

*Knowledge
replaces
fear.*

The Disciplinary Process at the Illinois Department of Financial and Professional Regulation

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Background

The Illinois Department of Financial and Professional Regulation (“the Department”) is responsible for administering and enforcing approximately thirty legislative Acts which regulate the practice of over 100 professions and occupations in Illinois. The Department has the authority to issue a license to practice a profession or occupation, and to revoke, suspend, or otherwise discipline the license upon proof of violation of a provision of the licensing Act under which the license is issued.

Case Initiation

When the Department receives an allegation from any source (i.e. a patient, client, competitor, or other government agency) that a person or business licensed by the Department has violated a provision of a licensing Act, an investigation may be initiated. An investigation may also be initiated by the Department itself. That usually occurs based on reports in the news media or information learned in the course of another investigation. When an allegation is received, it is forwarded to the Department’s Complaint Intake Unit where a case is opened and a docket number assigned.

Investigation

The information received is forwarded to the lead worker of the investigative unit responsible for investigating allegations concerning a particular profession. The lead worker reviews the information received and makes a decision regarding whether an investigation should be initiated or the case should be closed. If the matter is to be investigated, a Department investigator is assigned.

The assigned investigator first reviews any documentation received with the allegation. Next, Department licensure records and records of past investigations and disciplines concerning the licensee are reviewed. Interviews are then conducted. Though interviews can be conducted in any order, the person or persons who made the allegations are generally interviewed first. Any known or potential witnesses are then interviewed. The subject of the allegations is usually interviewed last. Copies of any pertinent documents and any other physical evidence are obtained and, in some instances, subpoenas are issued requiring that documents be turned over to the Department.

The assigned investigator prepares written reports concerning interviews conducted, documents received, and other investigative steps taken. As reports are prepared, they are submitted to the lead worker for review and approval. When the investigator believes the investigation is complete, the collected investigative reports are submitted to the lead worker along with a report summarizing the investigation. The lead worker reviews the reports and determines whether the case should be closed or forwarded to the appropriate Department prosecutions unit for further action.

A few professions, such as medical and dental, have coordinators who are licensed members of the profession who serve as in-house experts. In those areas, the cases are first forwarded to the coordinator for review rather than forwarded directly to the prosecutions unit. If the allegations involve a medical doctor or chiropractic physician, the matter is forwarded to the Complaint Committee of the Illinois

The Disciplinary Process Continued — Page 2

Medical Disciplinary Board and the Committee makes the decision whether to forward the case for prosecution or close the case.

Prosecution

The Department has three separate prosecutions units — medical, health-related, and business. Each unit has a chief. The medical unit is responsible for regulating medical doctors and chiropractors. The health related unit is responsible for dental, nursing, psychology, podiatry and all other professions relating to health. The business prosecutions unit is responsible for prosecuting cases concerning the design professions, the private investigative and security industry and any other profession or occupation the Department regulates that is not related to health.

When a case is received in a prosecutions unit, the case is first reviewed by the unit chief. The chief can return the case for further investigation, make the decision to close the case (except in medical and chiropractic cases which require board approval to close a case), or assign the case to a unit prosecutor for further action. The Department attorney assigned to prosecute the case reviews the evidence available. After evaluating the case, the assigned attorney can either file a formal Complaint or schedule the matter for a Disciplinary Conference. Though it is seldom done, upon initial review, the assigned attorney may recommend to his or her supervisor that the case be closed.

Disciplinary Conference

A Disciplinary Conference is an informal

meeting with an Illinois Department of Financial and Professional Regulation (Department) attorney assigned to prosecute a case, and with a member or members of the licensing board or committee¹ of the licensee's profession. An administrative law judge is not present during a Disciplinary Conference and no transcript of the meeting is prepared.

During a typical calendar year, the Department imposes discipline on 3,000 (or more) licensees in the various professions and occupations it regulates, yet less than 200 formal evidentiary hearings are held. The vast majority of discipline imposed results from negotiated settlements with the Department, which are documented in a Consent Order or a Stipulation of Facts and Recommendation for Settlement. Although they may be negotiated at any stage of a disciplinary proceeding, most settlement agreements are negotiated during or as a result of Disciplinary Conferences.

Attendance at a Disciplinary Conference is not mandatory; in many instances, it is wise not to attend a conference. A decision to attend should only be made after consulting with legal counsel familiar with the Department and its processes. Likewise, although one is not required to be accompanied by legal counsel at a Disciplinary Conference, and, being represented by counsel might even be discouraged by Department representatives, it always is in one's best interests to be represented by counsel experienced in dealing with the Department. Representation by an attorney from the inception of the case can make the difference between a case being closed

¹Licensing board and committee members generally are licensed members of the profession they assist in regulating. However, some boards and committees have unlicensed public members. Depending on the board or committee, members are appointed by the Governor or by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation. Boards and committees act in an advisory role to the Department, though they often have statutory powers. Some boards, such as the Illinois Medical Disciplinary Board, have powers that are quite broad.

The Disciplinary Process Continued — Page 3

and a Respondent's license being disciplined.

It is wise to remember that, by the time a Disciplinary Conference is scheduled, at least four Department employees have reviewed the case and have determined that it should proceed.

At the initiation of a Disciplinary Conference, the assigned Department attorney typically advises the licensee that what he or she says during the conference will not be used against him or her. That statement is deceptive. It is true that no transcript of the conference is prepared and that statements made during the conference will not be introduced into evidence if the matter cannot be resolved at the conference and a formal evidentiary hearing is held. However, it also is true that the prosecutor and board member (who will review the matter with the other board members if a hearing is held) will remember what is said at the conference and will use such information to make decisions regarding the outcome of the case. Additionally, information disclosed during a conference may also lead to further investigation of the matter.

A Disciplinary Conference is conducted by the Department attorney assigned to prosecute the case. The attorney and any board member who attends the conference generally ask the licensee a series of questions related to the allegation made against the licensee or information developed during the investigation. After finishing their questions, they may ask the licensee if he or she has anything else to say or anything further they wish to be considered. Then, it is customary to ask the licensee and his or her attorney to leave the room while the Department attorney and the board or committee member or members discuss the matter together, in private.

Following their private discussion, the licensee is called back to the room and the Department attorney presents the Department's settlement offer.

Following a conference, the Department has the option to close the case with no further action, but this rarely occurs. The Department also may decide to close the case by issuing an Administrative Warning Letter or, if the licensee is a medical doctor or chiropractor, a Letter of Concern. Neither letter is considered to be the "public discipline" of a license. The matter is not reported to the National Practitioner Data Bank (Data Bank) or the Healthcare Integrity and Protection Data Bank and, no public record is kept. Formal discipline, which is reportable to the Data Bank and a matter of public record, reflected on the Department's web site, ranges from a reprimand to license revocation.

It is most important to remember that a settlement offer received after a Disciplinary Conference is merely that, an offer to settle the matter. It is not an official finding of the board, and no matter how the prosecutor presents it, it is an offer. One can accept the offer, reject the offer, or make a counter-offer.

There are serious consequences to having a professional license disciplined, particularly in the healthcare professions (see the article titled, "Effects of Discipline of a Healthcare Practitioner's License"), and one must carefully consider whether to accept a disciplinary offer at the conference stage, or to let the matter go further.

If an offer is accepted, a written Consent Order, or in cases where a formal Complaint has already been filed, a Stipulation of Facts and Recommendation for Settlement is

The Disciplinary Process

Continued — Page 4

prepared and presented to the licensee for signature. It is not unusual for the Order to be presented some weeks or even months after the conference. Upon receipt, a licensee and his or her legal counsel should carefully review the document to ensure it accurately reflects the settlement offer made by the Department, and that no additional terms not discussed during the Disciplinary Conference have been added. Before signing the document, the licensee must also be certain that he or she understands what is required by the Order, and that he or she can comply with what he or she agrees to do pursuant to the Order.

When a licensee has signed a Consent Order or Stipulation and Recommendation indicating his or her agreement to settle according to the terms reflected in the document, the signed document is returned to the Department for the Department attorney who conducted the conference and the board member present at the conference to sign. In most instances, the Order is submitted to the full board or committee for its approval. However, for some professions, such as dentistry, only one board member is required to approve a Consent Order. When the board has approved a Consent Order, the Order is forwarded to the Director of the Department's Division of Professional Regulation for his or her approval. Only the Director can officially enter the agreement on behalf of the Department, and the Consent Order does not go into effect until the Director signs it.

If the licensee rejects the settlement offer, and makes no acceptable counter-offer, a formal Complaint will usually be filed and the formal process that will lead to a formal evidentiary hearing begins.

Formal Complaint Filed

In many cases the licensee is not offered the option of attending a Disciplinary Conference and a formal Complaint is filed upon conclusion of the investigation. There are also cases in which a Disciplinary Conference is held after a formal Complaint has been filed. If a case is not closed or settled by agreement as a result of a Disciplinary Conference, the Department will file a formal Complaint, in most cases. A Complaint will also be filed in those rare instances where the board or the Director of the Division of Professional Regulation has refused to approve the settlement terms negotiated at a Disciplinary Conference. A Complaint is a formal statement of what the Department believes the licensee did wrong and a citation to the particular provision of the licensing Act that the Department believes was violated.

Filing an Answer to the Formal Complaint

Individual licensing Acts require the licensee charged (who is identified in Department pleadings as the Respondent) to file an Answer to the Department's Complaint within a set time. The purpose of an Answer is to help identify exactly what matters are at issue and simplify the actual hearing. In the Answer, the Respondent must admit, deny, or state that he or she has insufficient information to admit or deny the matters alleged in each paragraph of the Department's Complaint. The Answer, in most instances, must be verified (signed on oath or affirmation) by the Respondent. Rather than file an Answer, under certain circumstances, the Respondent may file a Motion to Dismiss the Department's Complaint or other responsive pleading.

Preliminary Hearing and Case Status Hearings

When a formal Complaint is filed, a date is set for the preliminary hearing. At the preliminary

The Disciplinary Process

Continued — Page 5

hearing, legal counsel representing the Respondent and legal counsel for the Department appear before a Department Administrative Law Judge (ALJ) to establish an initial case management schedule and to discuss any other issues relevant to the case. An ALJ is an attorney employed by the Department who is schooled in issues of administrative law, and who assures that the proceeding is conducted fairly. At the preliminary hearing, any preliminary motions will be ruled on and/or a briefing schedule will be set regarding any motions filed. If an Answer has not been filed, the ALJ may enter an Order requiring the Respondent to Answer the Department's Complaint. If an Answer has been filed, a schedule will usually be set for the exchange of Discovery. The licensee is not required to attend the preliminary hearing if he or she is represented by legal counsel who attends. After the preliminary hearing, case status hearings are periodically held to allow the ALJ to manage the progress of the case until it is finally resolved.

Discovery Is Exchanged

The exchange of Discovery is intended to simplify the hearing process. Discovery consists of a list of witnesses that may be called to testify, copies of any documents that may be introduced into evidence, and a description of any other evidence that may be presented at hearing. The Department, because it bears the burden of proof, provides its Discovery first and the Respondent is given time to review the Department's Discovery before providing his or her Discovery.

Pre-hearing Conference

A pre-hearing conference is a meeting between the Department prosecutor, the Respondent's attorney, and an Administrative Law Judge employed by the Department. The Respondent

is not required to attend. Respondents often do attend because of the possibility that a case can be settled at the pre-hearing conference. The ALJ at the pre-hearing conference will usually be the one assigned to preside at the hearing, but not in all cases. The purpose of a pre-hearing conference is also to simplify what will occur at the evidentiary hearing. At the pre-hearing, a final list of witnesses who may be called to testify and copies of any documents that either party may seek to introduce into evidence, which have been previously labeled as Department or Respondent exhibits, are exchanged and any other evidence that either party may seek to introduce will be discussed. At the pre-hearing conference, pre-hearing motions may be argued and may be ruled upon with or without argument before an ALJ.

Pre-hearing Motions

Immediately prior to the hearing, any pre-hearing motions that have not yet been ruled on, and any procedural motions such as a motion to exclude witnesses from the hearing until after they have testified, are introduced and ruled on.

Role of Administration Law Judge and Board Member at Hearing

At the hearing, the ALJ oversees the proceedings. His or her job is to ensure that the hearing is conducted fairly and that the hearing proceeds smoothly. He or she also rules on questions of law and procedure, the admissibility of evidence, and determines whether motions are granted or denied. One or more board members may be present at the hearing.

The Hearing

A hearing is, in its simplest form, a story telling; albeit, a story-telling with formal rules regarding how the story may be told. In cases

The Disciplinary Process

Continued — Page 6

initiated by the Department, the Department must prove its case by clear and convincing evidence. In cases initiated by a licensee, such as a petition to restore a license, the licensee must prove his or her case by the preponderance of the evidence.

Opening Statement

At the hearing, each side has the opportunity to make an opening statement. The opening statement is a preview of what is to come. The attorney for each side may explain what he or she believes the evidence presented will show. Since the Department bears the burden of proof, they go first. An opening statement may be waived.

The Department's Case in Chief

The Department calls its witnesses to testify on direct examination and attempts to have admitted into evidence any documents or other evidence that support its position. After a witness has testified, the opposing party is allowed to cross-examine the witness. The party who called the witness to testify is then allowed to question the witness on redirect examination regarding issues raised in cross-examination. After a witness has been questioned by both sides, the ALJ and any board member present may ask questions of the witness. The Department's counsel and Respondent's counsel may then ask questions relative to the information discussed in response to the ALJ's or Board Member's questions. After the Department's case in chief is presented, it is the Defense's (Respondent's) turn.

Motion for Directed Finding

At the close of the Department's case in chief and prior to presenting his or her case in chief, if the Respondent believes that all the evidence

presented, viewed in the light most favorable to the Department, will not support a finding that the Respondent has violated the licensing Act in question, he or she may move for a directed finding that the Department has not proved its case. Motions for directed finding are seldom granted.

Respondent's Case in Chief

In its case in chief, the Respondent calls his or her witnesses for direct examination and seeks to have documents and other evidence which will support his or her position entered into evidence. The Department is allowed to cross-examine the Respondent's witness and the Respondent is allowed to ask questions on re-direct examination. Again, after both parties have had the opportunity to examine the witness, the ALJ and the Board Member may ask questions. And again, following the ALJ's and Board Member's questions, the Department and the Respondent may ask questions about matters relating to the questions asked by the ALJ and Board Member.

Closing Arguments

After the Respondent has presented his or her case in chief, it is time for closing arguments. As the opening statement presents a preview of what each side intends to prove, closing statements present a summary of what each side contends the evidence presented has proved. Any reasonable inference that can be drawn from the evidence presented may be argued. Because in most cases it bears the burden of proof, the Department presents its closing statement first. The Department may also reserve part of its time for closing argument for rebuttal argument after the closing argument of the Respondent is presented. After closing arguments are presented, housekeeping matters such as

The Disciplinary Process

Continued — Page 7

preparing a list of the documents admitted into evidence are completed; the record is closed, and the hearing is adjourned.

Preparation of Record

The court reporting service which transcribed the hearing prepares a transcript. The transcript, along with copies of any exhibits admitted into evidence, become the official record of the proceedings.

Findings of Fact, Conclusions of Law, and Recommendations to the Board or Committee

After the Administration Law Judge has received and reviewed the record of the proceeding, he or she prepares a report called Findings of Fact, Conclusions of Law, and Recommendations. A copy of the ALJ's report and a full copy of the transcript of the proceeding is then forwarded to each member of the appropriate licensing board for their review.

Findings of Fact, Conclusions of Law, and Recommendations to the Director

After individual Board members have reviewed the copies of the transcript and documents admitted at hearing, they meet to determine what their recommendation will be. Such meetings are usually held during regularly scheduled Board meetings. Board members discuss the case and determine the Board's findings and what recommendations they will make to the Director. The Board may accept the recommendation of the ALJ or may specifically reject the ALJ's recommendations and make its own recommendation to the Director.

Twenty Day Notice

A copy of the Board's Findings of Fact, Conclusions of Law, and Recommendations to

the Director are forwarded to the Respondent's legal counsel along with a "Twenty Day Notice". The notice advises the Respondent that he or she has twenty days from the day they are notified to request that the Director take action contrary to the recommendation of the Board.

Order of the Director

The Director reviews the record of the proceeding, the Findings of Fact, Conclusions of Law, and Recommendations prepared by the ALJ and by the Board and any motion for a re-hearing filed in response to the Twenty Day Notice. The Director may accept the recommendations of the Board or he or she may specifically reject the Board's recommendations and make his or her own. He or she then enters an Order which disposes of the case unless he or she decides to grant a re-hearing. When the Director signs the Order, the discipline or other result ordered goes into effect.

Administrative Review

Upon the petition of the Respondent, an Order of the Director that is not favorable to the Respondent may be appealed to the Circuit Court in the county where the hearing took place. Appeals for Administrative Review must be filed within 35 days of the Director's Order going into effect. An Administrative Review Court may uphold the decision of the Director, may overturn the decision and impose its own decision, or may order that the case be returned to the Department to be retried according to the instructions of the court. Decisions of Administrative Review courts may also be appealed.

The Disciplinary Process

Continued — Page 8

About the Author

Glen D. Crick is an attorney who, since 1987, has concentrated his practice in representing healthcare and other licensed professionals before the Illinois Department of Financial and Professional Regulation (IDFPR), the federal Drug Enforcement Administration (DEA), and other regulatory and administrative agencies in Illinois and in other states. Mr. Crick served as Director of Enforcement for the Department from 1980 to 1987, and was responsible for overseeing all investigative and prosecutorial activities of the Department. Prior to that, he was the supervisor of the Northern Illinois Fraud Investigations Unit of the Illinois State Police, Financial Fraud and Forgery Bureau.

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