent by the Board to submit a written reply to the response to the Board.
- vii. If the Complaint Committee has determined that it is in the best interest of the investigation to withhold disclosure of the complaint during the initial stage of the investigation, a copy of the complaint will be provided to the Respondent no later than at the time of the issuance of a notice of contemplated action or notice of hearing and complaint.

3. ***Reviews & Investigations by Complaint Committee.***

- a. After the receipt of a complaint and the expiration of the period for the response, the Complaint Committee shall consider the complaint, responses, complainant's reply to the responses, and other relevant material available and determine whether further investigation is warranted and/or make a recommendation to the Board. The Complaint Committee may also offer the licensee or applicant the opportunity to engage in the informal process for addressing complaints.
- b. At any point in its investigation of a complaint the Complaint Committee may, at its discretion, assign or reassign the matter to an investigator to ascertain additional facts and report to the Complaint Committee. The Complaint Committee may procure the services of experts, consultants, or private investigators to assist in the investigations and handling of complaints.
- c. The expert, consultant, or private investigator and/or Complaint Committee shall review and investigate the complaint and prepare a report concerning the complaint.
- d. Upon completion of a formal investigation, the Complaint Committee shall consider the facts regarding the complaint. The Complaint Committee shall review the investigative report and supporting documents and make a recommendation to the Board.
- e. When in the opinion of the Complaint Committee a complaint warrants the issuance of a formal complaint against the licensee or applicant, the Complaint Committee shall recommend such action to the Board in accordance with the *Administrative Proceedings'* section of this Rule.

4. ***Disposition of Complaints.***

a. Settlement:

The Board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.

b. Board Review:

Upon review and consideration, the Board shall vote upon the proposed recommendation(s) of the Complaint Committee and shall either uphold, reverse, or modify the recommendation(s).

c. Board Action:

The Board may take any action with regard to a complaint which is within its authority and which is within the law, including scheduling the matter for administrative hearing and referring the complaint to another licensing board or appropriate authority for further action.

d. 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 physical therapy in Mississippi.

5. ***Settlement by Informal Proceedings.***

a. Purpose:

The Board or the Complaint Committee may enter into informal proceedings with the party who is the subject of a complaint for the purpose of resolving the matter appropriately.

b. Informal Conferences:

This process includes an informal review or meeting between the Complaint Committee or Board and the licensee or applicant to fully explore the issue(s) involved in the complaint and to facilitate the disposition of a complaint. This process may occur at any time prior to the Board entering any order with respect to the complaint. No prejudice shall be attached to the licensee or applicant for failure to attend an informal conference.

c. Agreement:

The Board or Complaint Committee and the licensee or applicant may enter into a proposed stipulation, consent order or agreement for disciplinary action or resolution of the complaint.

No proposed settlement, consent agreement, voluntary surrender of a license, or other proposal for the resolution of a pending complaint or disciplinary action shall be effective unless approved by the Board. The settlement, consent order, or other proposal must be executed by the Board chair or Board designee and the licensee or applicant and his or her legal representative (if applicable). No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case or action based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending complaint or disciplinary or licensure action.

6. ***Administrative Proceedings.***

All administrative disciplinary hearings shall be conducted in accordance with the *Mississippi Physical Therapy Law* and the rules provided hereinbelow.

- a. **Case Summary:**
A case summary, including the alleged violations of the *Mississippi Physical Therapy Law*, as amended, and the Rules and Regulations of the Board will be presented to the Board by the Complaint Committee along with the recommendation(s) for the disposition of the complaint. Reasonable attempts will be made to not disclose the identity of the Respondent and the complainant by the Complaint Committee until the matter comes before the Board for hearing or final resolution.
- b. **Reasonable Cause:**
The Board's review will include the case summary presented by the Complaint Committee to determine if reasonable cause exists to issue a notice of contemplated action or notice of hearing and complaint.
- c. **Dismissal of a 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 formal complaint, a letter from the Board will be sent within thirty (30) calendar days of the Board's decision to the complainant and to the party named in the complaint. The letter will set forth the Board's action and reason for its decision.
- d. **Notice and Service to Respondent:**
If the Board determines that there is sufficient evidence or cause to issue a complaint or notice of contemplated action, the formal notice and complaint shall be signed by the Executive Director/Board Administrator and shall be served as required by Miss. Code Ann. Section 73-23-63, as amended, to the party named in the complaint (the "Respondent") at his or her last known address on file with the Board.
- e. **Presiding Hearing Official:**
All hearings shall be conducted by the Board or by a hearing officer designated by the Board.
 - a. If a hearing officer is designated to hear a case, the hearing officer shall have the 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.
 - b. If a hearing officer is not designated to preside over 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.
- f. **Filings:**
The original of any papers, pleadings, or other documents shall be filed with the Board office. Each party must send copies to the hearing officer and attorneys or parties of record.
- g. **Continuances:**
No more than two (2) continuances of the hearing will be granted without the approval of the Board for good cause.
- h. **Hearing Process:**
 - i. The Board's Executive Director/Administrator's duties shall include:
 1. Issuing a notice of hearing and complaint or notice of contemplated action in the case;
 2. Executing notices, scheduling orders, and other routine procedural documents that facilitate the conduct of the administrative proceedings;

3. Maintaining the official record of all papers and pleadings filed with the Board in any matter; and
 4. Preparing, certifying, and filing with the appellate court the record of the case on appeal or review.
- ii. The hearing officer or the Board designee shall issue appropriate orders to control the course of the proceedings.
 - iii. The hearing officer or the Board designee may order the filing of briefs or other documents in the proceedings.
 - iv. 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.
 - v. At the conclusion of the hearing, a final decision and order shall be entered by the Board. The hearing officer, the Board chair, or designated Board member shall have the authority to sign the written decision of the Board.
 - vi. The Board's Executive Director/Administrator shall serve the decision of the Board on the licensee or applicant.
 - vii. 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 the Board designee.
 - viii. If the licensee's scope of practice is restricted or limited or otherwise conditioned, the license may reflect such restriction, limitation, or condition.
- i. Recusal:
Complaint Committee members who participate in the preparation of recommendations to the remaining Board members shall not participate further in any actions initiated by the Board against the licensee or party who is the subject of the complaint.
 - j. Each hearing will be recorded by a court reporter. The cost of the transcription shall be borne by the person making the request.

Source: *Miss. Code Ann.* §§73-23-43(1)(e); 73-23-59(2) and (3); 73-23-63(2)(b), (c) and (d); and 73-23-64(3) (Rev. 2008).

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- b. Reasonable Cause:
The Board's review will include the case summary presented by the Complaint Committee to determine if reasonable cause exists to issue a notice of contemplated action or notice of hearing and complaint.
- c. Dismissal of a 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 formal complaint, a letter from the Board will be sent within thirty (30) calendar days of the Board's decision to the complainant and to the party named in the complaint. The letter will set forth the Board's action and reason for its decision.
- d. Notice and Service to Respondent:
If the Board determines that there is sufficient evidence or cause to issue a complaint or notice of contemplated action, the formal notice and complaint shall be signed by the Executive Director/Board Administrator and shall be served as required by Miss. Code Ann. Section 73-23-63, as amended, to the party named in the complaint (the "Respondent") at his or her last known address on file with the Board.
- e. Presiding Hearing Official:
All hearings shall be conducted by the Board or by a hearing officer designated by the Board.
 - i. If a hearing officer is designated to hear a case, the hearing officer shall have the 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.
 - ii. If a hearing officer is not designated to preside over 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.
- f. Filings:
The original of any papers, pleadings, or other documents shall be filed with the Board office. Each party must send copies to the hearing officer and attorneys or parties of record.
- g. Continuances:
No more than two (2) continuances of the hearing will be granted without the approval of the Board for good cause.
- h. Hearing Process:
 - i. The Board's Executive Director/Administrator's duties shall include:
 - 1. Issuing a notice of hearing and complaint or notice of contemplated action in

- the case;
2. Executing notices, scheduling orders, and other routine procedural documents that facilitate the conduct of the administrative proceedings;
 3. Maintaining the official record of all papers and pleadings filed with the Board in any matter; and
 4. Preparing, certifying, and filing with the appellate court the record of the case on appeal or review.
- ii. The hearing officer or the Board designee shall issue appropriate orders to control the course of the proceedings.
 - iii. The hearing officer or the Board designee may order the filing of briefs or other documents in the proceedings.
 - iv. 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.
 - v. At the conclusion of the hearing, a final decision and order shall be entered by the Board. The hearing officer, the Board chair, or designated Board member shall have the authority to sign the written decision of the Board.
 - vi. The Board's Executive Director/Administrator shall serve the decision of the Board on the licensee or applicant.
 - vii. 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 the Board designee.
 - viii. If the licensee's scope of practice is restricted or limited or otherwise conditioned, the license may reflect such restriction, limitation, or condition.
- i. Recusal:
Complaint Committee members who participate in the preparation of recommendations to the remaining Board members shall not participate further in any actions initiated by the Board against the licensee or party who is the subject of the complaint.
 - j. Each hearing will be recorded by a court reporter. The cost of the transcription shall be borne by the person making the request.

Source: Miss. Code Ann. §§73-23-43(1)(e); 73-23-59(2) and (3); 73-23-63(2)(b), (c) and (d); and 73-23-64(3) (Rev. 2008).

Rule 6.5 Notice of Charges and Hearing.

1. ~~Following the investigative process, the Board may file formal charges against the licensee. Such formal complaint shall, at a minimum, inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.~~
2. ~~Each licensee, whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee, shall be served notice of the formal charge at least thirty (30) days before the date of hearing. A hearing shall be presided over by the Board or the Board's designee. Service shall be considered to have been given if the notice was personally served on the licensee or applicant, or if the notice was sent by certified, United States mail to the licensee or applicant to the licensee's or applicant's last known address as listed on record with the Board. The notice of the formal hearing shall consist at a minimum of the following information:
 - a. ~~The time, place and date of hearing;~~
 - b. ~~That the licensee shall appear personally at the hearing and may be represented by counsel;~~
 - c. ~~That the licensee shall have the right to produce witnesses and evidence in the licensee's behalf and shall have the right to cross-examine adverse witnesses and evidence;~~
 - d. ~~That the hearing could result in disciplinary action being taken against the licensee's license;~~
 - e. ~~That rules for the conduct of these hearings exist and it may be in the licensee's best interest to obtain a copy; and~~
 - f. ~~That the Board, or its designee, shall preside at the hearing and following the conclusion of the hearing shall make findings of facts, conclusions of law and recommendations, separately stated, to the Board as to what disciplinary action, if any, should be imposed on the licensee.~~
 - g. ~~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 at issue in a disciplinary proceeding. 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 in Part 3103 Rule 6.2 of these regulations.~~
 - h. ~~The Board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the Board shall issue an order, within sixty (60) days.~~
 - i. ~~Disposition of any complaints may be made by consent order or stipulation between the Board and the licensee.~~
 - j. ~~All proceedings pursuant to this section are matters of public record and shall be preserved pursuant to state law.~~
 - k. ~~The Board or its designee shall conduct all administrative hearings in contested cases that are before the Board.~~~~
3. ~~Transcript of Hearing. Each hearing will be recorded by a court reporter. The cost of the transcription shall be born by the person making the request.~~

Source: *Miss. Code Ann.* §§73-23-43(1)(e); 73-23-59(2) and (3); 73-23-63(2)(b), (c) and (d); and 73-23-64(3) (Rev. 2008).