

ALABAMA BOARD OF OPTOMETRY
ADMINISTRATIVE CODE

CHAPTER 630-X-3
COMPLAINTS AND DISCIPLINARY ACTION AGAINST LICENSED OPTOMETRISTS

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630-X-3-.01 Complaints.

Complaints against licensed optometrists for unprofessional, unethical, or illegal conduct and complaints against any other person who may be accused of violating any provision of this act shall be filed with the secretary-treasurer or other specified agent of the Board in writing and under oath. Said complaints must set out in detail the charge(s) against the accused person and shall contain a telephone number at which person registering the complaint can be reached by telephone. Upon receipt of a complaint, the secretary-treasurer or the Board's legal counsel shall verify the complaint by making a telephone call to the complainant at the number listed in the complaint. During the telephone call, the secretary-treasurer or legal counsel shall seek details not set out in the complaint and shall make a memorandum thereof. In the event a complaint filed with the Board does not conform to the regulations set out above, the complainant shall be advised in writing by the Board of the proper procedure as set out herein. The Board shall take no action on a complaint until it complies with the procedure set out herein. Any person may file a complaint but if a member or agent of the Board shall file a complaint, said member or agent shall not participate in any hearing (other than to offer evidence), determination, or sanction of the charge(s) in said complaint.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §34-22-8.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.
Repealed: Filed July 9, 1990.

630-X-3-.02 Notification Of Accused Person.

Upon receipt of a complaint conforming to the requirements of Rule 630-X-3-.01, the secretary-treasurer or Board's legal counsel shall forward a letter to the accused person advising said person of the complaint and enclosing there with a copy of the written complaint, any memorandum made during the telephone interview with the complainant, and a copy of this chapter of the Board regulations. The letter shall invite the accused person to respond within 15 days to the charges in writing under oath. The letter to the accused person and the written response of the accused person shall be forwarded by certified mail, return receipt requested.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, § 34-22-8.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

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630-X-3-.03 Failure Of Accused Person To Respond.

If, at the expiration of 15 days after receipt by the accused person of the letter and other materials required by Rule 630-X-3-.02 above, the accused person has not responded to the charges in writing under oath, said person shall be deemed to have declined to respond.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, § 34-22-8.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

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Repealed: Filed July 9, 1990.

630-X-3-.04 Preliminary Investigation By Board.

Whether the accused person responds or does not respond to the charges, the Board shall conduct such further discreet preliminary investigation as the Board deems necessary under the circumstances

to determine whether or not formal charges should be presented and a hearing held as provided by law.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, § 34-22-8.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.

Repealed: Filed July 9, 1990.

630-X-3-.05 Confidentiality.

Unless, and until, a hearing is set by the Board, as hereinafter provided, the Board and each member or agent thereof shall keep the charges and all matters relating thereto completely confidential, and shall release no information in connection herewith to any person other than the Board or its agent thereof, the accused, or the accused's legal counsel, if any.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, § 34-22-8.

History: Filed July 9, 1990. **Amended:** filed August 28, 1995; effective October 2, 1995.

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Repealed: Filed July 9, 1990.

630-X-3-.06 Determination By Board Of Justification Of Charge.

After receipt of the complaint, the response of the accused person, and completion of the preliminary investigation specified in Rule 630-X-3-.04, the Board shall meet in executive session with its legal counsel and determine whether or not the complaint is a charge of unprofessional, unethical, or illegal conduct on the part of the accused person, such as to warrant disciplinary action if established by evidence. If a member or agent of the Board filed the complaint to be considered, said member or agent shall take no part in the executive session specified above except to the extent of giving testimony in connection with the charge. If the Board determines the complaint to be unjustified, frivolous, or not under the jurisdiction of the Board, there shall be reference in the minutes of the meeting of the Board, only to the fact that a charge was considered and found to not justify a hearing and no mention of the name of the accused person or complainant shall appear in the said minutes. If the Board proposes to take no further action on the charges, the accused person and the complainant shall be so notified in writing by either the Board or its agent thereof. If, on the other hand, after considering all matters before it, the Board is reasonably satisfied that such charge(s) is/are of such merit as to warrant

disciplinary action if established by evidence, then the Board may at its discretion at that meeting set sanctions, as well as adopt a resolution to be reflected in the minutes setting a date, time and place, either within the city of Montgomery, Alabama, or within the county in which the accused person resides, for the hearing of said charge(s).

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§34-22-8, 34-22-42(3).

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.

Repealed: Filed July 9, 1990.

630-X-3-.07 Responsibility Of Legal Counsel Of Board.

The Board's legal counsel shall forthwith, under supervision of the Board, draft a notice of the charge(s) against the accused person that complies with Code of Ala. 1975, §41-22-12, which is expressly incorporated herein by reference. Said notice may, at the discretion of the Board, include the opportunity by the accused person to accept specified sanctions administered by the Board. Service of the foregoing material may be made by personal service upon the accused, or by forwarding to the accused person via United States certified mail with a return receipt requested addressed to the accused's last known mailing address. However, if the accused person shall not be a resident of Alabama, or shall have departed from the state of Alabama, then notice of the date, time and place of such hearing shall be published in a newspaper of general circulation in the county where said accused person shall have been last known to reside, one (1) time, at least three (3) weeks prior to the hearing, setting out the date, time and place of the hearing.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§ 34-22-8, 34-22-42(10), 41-22-12.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.

Repealed: Filed July 9, 1990.

630-X-3-.08 Answer Of Accused Person To Specification of Charges.

At least five days before the date of the hearing, the accused person shall either agree to accept specified sanctions as administered by the Board or shall file with the Board a written answer to the specification of the charges served upon said

accused along with a list of the names and post office addresses of witnesses (including any books, records, papers or other documents the accused desires any witness to produce) which the accused desires to be subpoenaed for the hearing. At the same time, the accused shall file with the Board a list of any books, records, papers or other documents in possession of the Board which the accused desires to use in the hearing and the same shall be produced at the hearing by the Board without the necessity of a subpoena. If the accused person fails to file a written answer to the charges within the time set out above, the accused shall be deemed to have denied each and every such charge. If the accused person fails to file a list of witnesses within the time specified above, said accused shall be deemed to have waived the right to have witnesses subpoenaed.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§ 34-22-8, 41-22-12.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule entitled "Answer of Accused Licensee to Specification of Charges" filed September 13, 1982. **Repealed:** Filed July 9, 1990.

630-X-3-.09 Discovery.

At least five days prior to the date of the hearing, the Board's legal counsel shall prepare a list of the names and post office addresses of any witnesses the Board's legal counsel desires to subpoena for the hearing and shall also prepare a list of books, records, papers, and other documents that counsel desires said witnesses to produce and make available at the hearing. At least five days prior to the hearing, the Board's legal counsel will forward to the accused person and/or said accused person's legal counsel, if known to the Board or its counsel, a list of the witnesses who will testify at the hearing in behalf of the charges.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§ 34-22-8, 41-22-12.

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.

Repealed: Filed July 9, 1990.

630-X-3-.10 Subpoenas.

Upon the proper filing, by the accused person or the Board's legal counsel, of the lists of witnesses, the Board shall issue a subpoena for the witnesses and a subpoena duces tecum for any

requested books, records, papers, or other documents, directed to the sheriff of the respective counties where such witnesses reside.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§ 34-22-8, 34-22-42(9).

History: Filed July 9, 1990. **Amended:** Filed August 28, 1995; effective October 2, 1995.

Ed. Note: Previous rule (same title) filed September 13, 1982.

Repealed: Filed July 9, 1990.

630-X-3-.11 Hearing: Rules Of Procedure.

At the date, time, and place previously set for the hearing, the Board shall convene and if there is a quorum present proceed to hear the charges under the following rules of procedure:

(a) A quorum of the Board must be present at all times during the hearing. The president shall preside or in the president's absence the normal progression to the chair shall be followed. If a member or agent of the Board shall have filed the complaint of charges under consideration at the hearing, then that member or agent of the Board shall not participate in the hearing other than to offer evidence as a witness.

(b) The subpoenaed witnesses shall be called, sworn, and with the exception of the accused person and the complainant shall be excluded from the hearing, except when testifying. If a witness fails to appear, the party subpoenaing the witness may present to the opposing party a written statement of what the witness would testify to if present and, if agreed upon by the other party, the statement shall be admitted in evidence and given the same weight as if the witness had testified in person.

(c) If any subpoenaed witness fails to appear, refuses to be sworn, refuses to be examined, or refuses to produce a book, record, paper or other document as ordered by the Board, such facts shall be certified by the Board to the circuit court or the judge thereof in the county where such witness resides for action by such court or judge as is provided by law. Unless a written statement is submitted and agreed to for any such witness as provided above, upon motion of the party subpoenaing the witness, the hearing shall be continued for appropriate action with reference to such witness by the circuit court or judge of the county wherein such witness resides.

(d) The Board's legal counsel shall first present witnesses and other evidence in support of the charges specified. The accused person or legal counsel thereof shall have the full

and free right to cross-examine all witnesses testifying against the accused.

(e) Upon conclusion of all witnesses and other evidence presented by the Board's legal counsel, the accused person or legal counsel thereof shall present witnesses and other evidence in the accused's defense to the charges specified. The Board's legal counsel shall have the full and free right to cross-examine such witnesses.

(f) Upon conclusion of testimony presented by witnesses called for the accused's defense, the Board's legal counsel shall have the opportunity to offer rebuttal witnesses and testimony.

(g) The rules of evidence as applied in non-jury civil cases in the circuit courts of the state shall be followed.

(h) The Board shall have the hearing proceedings recorded either by a mechanical means or by a court reporter. If the accused person desires a transcript of the recorded proceedings, the expense of said transcript shall be borne by the accused person.

(i) Upon completion of all evidence, the Board's legal counsel and the accused person or legal counsel thereof shall have the opportunity of presenting closing arguments to the Board as follows: Board's legal counsel first, accused person or counsel thereof second, and then the Board's legal counsel shall close.

(j) Upon conclusion of all evidence and arguments, the Board shall proceed, in open meeting, to consider the charges and evidence submitted in connection therewith. If a member or agent of the Board shall have filed the complaint of charges under consideration, then said member or agent shall not participate in the consideration of charges specified above. If a majority of the quorum of members of the Board conducting the hearing shall find the charges are untrue, frivolous, or without probable cause as established by evidence, then the Board shall forthwith enter an order dismissing the charges. If, on the other hand, a majority of the quorum of members of the Board conducting the hearing shall find that the charge(s) are of merit and proven to their satisfaction, then the Board shall, within 30 days of the hearing's conclusion, render a final order consistent with Code of Ala. 1975, §§41-22-15, 41-22-16, which sections are adopted herein by reference.

(k) In all cases of suspension or revocation of licenses, fines, or of other disciplinary sanctions imposed by the Board as provided for by law, the accused person may appeal only to the circuit court of Montgomery County, Alabama. In all cases of suspension or revocation of licenses, the order specifying

such sanction shall contain instructions relating the methods and requirements for the reinstatement of said licenses. Except as may otherwise be provided herein to the contrary, judicial review of the orders and decisions of the Board shall be governed by the provisions of Code of Ala. 1975, §41-22-20, which section is adopted herein by reference.

(1) Members of the Board of Optometry, any optometrists impaneled by the Board, and any optometrist or other individual making any report or rendering any opinion or supplying any evidence or information or offering any testimony to the Board in connection with a disciplinary investigation or proceeding as authorized in this chapter shall be immune from suit for any conduct with respect to such investigations, actions, hearings, and proceedings.

Author: Dr. Larry Carter

Statutory Authority: Code of Ala. 1975, §§34-22-8, 41-22-13, 41-22-16, 41-22-20.

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