BEST PRACTICES FOR PROCESSING COMPLAINTS

Complaint Received

- Any person may file a complaint (i.e., consumers, a licensee, an individual Board Member, or the Board as a whole)
- Anonymous Complaints - refer to statutes/rules
  - Does the Board have an obligation regarding anonymous complaints?

Director Reviews for Jurisdiction

- Is this a complaint about a person licensed by the Board?
- Do the alleged actions fall within behavior regulated by the Board?

Send Licensee Complaint/Request Response

- Check statutes/rules for timeframes for responding
- Specify deadline for response
- Use objective, neutral language

Response Received

- Date stamp response
- Request missing documents, if necessary
Director Reviews Response/Formulates Recommendation

- Director makes recommendation to Complaint Committee or full Board
- Options:
  - **Dismiss** with no action
  - Initiate **Investigation**
  - Offer **Consent Agreement**
  - Schedule **Formal Hearing**
- Do not disclose licensee's identity to Board at this stage
- Confer with legal counsel, if necessary

Dismissal

- Send dismissal to complainant and respondent

Investigations

- Director, board employee, board member, or hired investigator (not board's legal counsel)
- Process:
  - Submit file to investigator
  - Investigator conducts witness interviews to gather facts
  - Investigator prepares report of information obtained
  - Director/Complaint Committee reviews report and formulates recommendation:
    - (1) Dismissal;
    - (2) Consent Agreement; or
    - (3) Formal Hearing.
- Director/Complaint Committee makes recommendation to the full Board
- Do not disclose licensee's identity to Board at this stage
- Confer with legal counsel, if necessary
Consent Agreement

• Director prepares Consent Agreement
  • See Sample Consent Agreement, attached.
• Legal Counsel reviews Consent Agreement
• Director sends Consent Agreement to licensee for consideration and signature
• Director/Complaint Committee present Consent Agreement to Board for approval
• Licensee's identity may be revealed once approved

Formal Hearing

• Director prepares Order and Notice of Hearing
  • See Sample Order and Notice of Hearing, attached.
• Must contain:
  • Time, place, and nature of the hearing;
  • Statement of the legal authority and jurisdiction;
  • Short and plain statement of the matters of facts and law asserted
• Legal Counsel reviews Order and Notice of Hearing
• Director sends Order and Notice of Hearing to Respondent
SAMPLE CONSENT AGREEMENT

BEFORE THE ARKANSAS [BOARD/COMMISSION NAME]

IN THE MATTER OF [RESPONDENT'S NAME], RESPONDENT

Case No. [NUMBER]

CONSENT AGREEMENT

A complaint alleging that [RESPONDENT'S NAME], (hereinafter referred to as “the Respondent”) violated Ark. Code Ann. § [APPLICABLE STATUTE] et seq., (hereinafter referred to as “the Act”) has been received by the Arkansas [BOARD/COMMISSION] (hereinafter referred to as “the Board”). In lieu of a formal hearing on these issues, and in the interest of prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements, and the responsibilities of the Board, the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Respondent and the [BOARD/COMMISSION] agree to the following:

1. Respondent, having read the proposed Consent Order, acknowledges [HIS/HER] right to consult with counsel, and enters into this Consent Order on Respondent’s own volition and without any reliance upon any representations by the Board or any officer, employee, agent or other representative thereof, other than expressly set forth herein.

2. Respondent hereby waives any further procedural steps including, without limitation, Respondent’s right to a hearing and all rights to
seek judicial review or to otherwise challenge or contest the validity of this Consent Order.

3. Respondent agrees that the Board will review and determine whether to approve this Consent Order. Furthermore, Respondent agrees that should this Consent Order not be approved by the Board, the presentation and consideration of this Consent Order by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of the matters involved herein at any subsequent hearing.

5. Respondent understands and agrees that approval and entry of this Consent Order shall not preclude additional proceedings by the Board against Respondent for acts or omissions not specifically addressed herein.

6. Respondent understands and acknowledges that this Consent Order and the Board’s records concerning this matter are public records and available to the public pursuant to the Freedom of Information Act, Ark. Code Ann. § 25-19-101, et seq.

7. This agreement shall not become a valid and enforceable order of this Board unless and until accepted and approved by the Board at an official meeting and executed by the Chairman of the Board or [HIS/HER] designee.
FINDINGS OF FACT

[RECITE ALLEGATIONS OF FACT FROM THE ORDER AND NOTICE OF HEARING]

1. Respondent [IS/IS NOT] licensed by the [BOARD/COMMISSION] [AS LICENSE NO. [NUMBER]].

2. At all times pertinent to this complaint, Respondent [HELD/DID NOT HOLD] such license and subsequently continues [TO HOLD/TO NOT HOLD] a valid license.

3. On [DATE], the [BOARD/COMMISSION] received a complaint alleging that Respondent [INSERT FACTS ESTABLISHING A VIOLATION OF BOARD/COMMISSION'S PRACTICE ACT.]

4. [INSERT FINDINGS OF FACT]

5. [INSERT FINDINGS OF FACT]

CONCLUSIONS OF LAW

[RECITE CHARGES]


2. [ADDITIONAL VIOLATIONS, IF ANY.]
ORDER

[AGREEMENT REGARDING DISCIPLINARY ACTION]

THEREFORE, IT IS SO ORDERED THAT:

1. [ENTER TERMS OF ORDER; i.e., SUSPENSION, REVOCATION, PROBATION, CIVIL PENALTY]

   IT IS FURTHER ORDERED that the Board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order and Respondent’s failure to comply with any term or condition of this Consent Order shall constitute grounds to impose disciplinary action pursuant to Ark. Code Ann. § [APPLICABLE STATUTE].

   IT IS SO ORDERED.

   AGREED this _____ day of _________ 20__.  

________________________________________     __________
Name                                              Date
Respondent

________________________________________     __________
Name                                              Date
Chair
[BOARD/COMMISSION NAME]
SAMPLE ORDER AND NOTICE OF HEARING

BEFORE THE ARKANSAS [BOARD/COMMISSION] BOARD

IN THE MATTER OF [RESPONDENT]
Case No. [NUMBER]

ORDER AND NOTICE OF HEARING

A complaint charging [RESPONDENT] (hereinafter referred to as “the Respondent”) with violations of Ark. Code Ann. § [APPLICABLE STATUTE SECTION] et seq., [BOARD/COMMISSION'S PRACTICE ACT] (hereinafter referred to as “the Act”) has been received by the Arkansas [BOARD/COMMISSION] (hereinafter referred to as “the Board”). The [BOARD/COMMISSION] has determined that sufficient evidence exists to conduct a hearing regarding whether the Respondent is in violation of the Act. Pursuant to the provisions of Ark. Code Ann. § [APPLICABLE STATUTE SECTION] and Ark. Code Ann. § 25-15-208, you are hereby Notified and Ordered to appear before the [BOARD/COMMISSION] at the time and place set out below, and from time to time thereafter as may be directed by the Board, to show cause, if any you have, why you should not be subject to or have imposed against you, one or more of the penalties outlined in Ark. Code Ann. § [APPLICABLE STATUTE SECTION] in that the following is alleged:
ALLEGATIONS OF FACT

[INSERT FACTS FROM COMPLAINT THAT ARE BELIEVED TO BE VIOLATIONS OF THE BOARD/COMMISSION’S PRACTICE ACT/RULES/REGULATIONS]

A-1. Respondent [IS/IS NOT] licensed by the [BOARD/COMMISSION] [AS LICENSE NO. [NUMBER]].

A-2. At all times pertinent to this complaint, Respondent [HELD/DID NOT HOLD] such license and subsequently continues [TO HOLD/TO NOT HOLD] a valid license.

A-3. On [DATE], the [BOARD/COMMISSION] received a complaint alleging that Respondent [INSERT FACTS ESTABLISHING A VIOLATION OF BOARD/COMMISSION’S PRACTICE ACT.]

A-4. [INSERT ALLEGATIONS OF FACT]

A-5. [INSERT ALLEGATIONS OF FACT]

APPLICABLE LAW AND REGULATIONS

[INSERT STATUTES, RULES, AND/OR REGULATIONS THAT APPLY TO ALLEGATIONS OF FACT, ABOVE.]

L-1. The [BOARD/COMMISSION] has the duty and responsibility to regulate the profession of [INSERT PROFESSION] pursuant to Ark. Code Ann. § [APPLICABLE STATUTE SECTION].

L-2. Ark. Code Ann. § [APPLICABLE STATUTE SECTION] provides that the [BOARD/COMMISSION] may revoke or suspend a license issued under the Act for the following reasons:
[INSERT BASIS FOR DISCIPLINARY ACTION UNDER THE BOARD/COMMISSION'S PRACTICE ACT]


[REQUIRES/PROHIBITS/STATES . . . .]

CHARGES

[MERGE ALLEGATIONS OF FACT WITH APPLICABLE LAW, RULES, REGULATIONS.]

C-1. Respondent’s actions, as set forth in paragraph [NUMBER], above, constitute a violation of Ark. Code Ann. § [APPLICABLE STATUTE SECTION] and [BOARD/COMMISSION RULE/REGULATION NUMBER] in that Respondent [INSERT ACTIONS THAT CONSTITUTE A VIOLATION].


Respondent may be heard in person or by counsel and may offer such witnesses, affidavits, and/or documentary evidence in defense of the above charges,
as [HE/SHE] may reasonably desire. Should the Respondent fail to appear, the Board will proceed in its case against the Respondent.

[IF BOARD HAS SUBPOENA POWER, INSERT FOLLOWING LANGUAGE]

[Upon the Respondent’s request, and upon payment of the witness fees required by the Arkansas Rules of Civil Procedure, the Board will issue subpoenas for the attendance of witnesses and production of documents.]

In the event Licensee requires the services of a foreign language interpreter or an interpreter for the hearing-impaired, the Licensee must send a written request to the Board office no later than ten days prior to the hearing date.

RESPECTFULLY,

_________________________________________

[NAME AND TITLE]

_________________________________________

[DATE]