

## **PROFESSIONAL LICENSE COMPLAINT REVIEW: INVESTIGATION AND PROCESS**

### **Your Licensing Board is an Administrative Body and Investigations Against Your License are Governed by Administrative Law**

Administrative law differs greatly from civil law or criminal law. Unlike with criminal or civil matters, which are decided by a judge or jury, administrative matters are decided by an administrative body. In the case of allegations against a licensed professional, that administrative body is your licensing board. Administrative bodies are granted such great deference by the legislature because they are considered the experts with regarding to whether or not an individual's practice poses any sort of risk to the public. As is elaborated on below, this means that your board will ultimately determine how your matter will be resolved, whether through dismissal, some sort of discipline against your license, suspension, or revocation.

### **You Have a Right to Due Process**

Since your professional license is considered your property, your right to due process enumerated in the United States Constitution protects you: your license cannot be arbitrarily taken away from you without a hearing. An administrative process has been outlined by the Minnesota Legislature that empowers your licensing Board to protect the public from unsafe practitioners, while also protecting your right to due process.

### **You Must Cooperate with Your Licensing Board**

Failure to cooperate with your licensing Board in the event of an investigation will likely result in your license being suspended or revoked indefinitely. You must provide a response to their questions and provide your full cooperation.

### **Responding to Allegations**

It is important to provide an appropriate and timely response to any written Allegations that have been served against you by your Board. You should consult an attorney before providing any response to your Board.

### **The Complaint Review Committee**

If you are called to a hearing or conference before the Minnesota Board of nursing or any other Board, it will be before a complaint review committee. Most licensing boards in Minnesota follow similar or same procedures. These committees vary in their make-up from Board to Board, but are generally composed of one or more members of the larger Board, an investigative Board staff member, and the Assistant Attorney General who is appointed to advise and represent your Board

The committee's recommendation will then be submitted for approval by the full Board at the next scheduled Board meeting. The committee will recommend one of the following: 1) complete dismissal of the allegations; 2) discipline be issued against your license; 3) suspension over your practice; 4) revocation of your license. The Board will almost certainly approve the committee's recommendation.

### **Settlement: Stipulation and Consent Orders**

If the complaint review committee recommends discipline against your license, which could include a period of suspension, you will most likely be presented with a Proposed Stipulation and Consent Order to sign. The Stipulation will outline the facts and the terms of the discipline against your license. **It is very important to talk with an attorney about the Stipulation because once you sign a Stipulation and Consent Order with your Board the document will become available to the public and it can never be removed.**

### **Discipline:**

If the committee determines discipline is appropriate, some types of discipline that may be recommended include: imposition of a fine, completion of additional education, requirement of ongoing supervision over your practice, limitation on the scope of your practice, or participation in the Health Professionals Services Program (HPSP).

### **Contested Case Proceedings**

If you are unable to reach a settlement agreement with your licensing Board, you have the option to go beyond the Board review process and pursue a Contested Case proceeding before an Administrative Law Judge. This process is much like a trial where you will have the opportunity to testify, and present evidence and call witnesses to testify on your behalf. It is important to recognize that, while you may obtain a favorable advisory opinion from the Administrative Law Judge, your licensing Board will still make the final determination as to how your case will be resolved.

### **Court of Appeals**

If you remain unable to reach a settlement agreement with your licensing Board through a Contested Case proceeding, you still have the right to appeal your case to the Minnesota Court of Appeals. It is rare that cases fail to settle before reaching this level in the legal process and even rarer that the Court of Appeals will find against the recommendations of your licensing Board. Absent a gross violation of your rights to Due Process, the Court of Appeals will not overturn a Board's recommendation.