

10.32.02 Hearings Before the Board of Physicians.

.01 Scope.

These regulations govern procedures for disciplinary and licensing matters before the Board of Physicians.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) *“Address of Record” means the personal address the respondent maintains for purposes of licensure.*

~~(1)~~ (2) *“Administrative action” means an order issued by the Board for reasons other than the disciplinary grounds under Health Occupations Article, §14-404, Annotated Code of Maryland, and that is not considered a disciplinary action.*

~~(2)~~ (3) *“Administrative expungement” means the classification of a record by the Board as confidential, not for public release, and removed from the ~~licensee~~ licensed individual’s public ~~individual~~ profile.*

~~(3)~~ (4) *“Administrative law judge (ALJ)” means ~~a hearing officer delegated the duty of conducting evidentiary hearings for the Board or disciplinary panel.~~ means an individual appointed as an Administrative Law Judge pursuant to the requirements established under State Government Article, § 9-1604, Annotated Code of Maryland.*

(4) (5) *“Administrative Procedure Act” means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.*

~~[(5)]~~ (6) “Administrative prosecutor” means the attorney assigned from the Office of the Attorney General to prosecute administrative charges.

~~[(6) Administrative Reinstatement.~~

~~(a) “Administrative reinstatement” means the reactivation of an inactive or expired license.~~

~~(b) “Administrative reinstatement” does not include postdisciplinary reinstatement.]~~

(7) “Advisory letter” means a nonpublic letter issued by a disciplinary panel which informs, educates, or admonishes an individual licensed *or regulated* by the Board [in regard to the practice of medicine or an allied health profession].

(8) “Allied health professional” means an individual who is licensed by the Board under:

(a) Health Occupations Article, §§14-5A—~~[14-5F]~~ 14-5G, Annotated Code of Maryland; or

(b) Health Occupations Article, Title 15, Annotated Code of Maryland.

(9) “Applicant” means an individual *applying for initial licensure or registration, renewal, or reinstatement pursuant to Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.* ~~[who has submitted an application to:~~

~~(a) The Board for initial licensure, for administrative expungement, or for administrative reinstatement; or~~

~~(b) Disciplinary panel for postdisciplinary reinstatement.]~~

(10) “Board” ~~[means the Maryland State Board of Physicians]~~ *has the meaning stated in Health Occupations Article §14-101, Annotated Code of Maryland.*

(11) “Board counsel” means the attorney assigned from the Office of the Attorney General for the purpose of advice on legal matters before the Board or a disciplinary panel.

(12) “Cease and desist order” means an order of the ~~[Board]~~ *Disciplinary Panel* issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland, prohibiting an individual from practicing *a profession regulated under Title 14 or Title 15 of the Health Occupations Article* ~~[medicine]~~ without a license~~[-];~~ ; *misrepresenting to the public that the individual is authorized to practice a profession regulated under Title 14 or Title 15 of the Health Occupations Article* ~~[-];~~ ; or for taking an action, for which there are grounds for discipline under

Health Occupations Article, §14-404, and that poses a serious risk to the health, safety, and welfare of a patient.

(13) “Charges” means the accusations or grounds for action the Board alleges a respondent committed which concerns:

(a) A disciplinary action against a licensee that may result in sanctions against a licensee;

(b) Intent to deny an initial application for licensure;

(c) An action against an individual practicing without a license; or

(d) Other action authorized by statute or regulation against an individual, licensee, applicant, or employer.

(14) “Charging document” means the document that includes the charges that initiates a Board action against a respondent and gives formal notice of an action by the Board.

~~[(13) “Charging document” means written notification that sets forth the grounds upon which the Board or a disciplinary panel is taking administrative disciplinary action against the respondent or applicant.]~~

(15) Complaint.

(a) “Complaint” means an allegation or report that:

(i) A Board licensee has committed a prohibited act for which a disciplinary panel can take disciplinary action or impose a fine; and

(ii) An individual is practicing ~~[medicine]~~ *a profession regulated under Health Occupations Article Title 14 or 15 without a license or representing to the public by title, description of services, methods, procedures, or otherwise, that the individual is authorized to practice without a license.* ~~[; or~~

~~(iii) A licensed physician has acted necessitating a Board action under Health Occupations Article, §14-206(e)(32), Annotated Code of Maryland.]~~

(b) “Complaint” includes, but is not limited to, the following:

(i) Issuance of a certificate of merit in a malpractice claim;

(ii) A report from *an employer, pursuant to Health Occupations Article Title 14 or Title 15, Annotated Code of Maryland* ~~[hospital, or related institution, or an alternative health care system, pursuant to Health Occupations Article, §14-413 or 14-414, Annotated Code of Maryland]~~ ;

(iii) A law enforcement report;

(iv) A report from another country, state, or jurisdiction or the armed services of the United States;

(v) A malpractice insurance report;

(vi) A report from another federal or state agency or court in any country, state, or jurisdiction;

(vii) Consumer complaints;

(viii) Media publications;

(ix) Statements on applications for licensure, renewal, or reinstatement; ~~and~~

(x) *Healthcare practitioners;*

(xi) *Anonymous complaints; and*

(xii) Other information, from whatever source, which warrants investigation.

(16) *“Consent Order” means a binding agreement, that is a public document, between a disciplinary panel and the respondent or applicant that resolves charges, a notice of action, or pre-charge allegations against the respondent or applicant.*

~~[(15)]~~ (17) *“Contested case” has the meaning stated in State Government Article, §10-202(d), Annotated Code of Maryland.*

(18) *“DCCR” means the Disciplinary Committee for Case Resolution.*

~~[(16)]~~ (19) *“Disciplinary panel” means a panel established under Health Occupations Article, §14-401, Annotated Code of Maryland, which:*

(a) Is composed of 11 Board members; and

(b) ~~Addresses~~ *Makes determinations regarding:*

(i) Complaints and disciplinary actions against ~~[licensees licensed physicians and allied health professionals]~~, *licensed individuals, applicants, and unlicensed individuals*; and

(ii) Postdisciplinary ~~[licensee]~~ reinstatements.

(20) *“Disciplinary proceedings” means any matters that occur after the Board or disciplinary panel initiates an administrative action against a respondent and provides public notice.*

~~[(17)]~~ (21) *“Disposition agreement” means a formal nonpublic agreement by which the health care [provider] professional agrees to comply with certain conditions [and the disciplinary panel stays further investigation or forgoes further action on a matter based on compliance with those conditions].*

(22) *Expert Review.*

(a) *“Expert Review” means a report by a qualified, licensed Physician, Physician Assistant or other allied health provider or other individual with specific expertise to provide expert opinion on allegations for disciplinary grounds or the unlicensed practice of a profession.*

(b) *“Expert Review” does not include the Peer Review process as defined under § 14-401.1.*

~~[(18)]~~ (23) *“Final [order] decision” means [(a) The] a final, written, public order [decision] of the Board or disciplinary panel which results from a contested case proceeding or other formal proceeding and which contains findings of fact, conclusions of law, sanction, order and written statement of appeal rights. [and a disposition which*

~~[(i) Denies a license;~~

~~[(ii) Sanctions by reprimand, probation, fine, consent order, suspension, or revocation;~~

~~[(iii) Dismisses charges;~~

~~[(iv) Accepts a surrender of a license; or~~

~~[(v) Denies administrative reinstatement of a license;~~

~~[(b) An order that denies postdisciplinary reinstatement of a license; or~~

~~[(c) An order to cease and desist from the practice of medicine.~~

~~(19)~~ “Fine” means a monetary penalty.]

~~[(20)]~~ (24) “Imperatively requires” means ~~[that an action shall be undertaken]~~ pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, ~~[as a result of]~~ *factual* ~~[contentions]~~ or *investigative findings* which raise a substantial likelihood of risk of serious harm to the public health, safety, or welfare ~~[before an evidentiary hearing governed by the Administrative Procedure Act is likely to be completed and result in a final order]~~.

~~[(21)]~~ (25) Investigation.

(a) “Investigation” means the gathering of ~~[the]~~ information ~~[necessary for the Board or a disciplinary panel to determine one or more of the following]~~, *materials, and evidence related to a complaint, application, request for declaratory ruling, or compliance with an order.*

~~[(i) Whether there is reasonable cause to charge the respondent with a violation of the Medical Practice Act or another statute which gives a disciplinary panel disciplinary authority;~~

~~[(ii) Whether an applicant is eligible for licensure or administrative reinstatement;~~

~~[(iii) The facts necessary for the Board to issue a declaratory ruling; or~~

~~[(iv) Whether an individual has complied with any disciplinary panel order.]~~

(b) “Investigation” includes:

(i) A preliminary investigation; and

(ii) A full investigation.

~~[(22)]~~ (26) “Involved medical specialty” means the area of medical specialty whose practitioners, in the disciplinary panel’s opinion:

(a) Treat the medical or surgical ailment, symptom, or problem in question; and

(b) Would likely be familiar with the risks and benefits of treatments provided for that ailment, symptom, or problem.

~~[(23)]~~ (27) “Licensure” means permission to engage in a health care profession regulated by the Board.

~~[(24)]~~ (28) “Medical Practice Act” means *the Maryland Medical Practice Act*, Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

(29) “*Opposition Hearing*” means a disciplinary panel hearing scheduled after the disciplinary panel has issued an initial cease and desist order and at which the respondent has the opportunity to explain why the disciplinary panel should terminate the initial cease and desist order.

~~[(25)]~~ (30) “Peer review” means an evaluation by a physician [or physicians] with special qualifications to judge the matter at hand, based on professional involvement within the involved medical specialty or specialties, of an act or acts of medical or surgical care, or other acts connected with medical practice, by an applicant or licensee.

~~[(26)]~~ (31) “Post deprivation hearing” means a disciplinary panel hearing scheduled after the disciplinary panel has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, and at which the respondent has the opportunity to explain why the disciplinary panel should ~~[revoke]~~ terminate the order of summary suspension.

~~[(27)]~~ (32) “Postdisciplinary reinstatement” means:

(a) The reactivation of a revoked [or suspended] license; or

(b) The reactivation of a license surrendered while the licensee was under investigation or subject to disciplinary charges.

~~[(28)]~~ (33) “Predeprivation hearing” means a disciplinary panel hearing at which the respondent has the opportunity to explain why the disciplinary panel should not issue an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland.

~~[(29)]~~ (34) “Preliminary investigation” means the initial review of a complaint or application irregularity which is the basis for the decision on whether to assign the case to a disciplinary panel for a full investigation or whether to close the investigation due to lack of jurisdiction or because, even if there were a full investigation, there still would not be a legal or factual basis for the issuance of a charging document.

~~[(30)] “Prohibited act” means any conduct for which the Board or a disciplinary panel can issue a sanction.]~~

~~[(31)]~~ (35) “Proposed decision” means ~~[the]~~ a recommended ruling by an administrative law judge that includes proposed findings of fact, ~~[and, where required by the delegation order from the Board or a disciplinary panel, the]~~ proposed conclusions of law, and proposed disposition issued by the administrative law judge, *unless otherwise directed by the disciplinary panel.*

~~[(32)]~~ (36) “Public individual profile” means the licensee profile maintained by the Board in accordance with Health Occupations Article, §14-411.1, Annotated Code of Maryland.

(37) *Reinstatement.*

(a) *“Reinstatement” means the reactivation of an inactive or expired license.*

(b) *Reinstatement does not include postdisciplinary reinstatement.*

~~[(33)]~~ (38) “Recusal” means disqualification by a Board or disciplinary panel member from participating in a proceeding because of a legal interest or prejudice in the case before the Board or disciplinary panel.

~~[(34)]~~ (39) “Respondent” means an individual who ~~[has been]~~ *is under investigation or charged.*

~~[(a) Given notice to answer allegations concerning violations of a statute over which the Board or a disciplinary panel has jurisdiction;~~

~~(b) Notified as to a potential summary suspension pursuant to State Government Article, §10-226(e), Annotated Code of Maryland; or~~

~~(c) Given notice to answer allegations concerning violations of a Board or disciplinary panel order.]~~

~~[(35)]~~ (40) “Revocation” means the removal of a health care provider’s license to practice a health occupation.

~~[(36) “Sanction” means an action by the Board or a disciplinary panel which:~~

~~(a) Reprimands;~~

~~(b) Places on probation;~~

~~(c) Fines;~~

~~(d) Suspends or revokes a license;~~

~~(e) Disciplines by a consent order; or~~

~~(f) Accepts a letter of surrender in lieu of charges or further investigation or prosecution.~~

~~(37) “Sanctioning guidelines” means guidelines set out in Regulation .10 of this chapter, indicating the minimum and maximum penalty associated with each ground for discipline and mitigating or aggravating circumstances which could result in imposition of a penalty below the minimum or above the maximum.]~~

~~[(38)] (41) “Show cause” means a demand by letter or order issued by a disciplinary panel, which directs the respondent to:~~

~~(a) Respond either in writing or by an appearance before the Board or a disciplinary panel; and~~

~~(b) Present reasons and argument why a particular order should not be entered.~~

~~[(39)] (42) “Special qualifications to judge the matter at hand” means those credentials which qualify a peer reviewer as a member of the involved medical specialty in a particular case.~~

~~[(40) “Stay” means the withholding of disciplinary panel action against a health care provider.~~

~~(41) “Stet” means the act of staying further action in a proceeding, subject to the proceeding being reopened at a later date.]~~

~~[(42)] (43) “Summary suspension” means a suspension of a license prior to or after a prompt opportunity to be heard based on a finding that the public health, safety, or welfare imperatively requires emergency action pursuant to State Government Article, § 10-226(c)(2), Annotated Code of Maryland [denial for an indefinite period of the right to use a license].~~

~~[(43)] (44) “Surrender” means the licensee’s written, public removal of their license, which constitutes discipline, that a disciplinary panel agrees to accept in lieu of further investigation or disciplinary proceedings [the voluntary relinquishing of a Board license to a disciplinary panel].~~

~~[(44)] (45) “Suspension” means an action that terminates the right to practice under a particular healthcare license for a specified period of time or until such time as the Board or a disciplinary panel finds that the specified conditions in an order are satisfied [a denial of the right to use a license].~~

.03 Service.

A. Unless otherwise required by law, service shall be made by:

(1) United States first-class mail;

(2) Certified mail;

(3) Personal or courier delivery;

(4) Delivery service with signature required;

(5) Subject to paragraph B, electronically to the email address on record or last known email address; or

(6) As otherwise agreed to by the parties.

B. If service is made electronically and no response of delivery received is obtained from the email address to which service was provided, the Board shall serve by another method.

C. Service shall be to the address of record with the Board, or the last known address, or to the attorney.

[.03] .04 Prehearing Proceedings.

A. This regulation applies to:

(1) Proceedings under Health Occupations Article, §1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, 14-5E-16(b), 14-5F-18(b), 14-5G-18, or 15-315, Annotated Code of Maryland; and

(2) ~~[To the extent specifically provided in this regulation]~~ Except as provided in COMAR 10.32.02.12-15, this regulation applies to cease and desist orders, notices of intent to deny initial licenses, actions taken for alleged unlicensed practice, and misrepresenting that an individual is authorized to practice a profession regulated by the Board.

B. This regulation does not apply to procedures pursuant to Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), 14-5E-16(c), or 14-5F-18(c), 14-5G-18(c) or 15-314(b), Annotated Code of Maryland.

C. Investigation of Complaints.

(1) Designated staff shall undertake a preliminary investigation regarding an allegation of grounds for disciplinary or other action brought to the Board's attention before the allegation is assigned to a disciplinary panel.

(2) A complaint concerning alleged grounds for discipline of a Board licensee shall be assigned to a disciplinary panel which *may*:

(a) ~~[Shall]~~ ~~[r]~~ Review a complaint in light of the preliminary investigation; and

(b) ~~[May]~~ ~~[d]~~ Direct further investigation, ~~[referral]~~ *refer a case* for peer review or *expert review*, ~~[closure]~~ *close* without charges, or ~~[closure]~~ *close* with an advisory letter.

(3) Participation in the complaint review process is not ordinarily a basis for recusal of a disciplinary panel member from further proceedings in the case.

(4) Investigative Subpoenas.

~~[(a) Except as provided in §C(4)(b) of this regulation, upon the receipt of a timely written request from a psychiatrist who is the subject of a complaint concerning the quality of the psychiatric care provided by that psychiatrist, a quorum of a disciplinary panel shall review a subpoena for mental health records made or held by that psychiatrist before the subpoena is enforced.~~

~~(b) Section C(4)(a) of this regulation does not apply to:~~

~~(i) Any subpoena other than an investigative subpoena;~~

~~(ii) A subpoena issued in response to an investigation opened based upon a patient complaint;~~

~~(iii) A subpoena issued as a result of a complaint or action by a law enforcement agency;~~

~~(iv) A subpoena issued as a result of a complaint from a health care professional;~~

~~(v) A subpoena for records if the executive director or the deputy director determines that there is a reasonable possibility that the records will be destroyed, secreted, lost, or altered if the subpoena is not promptly enforced; or~~

~~(vi) A subpoena if the executive director or deputy director determines that there is a reasonable possibility of imminent harm to the public health, safety, or welfare, including the health, safety, or welfare of an individual patient.~~

~~(e) Section C(4)(b) of this regulation does not affect any rights which an individual may have under Health-General Article, Annotated Code of Maryland, to contest a subpoena in court.]~~

(a) The Board may issue subpoenas requiring the attendance and testimony of witnesses, the production of documents, electronic files, or other tangible objects. Subpoenas may be served pursuant to COMAR 10.32.02.03.

(b) For subpoenas served pursuant to C(4)(a) of this regulation, service shall be to the address of record with the Board, the last known address, or to the attorney.

(c) A person may object to a subpoena by filing with a Circuit Court for the county where any party resides or has a principal place of business, a motion to quash or for other relief.

(d) If, without lawful excuse, a licensee disobeys a subpoena from the Board, the Board may charge the individual with a failure to cooperate with a Board investigation.

(e) If, without lawful excuse, any person disobeys a subpoena from the Board, a court of competent jurisdiction may punish the person as for contempt of court.

D. ~~[Review by the Peer Reviewers]~~ *Physician Peer Review.*

(1) After being assigned a complaint, a disciplinary panel shall have the matter reviewed by two peer reviewers if the complaint concerns an allegation that a physician failed to:

(a) Meet the standards of quality medical care; or

(b) Keep adequate medical records.

~~[(2) The disciplinary panel shall obtain reports from at least two different peer reviewers in each case for each allegation referred for peer review.]~~

~~[(3)]~~ (2) If ~~[one or both]~~ *the two* peer reviewers conclude that a violation of the standard of care has occurred, the disciplinary panel shall make the ~~[final peer review report, consisting of the]~~ report[s] of each individual peer reviewer[;] available to the respondent ~~[for review]~~ *to provide the Respondent with an opportunity to submit a written response* before the disciplinary panel considers whether to issue charges. The disciplinary panel shall redact the names of the *individual* peer reviewers before making ~~[the]~~ *a* report available under this section.

(4) The respondent may provide a written response to the peer review report within 10 business days after the report was sent to the respondent by electronic ~~mail~~ means or 13 business days if the report was sent via U.S. postal service.

(5) The disciplinary panel shall:

(a) Consider both the ~~final~~ peer review ~~report~~ reports and any written response submitted within the time period specified in §D(4) of this regulation; and

(b) Determine whether there is reasonable cause to charge a respondent with failure to meet appropriate standards of quality care *or failure to keep adequate medical records*.

(c) *If two peer reviewers agree that there is reasonable cause to charge a respondent with failure to meet appropriate standards of quality care or failure to keep adequate medical records, the panel may charge the Respondent.*

E. Prosecution of Complaint.

(1) Except as provided in §E(2) of this regulation, a disciplinary panel may not bring charges against a licensee based solely on events contained in a complaint the disciplinary panel received more than 6 years after:

(a) The day the complainant actually discovered the facts that form the basis of the complaint; or

(b) The day when a reasonable person exercising due diligence should have discovered the facts that form the basis of the complaint.

(2) The prohibition in §E(1) of this regulation does not apply to complaints that are based on any of the following:

(a) Criminal convictions;

(b) Sexual misconduct;

(c) Other boundary violations;

(d) Reciprocal actions under Health Occupations Article, §14-404(a)(21), §14-5A-17(a)(17), §14-5B-14(a)(17), §14-5C-17(a)(18), §14-5D-14(a)(17), §14-5E-16(a)(18), §14-5F-18(a)(5), §14-5G-18(a)(19), §15-314(a)(21), Annotated Code of Maryland;

(e) Ongoing substance abuse;

(f) Fraudulent concealment of material information; or

(g) Acts that occurred while a patient was a minor.

(3) After reviewing the completed investigative information and reports, a disciplinary panel shall make its determination to:

(a) Close a complaint investigation without charges;

(b) Take informal action by issuing a nonpublic advisory letter;

(c) Request *that* the respondent ~~[to]~~ enter into a disposition agreement with the disciplinary panel if the respondent suffers from substance abuse or a physical, mental, or emotional condition which may otherwise jeopardize medical care;

(d) Except as provided in §E(1) of this regulation, vote to charge a respondent with a violation of a ground, *or grounds*, under Health Occupations Article~~;~~ §14-404, §14-5A-17, §14-5B-14, §14-5C-17, §14-5D-14, §14-5E-16, §14-5F-18, §14-5G-18, §15-314, Annotated Code of Maryland, ~~[or COMAR 10.32.07,]~~ or another statute *or regulation*, which gives the Board or disciplinary panel authority *to sanction a respondent*;

(e) Vote to deny ~~[administrative]~~ reinstatement; or

(f) ~~[Accept a surrender]~~ Offer or accept on terms acceptable to the disciplinary panel a *pre-charge*;

(i) *Letter of Surrender*

(ii) *Consent Order*

~~[(7)]~~ (4) If the disciplinary panel issues charges, the disciplinary panel shall serve it *at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03* ~~[upon the respondent by regular mail or hand delivery at the address the respondent maintains for purposes of licensure notice].~~

(5) *The disciplinary panel may delegate the issuance and service of the charges to the administrative prosecutor.*

~~[(4)]~~ (6) Summary Suspension.

(a) In addition to charging, the disciplinary panel assigned to the complaint may vote to summarily suspend or vote an intent to summarily suspend the license of the respondent pursuant to State Government Article, §10-226(c), Annotated Code of Maryland.

(b) A vote to summarily suspend the license of the respondent may be taken before the disciplinary panel charges the respondent.

~~[(5)]~~ (7) After a vote to take formal action under §E(3)(d) or (e) and (7) of this regulation, the disciplinary panel shall refer the matter to the administrative prosecutor for prosecutorial action.

~~[(6)]~~ (8) Based upon a review of the case, the prosecutor may refer the matter back to the disciplinary panel for further consideration.

(9) Following the filing of charges, notice of initial denial of a license application, a summary suspension order, an intent to summarily suspend, a cease and desist order, and an order from another jurisdiction, the Board shall disclose the filing to the public on the Board's website.

(10) In addition to any disclosures required by this regulation, by written request served on the other party, a party may require another party to produce discovery on request.

~~[(8) The disciplinary panel, in the notice of administrative reinstatement, shall provide the respondent with an opportunity to request a hearing within 30 days from receipt of service.]~~

~~[(9)] F. [Disciplinary Committee for Case Resolution (DCCR)].~~

~~[(a)] (1) After [service of] the charging document is issued, the respondent may obtain, upon request, the case file from the administrative prosecutor. The respondent and the [complainant] administrative prosecutor shall be offered a meeting with the disciplinary panel that was originally assigned the complaint. The meeting is a voluntary, informal settlement proceeding to explore the possibility of a consent order or other resolution of the matter [and which sits as a DCCR. The meeting is a voluntary, informal settlement, proceeding to explore the possibility of a consent order or other resolution of the matter. The proceedings concerning a summary suspension are governed by Regulation .08 of this chapter and do not entail a meeting before a DCCR].~~

(2) The parties will have an opportunity to submit a written submission to the DCCR panel prior to the DCCR proceeding.

(3) Ordinarily, the oral presentation by the respondent, the administrative prosecutor, and the complainant is limited to 10 minutes each, not including questions from the Disciplinary Panel.

~~[(b)]~~ (4) If the respondent and the administrative prosecutor each do not agree with the proposed settlement offered by the DCCR, the matter proceeds to a hearing before the Office of Administrative Hearings.

~~[(c)]~~ (5) *The DCCR proceedings are confidential.* Except for the DCCR's consideration of a proposed resolution of a case achieved through the conference with the DCCR, the disciplinary panel, the parties, and the complainant may not make use of any commentary, admissions, facts revealed, or positions taken, including any disposition recommended by the DCCR, in the subsequent stages of the disciplinary proceedings unless the subject matter is available from other sources or is otherwise discovered. The respondent, administrative prosecutor, and complainant are prohibited from revealing this material.

~~[(d)]~~ (6) The complainant and respondent may attend and participate as authorized by statute. The complainant may be accompanied by Board staff *or the administrative prosecutor* but not by any other person.

~~[F]~~ G. Representation; Parties.

(1) The respondent may appear in proper person or be represented by counsel in any matter before a disciplinary panel and during any stage of the disciplinary proceedings. The respondent may be represented only by an attorney admitted to the Maryland Bar or specially admitted to practice law in Maryland ~~[under Maryland Rule 14 of the Maryland Rules Governing Admissions to the Bar found in the Maryland Rules]~~.

(2) The administrative prosecutor shall present evidence and argument at an evidentiary hearing on the charges and arguments before a disciplinary panel in the exceptions process as specified in Regulation .05 of this chapter.

(3) The administrative prosecutor is a party to the administrative proceedings:

(a) As soon as formal charges are issued; and

(b) Until a disciplinary panel's final decision is issued.

(4) The Board or a disciplinary panel is not a party to the proceedings before an administrative law judge.

H. The Chair, or the Chair's designee, of a disciplinary panel assigned the complaint may issue orders necessary to regulate the proceedings under this regulation. Orders of the disciplinary panel may be signed by the executive director or deputy director.

~~[-04]~~ .05 Adjudication of Allegations in a Charging Document.

A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, 14-5E-16(b), 14-5F-18(b), *14-5G-18(b)* and 15-315 Annotated Code of Maryland~~[-]~~ ; *and*

(2) As provided in COMAR 10.32.02.12-15, this regulation applies to cease and desist orders; notices of intent to deny applications for initial licenses and reinstatement of licenses; and actions taken for alleged unlicensed practice and misrepresenting that an individual is authorized to practice a profession regulated by the Board.

~~[(2)] (3) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), 14-5E-16(c), or 14-5F-18(c), *14-5G-18(c)* or 15-314(b), Annotated Code of Maryland [~~or to cease and desist orders issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland~~].~~

B. Delegation.

(1) If the charges are not resolved with the DCCR *or if a DCCR does not occur*, the ~~chair of the DCCR~~ Board shall ~~refer the case to the other disciplinary panel which shall~~ delegate to an administrative law judge *to hold an evidentiary hearing and thereafter* ~~responsibility~~ *to issue a proposed decision with* ~~to make:~~ *proposed findings of fact, proposed conclusions of law, and proposed order, unless directed otherwise.*

~~[(a) Proposed findings of fact;~~

~~[(b) Proposed findings of fact and proposed conclusions of law; or~~

~~[(c) Proposed findings of fact, proposed conclusions of law, and proposed disposition.~~

~~(2) If the disciplinary panel has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact only, the following apply:~~

~~(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact on allegations which are disputed;~~

~~(b) The disciplinary panel may rescind the delegation if:~~

~~(i) The parties jointly notify the disciplinary panel prior to the prehearing conference, or the administrative law judge notifies the disciplinary panel prior to the occurrence of the factors set out in State Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations in dispute;~~

~~(ii) The notification recites the facts which are undisputed; and~~

~~(iii) The disciplinary panel determines that the facts agreed upon are sufficient to decide the issue; and~~

~~(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(2)(b) of this regulation, the disciplinary panel shall set the case on the disciplinary panel docket for the disciplinary panel to issue conclusions of law and a disposition based on the undisputed material facts, after giving the parties a reasonable opportunity for written and oral argument.~~

~~(3) If the disciplinary panel has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact and conclusions of law only, the following apply:~~

~~(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact and conclusions of law on allegations which are disputed; and~~

~~(b) The disciplinary panel may rescind the delegation if:~~

~~(i) The parties jointly notify the disciplinary panel prior to the prehearing conference, or the administrative law judge notifies the disciplinary panel prior to the occurrence of the factors set out in State Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations or conclusions of law in dispute;~~

~~(ii) The notification recites the facts and conclusions of law which are undisputed; and~~

~~(iii) The disciplinary panel determines that the facts and conclusions of law agreed upon are sufficient to decide the issue.~~

~~(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(3)(b) of this regulation, the disciplinary panel shall set the case on the disciplinary panel docket for the disciplinary panel to issue a disposition based on the undisputed material facts and conclusions of law, after giving the parties a reasonable opportunity for written and oral argument.]~~

(2) The Disciplinary Panel may remand a decision back to the Office of Administrative Hearings.

~~[(4)]~~ (3) The disciplinary panel may rescind a delegation to an administrative law judge if prior to the start of the evidentiary hearing:

(a) The parties execute a proposed consent order settling all aspects of the case *or a letter of surrender*; and

(b) The disciplinary panel initially assigned the complaint agrees to that proposed consent order *or a letter of surrender*.

C. Discovery.

(1) Discovery on Request. In addition to any disclosures required by §C(2) or (3) of this regulation, by written request served on the other party and filed with the administrative law judge, a party may require another party to produce, within 15 calendar days, the following:

(a) A list of witnesses to be called; and

(b) Copies of documents intended to be produced at the hearing.

(2) Mandatory Notice of Specific Defenses in Cases Involving the Standard of Quality Care.

(a) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of any statement made to the respondent by the patient which was not recorded in the respondent's medical record of the patient, and which affected the patient's course of treatment, including but not limited to:

(i) Any refusal of hospitalization or treatment;

(ii) Any report of symptoms;

(iii) Any report of the effects of medication;

- (iv) Any report by the patient of consultations or treatment by other health care providers; and
 - (v) Any expressions by the patient of a preference for one course of treatment over another.
- (b) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of:
- (i) Any consultation concerning the patient, formal or informal, with any other health care provider, which is not recorded in the patient's medical record; or
 - (ii) Any communication with family members of the patient which affected the patient's course of treatment, and which is not recorded in the patient's medical record.
- (c) The notices required by §C(2)(a) and (b) of this regulation shall be in writing and shall state:
- (i) The name of the declarant or consultant;
 - (ii) The substance of the declaration or consultant report; and
 - (iii) The date on which each communication took place.
- (d) Unless the respondent has provided the notice required by §C(2) of this regulation, the administrative law judge shall exclude from the hearing any evidence described in §C(2)(a) or (b) of this regulation.
- (3) Mandatory Discovery.
- (a) Each party shall provide to the other party not later than 15 days prior to the prehearing conference or 45 days prior to the scheduled hearing, whichever is earlier:
- (i) The name and curriculum vitae of any expert who will testify at the hearing; and
 - (ii) A detailed written report prepared and signed by the expert summarizing the expert's testimony, which includes the opinion offered and the factual basis and the reasons underlying the opinion.
- (b) If the administrative law judge finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the administrative law judge shall exclude from the hearing:

- (i) The testimony of the expert; and
- (ii) Any report of the expert.
- (c) The administrative law judge shall consider and decide arguments concerning the sufficiency of the report at the prehearing conference and may require that the report be timely amended, if insufficient, to allow the opposing party ample opportunity to prepare for hearing.
- (d) If an expert adopts the written report of the disciplinary panel's peer reviewer or reviewers, or adopts a sufficiently specific charging document as the expert's report, that adoption is considered to satisfy the requirements set forth in §C(3) of this regulation.
- (4) Parties are not entitled to discovery of items except as listed in §C(1), (2), or (3) of this regulation.
- (5) Subject to §C(7) of this regulation, both parties have a continuing duty to supplement their disclosures of witnesses and documents.
- (6) Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list subsequent to:
 - (a) The prehearing conference, if scheduled; or
 - (b) If no prehearing conference is scheduled, 15 days prior to the hearing.
- (7) The prohibition from adding witnesses subsequent to the prehearing conference does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

D. Hearing.

- (1) Unless the delegation has been rescinded according to §B(2), (3), or (4) of this regulation, the administrative law judge shall conduct an evidentiary hearing governed by the Administrative Procedure Act and COMAR 28.02.01.
- (2) Evidence otherwise admissible under COMAR 28.02.01 may not be excluded solely on the ground that the evidence is not recited in the charging document.
- (3) During these proceedings, the administrative law judge shall treat all records except for a charging document as confidential and sealed.
- (4) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, §C of this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.

(b) In the event of a conflict between §C of this regulation and COMAR 28.02.01, §C of this regulation shall apply.

(5) The administrative law judge shall issue to the disciplinary panel, that delegated the case to the ALJ, a written proposed decision including, where applicable, proposed findings of fact, proposed conclusions of law, and a proposed disposition after the conclusion of the hearing.

[.05] .06 Disciplinary Panel Exceptions Process and *Final* [Order] Decision.

A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, 14-5E-16(b), 14-5F-18(b), *14-5G-18(b)*, and 15-315 Annotated Code of Maryland; *and*

(2) As provided for in COMAR 10.32.02.12-15, this regulation applies to cease and desist orders; notices of intent to deny initial licenses; and actions taken for alleged unlicensed practice and misrepresenting that an individual is authorized to practice a profession regulated by the Board.

~~[(2)]~~ (3) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-14(c), 14-5D-14(b), 14-5E-16(f), or 14-5F-18(c), *14-5G-18(c)* or 15-314(b), Annotated Code of Maryland [~~or to cease and desist orders issued under Health Occupations Article, §14-206(e)~~], Annotated Code of Maryland.

B. Exceptions.

(1) Written Exceptions.

(a) Any party may file, *with the disciplinary panel that did not issue charges*, [~~that delegated the case to an administrative law judge,~~] exceptions to a proposed decision of an administrative law

judge within 15 days of its issuance. A party may file a response to any exceptions within 15 days of the date the exceptions are filed. The disciplinary panel may extend the period for filing exceptions and responses. The disciplinary panel may grant a party filing exceptions the opportunity to file a reply to a response within a stated period of time as determined by the disciplinary panel in any specific case. No further exceptions or responses of any kind may be accepted.

(b) Format.

(i) Written exceptions and responses to exceptions are limited to 15 pages in length, double-spaced and in at least 12-point type, *with Times New Roman font*, and with margins of at least 1 inch.

(ii) Any reply to responses to exceptions is limited to five pages in the same format.

(iii) If a party attaches any part of the record to the exceptions, response, or reply, the attached pages are not to be encompassed within the applicable page limit. The disciplinary panel may require the attachment of those parts of the record cited in the exceptions in a form designated by the Board.

(c) Exceptions, responses, and replies may refer to the record by citing the exhibit number or the transcript page.

(d) The disciplinary panel chair or the disciplinary panel chair's designee may in each case rule on specific procedural issues with respect to written exceptions.

(e) The disciplinary panel may not accept additional evidence through the written exceptions process.

(f) The written exceptions shall be limited to the arguments made before the administrative law judge.

(2) Oral Exceptions Hearing.

(a) If either party files exceptions, the disciplinary panel shall schedule a hearing, ordinarily 30 days after the receipt of responses to the exceptions, after which the disciplinary panel shall issue an order containing the disciplinary panel's findings of fact, conclusions of law, and disposition.

(b) The presiding disciplinary panel member, usually the disciplinary panel chair, shall:

- (i) Determine all procedural issues that are governed by this section;
 - (ii) Make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing; ~~and~~
 - (iii) Ordinarily limit oral presentation by the respondent and the administrative prosecutor to 20 minutes each[-]; *and*
 - (iv) *Ordinarily limit oral exceptions to the issues addressed in the written exceptions or to any purported error in the proposed decision.*
- (c) The party who filed the first exceptions shall ordinarily proceed first.
- (3) Additional Evidence. ~~[At the oral exceptions hearing, t]~~The disciplinary panel may not accept additional evidence unless, *at the time exceptions are filed, a written request for additional evidence is filed with the disciplinary panel, and:*
- (a) Both parties consent to the admission of additional documentary evidence and the disciplinary panel determines that acceptance of the additional evidence would promote the just and efficient completion of the process; or
 - (b) The disciplinary panel determines that either:
 - (i) A compelling reason exists that would create an obvious injustice if the additional documentary evidence were not considered and the evidence can be admitted without compromising the rights of the other party, including the other party's opportunity to see the proffered evidence in a timely manner or cross-examine the source of the proffered document and present evidence to the contrary; or
 - (ii) The evidence has been timely proffered before the administrative law judge and the administrative law judge abused his or her discretion in refusing to admit the evidence.
- (4) If the parties do not file exceptions, the disciplinary panel shall consider the record, including the proposed decision of the administrative law judge, and issue its order based on the disciplinary panel's findings of fact and conclusions of law.
- (5) A Board staff member who testified at the hearing before the administrative law judge may not be present during disciplinary panel deliberations.

C. Board Action.

(1) Final ~~[Order]~~ *Decision*. The disciplinary panel shall issue a *final* ~~[order]~~ *decision* within 90 days after the conclusion of:

(a) An exceptions hearing; or

(b) Other formal disciplinary panel proceedings.

(2) Effect of Revocation Order.

(a) When a time period is not stated in an order for revocation, the disciplinary panel may not entertain an application for postdisciplinary reinstatement until at least 3 years after the date of the order.

(b) A revocation of a license may not be for less than 1 year and may be permanent.

(c) The disciplinary panel may not entertain an application for postdisciplinary reinstatement after an order of revocation unless:

(i) Any time period stated in the order has expired;

(ii) The conditions set out in the order have been fulfilled;

(iii) The applicant has filed a formal application and paid the fee; and

(iv) The applicant meets all of the requirements for reinstatement set out in COMAR 10.32.08.09.~~[01.10]~~

(d) The disciplinary panel that issued the *final* ~~[order]~~ *decision* revoking ~~[or suspending]~~ the *respondent's license* shall entertain applications for reinstatement pursuant to the procedures and standards of Regulation .06B of this chapter.

(3) Tolling.

(a) Except as a disciplinary panel order directs otherwise in a specific case, if a licensee subject to probation or suspension fails to renew a license:

(i) The failure to renew the license does not remove the suspension or probation from the licensee's disciplinary record during the period of nonrenewal;

(ii) Any condition of probation or condition precedent to terminating a suspension that is dependent on possessing a license is tolled until the probationer or suspended licensee again possesses a license; and

(iii) The time period of probation or suspension, if any, is tolled until the probationer or suspended licensee again possesses *an active* license.

(b) Section C(3)(a) of this regulation does not:

(i) Apply to fines; or

(ii) Require the disciplinary panel to reinstate any former licensee.

~~10.32.08.09~~ .07 ~~[Post-Disciplinary Reinstatement]~~ *Postdisciplinary Termination of a Suspended License.*

A. Termination of a suspension is subject to the following conditions:

(1) If an order suspends a license for a certain period of time, the respondent may petition the disciplinary panel that issued the order to suspend to terminate the suspension only pursuant to that order;

(2) The disciplinary panel may not entertain early termination of the suspension;

(3) If termination of a suspension is made contingent on the happening of an event, the respondent shall establish the occurrence of the event to the satisfaction of the disciplinary panel; and

(4) If a health care practitioner whose license is suspended fails to renew the suspended license when that license expires, the health care practitioner may:

(a) ~~[p]~~Petition the disciplinary panel for termination of suspension only after applying ~~[for]~~; and

(b) ~~[m]~~Meet~~[ing]~~ the requirements for administrative reinstatement set out in COMAR 10.32.08.09~~[01-10]~~; and

(c) Complete any period of the suspension that was tolled, and completing the requirements in this section.

B. Postdisciplinary reinstatement of a revoked or surrendered license is subject to the following conditions:

(1) A petitioner for postdisciplinary reinstatement of a revoked or surrendered license shall submit the following:

(a) A written application for reinstatement on a form prescribed by the Board;

(b) The appropriate fee;

(c) Written responses to any questions the disciplinary panel may propose concerning the reasons the license was revoked or surrendered and the petitioner's current fitness to practice; and

(d) Evidence of the completion of continuing ~~[medical]~~ education credits to the same extent as if the petitioner had been continuously licensed;

(2) ~~[If a license was revoked or surrendered while the licensee was under investigation or subject to disciplinary charges, t]~~The disciplinary panel may not consider the application for postdisciplinary reinstatement unless:

(a) If the letter of surrender indicates that the surrender or the revocation order is for a certain length of time, the time period has expired; or

(b) If the letter of surrender or revocation order does not indicate a time certain, 3 years have passed since the date of the order; and

(c) If the letter of surrender makes reinstatement contingent on certain conditions, those conditions have occurred;

(3) The disciplinary panel may grant postdisciplinary reinstatement of a revoked or surrendered license only in accordance with the terms of the order of revocation or the letter of surrender;

(4) The disciplinary panel may grant postdisciplinary reinstatement subject to any terms and conditions the disciplinary panel considers appropriate for public safety and the protection of the integrity and reputation of the profession;

(5) The disciplinary panel that issued the order to revoke or *accept a letter of surrender* ~~[suspend]~~ may conduct ~~[convene]~~ a reinstatement inquiry ~~[panel]~~ which *may include*:

(a) ~~May conduct an informal inquiry which shall include, i~~ If requested, an opportunity for the petitioner to *address* ~~have a personal interview~~ with the panel;

(b) ~~May consider t~~ The petitioner's history; and

(c) ~~May consider p~~ Presentations from both the petitioner and the administrative prosecutor's office *ordinarily limited to 20 minutes per side*.

(6) The disciplinary panel shall consider the application form, the petitioner's responses to the written questions, and the supporting documentation and written arguments, if any, submitted by the petitioner and the administrative prosecutor's office, as well as the *oral presentations at the reinstatement inquiry* ~~panel's recommendation~~, if any;

(7) The disciplinary panel shall determine, in its discretion, if postdisciplinary reinstatement is in the interest of the health and welfare of the general public and consistent with the best interest of the profession; and

(8) A disciplinary panel decision denying reinstatement may set out when, if ever, a subsequent petition may be submitted.

C. The disciplinary panel shall issue a final written order on the postdisciplinary reinstatement application that:

(1) Reinstates the license of the petitioner without conditions;

(2) Reinstates the license of the petitioner with one or more of the following conditions:

(a) Reprimand;

~~(a)~~ *(b) Probation;*

~~(b)~~ *(c) Requirements for supervision;*

~~(c)~~ *(d) Further review of competence or performance;*

~~(d)~~ *(e) Limitations on practice; or*

~~(e)~~ *(f) Other conditions that the disciplinary panel considers necessary; or*

(3) Denies reinstatement.

D. An order granting or denying postdisciplinary reinstatement is ~~[an order resulting from formal disciplinary action]~~ *not a contested case as defined in the Administrative Procedure Act.*

E. A petition for postdisciplinary reinstatement may be withdrawn only with the permission of the disciplinary panel. ~~[The disciplinary panel may not refund the fee except for extraordinary cause.]~~

~~[.07]~~ .08 Proceedings under Health Occupations Article, §§14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), 14-5E-16(c), 14-5F-18(c), ~~14-5G-18(c)~~, and 15-314(b), Annotated Code of Maryland.

~~[A. In this regulation, “health care provider” means an individual who is a:~~

- ~~(1) Licensed physician;~~
- ~~(2) Licensed respiratory care practitioner;~~
- ~~(3) Licensed radiographer;~~
- ~~(4) Licensed nuclear medical technologist;~~
- ~~(5) Licensed radiation therapist;~~
- ~~(6) Licensed radiologist assistant;~~
- ~~(7) Licensed polysomnographic technologist;~~
- ~~(8) Licensed athletic trainer;~~
- ~~(9) Licensed perfusionist;~~
- ~~(10) Licensed naturopathic doctor; or~~
- ~~(11) Licensed physician assistant.]~~

[B] A. Health Occupations Article, §§14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), 14-5E-16(c), 14-5F-18(c), *14-5G-18(c)*, and 15-314(b), Annotated Code of Maryland, govern mandatory actions of the suspension or revocation of a license on the filing of certified docket entries, if the health care provider is convicted of or pleads guilty, including by an Alford plea, or a plea of nolo contendere to a crime involving moral turpitude.

[E.] B. Procedures.

(1) [~~The Office of the Attorney General through~~] *Board staff in consultation with* Board counsel shall provide to the disciplinary panel assigned to the case certified docket entries of the criminal court proceeding and the following documents from the court record:

(a) For a conviction[~~, at least~~]:

(i) The indictment, information, or other formal statement of the charges; and

(ii) Documentation of the verdict and sentencing; and

(b) For a plea of guilty, including an Alford plea, or a plea of nolo contendere, at least one of the following:

(i) Stipulated statement of facts or statement of facts on the record;

(ii) Plea agreement containing agreed facts;

(iii) Transcript of plea agreement proceedings; or

(iv) Written or transcribed opinion or statement of the judge accepting the plea.

(2) When the disciplinary panel determines that documents provided to it indicate that the respondent comes within the language and intent of Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), 14-5E-16(c), 14-5F-18(c), *14-5G-18(c)*, or 15-314(b), Annotated Code of Maryland, and the disciplinary panel has a basis for finding preliminarily that it applies to the respondent, the disciplinary panel shall vote to issue an order requiring the respondent to show cause why the disciplinary panel should not take action under this section.

(3) After the vote to issue the show cause order, the disciplinary panel shall refer the matter to the administrative prosecutor for prosecutorial action.

(4) Based upon a review of the case, the prosecutor may refer the matter back to the disciplinary panel for further consideration.

[D] C. Service.

(1) The disciplinary panel shall serve the respondent *at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03.* ~~[by regular mail or hand delivery at the address the respondent maintains for purposes of licensure notice]~~

(2) The disciplinary panel may choose to serve the respondent personally.

[E] D. Opportunity to be Heard.

(1) The respondent *has 30 days to respond, after [service] issuance of the show cause order* ~~[, has 30 days in which to respond]~~.

(2) The respondent may show cause in writing on the following issues:

(a) Lack of conviction or plea;

(b) Whether the crime is one involving moral turpitude;

(c) Misidentity of the respondent with the defendant in the criminal matter; and

(d) Other relevant issues, if any, other than mitigation.

(3) The respondent may also, within 30 days of ~~[service]~~ *issuance of the show cause order, request an opportunity to address the disciplinary panel by a limited evidentiary hearing on the same issues. However, this argument may not be as of right, but is discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel.*

(4) The presiding disciplinary panel member, usually the disciplinary panel chair, shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding disciplinary panel member shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing. Ordinarily, the respondent and the administrative prosecutor shall limit their oral presentation to 20 minutes each. The respondent shall proceed first.

(5) The presiding disciplinary panel member shall allow for consideration of documents the presiding disciplinary panel member determines relevant and material. The presiding disciplinary panel member may not admit oral testimony or witnesses.

(6) Disciplinary panel members may ask questions of any party appearing before the disciplinary panel.

~~[F. Representation.~~

~~(1) The respondent may appear in proper person or be represented by counsel.~~

~~(2) The administrative prosecutor shall present argument in support of the proposed sanction.]~~

G] E. Burdens of Production and Persuasion.

(1) The respondent may argue issues as set out in §E(2) of this regulation and has the burden of producing argument or evidence in response to the show cause order.

(2) The administrative prosecutor bears the burden of persuasion by a preponderance of the evidence that the respondent was convicted of or pled guilty or nolo contendere to a crime of moral turpitude.

[H] F. Disciplinary Panel Action.

(1) After consideration of the respondent's answer, either in writing or at a hearing, the disciplinary panel shall deliberate and determine whether the crime is a crime involving moral turpitude, and then shall issue an appropriate order.

(2) A pending appeal of the conviction or plea does not operate as a bar to the disciplinary panel's acting under Health Occupations Article, §14-404(b)(1), 14-5A-17(c)(1), 14-5B-14(c)(1), 14-5C-17(c), 14-5D-14(b)(1), 14-5E-16(c), 14-5F-18(c), *14-5G-18(c)*, or 15-314(b), Annotated Code of Maryland.

(3) A respondent suspended pursuant to Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b)(1), 14-5E-16(e), 14-5F-18(c), *14-5G-18(c)*, or 15-314(b), Annotated Code of Maryland, shall be reinstated immediately upon the filing of a certified docket entry that the conviction has been reversed. The reinstatement does not terminate any other disciplinary action or investigation pending against the respondent.

~~[-08]~~ .09 Summary Suspension.

A. State Government Article, §10-226(c), Annotated Code of Maryland, governs consideration of summary suspension of a license.

B. Summary Suspension Before a Hearing.

(1) Based on information gathered during an investigation, the disciplinary panel may determine that the public health, safety, or welfare imperatively requires emergency action and vote to summarily suspend the license of the respondent.

(2) If the disciplinary panel votes to summarily suspend, the Board shall refer the matter to the administrative prosecutor for prosecutorial action.

(3) The summary suspension order shall include but is not limited to:

(a) The statutory authority upon which the order is based; and

(b) Statements of investigatory information which serve as a basis for the order.

(4) The respondent shall be provided with a postdeprivation opportunity to be heard within 15 days by the disciplinary panel that voted to summarily suspend the license.

(5) The disciplinary panel shall serve the respondent at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03.

~~[B]~~ C. Notice of Intent to Summarily Suspend.

(1) Based on information gathered during an investigation, the disciplinary panel may determine that there is a substantial likelihood of a risk of serious harm to the public health, safety, or welfare by the health provider, and vote an intent to summarily suspend the license of the respondent.

(2) If the disciplinary panel votes an intent to summarily suspend, the Board shall refer the matter to the administrative prosecutor for prosecutorial action.

~~[(3) Based upon a review of the case, the prosecutor may refer the matter back to the disciplinary panel for further consideration.]~~

~~[(4)]~~ (3) Notice to the respondent includes a:

(a) Proposed order for summary suspension; and

(b) Show cause notice letter providing an opportunity to the respondent to show cause why the order should not be issued.

~~[(5)]~~ (4) The proposed order for summary suspension includes but is not limited to:

(a) The statutory authority upon which the order is based;

(b) Notification that the respondent may request a full hearing to ~~[appeal]~~ challenge the proposed summary suspension ~~[-, if executed by the disciplinary panel];~~ and

(c) Statements of investigatory information which serve as a basis for the order.

~~[(6)]~~ (5) ~~[Service]~~ ~~[(a)]~~ The disciplinary panel shall serve the respondent ~~[:]~~ *at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03, at least 5 calendar days before a predeprivation hearing.*

~~[(i)]~~ ~~At least 5 calendar days before a predeprivation hearing; and~~

~~[(ii)]~~ ~~By regular mail or hand delivery at the address the respondent maintains for purposes of licensure notice.]~~

~~[(b)]~~ (a) The disciplinary panel may choose to serve the respondent personally.

~~[(7)]~~ (6) A show cause notice may not be required in extraordinary circumstances. The disciplinary panel, after consultation with the Board's counsel, may suspend a license without prior notice and opportunity to be heard, if:

(a) The disciplinary panel determines that the health, welfare, and safety of the public or the physician imperatively requires immediate suspension;

(b) Notice and opportunity to be heard before the action is not feasible; and

(c) The respondent is provided with a postdeprivation opportunity to be heard within 15 days by the disciplinary panel, that voted to summarily suspend the license.

~~[(E)]~~ D. Representation.

(1) The respondent may appear in proper person or be represented by counsel in any matter before the disciplinary panel. If represented at an evidentiary hearing, the respondent shall be

represented only by an attorney admitted to the Maryland Bar or specially admitted to practice law in Maryland under ~~[Rule 14 of]~~ the Rules Governing Admission to the Bar found in the Maryland Rules.

(2) The administrative prosecutor shall appear in prosecution of the case.

E. Postdeprivation Hearing Before the Disciplinary Panel.

(1) The disciplinary panel, that voted to summarily suspend under Section B, shall hold the postdeprivation hearing on whether to continue the summary suspension of the license. The presiding disciplinary panel member shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding disciplinary panel member may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing, and shall ordinarily limit the oral presentation by the respondent and the administrative prosecutor to 20 minutes each. The respondent shall proceed first.

(2) The presiding disciplinary panel member:

(a) Shall allow for consideration of oral presentations and documents considered to be relevant and material to the proceeding and not unduly repetitious; and

(b) May not admit oral testimony or witnesses.

(3) The disciplinary panel members may ask any questions of any party appearing before the disciplinary panel.

(4) The Respondent may waive the postdeprivation hearing in writing.

(5) After the postdeprivation hearing, the disciplinary panel shall vote to:

(a) Reaffirm the summary suspension;

(b) Terminate the summary suspension;

(c) Enter any order to which the parties may agree; or

(d) Enter any interim order which the circumstances of the case warrant.

~~[D]~~ *F. Predeprivation Hearing Before the Disciplinary Panel.*

(1) The disciplinary panel, that voted to issue a show cause order *under Section C*, shall hold the predeprivation hearing on whether to summarily suspend the license. The presiding disciplinary panel member shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding disciplinary panel member may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing, and shall *ordinarily* limit the oral presentation by the respondent and the administrative prosecutor to 20 minutes each. The *State* [respondent] shall proceed first.

(2) The presiding disciplinary panel member:

(a) Shall allow for consideration of oral presentations and documents considered by the presiding disciplinary panel member to be relevant and material to the proceeding and not unduly repetitious; and

(b) May not admit oral testimony or witnesses.

(3) The disciplinary panel members may ask any questions of any party appearing before the disciplinary panel.

(4) After the predeprivation hearing, the disciplinary panel may issue the summary suspension order, previously filed with the notice, if it finds that the health, safety, and welfare imperatively require emergency action.

~~[E. If the disciplinary panel proceeds under §B(7) of this regulation, the disciplinary panel shall hold a postdeprivation initial hearing. The disciplinary panel shall conduct the hearing in accordance with §D of this regulation unless the parties waive this hearing and proceed to the summary suspension appeal.~~

F] *G. Burdens of Production and Persuasion.*

(1) The respondent may present argument in opposition to allegations presented in the [proposed] order for summary suspension *or the proposed order for summary suspension.*

(2) The administrative prosecutor bears the burden to show by a preponderance of the evidence that the health, welfare, and safety of the public imperatively requires the disciplinary panel to issue an order to suspend the respondent's license.

~~[G. After the predeprivation hearing, the disciplinary panel shall vote to:~~

~~(1) Order a summary suspension;~~

~~(2) Deny the summary suspension;~~

~~(3) Enter any order to which the parties may agree; or~~

~~(4) Enter any interim order which the circumstances of the case warrant.~~

~~H. After the postdeprivation hearing, the disciplinary panel shall vote to:~~

~~(1) Reaffirm the summary suspension;~~

~~(2) Rescind the summary suspension;~~

~~(3) Enter any order to which the parties may agree; or~~

~~(4) Enter any interim order which the circumstances of the case warrant.]~~

I. The respondent may demand a full evidentiary hearing, *in accordance with the Administrative Procedure Act*, on the merits within 10 days of the issuance of *the waiver or affirmance or modification* of a summary suspension order, and the Office of Administrative Hearings shall ~~[set]~~ *schedule a hearing to be held* within ~~[30]~~ 45 days of the demand, *but the [30] 45 day time frame may be waived by the respondent.*

J. If the Respondent does not request an evidentiary hearing within 10 days of the issuance of the waiver or affirmance or modification of a summary suspension order, the Summary Suspension will not be referred to OAH and there will be no further opportunity to challenge the summary suspension.

~~[J]~~ K. Evidentiary Hearing Before the Administrative Law Judge.

~~[(1) The appeal from a summary suspension hearing shall be an evidentiary hearing under the Administrative Procedure Act.]~~

~~(1) [If the parties agree,] [t]~~*The summary suspension and disciplinary charges shall be consolidated, if practical, into a single evidentiary hearing.*

(2) After a full evidentiary hearing, the administrative law judge shall issue a proposed decision with findings of fact, conclusions of law and disposition. The administrative prosecutor and respondent may file exceptions in accordance with Regulation .05B of this chapter. If a party files exceptions, unless the exceptions hearing is waived, an exceptions hearing, on the record, shall be held before the disciplinary panel that had not issued the order of summary suspension.

After the disciplinary panel issues its final ~~[order]~~ *decision*, the respondent may appeal this decision in accordance with Regulation .12 of this chapter.

~~[-09]~~ .10 Sanctioning and Imposition of Fines.

A. General Application of Sanctioning Guidelines.

(1) Sections A and B of this regulation and Regulation .10 of this chapter do not apply to ~~[offenses]~~ *violations* for which a mandatory sanction is set by statute or regulation.

~~[(2) Except as provided in §B of this regulation, for violations of Health Occupations Article, §§14-404(a), 14-504 and 1-302, Annotated Code of Maryland, To resolve disciplinary charges the disciplinary panel shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.~~

~~(3)~~ (2) Ranking of Sanctions.

(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

- (i) Reprimand;
- (ii) Probation;
- (iii) Suspension; and
- (iv) Revocation.

~~[(b) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.~~

~~(c) A stayed suspension not meeting the criteria for §A(3)(b) of this regulation is ranked as a reprimand.]~~

~~[(d)]~~ (b) A fine listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.

~~[(e)]~~ (c) The addition of a fine does not change the ranking of the severity of the sanction.

(3) *A departure from the sanctioning guidelines set forth in Regulation .11 of this chapter is not a ground for any hearing or appeal of a disciplinary panel action.*

(4) The disciplinary panel may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the ~~[chart]~~ *sanctioning guidelines set forth in Regulation .11 of this chapter.*

(5) Any sanction may be accompanied by conditions reasonably related to the ~~[offense]~~ *violation* or to the rehabilitation of the ~~[offender]~~ *respondent*. The inclusion of conditions does not change the ranking of the sanction. *Conditions imposed may include, but are not limited to, the length of probation or suspension, permanent or temporary conditions upon the license, required participation in remedial courses or programs, and supervision.*

(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:

(a) The sanction with the highest severity ranking should be used to determine which ground will be used in developing a sanction; and

(b) The disciplinary panel may impose concurrent sanctions based on other grounds violated.

~~(7) [Notwithstanding the sanctioning guidelines set forth in Regulation .10 of this chapter, in order to resolve a pending disciplinary action, the disciplinary panel and the licensee may agree to a surrender of license or a consent order with terms, sanction, and fine agreed to by the disciplinary panel, the administrative prosecutor, and the licensee.]~~ *The disciplinary panel may depart from the sanctioning guidelines for the purposes of settlement.*

(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the disciplinary panel may consider the aggravating and mitigating factors set out in §B(5) and (6) of this regulation and may, in its discretion, determine, based on those factors, that an exception should be made and ~~[that the]~~ *impose a* sanction in a particular case ~~[should]~~ *that falls* outside the range of sanctions listed in the sanctioning guidelines.

(9) If the disciplinary panel imposes a sanction that departs from the sanctioning guidelines set forth in Regulation .10 of this chapter, the disciplinary panel shall state its reasons for doing so in its final decision ~~[and order]~~.

B. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the disciplinary panel may consider the aggravating and mitigating factors set out in §B(5) and (6) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and ~~[that the]~~ *imposed* sanction in a particular case ~~[should]~~ *that* falls outside the range of sanctions listed in the sanctioning guidelines.

(2) Nothing in this regulation requires the disciplinary panel or an administrative law judge to make findings of fact with respect to any of these factors.

~~[(3) A departure from the sanctioning guidelines set forth in Regulation .10 of this chapter is not a ground for any hearing or appeal of a disciplinary panel action.~~

~~(4)~~ (3) The existence of one or more of these factors does not impose on the disciplinary panel or an administrative law judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set out in the sanctioning guidelines.

~~[(5)]~~ (4) Mitigating factors may include, but are not limited to, the following:

- (a) The absence of a prior disciplinary record;
- (b) The ~~[offender]~~ *respondent* self-reported the incident;
- (c) The ~~[offender]~~ *respondent* voluntarily admitted the misconduct, made full disclosure to the disciplinary panel and was cooperative during the disciplinary panel proceedings;
- (d) The ~~[offender]~~ *respondent* implemented remedial measures to correct or mitigate the harm arising from the misconduct;
- (e) The ~~[offender]~~ *respondent* made good faith efforts to make restitution or to rectify the consequences of the misconduct;
- (f) The ~~[offender]~~ *respondent* has been rehabilitated or exhibits rehabilitative potential;
- (g) The misconduct was not premeditated;
- (h) There was no potential harm to patients or the public or other adverse impact; or
- (i) The incident was isolated and is not likely to recur.

~~[(6)]~~ (5) Aggravating factors may include, but are not limited to, the following:

- (a) The ~~[offender]~~ *respondent* has a previous criminal or administrative disciplinary history;
- (b) The ~~[offense]~~ *violation* was committed deliberately or with gross negligence or recklessness;
- (c) The ~~[offense]~~ *violation* had the potential for or actually did cause patient harm;
- (d) The ~~[offense]~~ *violation* was part of a pattern of detrimental conduct;
- (e) The ~~[offender]~~ *respondent* committed a combination of factually discrete ~~[offense]~~ *violation* adjudicated in a single action;
- (f) The ~~[offender]~~ *respondent* pursued his or her financial gain over the patient's welfare;
- (g) The patient was especially vulnerable;
- (h) The ~~[offender]~~ *respondent* attempted to hide the error or misconduct from patients or others;
- (i) The ~~[offender]~~ *respondent* concealed, falsified or destroyed evidence, or presented false testimony or evidence;
- (j) The ~~[offender]~~ *respondent* did not cooperate with the investigation; or
- (k) Previous attempts to rehabilitate the ~~[offender]~~ *respondent* were unsuccessful.

~~[C. Fines for Unauthorized Practice of Medicine.~~

~~(1) The Board may impose a fine as provided in §C(3) of this regulation for:~~

- ~~(a) Practicing medicine without a license in violation of Health Occupations Article, §14-601, Annotated Code of Maryland; or~~
- ~~(b) A violation of an order of cease and desist from practicing medicine without a license.~~

~~(2) Factors in determining the amount of a fine include, but are not limited to the following:~~

- ~~(a) The extent to which the respondent derived any financial benefit from the improper conduct;~~

~~(b) The willfulness of the improper conduct;~~

~~(c) The extent of actual or potential public harm caused by the improper conduct; and~~

~~(d) The deterrent effect of the fine.~~

~~(3) Range of Fines Imposed:~~

~~(a) Except as specified in §C(3)(b) of this regulation, the Board may impose fines as follows:~~

~~(i) For the first violation, not less than \$1,000 and not more than \$30,000;~~

~~(ii) For the second violation, not less than \$10,000 and not more than \$40,000; and~~

~~(iii) For the third violation, not less than \$15,000 and not more than \$50,000.~~

~~(b) If the conduct resulted in harm to any patient, the Board may consider each patient seen to be a separate violation when imposing a fine listed in §C(3)(a) of this regulation.~~

~~(4) The Board shall pay all monies collected pursuant to this section into the Board's fund.~~

~~D. Other Fines:~~

~~(1) The disciplinary panel shall impose a fine of \$100 for a violation of Health Occupations Article, §14-505, Annotated Code of Maryland, and a fine of \$100 for a violation of Health Occupations Article, §14-316(f), Annotated Code of Maryland.~~

~~(2) The disciplinary panel shall pay all monies collected pursuant to §D(1) of this regulation into the Board's fund.]~~

~~[E] C. [Offenses] Violations Related to Continuing [Medical] Education Credits.~~

~~(1) First [Offense] Violation of Failure to Document Credits.~~

~~(a) Except as provided in §E(2) or (3) of this regulation, if a licensee has submitted an application claiming the completion of continuing [medical] education credits and the licensee fails to document the completion of such continuing [medical] education credits when audited by the Board, the disciplinary panel may impose a civil fine under Health Occupations Article, §§[14-316(d)(5)] 14-316(d)(6), 14-5A-13(d)(2), 14-5B-12(d)(2), 14-5C-14(h), 14-5D-12(g), 14-5E-13(h), 14-5F-15(e), 14-5G-13(d)(2), or 15-307(f), Annotated Code of Maryland, of up~~

to \$100 per missing continuing ~~[medical]~~ education credit in lieu of a sanction under Health Occupations Article, §§14-404, 14-5A-17, 14-5B-14, ~~14-5C-17~~, 14-5D-14, ~~14-5E-16~~, ~~14-5F-18~~, ~~14-5G-18~~, or 15-314, Annotated Code of Maryland.

(b) Section E(1)(a) of this regulation does not limit the Board's or disciplinary panel's authority to require completion of the missing continuing ~~[medical]~~ education credits.

(2) Willful Falsification.

(a) If a licensee has willfully falsified an application with respect to continuing ~~[medical]~~ education credits, the licensee may be charged under one or more of the following, as appropriate:

(i) Health Occupations Article, §§14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), ~~14-5G-18(a)(3)~~, or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5C-17(a)(10), 14-5D-14(a)(10), 14-5E-16(a)(10), 14-5F-18(a)(9), ~~14-5G-18(a)(10)~~, or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36), ~~14-5A-17(a)(14)~~, ~~14-5B-14(a)(14)~~, ~~14-5C-17(a)(14)~~, ~~14-5D-14(a)(14)~~, ~~14-5E-16~~, ~~14-5F-18(a)(15)~~, ~~14-5G-18(a)(14)~~, or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the disciplinary panel may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5C-17, 14-5D-14, 14-5E-16, 14-5F-18, ~~14-5G-18~~, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines.

(3) Licensees Previously Disciplined Under §E(1) or (2) of this Regulation.

(a) If a licensee has been previously fined or otherwise disciplined under §E(1) or (2) of this regulation, the disciplinary panel may, for a subsequent ~~[offense]~~ violation relating to continuing ~~[medical]~~ education credits, charge a licensee under one or more of the following, as appropriate:

(i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), ~~14-5G-18(a)(3)~~, or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5C-17(a)(10), 14-5D-14(a)(10), 14-5E-16(a)(10), 14-5F-18(a)(9), *14-5G-18(a)(10)*, or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36), *14-5A-17(a)(14)*, *14-5B-14(a)(14)*, *14-5C-17(a)(14)*, *14-5D-14(a)(14)*, *14-5E-16*, *14-5F-18(a)(15)*, *14-5G-18(a)(14)*, or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the disciplinary panel may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5C-17, 14-5D-14, 14-5E-16, 14-5F-18, *14-5G-18*, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines for a subsequent **[offense]** violation.

(c) The disciplinary panel may not apply the sanction described in §E(1) of this regulation in determining a sanction for a licensee previously fined or disciplined for an **[offense]** violation related to continuing **[medical]** education credits.

(4) The disciplinary panel shall pay all monies collected pursuant to this section into the State's General Fund.

[F] D. Payment of Fines.

(1) An individual shall pay to the disciplinary panel any fine imposed under this regulation within ~~[15]~~ 90 calendar days of the date of the order, unless the order specifies otherwise.

(2) Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, does not stay payment of a fine imposed by the disciplinary panel pursuant to this regulation.

(3) If an individual fails to pay, in whole or in part, a fine imposed by the disciplinary panel pursuant to this regulation, the disciplinary panel may not restore, reinstate, or renew a license until the fine has been paid in full.

(4) In its discretion, the disciplinary panel may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

[.10] .11 Sanctioning Guidelines for Physicians.

A. Subject to provisions of Regulation .09A and B of this chapter, the disciplinary panel may impose sanctions as outlined in §B of this regulation on physicians for violations of Health Occupations Article, §§14-404(a), 14-504, and 1-302, Annotated Code of Maryland.

B. Range of Sanctions.

Ground	[Maximum] <i>Minimum</i> Sanction	[Minimum] <i>Maximum</i> Sanction	[Maximum] <i>Minimum</i> Fine	[Minimum] <i>Maximum</i> Fine
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another	[Revocation] <i>Reprimand with 2 years' probation</i>	[Reprimand with 2 years' probation] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>
(2) Fraudulently or deceptively uses a license	[Revocation] <i>Probation</i>	[Probation] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>
(3) Is guilty of immoral <i>conduct in the practice of medicine</i> or unprofessional conduct in the practice of medicine, consisting of:				
(a) Sexual impropriety as defined by the Board's regulations at COMAR 10.32.04.02 [+7-02]	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>

(b) A sexual violation as defined in the Board's regulations at COMAR 10.32.04.02 [17.02]	[Revocation] <i>1 year probation</i>	[1-year probation] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>
(c) [Ethical] Violations that are not sexual in nature	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$5,000] <i>\$50,000</i>
(d) Attesting to earning but failing to earn <i>the</i> required number of continuing [medical] education [(CME)] credits	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>
(e) Immoral or unprofessional conduct violations that are not sexual in nature	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$25,000] <i>\$0</i>	[\$10,000] <i>\$25,000</i>
(4) Incompetence				
(a) Is professionally incompetent	[Revocation] <i>Suspension until professional incompetence is addressed to disciplinary panel's satisfaction</i>	[Suspension until professional incompetence is addressed to disciplinary panel's satisfaction] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$5,000] <i>\$50,000</i>

(b) Is physically [or mentally] incompetent	[Revocation] <i>Suspension until physical or mental incompetence is addressed to the disciplinary panel's satisfaction.</i>	[Suspension until physical or mental incompetence is addressed to disciplinary panel's satisfaction.] <i>Revocation</i>	[\$50,000] \$0	[\$0] \$50,000
(c) <i>Is mentally incompetent</i>	<i>Suspension until physical or mental incompetence is addressed to the disciplinary panel's satisfaction.</i>	<i>Revocation</i>	\$0	\$50,000
(5) Solicits or advertises in violation of Health Occupations Article, §14-503, Annotated Code of Maryland	[Reprimand with probation] <i>Reprimand</i>	[Reprimand] <i>Reprimand with probation</i>	[\$50,000] \$0	[\$5,000] \$50,000
(6) Abandons a patient	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000

<p>(7) Habitually is intoxicated</p>	<p>[Revocation] <i>Suspension until physician is in treatment and has been abstinent for 6 months</i></p>	<p>[Suspension until physician is in treatment and has been abstinent for 6 months] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$0] \$50,000</p>
<p>(8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland</p>	<p>[Revocation] <i>Suspension until physician is in treatment and has been abstinent for 6 months</i></p>	<p>[Suspension until physician is in treatment and has been abstinent for 6 months] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$0] \$50,000</p>
<p>(9) Provides professional services: (a) While under the influence of alcohol; or (b) While using any narcotic or controlled dangerous substance, as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or other drug that is in excess of therapeutic amounts or without valid medical indication</p>	<p>[Revocation] <i>Suspension until physician is in treatment and has been abstinent for 1 year</i></p>	<p>[Suspension until physician is in treatment and has been abstinent for 1 year] <i>Revocation</i></p>	<p>[\$100,000] \$0</p>	<p>[\$10,000] \$100,000</p>

(10) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain	[Suspension for 5 years] <i>Reprimand</i>	[Reprimand] <i>Suspension for 5 years</i>	[\$50,000] \$0	[\$10,000] \$50,000
(11) Willfully makes or files a false report or record in the practice of medicine	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000
(12) Willfully fails to file or record any medical report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000
(13) On proper request, and in accordance with the provisions of Health - General Article, Title 4, Subtitle 3, Annotated Code of Maryland, fails to provide details of a patient's medical record to the patient, another physician, or hospital	[Suspension] <i>Reprimand</i>	[Reprimand] <i>Suspension</i>	[\$10,000] \$0	[\$1,000] \$10,000
(14) Solicits professional patronage through an agent or other person or profits from the acts of a person who is	[Suspension for 1 year] <i>Reprimand</i>	[Reprimand] <i>Suspension for 1 year</i>	[\$50,000] \$0	[\$5,000] \$50,000

represented as an agent of the physician				
(15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$100,000] \$0	[\$10,000] \$10,000
(16) Agrees with a clinical or bioanalytical laboratory to make payments to the laboratory for a test or test series for a patient, unless the licensed physician discloses on the bill to the patient or third-party payor: (a) The name of the laboratory; (b) The amount paid to the laboratory for the test or test series; and (c) The amount of procurement or processing charge of the licensed physician, if any, for each specimen taken	[Suspension for 1 year] <i>Reprimand</i>	[Reprimand] <i>Suspension for 1 year</i>	[\$50,000] \$0	[\$10,000] \$50,000
(17) Makes a willful misrepresentation in treatment	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000

(18) Unauthorized Persons				
(a) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>
(b) When the offense under §B(18)(a) of this regulation: (i) Consists solely of a physician permitting an unlicensed allied health professional to work in a hospital (ii) The allied health professional is employed by the hospital, not the physician; (iii) The physician is not employed by the hospital; and (iv) The recruitment, hiring, scheduling, and credentialing of the allied health professional is performed by the hospital and not the physician	[Suspension for 1 year] <i>Reprimand</i>	[Reprimand] <i>Suspension for 1 year</i>	[\$50,000] <i>\$0</i>	[\$0] <i>\$50,000</i>
(19) [Grossly overutilizes health care services] <i>Establishes a pattern of excessive or medically unnecessary procedures or treatment.</i>	[Revocation] <i>Reprimand and probation for 2 years</i>	[Reprimand] <i>Revocation</i>	[\$50,000] <i>\$0</i>	[\$10,000] <i>\$50,000</i>

<p>(20) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$50,000] <i>\$0</i></p>	<p>[\$10,000] <i>\$50,000</i></p>
<p>(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans Administration for an act that would be grounds for disciplinary action under this section</p>	<p>[Penalty comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline] [Penalty] Sanction equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be</p>	<p>[Penalty equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be.] [Penalty] Sanction comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline</p>	<p>[Fine comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline] Fine equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be</p>	<p>[Fine equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be] Fine comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline</p>

<p>(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$5,000] \$50,000</p>
<p>(23) Willfully submits false statements to collect fees for which services are not provided</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>
<p>(24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section, and the licensee: (a) Surrendered the license issued by the state or country to the state or country; or (b) Allowed the license issued by the state or country to expire or lapse</p>	<p>[Penalty comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline] [Penalty] <i>Sanction equivalent to that imposed by original licensing</i></p>	<p>[Penalty equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be] [Penalty] <i>Sanction comparable to what disciplinary</i></p>	<p>[Fine comparable to what disciplinary panel imposes under equivalent Maryland ground for discipline] <i>Fine equivalent to that imposed by original</i></p>	<p>[Fine equivalent to that imposed by original licensing authority if this is lesser than disciplinary panel sanction would be] <i>Fine comparable to what</i></p>

	<i>authority if this is lesser than disciplinary panel sanction would be</i>	<i>panel imposes under equivalent Maryland ground for discipline</i>	<i>licensing authority if this is lesser than disciplinary panel sanction would be</i>	<i>disciplinary panel imposes under equivalent Maryland ground for discipline</i>
(25) [Knowingly] <i>Willfully</i> fails to report suspected child abuse in violation of the Family Law Article, §5-704, Annotated Code of Maryland	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$5,000] \$50,000
(26) Fails to educate a patient being treated for breast cancer of alternative methods of treatment as required by of Health-General Article, §20-113, Annotated Code of Maryland	[Reprimand and probation of 1 year with mandatory CMEs] <i>Reprimand</i>	[Reprimand] <i>Reprimand and probation of 1 year with mandatory CMEs</i>	[\$50,000] \$0	[\$5,000] \$50,000
(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	[Revocation] <i>Reprimand and probation for 3 years with practice oversight</i>	[Reprimand and probation for 3 years with practice oversight] <i>Revocation</i>	[\$100,000] \$0	[\$10,000] \$100,000

<p>(28) Fails to comply with the provisions of Health Occupations Article, §12-102, Annotated Code of Maryland, regarding dispensing prescriptions</p>	<p>[Suspension for 2 years] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 2 years</i></p>	<p>[\$50,000] \$0</p>	<p>[\$2,500] \$50,000</p>
<p>(29) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive</p>	<p>[Suspension for 1 year] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 1 year</i></p>	<p>[\$50,000] \$0</p>	<p>[\$5,000] \$50,000</p>
<p>(30) Except as to an association that has remained in continuous existence since July 1, 1963: (a) Associates with a pharmacist as a partner or co-owner of a pharmacy for the purpose of operating a pharmacy; (b) Employs a pharmacist for the purpose of operating a pharmacy; or (c) Contracts with a pharmacist for the purpose of operating a pharmacy</p>	<p>[Suspension for 3 years] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 3 years</i></p>	<p>[\$50,000] \$0</p>	<p>[\$5,000] \$50,000</p>

(31) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control and Prevention's guidelines on universal precautions	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$100,000] \$0	[\$10,000] \$100,000
(32) Fails to display the notice regarding CDC universal precautions, as required under Health Occupations Article, §14-415, Annotated Code of Maryland	[Suspension] <i>Reprimand</i>	[Reprimand] <i>Suspension</i>	[\$10,000] \$0	[\$1,000] \$10,000
(33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000
(34) Is convicted of insurance fraud as defined in Insurance Article, §27-801, Annotated Code of Maryland	[Revocation] <i>Suspension for 6 months</i>	[Suspension for 6 months] <i>Revocation</i>	[\$50,000] \$0	[\$10,000] \$50,000
(35) Is in breach of a service obligation resulting from the applicant's or licensee's receipt of State or federal funding for the licensee's medical education	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$100,000] \$0	[\$10,000] \$100,000

<p>(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>
<p>(37) [By corrupt means, threats, or force, intimidates] <i>Intimidates</i> or influences, or attempts to intimidate or influence, for the purpose of causing any person to withhold or change testimony in hearings or proceedings before the Board or a disciplinary panel or those otherwise delegated to the Office of Administrative Hearings</p>	<p>[Revocation] <i>Suspension for 3 years</i></p>	<p>[Suspension for 3 years] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>

<p>(38) [By corrupt means, threats, or force, hinders] Willfully hinders, prevents, or otherwise delays any person from making information available to the Board or a disciplinary panel in furtherance of any investigation of the Board or a disciplinary panel</p>	<p>[Revocation] <i>Suspension for 3 years</i></p>	<p>[Suspension for 3 years] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>
<p>(39) Intentionally misrepresents credentials for the purpose of testifying or rendering an expert opinion in hearings or proceedings before the Board or a disciplinary panel or those otherwise delegated to the Office of Administrative Hearings</p>	<p>[Revocation] <i>Probation for 3 years</i></p>	<p>[Probation for 3 years] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>
<p>(40) Fails to keep adequate medical records as determined by appropriate peer review</p>	<p>[Suspension for 1 year] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 1 year</i></p>	<p>[\$50,000] \$0</p>	<p>[\$2,500] \$50,000</p>

<p>(41) Performs a cosmetic surgical procedure in an office or a facility that is not:</p> <p>(a) Accredited by:</p> <p>(i) The American Association for Accreditation of Ambulatory Surgical Facilities;</p> <p>(ii) The Accreditation Association for Ambulatory Health Care; or</p> <p>(iii) The Joint Commission on the Accreditation of Health Care Organizations; or</p> <p>(b) Certified to participate in the Medicare program, as enacted by Title XVIII of the Social Security Act</p>	<p>[Revocation] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation</i></p>	<p>[\$50,000] \$0</p>	<p>[\$10,000] \$50,000</p>
<p>(42) Fails to complete a criminal history records check under Health Occupations Article, §14-308.1, Annotated Code of Maryland</p>	<p>[Suspension for 1 year] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 1 year</i></p>	<p>[\$10,000] \$0</p>	<p>[\$500] \$10,000</p>

(43) Violates any provision of the Health Occupations Article, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$25,000] \$0	[\$10,000] \$25,000
(44) Fails to meet the qualifications for licensure under Health Occupations Article, Title 14, Subtitle 3, Annotated Code of Maryland	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$25,000] \$0	[\$10,000] \$25,000
(45) Fails to comply with Health Occupations Article, §1-223, Annotated Code of Maryland	[Revocation] <i>Reprimand</i>	[Reprimand] <i>Revocation</i>	[\$50,000] \$0	[\$5,000] \$50,000

<p>(46) Fails to comply with the requirements of the Prescription Drug Monitoring Program under Health - General Article, Title 21, Subtitle 2A, Annotated Code of Maryland</p>	<p>[Suspension for 1 year] <i>Reprimand</i></p>	<p>[Reprimand] <i>Suspension for 1 year</i></p>	<p>[\$25,000] <i>\$0</i></p>	<p>[\$10,000] <i>\$25,000</i></p>
<p>(47) Fails to comply with the provisions of Health Occupations Article, §14-504, Annotated Code of Maryland, regarding acupuncture</p>	<p>[Revocation of acupuncture registration] <i>Reprimand</i></p>	<p>[Reprimand] <i>Revocation of acupuncture registration</i></p>	<p><i>\$0</i></p>	<p>[\$0] <i>\$25,000</i></p>
<p>(48) Fails to comply with the provisions of Health Occupations Article, Title 1, Subtitle 3, Annotated Code of Maryland, regarding patient referrals</p>	<p>[Revocation] <i>Suspension for 6 months</i></p>	<p>[Suspension for 6 months] <i>Revocation</i></p>	<p>[\$100,000] <i>\$0</i></p>	<p>[\$25,000] <i>\$100,000</i></p>

~~[.11]~~ .12 [~~Disciplinary Actions and~~] Licensure Denials [~~Assigned to the Board~~]

A. This regulation applies to proceedings under Health Occupations Article §, ~~[14-205(b)(1)(iii);] 14-206(e)(3) and 14-404~~ [~~14-307, 14-405, 14-606(a)(4)(ii), 14-5A-17(a), 14-5A-09, 14-5A-23(b), 14-5B-09, 14-5B-14(a), 14-5B-19(b), 14-5C-09, 14-5C-17(a), 14-5C-23(b), 14-5D-08, 14-5D-14(a), 14-5D-18(b), 14-5E-09, 14-5E-16(a), 14-5E-23(b), 14-5F-11, 14-5F-18(a), 14-5F-29(b), 15-313, or 15-403~~], Annotated Code of Maryland.

B. The final decision in the proceedings in this regulation is made by ~~[the full board]~~ a panel of the Board.

C. Denial of Application for Initial License.

(1) When an individual files an application for a license with the Board, the applicant shall be investigated to determine whether the Board will:

(a) Issue a license; or

(b) Deny the application.

(2) The *Disciplinary Panel* ~~[Board]~~ may vote for the issuance of an intent to deny application for an initial license to practice medicine or an allied health profession for one or any combination of the grounds for denial, including:

(a) Failing to meet the minimal qualifications or requirements of licensure;

(b) Committing an act or an omission constituting grounds for discipline under Health Occupations Article, §14-404, Annotated Code of Maryland;

(c) Failing to complete the application or failing to provide additional information requested by the Board in connection with the application;

(d) Submitting false or misleading information in connection with the application; or

(e) Failing to cooperate with the Board's investigation of the application.

(3) If the *Disciplinary Panel* [Board] votes to issue a notice of an intent to deny an application for an initial license, the notice shall be served upon the applicant by regular mail or hand delivery to an address the applicant identified on the applicant's application.

(4) The disciplinary panel may issue a notice of intent to deny with a proposed order which will go into effect if the applicant fails to request a hearing within 30 days of issuance of the notice of intent to deny.

~~[(4)]~~ (5) ~~[After service of the notice of intent to deny application for initial license,]~~ *If the applicant timely requests a hearing, the applicant shall be offered an informal meeting with a panel of the Board to explore whether the matter can be resolved with a consent order. The administrative prosecutor also may attend the meeting. The panel may recommend a consent order granting a license, denying a license, or granting a license with appropriate terms and conditions including probation.*

~~[(5)]~~ (6) If the applicant and the administrative prosecutor agree with the panel's proposed resolution, the applicant shall sign a consent order with the proposed resolution, and the *disciplinary panel* [Board] shall vote on whether to approve the resolution. If the applicant and the administrative prosecutor do not agree with the panel's proposed resolution, the Board shall delegate the matter to the Office of Administrative Hearings for a contested case hearing.

~~[(6)]~~ (7) If the matter proceeds to a hearing before the Office of Administrative Hearings, the administrative prosecutor shall present evidence before an administrative law judge in support of the denying the initial licensure application. The applicant shall be given an opportunity to present evidence in support of granting the license.

~~[(7)]~~ (8) The administrative law judge shall conduct an evidentiary hearing in accordance with:

(a) The Administrative Procedure Act;

(b) COMAR 28.02.01; and

(c) COMAR ~~[10.32.02.04C]~~ 10.32.02.05C, which shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.

~~[(8)]~~ (9) The administrative law judge shall issue a proposed decision. Within 15 days of the issuance of the proposed decision, the applicant and the administrative prosecutor may file exceptions to the proposed decision with the Board. A response to the exceptions may be filed within 15 days of the filing of the exceptions.

~~[(9)]~~ (10) If exceptions are filed, the *disciplinary panel that did not issue the denial* [Board] shall hold a hearing on the exceptions. The exceptions hearing is based upon evidentiary record established before the Office of Administrative Hearings.

~~[(10)]~~ (11) The *disciplinary panel* [Board] shall vote and issue a final decision and order on whether the initial license application is granted or denied.

~~[(11)]~~ (12) An individual whose application for initial licensure has been denied by a final decision and order by the Board may petition for judicial review of the final decision and order as provided by Health Occupations Article, §14-408(a), Annotated Code of Maryland.

~~[D. Unauthorized Practice and Misrepresentation as a Licensed Practitioner.~~

~~(1) The Board may vote for charges that an individual has practiced medicine or an allied health profession without authorization or that an individual has misrepresented one's self as a practitioner of medicine or as an allied health professional.~~

~~(2) If the Board votes to charge an individual for practicing medicine or an allied health care profession without authorization or with misrepresenting one's self as a practitioner of medicine or as an allied health professional, the notice shall be served upon the respondent by regular mail, certified mail, or hand delivery to the individual.~~

~~(3) After service of the charges, the respondent shall be offered an informal meeting with a panel of the Board to explore whether the matter can be resolved with a consent order. The administrative prosecutor may attend the meeting. The panel may recommend a consent order.~~

~~(4) If the respondent and the administrative prosecutor agree with the panel's proposed resolution, the respondent shall sign a consent order with the proposed resolution, and the Board shall vote on whether to approve the resolution. If the applicant and the administrative prosecutor do not agree with the panel's proposed resolution, the Board shall delegate the matter to the Office of Administrative Hearings for a contested case hearing.~~

~~(5) If the matter proceeds to a hearing before the Office of Administrative Hearings, the administrative prosecutor shall present evidence before an administrative law judge to prove the charges. The applicant shall be given an opportunity to present evidence in defense.~~

~~(6) The administrative law judge shall conduct an evidentiary hearing in accordance with:~~

~~(a) The Administrative Procedure Act;~~

~~(b) COMAR 28.02.01; and~~

~~(c) COMAR 10.32.02.04C which shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.~~

~~(7) The administrative law judge shall issue a proposed decision. Within 15 days of the issuance of the proposed decision, the applicant and the administrative prosecutor may file exceptions to the proposed decision with the Board. A response to the exceptions may be filed within 15 days of the filing of the exceptions.~~

~~(8) If exceptions are filed, the Board shall hold a hearing on the exceptions. The exceptions hearing is based upon evidentiary record established before the Office of Administrative Hearings.~~

~~(9) The Board shall vote and issue a final decision and order. If the Board determines that the respondent has practiced a health care profession without authorization or misrepresented one's self as a practitioner of medicine, the Board may fine the respondent as authorized by statute and regulation.~~

~~(10) An individual who is aggrieved by a final decision and order by the Board may petition for judicial review of the final decision and order as provided by Health Occupations Article, §14-408(a), Annotated Code of Maryland.~~

~~E. Cease and Desist Orders~~

~~(1) An initial Board order to cease and desist issued under §14-206(e) of the Medical Practice Act from the unauthorized practice of medicine or from taking any action for which there are grounds for discipline under Health Occupations Article, §14-404, Annotated Code of Maryland, and which pose a serious risk to the health, safety, and welfare of a patient:~~

~~(a) Is a public document; and~~

~~(b) Is effective immediately unless the order states otherwise.~~

~~(2) The Board shall serve the initial order by hand delivery, certified mail, or first-class mail.~~

~~(3) Challenge:~~

~~(a) A respondent may challenge the factual or legal basis of the initial order by filing a written opposition within 30 days of its issuance, and may include a request for a hearing.~~

~~(b) The Board shall consider that opposition and shall provide a hearing if requested.~~

~~(c) After considering the written opposition and the presentation at the hearing, if any, the Board may issue a final order to rescind, modify, or affirm the cease and desist order.~~

~~(d) The Board shall serve the final order by hand delivery, certified mail, or first-class mail to the last known address of the respondent.~~

~~(e) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.~~

~~(4) Violations of a Cease and Desist Order:~~

~~(a) The Board may impose a fine as provided in Regulation .09C of this chapter on any individual who violates a cease and desist order.~~

~~(b) Before imposition of a fine for violation of a cease and desist order, the Board shall give notice of the alleged violation, and an opportunity for a hearing.~~

~~(c) The hearing may not concern issues:~~

~~(i) That were not raised under §E(3) of this regulation; or~~

~~(ii) That were raised under §E(3) of this regulation, but for which the Board did not grant the relief or modification requested.~~

~~(d) The only issues to be considered at the hearing are:~~

~~(i) Whether the individual violated the cease and desist order; and~~

~~(ii) The amount of any fine to be imposed.~~

~~(e) The Board shall issue a final order stating whether a violation occurred and if so, the amount of the fine.~~

~~(f) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.~~

~~(5) Nothing in this regulation prohibits the Board from delegating any hearing to the Office of Administrative Hearings as permitted by State Government Article, §10-205, Annotated Code of Maryland.]~~

.13 Cease and Desist Proceedings for Licensed Physicians and Unlicensed Individuals

A. This regulation applies to proceedings under Health Occupations Article, §14-206(e)(1),(2), and (3) Annotated Code of Maryland.

B. Initial Cease and Desist Order for a Licensed Physician and Unlicensed Individuals.

(1) After an investigation, a disciplinary panel may issue an initial order to cease and desist, under §14-206(e)(3) of the Medical Practice Act, prohibiting a licensed physician from taking any action for which a disciplinary panel determines by a preponderance of the evidence that there are grounds for discipline under Health Occupations Article, §14-404 Annotated Code of Maryland, and which pose a serious risk to the health, safety, and welfare of a patient.

(2) After an investigation, a disciplinary panel may issue an initial order to cease and desist, under §14-206(e)(1) and (2) of the Medical Practice Act prohibiting an unlicensed individual from practicing a regulated profession under Titles 14 or 15 of Health Occupations Article, Annotated Code of Maryland, and misrepresenting to the public that an individual is authorized to practice a regulated profession under Titles 14 or 15 of Health Occupations Article, §14-404 Annotated Code of Maryland.

(3) The Initial Cease and Desist Order is:

(a) A public document; and

(b) Effective immediately unless the initial order states otherwise.

(4) The Board shall serve the initial order pursuant to COMAR 10.32.02.03.

(5) The Board may serve the initial order to the respondent's attorney if the Board has received a letter of representation.

(6) The initial cease and desist order will become final if an opposition or request for hearing is not received within 15 days of the issuance of the order.

C. Written Opposition and Request for a Hearing.

(1) The respondent may challenge the initial order by filing a written opposition with the disciplinary panel that issued the initial order, within 15 days of the issuance of the initial order.

(2) The disciplinary panel shall consider that opposition.

(3) After considering the written opposition, the disciplinary panel may issue a final cease and desist order rescinding, modifying, or affirming the initial cease and desist order.

(4) The respondent may submit a written request for an opposition hearing with the opposition, which, if requested, will be held before the disciplinary panel that issued the initial order.

(5) The disciplinary panel, that voted to issue the initial cease and desist order under Section B, shall hold the opposition hearing on whether to continue the order. The presiding disciplinary panel member shall:

(a) Determine all procedural issues that are governed by this section, and may impose reasonable time limitations;

(b) Make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing; and

(c) Ordinarily limit the oral presentation by the respondent and the administrative prosecutor to 20 minutes each.

(6) The presiding disciplinary panel member:

(a) Shall allow for consideration of oral presentations and documents considered by the presiding disciplinary panel member to be relevant and material to the proceeding and not unduly repetitious; and

(b) May not allow oral testimony from the respondent or testimony from witnesses.

(7) The disciplinary panel members may ask any questions of any party appearing before the disciplinary panel.

(8) The panel will affirm, modify, or terminate the initial cease and desist order following the opposition hearing.

(9) If the panel affirms or modifies the initial cease and desist order at the opposition hearing, the respondent may request, within 10 days, an evidentiary hearing before an administrative law judge.

D. Evidentiary Hearing.

(1) If the respondent timely requests an evidentiary hearing, the panel will delegate the evidentiary hearing to an administrative law judge, in accordance with COMAR 10.32.02.05.

(2) If a case is delegated to the Office of Administrative Hearings, the parties have the right to file exceptions in accordance with COMAR 10.32.02.06.

(3) Following the exceptions hearing, the disciplinary panel shall affirm, modify, or terminate the cease and desist order.

E. Final Cease and Desist Order.

(1) The Board shall serve the final cease and desist order pursuant to COMAR 10.32.02.03.

(2) The respondent may seek judicial review of the disciplinary panel's final cease and desist order as provided in the Administrative Procedure Act.

F. Violations of a Cease and Desist Order.

(1) A disciplinary panel may impose a reprimand, probation, suspension, or revocation, in addition to a fine on any licensed physician who violates a cease and desist order.

(2) A disciplinary panel may impose a fine on any unlicensed individual who violates a cease and desist order.

(3) Before imposition of a sanction or fine for a violation of a cease and desist order, the panel shall provide notice of the alleged violation and an opportunity for a hearing.

(4) The only issues to be considered at the hearing are:

(a) Whether the licensed physician or unlicensed individual violated the cease and desist order; and

(b) The sanction.

(5) The respondent may seek judicial review of the disciplinary panel's violation of cease and desist order as provided in the Administrative Procedure Act.

.14 Unauthorized Practice.

A. This regulation applies to proceedings under Health Occupations Article, §14-606(a)(4)(ii), 14-5A-23(b), 14-5B-19(b), 14-5C-23(b), 14-5D-18(b), 14-5E-23(b), 14-5F-29(b)(c), 14-5G-27(b), 15-403(b), Annotated Code of Maryland.

B. The final decision in the proceedings in this regulation is made by a disciplinary panel.

C. Unlicensed Practice and Misrepresentation as an Authorized Practitioner.

(1) After an investigation, a disciplinary panel may vote for charges that an individual has practiced medicine or an allied health profession without a license or that an individual has misrepresented one's self as authorized to practice medicine or an allied health profession.

(2) In its discretion the panel may offer a pre-charge consent order to resolve the allegations prior to the issuance of charges.

(3) If a disciplinary panel votes to charge an individual for practicing medicine or an allied health care profession without a license or with misrepresenting one's self as authorized to practice medicine or an allied health profession, the notice shall be served upon the respondent at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03.

(4) After issuance of the charges, the respondent shall be offered a DCCR with a panel of the Board to explore whether the matter can be resolved with a consent order. The administrative prosecutor may attend the DCCR. The panel may recommend a consent order. In addition to a civil fine, the consent order may include an order that the respondent cease and desist from the charged unlicensed practice or misrepresenting to the public that the respondent is authorized to practice medicine or an allied health profession.

(5) If the respondent and the administrative prosecutor agree with the panel's proposed resolution, the respondent shall sign a consent order with the proposed resolution. If the respondent or the administrative prosecutor do not agree with the panel's proposed resolution, the disciplinary panel shall delegate the matter to the Office of Administrative Hearings for a contested case hearing, in accordance with COMAR 10.32.02.05.

(6) The administrative law judge shall issue a proposed decision in accordance with COMAR 10.32.02.05.

(7) After the proposed decision is issued, the parties have the right to file exceptions in accordance with COMAR 10.32.02.06.

D. Fines for Unauthorized Practice of Medicine or Misrepresentation as Licensee.

(1) The disciplinary panel may impose a fine as provided in §D(3) or (4) of this regulation for:

(a) Practicing without a license or misrepresenting authorization to practice in violation of Health Occupations Article, §§14-601, 14-602, 14-5A-20, 14-5A-21, 14-5A-22, 14-5B-17, 14-5B-18, 14-5C-20, 14-5C-21, 14-5C-22, 14-5D-17, 14-5E-20, 14-5E-21, 14-5E-22, 14-5F-29, 14-5F-30, 14-5G-23, 14-5G-24, 14-5G-25, 15-401, 15-402 Annotated Code of Maryland; or

(b) A violation of an order of cease and desist from practicing medicine without a license.

(2) Factors in determining the amount of a fine include, but are not limited to the following:

(a) The extent to which the respondent derived any financial benefit from the improper conduct;

(b) The willfulness of the improper conduct;

(c) The extent of actual or potential public harm caused by the improper conduct; and

(d) The deterrent effect of the fine.

(3) Range of Fines Imposed for Physicians and Naturopathic Doctors.

(a) Except as specified in §D(3)(b) of this regulation, the disciplinary panel may impose a fine of up to \$50,000, but may consider the guideline ranges as follows:

(i) For the first violation, not less than \$1,000 and not more than \$30,000;

(ii) For the second violation, not less than \$10,000 and not more than \$40,000; and

(iii) For the third or subsequent violation, not less than \$15,000 and not more than \$50,000.

(b) If the conduct resulted in harm to any patient, the disciplinary panel may consider each patient seen to be a separate violation when imposing a fine listed in §D(3)(a) of this regulation.
(4) Range of Fines Imposed for Allied Health.

(a) Except as specified in §D(3)(b) of this regulation, the disciplinary panel may impose a fine of up to \$50,000, but may consider the guideline ranges as follows:

(i) For the first violation, not less than \$500 and not more than \$3,000; and

(ii) For the second or subsequent violation, not less than \$1,000 and not more than \$5,000.

(b) If the conduct resulted in harm to any patient, the disciplinary panel may consider each patient seen to be a separate violation when imposing a fine listed in §D(3)(a) of this regulation.

(5) The disciplinary panel shall pay all monies collected pursuant to this section into the Board's fund.

.15 Denials.

A. This regulation applies to proceedings under Health Occupations Article, §14-205(b)(3)(i), 14-5A-17(a), 14-5B-14(a), 14-5C-17(a), 14-5D-14(a), 14-5E-16(a), 14-5F-18(a), 14-5G-18(a), or 15-311 Annotated Code of Maryland.

B. The final decision in the proceedings in this regulation is made by a disciplinary panel of the Board.

C. Denial of Application for Initial License and Reinstatement After Expiration of License.

(1) If a panel votes to issue a notice of an intent to deny, the notice shall be served upon the applicant at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03.

(2) If the applicant does not request a hearing, the panel shall issue a final order denying the license.

(3) In its discretion, the panel may offer a consent order to resolve the allegations prior to the issuance of a notice of intent to deny.

(4) After issuance of the notice of intent to deny application for initial license, within 30 days, the applicant may request a hearing. If the applicant requests a hearing, they shall be offered a DCCR with a panel to explore whether the matter can be resolved with a consent order. The administrative prosecutor also may attend the DCCR. The panel may recommend a consent order granting a license, denying a license, or granting a license with appropriate terms and conditions including probation.

(5) If the applicant and the administrative prosecutor agree with the panel's proposed resolution, the applicant shall sign a consent order with the proposed resolution. If the applicant or administrative prosecutor do not agree with the panel's proposed resolution, the panel shall delegate the matter to the Office of Administrative Hearings for a contested case hearing, in accordance with COMAR 10.32.02.05.

(6) The administrative law judge shall issue a proposed decision, in accordance with COMAR 10.32.02.05.

(7) After the proposed decision is issued, the parties have the right to file exceptions in accordance with COMAR 10.32.02.06.

(8) The panel shall vote and issue a final decision and order on whether the initial license application is granted or denied. If a panel denies an application for an initial license, the panel may set a time period before the applicant can reapply or issue a decision in which the panel prohibits the applicant from reapplying. If the panel does not provide a time period when the applicant can reapply for initial licensure, the applicant may not reapply for an initial license until two years have passed from the date of the final decision denying their original application.

(9) An individual whose application for initial licensure has been denied by a final decision and order by the panel may petition for judicial review of the final decision and order as provided by Health Occupations Article, §14-408(a), Annotated Code of Maryland.

.16 Modification or Disapproval of Advanced Duties for Physicians Assistants and Disapproval of Specialized Tasks for Athletic Trainers.

A. This regulation applies to proceedings under Health Occupations Article, §15-302.1 and 14-5D-11.3, Annotated Code of Maryland.

B. The final decision in the proceedings in this regulation is made by a panel of the Board.

(1) If the Board votes to issue a modification or disapproval of an advanced duty for a physician assistant or a disapproval of a specialized task for an athletic trainer, the Board shall notify the applicant at the address of record or the last known address, or upon the attorney pursuant to COMAR 10.32.02.03.

(2) Within 30 days after notification of a modification or disapproval of an advanced duty for a physician assistant or a disapproval of a specialized task for an athletic trainer, the applicant may request a hearing. If the applicant does not request a hearing, the Board's modification or disapproval of an advanced duty for a physician assistant or its disapproval of a specialized task for an athletic trainer will become final. If the licensee requests a hearing, the Board may delegate the matter to the Office of Administrative Hearings for a contested case hearing, in accordance with COMAR 10.32.02.05.

(3) The administrative law judge shall issue a proposed decision, in accordance with COMAR 10.32.02.05.

(4) After the proposed decision is issued, the parties have the right to file exceptions in accordance with COMAR 10.32.02.06.

(5) After the exceptions process, the panel shall vote and issue a final decision and order on whether the advanced duty or specialized task is granted, modified, or denied.

C. The licensee whose advanced duty or specialized task is modified or denied may seek judicial review of the disciplinary panel's final decision as provided in the Administrative Procedure Act.

[.13] .17 Recusal in Board or Disciplinary Panel Proceedings.

A. A Board or disciplinary panel member may not participate in an investigation or a proceeding in which the impartiality of the Board or disciplinary panel member might reasonably be questioned, including, but not limited to, proceedings and investigations in which the Board or disciplinary panel member has or appears to have:

(1) A personal bias or prejudice concerning a party; or

(2) Personal knowledge of disputed, *material* evidentiary facts concerning a proceeding.

B. The recusal shall be stated on the record.

C. In a ~~[hearing]~~ *proceeding* before the Board or disciplinary panel, the parties may waive the recusal.

~~[.12]~~ .18 Judicial Review.

~~[A. A respondent whose license has been sanctioned by a final order of the disciplinary panel after a contested case proceeding under Health Occupations Article, §14-404, 14-5A-17.1, 14-5B-14.1, 14-5C-17(b), 14-5D-15, 14-5E-17, 14-5F-23, or 15-315(b), Annotated Code of Maryland, may seek judicial review of the disciplinary panel's decision as provided under Health Occupations Article, §14-408(a), Annotated Code of Maryland.]~~ *Any person aggrieved by a final decision of the Board or a disciplinary panel in a contested case, as defined in the Administrative Procedure Act, may take a direct judicial appeal as provided in the Administrative Procedure Act. see Health Occupations Article §14-408.*

~~[B. An individual whose application for administrative reinstatement has been denied by a final disciplinary panel order after a contested case proceeding under Health Occupations Article, §14-205(a)(1)(iii), 14-5A-17.1, 14-5B-14.1, 14-5C-17(b), 14-5D-15, 14-5E-17, 14-5F-23, or 15-315(b), Annotated Code of Maryland, may appeal the decision as provided under Health Occupations Article, §14-408(a), Annotated Code of Maryland.]~~

~~[.14 Proposed Orders;]~~ .19 Show Cause Hearings.

~~[A. Nothing in this chapter prohibits the issuance of a charging document with a proposed order which will go into effect if the respondent fails to request a hearing.]~~

~~[B] A.~~ Nothing in this chapter prohibits a disciplinary panel from conducting a show cause hearing to determine if there has been:

- (1) A violation of probation;
- (2) A violation of a condition under ~~[which]~~ any portion of a disciplinary order ~~[was stayed]~~; or
- (3) Any other violation of a Board or disciplinary panel order.

[E] B. A disciplinary panel may terminate a show cause hearing if it determines that there are material facts in dispute which cannot reasonably be determined in that [venue] forum. The disciplinary panel may ~~[then convene an evidentiary hearing or]~~ delegate such a hearing to an administrative law judge.

C. Nothing in this chapter prohibits the issuance of a denial of an advanced duty, specialized task, or imposition of a civil penalty, which will go into effect if the respondent fails to request a hearing.

[.18] .20 Administrative Expungement.

A. Administrative Expungements.

(1) The Applicant may file with the Board an application for administrative expungement to have records of an administrative action by a disciplinary panel classified as confidential, not for public release, and removed from the licensee's public individual profile, if:

(a) The application is submitted more than 3 years after the imposition of an administrative action by the Board or after administrative reinstatement or termination of suspension of the license, whichever is later;

(b) The licensee had no incidents of a public sanction since the administrative action identified in the application occurred; and

(c) The licensee is not currently under probation or investigation by the Board.

(2) An application for administrative expungement shall only be granted for the following administrative actions:

(a) Failure to pay taxes or unemployment insurance contributions under Health Occupations Article, §1-213(b), Annotated Code of Maryland;

(b) Failure to complete continuing [medical] education requirements under Health Occupations Article, §14-316(d), Annotated Code of Maryland;

(c) Failure to renew a license on time under Health Occupations Article, §14-606(a)(5), Annotated Code of Maryland; or

(d) Failure to notify the Board in writing of change of name or address within the time required under Health Occupations Article, §14-316(f).

(3) An administrative expungement shall not be considered for any license denials, reprimands, probations, suspensions, and revocations issued pursuant to Health Occupations Article, §14-404, Annotated Code of Maryland.

B. Application for Administrative Expungement.

(1) The application for administrative expungement shall be filed in writing on a form provided by the Board.

(2) The application fee shall be \$450.

(3) The application fee is non-refundable.

C. Disposition of Application.

(1) If the applicant meets the requirements specified in §§A and B of this regulation, the Board shall inform the applicant when to expect the records to be removed from the applicant's public practitioner profile as required in Health Occupations Article, §14-411.1, Annotated Code of Maryland, and when all Board records will be classified confidential.

(2) If the applicant does not meet the requirements specified in §§A and B of this regulation, the applicant will be deemed ineligible and the Board shall notify the applicant in writing.

(3) An applicant whose application is ineligible under §C(2) of this regulation may reapply when they meet the criteria.

D. The Board is not required to report an administrative expungement to any national database.

E. Nothing in this regulation shall prohibit the Board from using a Board record, previous sanction, or disciplinary action for any regulatory purpose or from releasing records to law enforcement or other governmental body as permitted by law.

.21 Standard of Proof and Burden of Proof.

A. The standard of proof in a Board proceeding is by a preponderance of the evidence.

B. Unless otherwise provided herein, a party asserting the affirmative of an issue before a disciplinary panel bears the burden of proof regarding the issue.

[.15] .22 Confidentiality.

A. Except as provided by 14-411(o), for formal charging documents, notices of intent to deny, notice of show cause hearing, summary suspensions, cease and desist orders, final decisions, or as otherwise provided by law, the proceedings of the Board and the disciplinary panels are confidential, and the confidentiality of the proceedings cannot be waived by the parties.

B. Unless adopted by the disciplinary panel as part of the final decision, ~~[F]~~the ~~[recommended]~~ proposed decision by an administrative law judge is confidential~~[-and]~~

C. The respondent ~~[cannot]~~ may not waive the confidentiality of the contested case proceedings ~~[or of the patients whose care is reflected in the record of the proceedings].~~

~~[E]~~ D. To the extent possible, even after a final ~~[order]~~ decision is entered by the Board or a disciplinary panel, the Board, the parties, Office of Administrative Hearings or witnesses shall refrain from revealing legal documents or oral statements or information that would reveal the identity of any party, patient[s], or witness referenced in the order[-], or the testimony of any witness or any evidence produced in the proceedings.

[.16] .23 Ethics.

A. The Board and the disciplinary panels may consider the ~~[Principles of]~~ Code of Medical Ethics of the American Medical Association~~[-but these]~~ and Opinions on related matters, the principles and opinions are not binding on the Board or the disciplinary panels.

B. If offered by a party, the ALJ shall take judicial notice of the relevant principles and opinions contained in the Code of Medical Ethics of the American Medical Association and Opinions on related matters.

[.17 Opioid Guidelines] .24 Centers for Disease Control and Prevention.

A. Opioid Guidelines

(1) The Board and the disciplinary panels may consider the “Guideline for Prescribing Opioids for Chronic Pain” published by the Centers for Disease Control and Prevention *and Opinions on related matters*, but ~~[this]~~ *the guideline and opinions [is]* are not binding on the Board or the disciplinary panels.

B. CDC Guidelines

(1) *If offered by a party, the ALJ shall take judicial notice of the infection control guidelines and recommendations for healthcare settings in the Guideline for Prescribing Opioids for Chronic Pain published by the Centers for Disease Control and Prevention and Opinions on related matters.*