# ALABAMA BOARD OF HEATING, AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADMINISTRATIVE CODE

## CHAPTER 440-X-6 DISCIPLINARY AND COMPLIANCE PROCEEDINGS

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### 440-X-6-.01 Definitions.

(1) Consumer Complaint: A complaint initiated by any written notice from a consumer that a certified contractor has performed substandard installation, service, or repair of a heating and air conditioning, or commercial refrigeration system

(2) Board Complaint: A complaint initiated by a Board compliance officer, certified contractors, or municipal, county, or state official charged with the responsibility of issuing building or similar permits.

(3) Administrative Complaint: A legal document which contains notice of the time and place of an administrative hearing; contains a statement of the charges against the certified contractor; and complies with the notice provisions for contested cases as set forth in the Alabama Administrative Procedures Act.

(4) Fine: A monetary penalty imposed by the Board.

(5) Settlement Agreement: Informal offer to resolve a consumer or Board compliant in lieu of the administrative compliant process.

(6) Consent Agreement: Informal offer to resolve a complaint involving an unlicensed contractor in lieu of criminal proceedings.

(7) Private Reprimand: Letter of disciplinary action to formally reprove or censure a certified contractor for unprofessional or

unlawful conduct, with the documentation of the action being classified as a private record

(8) Public Reprimand: Letter of disciplinary action to formally reprove or censure a certified contractor for unprofessional or unlawful conduct, with the documentation of the action being part of the contractor's licensure file and may be published online or in the Board's newsletter.

(9) Probation: The monitored practice of heating and air conditioning or refrigeration which permits the certified contractor to continue to work pursuant to specified conditions as set forth by the Board.

(10) Revocation: The withdrawal of the license by Board action

(11) Suspension: The temporary withdrawal of the license by Board action.

(12) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.

(13) Violation Letter: A letter from the Board detailing each violation found during an investigation into a consumer complaint.

(14) Letter of Closure: A letter from the Board notifying a contractor that no probable cause has been found after an investigation into a Board or consumer complaint.

(15) Investigative Committee: A committee comprised of at least one Board member; the executive director of the Board; and the Board's attorney which determine whether probable cause exists to discipline a certified contractor or unlicensed contractor. The Board shall name the Board member to serve on the Investigative Committee on an annual basis.
**Author**: Jeffrey M. Becraft; Ellen Leonard
**Statutory Authority**: Code of Ala. 1975, §31-31-32.
**History**: **New Rule**: Published November 30, 2021; effective: January 14, 2022.

**440-X-6-.02 Violations Of State Law And Rules Of The Board Of Heating, Air Conditioning And Refrigeration Contractors.**

(1) All entities, municipality, county, or state official charged with the duty of issuing mechanical or similar permits shall report to the Board the name and contact information of any individual in violation of Alabama law and/ or the rules and regulations set forth by the Board of Heating, Air Conditioning and Refrigeration Contractors.

(2) The Board may reprimand, fine, probate, or suspend the license of a certified contractor and/or otherwise discipline a contractor engaging in the business of heating and air conditioning or refrigeration installation, service, or repair.
**Author:** Jeffrey M. Becraft; Ellen Leonard
**Statutory Authority:** Code of Ala. 1975, §§34-31-21; 34-31-32.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003. **Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**Ed. Note:** Original Rule .01 was renumbered .02 per certification published November 30, 2021; effective: January 14, 2022.

**440-X-6-.03 Investigative Committee.**

The Investigative Committee shall be comprised of at least one Board member; the executive director of the Board; and the Board's attorney. The Board shall name the Board member to serve on the Investigative Committee on an annual basis.

(1) No Board members shall serve more than two (2) consecutive complete annual terms on the Investigative Committee.

(a) The Board Chairman shall have the power to replace or remove the designated Board member serving on the Investigative Committee due to any vacancy in the Board member position caused by any reason.

(b) The Board Chairman or Executive Director may name a Board member to serve as a substitute appointment to the Investigative Committee for any specific investigation or complaint in which the Board member has recused themselves or is disqualified from participating due to a conflict of interest, including involvement in the investigation as a possible witness to the facts.

(2) The Investigative Committee shall review the investigation and complaint to determine whether probable cause exists for disciplinary action or formal revocation proceedings by the Board.

(3) Any Board member participating in the probable cause determination by the Investigative Committee shall recuse themselves in any disciplinary proceedings of the Board arising from that investigation.
**Author:** Jeffrey M. Becraft; Ellen Leonard
**Statutory Authority:** Code of Ala. 1975, §31-31-32.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**440-X-6-.04 Initiation Of Compliance Investigation.**

(1) The Board may initiate investigations, as it deems appropriate, to determine compliance with state law and the rules and regulations of the Board including the competency, ability, and integrity of an individual certified or registered by the Board.

(2) The Board shall consider consumer complaints which must include the following:

(a) The name of the certified contractor.

(b) The name and contact information (telephone number, email address, etc.) of the complainant.

(c) Specific allegation(s) which, if substantiated through investigation, would constitute violation(s) of the Board of Heating, Air Conditioning & Refrigeration Law (Code of Ala. 1975, §34-31-18, et seq.) or the Alabama Board of Heating, Air Conditioning & Refrigeration Administrative Code (Rules and Regulations).

(3) Upon receipt of a written complaint the Executive Director and staff will review the information to determine if a certified contractor has potentially violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, the Executive Director shall then provide for an investigation by Board staff to determine if there is sufficient evidence to warrant disciplinary proceedings.

(4) The Board shall retain the authority to pursue or discontinue any investigation based on the information obtained in during the investigation of a complaint.

(5) The Board may require a certified contractor to submit a written and sworn statement to the Board in response to any complaint or investigation by the Board.

(6) All reports of investigations of complaints against certified contractors shall be submitted to the Investigative Committee prior to moving forward with disciplinary action.

(7) When an investigation concludes no probable cause exists to move forward with disciplinary action the complaint file shall be closed, and a letter of closure issued. The complaint may be reinvestigated within the jurisdictional timeframe set by the Board if circumstances so warrant.

(8) The Board shall refer any investigation involving possible criminal violations of state law to the State Attorney General or other appropriate state, county or local law enforcement agency.
**Author:** Jeffrey M. Becraft
**Statutory Authority:** Code of Ala. 1975, §31-31-32.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**Ed. Note:** Original Rule .02 was renumbered .04 per certification published November 30, 2021; effective: January 14, 2022.

**440-X-6-.05 Action Following Investigation.**

The investigative committee or its designee shall have the power to act on the report of the investigation as follows:

(1) Dismiss a complaint with a letter of closure If following its investigation, the Investigative Committee determines that no probable cause exists to proceed with disciplinary action, the compliance investigation shall be terminated, and the investigation closed.

(2) Offer a settlement agreement which may include a public reprimand, private reprimand, probation, suspension and/or fines.

(3) Private reprimand

(4) Public reprimand

(5) Suspension of certification for a Specified Period of Time

(6) Revocation of Certification.

(7) Accept voluntary surrender of a license of a certified contractor.
**Author:** Jeffrey M. Becraft
**Statutory Authority:** Code of Ala. 1975, §31-31-32.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**440-X-6-.06 Informal Disciplinary Proceedings.**

(1) The Board may offer an informal settlement to any individual involved in an investigation to resolve the administrative complaint or investigation by the Board. Neither the Board nor any other party is obligated or required to use informal settlement

procedures or to participate in informal settlement negotiations and any informal settlement shall be to terms that are negotiated to be in the best interest of the Board and the public and shall not become final until ratified and approved by the Board. All informal settlement agreements ratified and approved by the Board shall be incorporated by reference in the official minutes of the Board.

(2) The Board may issue a public reprimand that may be published online or in the annual newsletter.

(3) The Board may issue a private reprimand that is sealed to the public.
**Author:** Jeffrey M. Becraft
**Statutory Authority:** Code of Ala. 1975, §§31-31-31.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**440-X-6-.07 Administrative Proceedings.**

(1) When the Investigative Committee recommends a suspension or revocation, the certified contractor is entitled to a hearing.

(2) At least twenty days prior to the administrative hearing, an administrative complaint shall be served on the certified contractor as follows:

(a) Personal service made by a Board Compliance Officer.

(b) If the certified contractor out of state, evades service, or cannot be served personally, service shall be made by registered or certified mail to the last known post office mailing address shown on the records of the Board.

(c) If the certified contractor is represented by an attorney who has filed a notice of appearance with the Board, service shall be made on the attorney personally or by registered or certified mail.

(3) The Board's administrative complaint may be amended without leave of the hearing officer prior to the hearing so long as the amendment is germane to the charge or charges and does not materially alter the nature of any offense charged. Any amended administrative complaint will be served on the certified contractor being charged.

(4) Requests for subpoenas shall be filed with the Board at least ten days prior to the administrative hearing along. Any expenses incurred relative to subpoenas requested by a Respondent, either for witnesses or related to production of documents, are the

responsibility of the party who requested the issuance of said subpoena.

(5) The administrative hearing shall be conducted by a hearing officer provided by the Board. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.

(6) A continuance may be granted by the hearing officer, upon the filing of a written motion detailing the reasons for the continuance.
**Author:** Jeffrey M. Becraft; Ellen Leonard
**Statutory Authority:** Code of Ala. 1975, §31-31-32.
**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.
**Repealed and New Rule:** Published November 30, 2021; effective January 14, 2022.

**440-X-6-.08 Decision Of The Board.**

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition, the Board may take one or more of the following actions:

(a) Dismiss the administrative complaint in its entirety or any alleged violation in the complaint.

(b) Find the respondent not guilty of any or all the violations alleged in the administrative complaint.

(c) Find the respondent guilty of any or all the violations alleged in the administrative complaint. If the Board finds the respondent guilty of one or more of the violations alleged in the administrative complaint, the Board may take one or more of the following disciplinary actions against the respondent:

1. Reprimand the respondent.

2. Require additional continuing education hours.

3. Suspend the respondent's certification.

4. Revoke the respondent's certification.

5. Levy a fine not to exceed $2,000.00 per violation.

(2) The decisions of the Board shall be in writing in the form of an Order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.

(3) The decisions of the Board shall be subject to public dissemination, including but not limited to the required reporting of disciplinary actions to all federal databanks.

(4) Section 34-31-33 requires judicial review of decisions of the Board, if requested, be sought I the Circuit Court of Montgomery County, Montgomery, Alabama. Appeals are to be perfected in accordance with the Alabama Administrative Procedures Act and a petition shall be filed either in the Circuit Court of Montgomery County or in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, in the circuit court of the county where a party other than an intervenor, resides or if a party, other than an intervenor, is a corporation, domestic or foreign, having a registered office or business office in this state, then in the county of the registered office or principal place of business within this state.

**Author:** Jeffrey M. Becraft
**Statutory Authority:** Code of Ala. 1975, §31-31-33.
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