

ALABAMA BOARD OF EXAMINERS IN COUNSELING
ADMINISTRATIVE CODE

CHAPTER 255-X-8

CONTESTED CASES INVOLVING REFUSAL, REVOCATION OR SUSPENSION OF
LICENSE OR CERTIFICATE; INITIATION OF PROCEEDINGS; COMPLAINT
PROCEDURE; APPEAL AND JUDICIAL REVIEW; EMERGENCIES

255-X-8-.01 Contested Cases.

(1) An applicant, licensed professional counselor (LPC) or associate licensed counselor (ALC) is entitled to an evidentiary hearing before the Board when any action is brought against that person.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail, return receipt requested, or by registered mail. Delivery of the notice of the hearing shall constitute commencement of the contested case proceeding.

(3) The notice shall include:

(a) A statement of the time, place, and nature of the hearing which must be not less than thirty (30) days nor more than sixty (60) days from the date of mailing or service of the notice.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(4) In a contested case, on motion of a party, the presiding officer conducting the hearing may issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure.

(5) Nonappearance of the person against whom action is taken shall not prevent a hearing from being conducted by the Board on the charges brought provided proof of service of the notice of Board action is shown. The presiding officer may, if no adjournment is

granted, proceed with the hearing and make a decision in the absence of the party.

(6) Parties shall have the right to be represented by counsel and to conduct cross-examination of witnesses.

(7) The Board shall have the authority to administer oaths, to issue subpoenas, and to summon witnesses to take testimony in all matters relating to its duties.

(8) The Board shall have the authority to enter into settlement negotiations with the party against whom action is taken.

(9) The record of proceedings before the Board shall include:

(a) All pleadings, motions, and intermediate rulings.

(b) All evidence received or considered and all other submissions; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information.

(c) A statement of all matters officially noticed.

(d) All questions and offers of proof, objections, and rulings thereon.

(e) All proposed findings and exceptions.

(f) Any decision, opinion, or report by the hearing officer at the hearing.

(g) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration or privilege; provided, if such memoranda or data contain information of a proprietary and confidential nature, it shall be protected by the Board from public disclosure.

(10) The proceedings before the Board shall be open to the public. Oral proceedings shall be recorded either by mechanized means or by qualified shorthand reporters. The records or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the Board for at least five years from the date of decision and shall be made available for inspection by the public, except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.

(11) On the basis of any hearing or upon default of applicant, LPC or ALC, the Board shall make a determination specifying its

findings of fact, based solely on the evidence in the record and on matters officially noticed in the record, and conclusions of law.

(12) The board may withhold, deny, revoke, or suspend any license upon proof by proper hearing that the applicant or licensee has violated the Code of Ala. 1975, §34-8A-16(a)1 through (a)9. In addition to any other disciplinary action, the board may levy and collect administrative fines in an amount not to exceed one thousand dollars (\$1,000) for each violation. The board may also assess all legal costs for the preparation and execution of a disciplinary action.

(13) Results of the proceeding shall be mailed to the applicant, LPC or ALC by registered mail, or certified mail, return receipt requested, or by personal service.

(14) Every order and judgment of the Board shall take effect immediately on its promulgation unless the Board in such order or judgment fixes a probationary period for the applicant, LPC or ALC. Such order and judgment shall continue in effect unless upon appeal the courts by proper order or decree terminate it earlier.

(15) The Board may make public its orders and judgments in such manner and form as it deems proper, and for such periods as it may direct.

(16) The results of the Board action shall become final in thirty (30) days following their entry unless appealed. After thirty (30) days, a party's right of appeal is waived unless extended under the provisions of, §41-22-20(d), Code of Ala. 1975.

(17) The Board shall have the authority to reinstate suspended or revoked licenses.

(18) The Board shall have the authority to furnish evidence to assist prosecutors in the prosecution of violations of the act and to investigate complaints regarding possible violations of the act.

Author: Alabama Board of Examiners in Counseling

Statutory Authority: Code of Ala. 1975, §§34-8A-1, et seq.

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