

# ARIZONA BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

## GUIDELINES - INVESTIGATIVE PROCEDURES

Revised effective November 23, 2010

### PURPOSE:

The purpose of these Investigative Procedure Guidelines is to establish uniformity and consistency among the investigations performed by the Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board"). These guidelines are general recommendations. Each investigation will require specific procedures and techniques which best suit the allegations of unprofessional conduct stated and contribute to the most complete information being provided to the Board so that they can make a determination based on all the facts of the case and, thereby, fulfill their statutory obligation to protect the public.

### INTRODUCTION:

The Board regulates the osteopathic medical profession according to the Arizona Revised Statutes and is self-funded through licensing/registration fees (referred to as "90/10 Agencies"). The Board consists of seven members that are appointed to five-year terms by the Governor of Arizona. These members consist of five osteopathic physicians and two public members and are authorized to make final determination of all matters brought before the Board. The Board hires an Executive Director to administer the agency.

The primary goal of the Board is to protect the public from unprofessional physicians. In order to carry out that duty, the Board receives and investigates complaints and other information that is reported pursuant to the Arizona Revised Statutes. The Board is an administrative agency and not a court of law and typically is not bound by the Rules of Evidence.

### COMPLAINT PROCESSING

#### *Sources of Information:*

The Board receives information and complaints about its licensees in various ways. Some information is required by law to be reported to the Board (i.e. other licensees, other states, hospitals, National Practitioner Data Banks, etc.) and other information is voluntarily reported. The most common complainant is the patient. Medical malpractice cases are provided to the Board by law at both the filing and final determination of the lawsuit. The Board also accepts anonymous complaints if the alleged misconduct can be verified.

#### *Jurisdiction:*

The Board has jurisdiction to investigate information that a licensee or registrant is or may be incompetent, unqualified, impaired or unprofessional. Once a complaint or information is received by the agency and the Board has jurisdiction over the subject matter, the Board is obligated by law to investigate the matter. Even if the complainant changes his or her mind, the investigation continues. Only the Board may dispose of an allegation of unprofessional conduct.

#### Notification of an Investigation:

Once a complaint is received, the agency will inform the licensee and complainant as soon as possible regarding the investigation of the matter. The Board staff may contact the complainant to verify the information received. At the time of notification to the licensee, a response to the allegation and a request for all relevant information including medical records is requested.

#### Processing of Information:

The physician's response to an allegation should be received by the Board staff no later than twenty days after notification to the licensee. The Board staff shall subpoena all relevant information to the allegation or compel testimony of witnesses. If during the course of the investigation the Board determines that another licensee or institution has information relevant to the complaint, the Board will subpoena the records.

### Investigation Review:

The Executive Director, Deputy Director, or other Board staff will review and ensure that all relevant and necessary information is received. Once all information is received, an Investigation Report is written, summarizing the allegations, the physician's response, all materials received and reviewed, and a factual presentation of the case. The report and materials are presented to the Executive Director or to three Board Members for preliminary review. (See Executive Director Authority to Dismiss, below) The Board Member/reviewers' make recommendations whether to have the full Board review the case at Case Review, or to move the case to Investigative Hearing. The cases are then put on the agenda of the Board's next regular meeting. All parties to a complaint/investigation shall be informed of the date and location of that meeting. Interested parties will be provided an opportunity to address the Board at the meeting.

### Board Meeting: Case Review

At this level of review, the full Board considers the case. Neither the doctor nor the complainant is required to attend, although they may choose to do so. At a Case Review, the Board will discuss and determine whether or not to dismiss the case, issue a nondisciplinary letter of concern, require continuing medical education, or move the case to an investigative or formal administrative hearing.

### Board Meeting: Investigative Hearing

At this level, the Board has invited the doctor to attend the hearing. The complainant will also be notified of the hearing and asked to speak. After conducting the Investigative Hearing, the Board may take a variety of actions: dismiss the complaint, take non-disciplinary action (a Letter of Concern or Continuing Medical Education) or take disciplinary action such as issuing a Decree of Censure or Administrative Warning, putting the doctor's license on probation, fining the doctor, or suspending the doctor's license for no longer than one year.

Investigative Hearings are transcribed by a court reporter; the doctor and other parties who testify are sworn under oath. If a doctor does not show up for the Investigative Hearing, the Board cannot have the Hearing without the doctor, but may move the case to a Case Review or move to hold an Administrative Hearing.

### Administrative Hearing

An Administrative Hearing looks like a court trial, and is held when the Board is considering the revocation or long-term suspension of a doctor's license. Of course, the Administrative Hearing can result in any action that the Board finds appropriate. Should the doctor choose not to attend the Administrative Hearing, the Hearing can proceed without the doctor. Administrative Hearings are transcribed by a court reporter; the doctor and the witnesses testify under oath. Most Administrative Hearings are conducted by the Office of Administrative Hearings, at a time and place other than the Board's meetings.

### Public Record of Disposition of Cases

Once the Board disposes of (decides) a case, the disposition is made public record, but the investigative file remains confidential. All parties to an investigative matter are informed in writing of the disposition of the matter. Cases in which the allegations of unprofessional conduct are found to have no merit are dismissed and will remain a public record for five years after the disposition of the case. Cases in which the Board has issued non-disciplinary Letters of Concern or remedial CME remain public record for five years. All disciplinary actions are finalized as Orders and are maintained permanently as a public record. Non-disciplinary and disciplinary actions are posted on the Board's website, in the doctor's profile page.

### Executive Director Dismissal of Cases

The Executive Director has the authority to dismiss certain types of complaints. All cases will be investigated as described above. Some types of complaints may be dismissed by the Executive Director after that investigation. Some complaints may be dismissed by the Executive Director after three Board members have independently reviewed the complaint and investigation reports. The Executive Director reports to the Board at each regular meeting the complaints that have been dismissed. Upon request by the complainant, the Board will review the basis for the Executive Director's dismissal and may require additional investigation.