

**SOUTH CAROLINA BOARD OF DENTISTRY
POLICY / PROCEDURE
FOR HEARING DISCIPLINARY COMPLAINTS**

S.C. Code Ann. Section 40-1-90 authorizes the Board to designate a hearing officer or hearing panel to conduct hearings or take other action as may be necessary under this Section or the Dental Practice Act.

Since at least the July 15, 2005 Board meeting, the Board has established a pool of hearing officers or panel members, including former Board members, to serve as designated hearing officers and panel members for the purpose of conducting disciplinary hearings.

PROCEDURE:

The names of individuals interested in serving as a hearing officer or hearing panel members shall be submitted to the Board for consideration. The Board shall appoint persons who are either licensed dental professionals in good standing (dentists and dental hygienists) residing in the State or former dental professionals (dentists and dental hygienists) who have been retired less than five years and who were in good standing at the time of their retirement. The hearing officer or panel members are empowered to conduct hearings and other matters filed with the Board against dental professionals.

If the Board designates a hearing officer to conduct disciplinary hearings in proceedings against a dentist, that hearing officer shall be a dentist. If the Board designates a hearing officer to conduct disciplinary hearings in a proceeding against a dental hygienist, that hearing officer shall be a dental hygienist.

In the event a panel is chosen by the Board to hear a disciplinary case, the hearing panel shall consist of not less than two members. In cases where a panel is empaneled to hear a case, a Chairman shall be chosen by the Board or its representative. The hearing officer or Chairman of a panel shall hear all evidentiary or pretrial issues on the day of the hearing prior to the calling of the case, including but not limited to the admissibility of evidence or testimony and the competency of witnesses to testify.

If two panel members are empaneled to hear the disciplinary case, they shall consist of dental professionals of the same licensure as the Respondent. In the event three members of a panel are empaneled, one of the three may be a public member, while the other two must be comprised of dental professionals of the same licensure as the Respondent. Whether the case is heard by a hearing officer or panel shall be at the discretion of the Board and Board staff. Respondent has no authority to choose whether his/her case will be heard by a hearing officer or panel.

Panel members shall receive mileage, subsistence, and per diem as provided by law for each hearing attended.

Duty of the Hearing Officer or Panel

If the hearing officer or panel finds that the charges in the Formal Complaint are not supported by the evidence or do not merit the taking of disciplinary action, the hearing officer or panel shall make a certified report of the proceedings before it, including its findings of fact, conclusions of law, and recommendations of sanctions, and file the certified report together with the transcript of the testimony taken and with exhibits, if any, with the Administrator of the Board.

If the hearing officer or panel finds and determines that the Respondent is guilty of misconduct meriting a sanction, it shall make a certified report of the proceedings before it, including its findings of fact, conclusions of law, and recommendations for sanctions, and shall file the certified report, together with a transcript of the testimony taken and exhibits, with the Administrator of the Board.

If a hearing panel of two members disagrees as to whether the Respondent is guilty of misconduct, the panel should make a certified report setting forth the findings of fact and conclusions of law upon which the members concur, identify the findings of fact and conclusions of law about which they disagree, and shall not make a recommendation of sanctions.

If a hearing panel of two members disagrees solely as to the sanction recommendation, the panel should make a certified report setting forth the findings of fact and conclusions of law but shall not recommend any sanction to the Board for its consideration.

Review by the Board

After the hearing officer or panel has filed its certified report, the Board, through its Administrator, shall give 30 days' notice to the Respondent and/or counsel of the time and place at which the Board will convene to consider the certified report for the purpose of determining its final action.

The Respondent and/or counsel shall have the right to appear before the Board at said hearing and to be heard in oral argument in opposition to, or in support of, the recommendations of the hearing officer or panel. The Board shall proceed upon the certified report of the prior proceedings that were conducted before the hearing officer or panel.

Duty of the Board after Review

Upon its final review, the Board may either dismiss the Formal Complaint or find that Respondent has violated the Dental Practice Act or other applicable provision of law. If the Formal Complaint is dismissed, the Administrator of the Board shall so notify the Respondent, personally or through his counsel, and the initial complainant. If the Board determines that the Respondent has committed misconduct meriting a sanction, it shall issue a Final Order of the proceedings before it, including its findings of fact, conclusions of law, and decision of sanction. The Board may choose to adopt the certified report of the prior proceedings as its own or modify the findings of fact, conclusions of law, and/or sanctions. The Administrator shall notify the Respondent, personally or through his counsel, of the Final Order and provide the same to them. Notice to counsel constitutes notice to the Respondent.

Appeal of the Board's Decision

A Respondent may appeal the decision of the Board to the Administrative Law Court in accordance with the rules established by the Administrative Law Court. These rules can be found in Section III located here:

<https://www.scalc.net/pdf/Updates%205262021/Official%20ALC%20Rules%202021.pdf>

Policy Amended: October 8, 2021