

21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing, or by filing a complaint online at the Board's website www.ncptboard.org.

- (1) the name and address of person alleged to have violated the Physical Therapy Practice Act;
- (2) a statement of conduct that is the basis of the complaint; and
- (3) the name, address, and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that may subject a licensee to disciplinary action, or upon the receipt of the information that a violation of the Physical Therapy Practice Act may have occurred, the Board shall investigate the matter to determine whether probable cause exists to institute disciplinary proceedings.

(c) The Executive Director of the Board and a member appointed by the Chair shall serve as an investigative committee. This investigative committee may be assisted by:

- (1) the Board's attorney;
- (2) an investigator; or
- (3) a consultant, who is not a NC PT/PTA licensee, retained by the investigative committee who possesses expertise that will assist the investigative committee in its investigation.

(d) The investigative committee shall investigate the complaint or information set forth in Paragraphs (a) and (b) of this Rule. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may issue subpoenas in the investigative committee's name for the production of documents pursuant to the provisions of Rule .0512 of this Section. The investigative committee shall determine whether there is probable cause to believe that the licensee has violated any statute or Board rule that justifies a disciplinary hearing. If the investigative committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the investigative committee's action and its reasons. If the investigative committee determines that probable cause exists, the investigative committee shall offer to confer with the licensee in an attempt to settle the matter through informal means. If the investigative committee and the licensee reach an agreement on the disposition of the matter under investigation, the investigative committee shall cause to be drafted a proposed settlement agreement that shall include findings of fact, conclusions of law, and a consent order for presentation to and consideration by the Board. The settlement agreement shall be presented to and approved by the licensee before it is presented to the Board for consideration and approval.

(e) Prior to a decision rendered by the Board, any materials generated or obtained by the Board in conducting an investigation shall be considered confidential investigation records not subject to the Public Records Act, G.S. 132. However, copies of the materials may be provided to a licensee subject to disciplinary action, or to the licensee's attorney, so long as identifying information concerning the treatment or delivery of professional services to a patient who has not consented to its public disclosure shall be redacted.

(f) If the investigative committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board shall give notice of a disciplinary or contested case hearing.

(g) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the investigative committee shall recommend that the Board place the licensee on probation, or issue a warning to the licensee. In making this determination, the investigative committee shall consider such factors as harm to the public; nature of the conduct; and prior record of discipline. The investigative committee shall mail or email a copy of its recommendation to the licensee or the licensee's attorney.

(h) Within 20 days after receipt of the recommendation, the licensee may refuse the probation or warning and request a contested case hearing pursuant to this Rule. The refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.

(i) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the investigative committee's recommendation and present reasons why the Board should not follow the investigative committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(j) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the investigative committee's recommendation.

(k) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(l) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney

prosecuting the matter for the Board may continue to communicate concerning the contested case with the members of the investigative committee who investigated the matter, with persons not parties to the contested case who may be called as witnesses including the person who filed the complaint, and with the Board members about other matters.

History Note: Authority G.S. 90-270.92; 150B-38; 150B-39; 150B-40;
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