

## **.02 Definitions.**

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

B. Terms Defined.

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

[1] (3) “Administrative law judge (ALJ)” means a hearing officer delegated the duty of conducting evidentiary hearings for the Board or disciplinary panel.

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

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

[4] (6) Administrative Reinstatement.

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

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

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

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

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

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

[7] (9) “Applicant” means an individual 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.

[8] (10) “Board” means the Maryland State Board of Physicians.

[9] (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.

[(10)] (12) “Cease and desist order” means an order of the Board issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland, prohibiting an individual from practicing medicine without a license or from taking an action for which there are grounds for discipline under Health Occupations Article, §14-404, and which poses a serious risk to the health, safety, and welfare of a patient.

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

[(12)] (14) 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;

(ii) An individual is practicing medicine without a license; or

(iii) A licensed physician has acted necessitating a Board action under Health Occupations Article, §14-206(e)(2), 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 a hospital or related institution, or an alternative health 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) Other information, from whatever source, which warrants investigation.

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

[(14)] (16) “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:

- (i) Complaints and disciplinary actions against licensed physicians and allied health professionals; and
- (ii) Postdisciplinary licensure reinstatements.

[(15)] (17) “Disposition agreement” means a formal nonpublic agreement by which the health care provider 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.

[(16)] (18) “Final order” means:

(a) The final written 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, 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.

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

[(18)] (20) “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 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.

[(19)] (21) 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:

- (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.

[(20)] (22) “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.

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

[(22)] (24) “Medical Practice Act” means Health Occupations Article, §§14-101—14-702, Annotated Code of Maryland.

[(23)] (25) “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.

[(24)] (26) “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 rescind the order of summary suspension.

[(25)] (27) “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.

[(26)] (28) “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.

[(27)] (29) “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.

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

[(29)] (31) “Proposed decision” means the 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.

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

[(30)] (33) “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.

[(31)] (34) “Respondent” means an individual who has been:

(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(c), Annotated Code of Maryland; or

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

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

[(33)] (36) “Sanction” means a- disciplinary 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.

[(34)] (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.

[(35)] (38) “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.

[(36)] (39) “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.

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

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

[(39)] (42) “Summary suspension” means a denial for an indefinite period of the right to use a license.

[(40)] (43) “Surrender” means the voluntary relinquishing of a Board license to a disciplinary panel.

[(41)] (44) "Suspension" means a denial of the right to use a license.

10.32.02.18

## **.18 Administrative Expungements.**

### *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;*

*(d) delinquent child support under Family Law Article, § 10-119.3(e)(2), Annotated Code of Maryland; or*

*(e) 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 § 14-411.1 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.*