

1 **21 NCAC 48F .0504 is proposed for readoption without substantive changes as follows:**

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3 **21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS**

4 (a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- 5 (1) the name and address of person alleged to have violated the Physical Therapy Practice Act;
- 6 (2) a statement of conduct giving rise to complaint; and
- 7 (3) the name, address, and telephone number of complainant.

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

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

- 13 (1) the Board's attorney;
- 14 (2) an investigator;
- 15 (3) a former member of the Board; or
- 16 (4) a consultant retained by the investigative committee who possesses expertise that will assist the
17 investigative committee in its investigation.

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

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

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

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

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

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

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

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

20 (l) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may
21 not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party,
22 including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law
23 in the contested case, except on notice and opportunity for all parties to participate. However, the attorney
24 prosecuting the matter for the Board may continue to communicate concerning the contested case with the members
25 of the investigative committee who investigated the matter, with persons not parties to the contested case who may
26 be called as witnesses including the person who filed the complaint, and with the Board members about other
27 matters.

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29 *History Note: Authority G.S. 90-270.26; 90-270.26(10); 150B-38; 150B-39; 150B-40;*

30 *Eff. October 1, 1995;*

31 *Amended Eff. February 1, 2015; July 1, 2013; August 1, 2002; August 1, 1998; February 1, 1996;*

32 *Readopted Eff. May 1, 2019.*