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# Administrative Complaint Procedures for All Other Programs

## Scope

The Office of Professional and Occupational Regulation ("OPOR") provides administrative and support services to 29 professional and occupational licensing boards, and directly manages 8 additional licensing programs that do not have boards. This section describes the administrative complaint procedures followed by all boards other than the Manufactured Housing Board and the Real Estate Commission. For the programs without boards, the procedures are similar but not identical to what is set out below.

## Overview of the Complaint Process

The purpose of the licensing system is to protect the public against—

- Dishonest or unethical practitioners, and
- Practitioners who have fallen below minimum standards of competence in the practice of their profession.

Violators are subject to disciplinary action that can range from a formal warning to revocation of a license.

Disciplinary action is taken by the board or program that licensed the practitioner. Administrative support of the complaint process is provided by OPOR. Please contact the OPOR Complaint Division for assistance and information relating to the complaint process. You can reach the Complaint Division at:

Office of Professional and Occupational Regulation  
35 State House Station  
Augusta, ME 04333-0035  
(207) 624-8660 (voice)  
[OPORcomplaints.PFR@maine.gov](mailto:OPORcomplaints.PFR@maine.gov) (<mailto:OPORcomplaints.PFR@maine.gov>)

## Filing a Complaint

[Click here to file an electronic complaint. \(https://www.maine.gov/pfr/professionallicensing/home/file-a-complaint\)](https://www.maine.gov/pfr/professionallicensing/home/file-a-complaint) You may also request paper forms from the OPOR Complaint Division.

If the person complained against is a trade licensee (*i.e.*, electrician, plumber, oil burner technician, propane/natural gas technician or boiler operator, etc.), the complaint is routed to the senior inspector for the applicable board or program for review. Complaints against non-trade licensees are docketed and assigned a complaint number.

## Document Exchange

After the complaint is docketed, the OPOR Complaint Division acknowledges receipt of the complaint and sends a copy to the licensee. The licensee is asked to respond within 33 days. Upon receipt of the licensee's response, a copy may be sent to the complainant. The complainant is asked to reply within 15 days, but a reply is not mandatory. The complainant's reply, like the original complaint, is shared with the licensee.

## Investigation

Copies of the complaint, the licensee's response, and the complainant's reply (as well as any supplemental information from either the licensee or the complainant) are sent to the board's complaint committee. Generally, the complaint committee consists of 1 board member who serves as complaint officer, the OPOR administrator of the board, the Assistant Attorney General assigned to the board, and frequently, an OPOR investigator. The complaint committee **may** investigate the complaint beyond the document exchange described above **but does not always do so**. The complainant, the licensee, or other persons with information pertinent to the complainant may be contacted by a member of the complaint committee as part of this investigation.

## Evaluation

The complaint committee will evaluate the information obtained during the processing of the complaint. The complaint committee may make a recommendation to the board when the complaint is presented at a regularly-scheduled board meeting. You can check the board's meeting schedule and meeting agendas at OPOR's web site for the listing of the complaint number on the agenda at: [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing) (<http://www.maine.gov/professionallicensing>). Please be aware that a complaint presentation scheduled on short notice may not appear on a posted agenda. Board meetings take place at OPOR's offices located at 76 Northern Avenue, Gardiner, Maine.

## Board Action

At the conclusion of a complaint presentation, the board may:

### *1. Dismiss the complaint*

If there is insufficient evidence to determine whether or not a violation of the board's statute or rules occurred, if the licensee's conduct does not appear to constitute a violation of the board's statutes or rules, or if the complaint committee believes that no violation occurred, the board may vote to dismiss a complaint. A dismissal cannot be appealed by the complainant.

A complaint may be dismissed with a letter of guidance or a letter of concern, which are used to educate, reinforce knowledge regarding legal or professional obligations, and/or to express concern over a licensee's action or inaction. A letter of guidance or concern is a matter of public record but is not discipline.

### *2. Proceed with a consent agreement*

A consent agreement is a voluntary mechanism for resolving enforcement matters without a hearing or further proceeding. A consent agreement is a negotiated settlement between the board, the licensee and the Maine Attorney General's Office in which the licensee admits to one or more violations of board law or rules and agrees upon the sanctions to be imposed. The complainant is not a party to the consent agreement. Executed consent agreements are a matter of public record and are considered discipline.

### *3. Schedule the matter for an adjudicatory hearing*

Adjudicatory hearings are held before the board and are conducted in accordance with the Maine Administrative Procedure Act. The Assistant Attorney General assigned to the board presents the case against the licensee by calling witnesses to testify, presenting documentary evidence, etc. The licensee also has the right to testify, to call other witnesses to testify on his/her behalf, and to present documentary evidence. Many times, the complainant will be called as a witness as well. The licensee has the right to be represented by a lawyer and to compel the attendance of witnesses and the production of documents. Each side may cross-examine witnesses called by the other side. All testimony is taken under oath.

At the close of the hearing, the board deliberates and votes on whether or not a violation of the board's statutes or rules occurred. If the board determines that one or more violations occurred, the board decides on what action to take. Once the board's decision has been reduced to writing and signed by the board chair, the writing is called a Decision and Order and constitutes the final action of the board.

The licensee can appeal the Decision and Order to court. The complaint committee or complainant cannot appeal the board's decision.

The Complaint Division cannot tell you the outcome of a complaint over the phone, but a written notification will be mailed once it is completed.

## Discipline

A board or program may impose any of the following types of discipline:

- Issue a warning, censure or reprimand to a licensee
- Suspend a license for up to 90 days per violation or occurrence
- Revoke a license
- Impose a civil penalty of up to \$1,500 per violation or occurrence
- Impose conditions of probation on a licensee
- Assess the licensee for the cost of transcribing and reproducing the administrative record in the event of appeal

## Confidentiality

With limited exceptions, complaints and investigative records are confidential during the pendency of an investigation. Complaints are only identified by complaint number on board meeting agendas, and board members avoid referring to the complainant or licensee by name when evaluating the complaint in a public meeting. The complaint and the complaint file become public upon the conclusion of an investigation, unless confidentiality is required by some other provision of law. Patient/client treatment records obtained during investigation, such as a chiropractor's chart or a therapist's notes, remain confidential indefinitely and do not become public records.

## Reporting of Disciplinary Action

OPOR posts on its web site copies of all disciplinary action imposed on licensees via consent agreement or Decision and Order. OPOR also reports disciplinary action taken against health care licensees to the National Practitioner Data Bank (NPDB) maintained by the U.S. Department of Health and Human Services. Disciplinary action taken against real estate appraisers is reported to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

## Recovery of Money Damages

An OPOR board or program cannot order a licensee to pay money damages to a complainant, although a licensee may agree to restitution or reimbursement in a consent agreement. The recovery of money damages is a function of the court system. Civil penalties collected are not given to the complainant. The primary purpose of the OPOR complaint process is to protect the public against dishonest or incompetent practitioners by disciplining violators. The penalties listed above protect the public by punishing the licensee, discouraging future violations by the licensee, rehabilitating the licensee, and promoting compliance by other licensees. The OPOR complaint process is not designed to redress violations by the recovery of money damages to compensate persons harmed by the licensee's conduct. This is a function of the courts. A complainant is free to file a civil action against a licensee in addition to filing a complaint with OPOR.

**Last Updated:** January 14, 2021

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