

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. Some components of a matter may be decided by an Administrative Law Judge. In the case of allegations against a licensed professional, that administrative body is your licensing board. Administrative bodies are granted a lot of power by the legislature because they are considered the experts with regarding to whether an individual's practice poses any sort of risk to the public. As 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 providers, 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. You agree to do this when you become licensed.

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 or panel. 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.

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The committee's recommendation usually must be approved by at least two board members, and must be agreed upon in writing by you, in order to resolve the investigation. The committee typically recommends 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.

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 document titled Stipulation and Consent Order for your signature. 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 before you sign it because once signed the entire document will become available to the public and it can never be removed.**

Discipline:

If the committee recommends disciplinary action this may include: imposition of a fine, completion of additional education, requirement of ongoing supervision over your practice, limitation on the scope of your practice, participation in the Health Professionals Services Program (HPSP), or even suspension or revocation of your license.

Contested Case Proceedings

If you are unable to reach a settlement agreement with your licensing Board (for instance you refuse to sign their proposal), the matter will proceed beyond the Board review process into a Contested Case proceeding before an Administrative Law Judge. This process is much like a trial where you will have the opportunity to testify, present evidence, and call witnesses to testify on your behalf. It is important to understand, however, that the scope of the Administrative Law Judge's ruling will only be whether or not it is more probable than not that a practice violation occurred. They will not make a recommendation as to how the matter should be resolved. While the Board has the burden of proof, it is a very low burden. If the Administrative Law Judge finds that a violation has occurred, your licensing Board will still make the final determination as to how your case will be resolved.

Court of Appeals

If you obtain an unfavorable result in a Contested Case proceeding, you have the right to appeal your case to the Minnesota Court of Appeals. It is rare that cases fail to resolve 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 likely not overturn the Administrative Law Judge's finding or the Board's final recommendation.

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