

*Knowledge
replaces
fear.*

What to Do When Investigated

By Glen D. Crick, Attorney at Law

Note: This article is addressed to those who hold professional licenses issued by the Illinois Department of Financial and Professional Regulation and by similar licensing agencies in other states. These suggestions are, in most circumstances, valid for any type investigation, whether administrative, criminal, or civil. However, it should be noted that in some other states, one who holds a professional license may be required to submit to an investigative interview as a condition of being licensed. This article reflects the opinions of Glen D. Crick, an attorney licensed to practice in Illinois only, and are based on his twenty-seven years' experience investigating, directing investigations and prosecutions, and defending those who become the subject of investigations and prosecutions conducted by regulatory and administrative agencies in Illinois and other states. These suggestions will apply to a greater or lesser extent depending on the individual circumstances of a case. Whatever the circumstances, however, one who becomes the subject of an investigation would be wise to immediately retain legal counsel. The suggestions presented are not to be considered "legal advice" and by reading this article, no attorney/client relationship is formed with Mr. Crick or Glen D. Crick, Ltd.

Few things are more threatening to a medical doctor, dentist, chiropractor, psychologist, pharmacist, nurse, or other licensed professional than the prospect of being investigated. Licensed professionals work today under a constant shadow of scrutiny. A host of federal laws, administrative regulations, licensing board rules and other statutes and ordinances regulate almost every aspect of professional practice. More and more patients, clients, competitors, and regulators are bringing charges and complaints for an assortment of real and imagined misdeeds. Across the country, state licensing boards are increasing the number of licensees disciplined each year. The longer you practice, the more likely you are to be

investigated. However, **knowledge replaces fear**, and taking some precise, careful steps when investigated will help ensure that your rights are safeguarded and may result in a better outcome.

Do not panic. With complicated regulations governing the practice of various professions and cultural forces that advocate assigning blame, the likelihood of a licensed professional being investigated is great. That means you are not alone. Many of your colleagues have faced the same dilemma. Talk to others who have experienced an investigation. Get referrals for legal counsel. Find out how others coped and remember, **you will get through this.**

Do not "get in a hurry". The passage of time only works to the benefit of the accused. While you must be mindful of time limits imposed by law, when there is no set time in which you must act, take your time. The vast majority of legal actions brought in this country are resolved by negotiation rather than by hearing or trial. Negotiations become easier when prosecutors are trying to "move" old cases.

Always remember that the investigator and the prosecutor are not your friends. If you remember nothing else from this article, remember that. All too often, licensed professionals, surprised by a visit from an investigator, lower their guard and say and do things that are ill-advised. In an attempt to defend their actions or make sure an investigator understands their side, professionals often jeopardize their opportunity for an effective defense by answering questions and providing written statements without even a clear understanding of what the investigation is about.

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Before you decide to answer any questions, ask some questions. Many licensed professionals agree to an interview or to provide documents before they have a clear idea of who is requesting information and for what purpose.

Find out who is conducting the investigation. Federal, state and local law enforcement agencies may have overlapping jurisdictions in a particular case. If an investigator wants to talk to you, find out who he or she is and what agency they represent before the interview begins. The easiest way to find out is to ask. Finding out who is investigating is important because different agencies investigate different things and you should have a better idea of what the investigation concerns based on who is conducting the investigation.

Find out who and what is being investigated. It may be you, or it may be an employee, or a patient, or the neighbor down the hall. Ask who is being investigated and why. In the beginning, the primary person asking questions should be you. If you are the subject of the investigation, depending on what the investigation is about, you may wish to terminate or postpone the interview until you have discussed the matter with legal counsel.

Beware of investigators' attempts to minimize. If you are told, "This is just a routine investigation," ask yourself for whom is it routine? Sure, it is routine for the investigator; he or she investigates someone every day, but it is not routine for you. Being investigated is not a trivial matter. If the investigator refuses to disclose who is being investigated or says he or she can't tell you what the investigation is about, then it is wise to terminate the interview. If the investigator is not going to be up front with you, it is not in

your best interest to talk to him or her.

If an investigator attempts to intimidate you, terminate the interview. If the investigator's response to your questions or concerns is: "If you don't want to answer questions here, you can answer them downtown," or "We can put you out of business," or "We can do this the easy way or the hard way," then right away it is clear that the investigator is not going to be reasonable and is more concerned with his or her ego than your right to earn your livelihood without undue interference. Such an attitude is a signal to stop talking and call a lawyer. A good investigator will be friendly, and a friendly investigator is far more effective and far more dangerous than a surly one. Remember, although an investigator might be friendly, **the investigator is not your friend**; he or she is there to do a job.

Remember, the investigator is not your friend.

If you are told, "You have the right to remain silent," then remain silent. The Miranda Warning is only given to someone who is the subject of a **criminal** investigation. If an investigator tells you that you have the right to remain silent, there is no guesswork involved. You are the subject of a criminal investigation, and there is nothing to be gained and much to be lost by talking to an investigator without legal counsel present.

By law, you usually are not required to submit to an investigator's interview. Even in those rare circumstances when you are required to submit to an interview, you are entitled to first consult with legal counsel and have counsel present during the interview. Once you have determined who is conducting the investigation and who and what is being investigated, you can decide whether to talk to the investigators or advise them that currently, you do not wish to be interviewed. Attorneys

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do not like their clients to speak to investigators when they are not present. In a serious case, it is in the best interests of the person being investigated to tell his or her story for the first time during a settlement conference, in court, or a hearing. Any time a story is told twice, there are variations, and opposing legal counsel will often use those variations to attack the credibility of the story teller.

An interview can be terminated at any time. Professionals who are under investigation often worry about appearing uncooperative and angering the investigator. Remember, the investigator is not your friend. It doesn't matter if an investigator does not like you. Your right to continue practicing, uninterrupted, is at stake. If you don't like the way an interview is going, simply say, "Let me speak with an attorney and get back to you."

Do not lie and do not justify. If you do decide to talk to an investigator, **do not lie.** It is a federal crime to lie to a federal agent, and it always is a big mistake to lie. It also is unnecessary. Remember, you can terminate an interview at any time, for any reason. So, if you feel uncomfortable, or if you don't like the questions being asked, stop the interview and seek legal counsel. Often a licensed professional's first instinct is to explain, but remember, an investigator cannot be counted on to listen or understand. Although *Webster's Dictionary* defines the word "investigation" as "a critical search for the truth," an investigator often sees his or her job as gathering evidence to prosecute an offense committed by the person being investigated, and that does not necessarily make the investigator a good or unbiased listener. Further, an investigator might not have the expertise necessary to understand the explanation. An attorney assigned to prosecute the case and/or a member of a licensing board, **not** the investigator, decides whether someone

will be prosecuted. Hold the explanation for someone who will listen, who understands, and who is in a position to **do** something.

You will not have an opportunity to review and correct an investigator's report. In most instances, an investigator will prepare a written report of any interview conducted during an investigation. These written reports are very important because they will be reviewed by prosecutors who will decide whether to file formal charges. They also are reviewed by members of a licensing board prior to a settlement conference and, although they should not be, the reports themselves are sometimes allowed into evidence at hearing. The problem is that an investigator's report is written by an investigator from that investigator's viewpoint. Important statements and points raised are often minimized or omitted when they do not fit the investigator's view of the case. If you do not talk to an investigator, then you can tell your story for the first time in your own words, in a context where it counts. Also, remember, what you say to an investigator never will be used by the prosecution for your benefit.

Except for patient medical records you are authorized by the patient to release, do not give investigators any original documents or document copies, unless served with a subpoena or search warrant. An investigator might not have any legal right to requested materials but, if you provide them, then they may be used against you. Further, there might be a legal reason to question the validity of a subpoena or the authority of the entity that issued it. So, maintain copies and a careful inventory of all documents and/or other materials you decide to provide.
Do not ever provide a written statement at the time of an interview. This "don't" is **critical.** There is absolutely nothing to be gained by providing a written statement at the

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time of an interview, and much to be lost. The only reason for an investigator to request a written statement during an interview is to lock you into a position expressed in that statement. Such a statement only will be used against you and never for your benefit. While often it is in your best interest to provide requested information in writing for the purpose of avoiding misinterpretation, it is not necessary to do so at the time of an interview. Carefully review all written information with legal counsel – before it is submitted.

Remember, most cases are resolved by settlement agreements rather than at hearing.

Most cases end in a negotiated settlement. Settlement terms often depend on the amount of information the prosecutor has and what he or she can prove. In most settlements, the less information the other side has, the better for you. **You** control the flow of information, so guard it carefully. Only consider providing information through an attorney.

During the investigation, beware of being asked to attend conferences. During the course of an investigation, you could be asked to attend, with agency representatives, an “investigative”, “informal”, “disciplinary”, or other such conference or meeting with Department representatives. To distinguish, a “conference” or “meeting” is different than a formal hearing, because a formal hearing is conducted by a hearing officer or an administrative law judge schooled in issues of administrative law, who is there to assure that the proceeding is conducted fairly. During a formal hearing, the accused generally is represented by legal counsel with the responsibility of protecting the rights of the accused. Decisions about one’s guilt and the appropriate discipline are rendered after deliberation by a board of peers of the accused and following a recommendation by the board.

During an informal or Disciplinary Conference, any number of representatives from the government agency might be present. Such attendees are neither impartial nor on the side of the accused. The accused is not required to attend a disciplinary or informal conference with department representatives and often it is in his or her best interests not to do so. If one were to attend such a conference without legal counsel, that individual might be pressured into admitting wrongdoing and agreeing to unwarranted discipline. For more information about disciplinary and informal conferences, visit the Web site: www.cricklaw.com.

The last suggestion is to return to the first suggestion. Do not panic, for you **will** get through this experience.

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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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