

APA-1

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 589 Department or Agency Alabama State Board of Prosthetists and Orthotists

Rule No. **746-X-4-.01**  
Rule Title: **COMPLAINTS**

New	<b>Amend (X)</b>	Repeal	Adopt by Reference
Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?			YES
Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare:			YES
Is there another, less restrictive method of regulation available that could adequately protect the public?			NO
Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?			NO
Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?			N/A
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?			YES
Does the proposed rule have an economic impact?			NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with Subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Kendall S. Zell* Date 11-15-11

APA-2

**ALABAMA STATE BOARD OF PROSTHETISTS AND ORTHOTISTS**  
**Notice of Intended Action**

**AGENCY NAME:** ALABAMA STATE BOARD OF  
PROSTHETISTS AND ORTHOTISTS

**RULE NO. & TITLE:** 746-X-4-.01 - COMPLAINTS


**INTENDED ACTION:** Amend Existing Rule

**SUBSTANCE OF PROPOSED ACTION:** Deleting old language and proposing new language pertaining to complaints.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** The board will provide the public with an opportunity to present their views orally by contacting the Board at 334-420-1111 or in writing at the following address: Alabama State Board of Prosthetists and Orthotists, P.O. Box 1052, Montgomery, 36101; or via electronic mail at rezell113@aol.com. Physical Address: 441 High Street, Montgomery, AL 36104. All oral and written comments to be received no later than 4:00 PM on January 5, 2012.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**  
The record shall be closed on January 5, 2012 at 4:00 PM.

**CONTACT PERSON AT AGENCY:** Ronald E. Ezell, Executive Director,  
Alabama State Board of Prosthetists and Orthotists, P.O. Box 1052, Montgomery,  
AL 36101; 441 High Street, Montgomery, AL 36104; Phone: 334-420-1111.

  
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Ronald E. Ezell, Executive Director

11-15-11  
Date

ALABAMA STATE BOARD OF PROSTHETISTS AND ORTHOTISTS  
ADMINISTRATIVE CODE

CHAPTER 746-X-4  
DISCIPLINARY ACTIONS

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~~746-X-4-.01 Complaints. Complaints alleging any violation of the laws of the State of Alabama or rules of this Board may be lodged by any person with the Executive Director by submitting a written complaint. A copy of a complaint report may be obtained from the office of the Board.~~

Authors: Alabama Board of Prosthetists and Orthotists

History: Amended: October 15, 2011; Filed: November 15, 2011

746-X-4-.01 Complaints. Complaints alleging any violation of the Alabama Prosthetics and Orthotics Act, any Board Rule or any other applicable law will be submitted to the Board in writing. A copy of a Complaint form may be obtained from the Board's Office.

(1) ~~The Alabama State Board of Prosthetists and Orthotists may on its own motion, or in response to any complaint submitted to the Board, investigate any evidence which appears to show that a prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or an accredited facility licensed in the State of Alabama may be guilty of any of the professional standards set out in Rule 746-X-3. In carrying out its investigations, the Board may request the production of documents, records and papers which it deems pertinent to any matters under investigation.~~  
The Board shall investigate any complaint concerning any individual or entity regulated by the Board in the manner set

forth in this Rule and in doing so, may request the production of documents, records or other information deemed necessary in order to make a determination if probable cause for a violation exists. The board may within its discretion convene a hearing as set out in Rule 746-X-4-.04 and/or 746-X-4-.05.

Author: Glenn Crumpton

Statutory Authority: Code of Ala. 1975, §34-25A-1-14.

History: New Rule: Filed August 8, 2003; effective September 12, 2003. Amended: Filed December 16, 2005; effective January 20, 2006. Amended: Filed November 14, 2007; effective December 19, 2007. Amended: October 18, 2011; Filed: November 15, 2011;

746-X-4-.02 Complaint Investigation Procedure.

(1) In the event a complaint is filed against a licensee, ~~assistant,~~ or an accredited facility or it is determined from other information that an investigation is necessary, the procedure for investigation shall be as follows:

~~(a) The complaint or other information will be investigated by a committee appointed by the Presiding Officer.~~

(a) Any complaint shall be assigned to a Committee made up of two (2) Board Members. The Board's Executive Director shall be a member of each committee.

~~(b) The committee may issue a letter of concern to the prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or accredited facility, which is the subject of the investigation. A letter of concern shall consist of a private, confidential, written communication from the committee to the prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or accredited facility the contents of which shall be specified by the committee. A letter of concern shall not be considered a disciplinary action and is not intended to communicate a finding on the part of the committee that the prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or accredited facility will be charged with or has been found guilty of any wrong doing. The purpose to provide notification that the prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or accredited facility is under investigation and the committee has concluded that the actions or conduct in question may not be in accord with generally accepted professional standards. The letter may request the subject of the investigation to appear in front of the committee to provide~~

~~further information for the investigation. The issuance of a letter of concern by the committee shall not preclude the Board from taking any other action authorized by law, including the filing of a written complaint in accordance with paragraph (c) of this Rule. A letter of concern shall be deemed a non-public record of the Board. The committee within its discretion, if applicable, may notify the person or persons whose complaint led to the board's investigation that the prosthetist and/or orthotist, prosthetist and/or orthotist assistant, pedorthists, or accredited facility in question has been sent a letter of concern.~~

(b) At any time during the course of an investigation of a complaint, the Board may, in its discretion, issue a Letter of Concern to the individual or entity who is the subject of the complaint. A Letter of Concern shall consist of a private, confidential, written communication from the Board to the subject of the complaint, the contents of which shall be specified by the Board. A Letter of Concern shall not be considered a disciplinary action and is not intended to communicate a finding on the part of the Board that the individual or entity to whom the Letter of Concern is directed will be charged with or has been found guilty of any wrong doing. The purpose of the Letter of Concern is to provide notice to the applicable individual or entity that the Board has concluded that the alleged actions or conduct in question may not be in accord with the provisions of the Alabama Prosthetists and Orthotists Act, Board's Rules or any other applicable law. The issuance of a Letter of Concern shall not preclude the Board from taking any other action authorized by law. A Letter of Concern shall be deemed a non-public record. The Board shall notify the complainant of its decision to issue a Letter of Concern. The Board may make public statistical reports concerning the number and type of Letter of Concern issued.

(c) At such time as the committee may determines that there is probable cause to believe that a ~~licensed prosthetist and/or orthotist, or a prosthetist, pedorthists, and/or orthotist assistant~~ an individual or entity is guilty of violating any of the professional standards set out in Rules 746-X-3, ~~or the an accredited facility is in violation of rules set forth in relation to accredited facility,~~ then the committee may direct that a written administrative complaint be prepared by the Executive Director. The administrative complaint shall be executed by the Presiding Officer, or any member designated by the board and shall request that the Executive Director issue an order directing the respondent to appear and answer the

allegations of the administrative complaint. The subject of the investigation will be afforded the opportunity to plea guilty and pay a fine set by the committee and approved by the Board.

~~(d) If the committee determines after its investigation in consultation with the Board attorney that probable cause exists and the subject of the investigation chooses not to plea guilty, the procedure outlined in Board Rule 746-X-4 .04 and/or 746-X-4 .05 shall be followed. In the event the committee determines in consultation with the Board attorney that probable cause does not exist, no further action will be taken and the complaint will be considered closed.~~

(d) If the Committee determines after investigation, and consultation with the Board's counsel, that probable cause exists of a violation of the Alabama Prosthetists and Orthotists Act, the Board Rules or any other applicable law, the individual or entity the subject of the complaint shall be served with a Notice of charges and the time and place for a hearing as set forth in the Alabama Prosthetists and Orthotists Act, the Alabama Administrative Procedure Act or any applicable Board Rule. If there is a determination of probable cause, those on the Committee shall not be a part of the Board who considers the charges.

In the event the Committee determines that probable cause does not exist, no further action will be taken and the complaint shall be considered closed. In that event, the complainant shall be notified.

(e) When the Board determines that there exists sufficient evidence to believe that a respondent may have violated the Professional Standards as set in Rule 746-X-3, then the Board may direct that a notice and complaint be filed with the Board and served upon the respondent. The notice and complaint shall set a date for a hearing before the Board not less than thirty (30) days after the date of service of the notice, or in the case of a renewal license, not later than thirty (30) days after the expiration of such license. Notice may be served by personal service or by certified mail, return receipt requested, to the last known address of the respondent. If the respondent cannot be located at this last known address or if it appears that the respondent is seeking to avoid service of the notice, then the Presiding Officer may direct service of process in any other manner permitted by law. When the Board has made a reasonably diligent inquiry and cannot establish a valid mailing address for the respondent, then notification to

the Board by the U.S. Post Office of attempted service by certified mail, return receipt requested, to the last known mailing address of the respondent, shall authorize the Board to proceed in the absence of the respondent.

**Author:** Glenn Crumpton

**Statutory Authority:** Code of Ala. 1975, §34-25A-1-14.

**History: New Rule:** Filed August 8, 2003; effective September 12, 2003. **Amended:** Filed December 17, 2004; effective January 21, 2005. **Amended:** Filed December 16, 2005; effective January 20, 2006. **Amended:** Filed November 14, 2007; effective December 19, 2007. **Amended:** October 18, 2011; Filed: November 15, 2011;

#### 746-X-4-.03 Pre-Hearing Discovery.

(1) Permitted. Pre-hearing discovery shall be permitted in accordance with this rule.

(2) Extent Allowed. The attorney for the Board or the respondent may upon application to the hearing officer obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the charge of the Board or the defense of the respondent.

(3) Methods of Discovery.

(a) Upon written application to the hearing officer, and in his discretion, the following discovery may be allowed:

1. Deposition upon oral examination of any expert witness.

2. Interrogatories.

3. Request for production and copying of documents or for inspection.

(b) The discovery must be had in accordance with any terms and conditions imposed by the hearing officer. The hearing officer may impose any such terms and conditions as are just upon discovery in order to protect a person from annoyance, embarrassment, oppression, or undue burden or expense.

**Authors:** Joseph C. Elliott, Glenn Crumpton

**Statutory Authority:** Code of Ala. 1975, §34-25A-1-14.