

Title 10 MARYLAND DEPARTMENT OF HEALTH

Subtitle 46 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Chapter 07 Sanctioning Guidelines

Authority: Health Occupations Article, §§1-606 and 10-315, Annotated Code of Maryland

.01 Scope.

A. This chapter shall be used by the Board and the Maryland Office of Administrative Hearings as a framework for imposing discipline.

B. The Board and the Maryland Office of Administrative Hearings shall take into consideration a range of activity within certain types of conduct rather than assigning particular sanctions to each specific violation.

C. The Board is aware that there may be conduct by a licensee that does not fall squarely within a particular grid contained in Regulation .06 of this chapter. In that event the Board will use its best judgment to determine the appropriate sanction.

D. The Board and the Maryland Office of Administrative Hearings shall make determinations that maximize the protection of the public's health while maintaining the rights of licensees.

.02 Definitions.

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

B. Terms Defined.

(1) "Board" means the Maryland State Board of Occupational Therapy Practice.

(2) "Conditions" means requirements in a public or non-public order that a licensee is required to satisfy which include but are not limited to:

(a) Treatment and counseling for an emotional or physical illness;

(b) Submission to drug and alcohol testing;

(c) Abstinence from specified drugs;

(d) Abstinence from alcohol;

(e) Remedial training;

- (f) Inspection;
- (g) Monitoring;
- (h) Evaluation;
- (i) Supervision;
- (j) Testing of clinical skills;
- (k) Submission of written reports;
- (l) A demonstration of knowledge or competency;
- (m) Limitation of practice;
- (n) Limitation on the administration of specified drugs to patients;
- (o) The provision of pro bono occupational therapy to the poor, elderly, or disabled;
- (p) Obedience of Maryland Occupational Therapy Practice Act, federal, state, and local laws; and
- (q) The payment of a civil penalty.

(3) "Conduct" means behavior or action or a failure to behave or act that results in a violation of the Maryland Occupational Therapy Practice Act or the regulations adopted by the Board.

.03 Application.

A. This chapter shall be used by the Board as a guide for sanctioning licensees in formal and informal actions and proceedings.

B. Except as provided in Regulation .05 of this chapter, the Board shall impose a sanction not less severe than the minimum listed in Regulation .06 of this chapter, nor more severe than the maximum listed in Regulation .06 of this chapter.

C. When conduct results in multiple violations of the Maryland Occupational Therapy Practice Act and the regulations adopted by the Board, the Board shall consider sanctions that are greater than those imposed for a single violation.

D. This chapter is not applicable to disciplinary matters reviewed by the Board that are initially closed.

E. Unless otherwise indicated, the period of a suspension may be stayed in whole or in part.

F. A respondent placed on suspension or probation shall have conditions attached to the suspension or probation which focus on the conduct and steps needed to assure public protection.

G. Consent orders shall:

- (1) Include an acknowledgement of the violation or violations; and

(2) Indicate that the respondent accepts personal responsibility for the respondent's behavior.

H. If the conduct is not described in Regulation .06 of this chapter, the Board shall use its judgment to determine appropriate sanctions.

I. A departure from the sanctioning guidelines alone may not be grounds for any hearing or appeal of any Board action before the Board or the Maryland Office of Administrative Hearings.

J. The sanctioning guidelines are not applicable to:

(1) Individuals seeking an initial license; or

(2) The summary suspension of a license under State Government Article, §10-226, Annotated Code of Maryland.

K. Notwithstanding the sanctioning guidelines, a respondent may surrender a license.

.04 Aggravating and Mitigating Factors.

A. Sanctions in a particular case may fall outside the range of the sanctioning guidelines established by the Board.

B. Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the following aggravating and mitigating factors in determining whether the sanction in a particular case should fall outside the range of the sanctioning guidelines:

(1) Aggravating factors:

(a) Previous criminal or administrative discipline history;

(b) Whether the offense was committed deliberately or with gross negligence or recklessness;

(c) Whether the offense has the potential for, or caused, serious patient harm;

(d) Whether the offense was part of a pattern of detrimental conduct;

(e) Whether the respondent pursued the respondent's financial gain over the patient's welfare;

(f) Whether the patient was especially vulnerable;

(g) Whether the respondent attempted to hide error or misconduct from patients or others;

(h) Whether the respondent:

(i) Concealed, falsified, or destroyed evidence; or

(ii) Presented false testimony or evidence;

(i) Whether the respondent willfully and without legal justification failed to cooperate with a lawful investigation conducted by the Board; and

(j) Whether previous attempts to rehabilitate the respondent were unsuccessful; and

(2) Mitigating factors:

- (a) Absence of a prior disciplinary record;
- (b) The passage of time since any prior offenses;
- (c) Whether the respondent self-reported to the Board;
- (d) Cooperation with the Board's investigation;
- (e) Full disclosure to the Board;
- (f) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;
- (g) Timely good-faith efforts to make restitution or to rectify consequences of misconduct;
- (h) Evidence of rehabilitation or rehabilitative potential;
- (i) Absence of premeditation to commit the offense;
- (j) Absence of potential harm to the public;
- (k) Absence of adverse impact;
- (l) Whether the offense was an isolated incident and not likely to recur;
- (m) How and when the respondent has been involved in community service and the value of the community service to the community; and
- (n) Voluntary admissions of misconduct.

.05 Disciplinary Guidelines.

The following guidelines shall be used by the Board as a guide for sanctioning licensees in formal and informal actions and proceedings:

A. Abuse — Physical and Emotional.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|--|---|---|--|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Unnecessary or disruptive behavior which may include verbal comments, directed to a patient, resulting in minimal harm or a risk of harm | Reprimand | Suspension for up to 5 years, and probation for up to 5 years, and conditions | Reprimand to suspension and probation for up to 5 years |
| | (2) Physical abuse resulting in significant physical or emotional injury | Suspension for 3 years, without stay for at least 30 days and probation for 3 | Revocation | Suspension for 3 years, without stay for at least 30 days, and probation for 3 years to revocation |

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| | | years, and conditions | | |
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B. Criminal Convictions or Plea of Nolo Contendere.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|--|--|------------|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude | Suspension for 1 year and probation for 1 year, and conditions | Revocation | Suspension for 1 year and probation for 1 year, to revocation |
| | (2) Convicted of or pleads guilty or nolo contendere to a sexual offense | Suspension for 5 years, without stay for at least 60 days, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 60 days, and probation for 5 years, to revocation |

C. Disciplined by Another Licensing or Disciplinary Authority.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|---|--|---|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Conduct resulting in no physical or psychological harm | Reprimand | Reprimand and probation for up to 3 years, and conditions | Reprimand to reprimand and probation for up to 3 years |
| | (2) Conduct resulting in financial injury | Reprimand | Revocation | Reprimand to revocation |
| | (3) Conduct resulting in physical or psychological harm or a risk of physical or psychological harm | Suspension for 3 years, without stay for at least 10 days, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, at least 10 days without stay, and probation for 3 years to revocation |
| | (4) Misrepresentation or fraud | Suspension for 2 years, without stay for at least 5 days, and probation for 2 years, and conditions | Revocation | Suspension for 2 years, without stay for at least 5 days, and probation for 2 years to revocation |
| | (5) Conduct not provided for in §C(1)—(4) of this regulation | Reprimand | Revocation | Reprimand to revocation |

D. Diversion of Controlled Substances or Prescription Drugs.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|----------|--|-------------------------------|-------------------------------|------------------------------------|
| | | Minimum | Maximum | |
| Least | (1) Diversion without harm to self or others | Reprimand and conditions, and | Suspension for up to 5 years, | Reprimand and probation for 1 year |

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|-------------------------|-------------------------------------|--|--|--|
| Least to Greatest | | probation for 1 year | and probation for up to 5 years, and conditions | to suspension for up to 5 years and probation for up to 5 years |
| | (2) Diversion creating risk of harm | Suspension for 3 years and probation for 3 years, and conditions | Suspension for up to 5 years and probation for up to 5 years, and conditions | Suspension for 3 years and probation for 3 years to suspension for up to 5 years and probation for up to 5 years |
| | (3) Diversion with harm | Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, to revocation |

E. Failure to Renew a License When the Licensee Has Continued to Practice.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|--|---|---|--|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Failure to renew a license and practicing for up to 1 year | Reprimand | Suspension for 2 years, and probation for 2 years, and conditions | Reprimand to suspension for 2 years, and probation for 2 years |
| | (2) Failure to renew a license and practicing for 1 year or longer | Suspension for 2 years, and probation for 2 years, and conditions | Revocation | Suspension for 2 years, and probation for 2 years, to revocation |

F. Noncompliance with Board Orders.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|---|--|------------|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Failure to comply with a Board order | Suspension for 3 years, without stay for at least 10 days, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, without stay for at least 10 days, probation for 3 years, to revocation |
| | (2) Failure to comply with a Board order with additional unprofessional conduct | Suspension for 3 years, without stay for at least 30 days, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, without stay for at least 30 days, and probation for 3 years, to revocation |

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| | (3) Failure to comply with a Board order with serious physical injury or death of a patient, or the risk of significant physical injury or death | Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, to revocation |
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G. Incompetent Practice or Misconduct.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|---|--|---|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Practice below acceptable standards with a low risk of patient harm | Reprimand and conditions | Suspension for 1 year, and probation for 1 year, and conditions | Reprimand to suspension for 1 year, and probation for 1 year |
| | (2) Practice below acceptable standards with patient harm or risk of patient harm | Suspension for 3 years, without stay for at least 30 days, and probation, and conditions | Revocation | Suspension for 3 years, without stay for at least 30 days, and probation, to revocation |
| | (3) Practice below acceptable standards with serious physical injury or death of a patient, or a risk of significant physical injury or death | Suspension for 3 years, without stay for at least 90 days, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, without stay for at least 90 days, and probation for 3 years, to revocation |

H. Sexual Misconduct.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|---|--|--|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Unsolicited conduct of a sexual nature excluding physical contact that serves no diagnostic or treatment purpose | Reprimand and conditions | Suspension for 1 year, and probation for 1 year, and conditions | Reprimand to Suspension for 1 year, and probation for 1 year |
| | (2) A personal relationship that violates professional ethics | Suspension for 1 year, and probation for 1 year, and conditions | Suspension for up to 5 years, probation for up to 5 years, and conditions | Suspension for 1 year, and probation for 1 year, to suspension for up to 5 years, and probation for up to 5 years |
| | (3) Physical contact of a sexual nature that does not include force, intimidation, the use of drugs, or alcohol, and that serves no diagnostic or treatment purpose | Suspension for 2 years, without stay for at least 90 days, and probation for 2 years, and conditions | Suspension for up to 7 years, without stay for at least 90 days, and probation for up to 7 years, and conditions | Suspension for 2 years, without stay for at least 90 days, and probation for 2 years, to suspension for up to 7 years, without stay for at least 90 days, and |

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| | | | | probation for up to 7 years |
| | (4) Sexual conduct involving, but not limited to, force intimidation, the use of drugs, or alcohol, or multiple victims | Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 1 year, and probation for 5 years to revocation |

I. Substance Abuse.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------|--|--|---|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Misuse of drugs or alcohol without harm to others | Suspension for 2 years and probation for 2 years, and conditions | Suspension for up to 5 years, and probation for up to 5 years, and conditions | Suspension for 2 years and probation for 2 years, to suspension for up to 5 years and probation for up to 5 years |
| | (2) Misuse of drugs or alcohol with patient harm or a risk of patient harm | Suspension for 5 years, without stay for at least 90 days, probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 90 days, and probation for 5 years to revocation |

J. Unauthorized Practice.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------|---|--|--|--|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Licensee knowingly allows an unauthorized individual to practice outside their scope of practice without patient harm or minimal patient harm | Reprimand and conditions | Suspension for 2 years, and probation for 2 years, and, conditions | Reprimand to suspension for 2 years, and probation for 2 years |
| | (2) Licensee knowingly allows an unauthorized individual to practice outside their scope of practice with greater than minimal patient harm | Suspension for 5 years, without stay for at least 30 days, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 30 days, and probation for 5 years to revocation |
| | (3) An unauthorized individual practices outside their scope of practice without patient harm or minimal patient harm | Reprimand | Suspension for 2 years, and probation for 2 years, and, conditions | Reprimand to suspension for 2 years, and probation for 2 years |

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| | (4) An unauthorized individual practices outside their scope of practice with greater than minimal patient harm | Suspension for 5 years, without stay for at least 30 days, and probation, and conditions | Revocation | Suspension for 5 years, without stay for at least 30 days, and probation, to revocation |
|--|---|--|------------|---|

K. Unethical Conduct.

| Severity | Tier/Conduct | Sanction Range | | Duration |
|-------------------------|--|---|--|---|
| | | Minimum | Maximum | |
| Least to Greatest | (1) Unethical Conduct resulting in no physical or psychological harm | Reprimand and conditions | Suspension for 2 years, and probation for 2 years, and, conditions | Reprimand to suspension for up to 2 years, and probation for up to 2 years |
| | (2) Unethical conduct resulting in financial injury | Suspension for 3 years, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, and probation for 3 years, to revocation |
| | (3) Unethical conduct resulting in physical or psychological harm or a risk of physical or psychological harm | Suspension for 3 years, and probation for 3 years, and conditions | Revocation | Suspension for 3 years, and probation for 3 years, to revocation |
| | (4) Unethically, and without legal justification, fails to cooperate with a lawful investigation conducted by the Board | Suspension for 5 years, without stay for at least 30 days, and probation, for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 30 days, and probation for 5 years, to revocation |
| | (5) Unethical conduct resulting from misrepresentation or fraud | Suspension for 5 years, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, and probation for 5 years, to revocation |
| | (6) Threatens, forces, intimidates, or influences a person to change or withhold evidence before the Board or the Office of Administrative Hearings. | Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, and conditions | Revocation | Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, to revocation |
| | (7) Unethical Conduct resulting from any violation not provided for in §K(1)—(6) of this regulation | Reprimand | Revocation | Reprimand to revocation |

Administrative History

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