Licenses and the Law Series, Part I: An Overview of the Process



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Arkansas is one of the highest licensing states, meaning it licenses more occupations than most other states. Accordingly, Arkansas has numerous licensing boards. From the obvious, i.e., the Arkansas State Medical Board, to the not so obvious, i.e., the Arkansas State Plant Board, which oversees the licenses for landscape contractors and nursery dealers, among other things.

Despite their different rules and regulations, licensing boards often have one thing in common: they are able to receive complaints against their licensees. Generally, licensing boards follow a similar process regarding investigating those complaints.

The purpose of this article series is to provide an overview of that process for licensed professionals who have received a complaint against their license.

1. Investigation

First, the licensing board will receive a complaint. At this point, the licensing board may review and dismiss the complaint before ever notifying the licensee that it has received a complaint. The licensing board could determine that it lacks authority (jurisdiction) to even act, or it could determine that the allegations, even if true, do not warrant board action.

However, some licensing boards review their authority and the claim's validity only after first launching a formal investigation into the complaint and requesting a response from the licensee. Normally, the board will "serve" the licensee with a copy of the complaint and request a response, using the licensee's address on file with the board.

In addition, the board may hire an investigator. The investigator may interview relevant witnesses regarding the allegations in the complaint, including the licensee. That investigator has virtually free reign to look into the allegations in the Complaint and report back to the board.[1] Importantly, licensees are allowed to have legal representation at any interview with the board investigator, and we highly recommend that you do.

2. Board Review

More likely, the board will conduct its review only after the investigation concludes, which means that it is possible for the board to realize that it lacks authority to handle the complaint—after the licensee has already been required to respond. While understandably aggravating, this is likely a product of the timing of board meetings and the bureaucracy associated with the same.

At this stage, the board, or a subcommittee of the board, reviews the investigation's findings and makes a recommendation on how to handle the allegations in the complaint.

The board may determine that the complaint allegations are substantiated, unsubstantiated, that the allegations could not be substantiated properly, or that the allegations, without more, do not amount to a violation of the board rules. The board's next steps are determined by its conclusion.

3. Consent Order

If the board concludes that the allegations are substantiated, it may offer the licensee a consent order to sign. A consent order is a written agreement between the board and the licensee in which the licensee agrees to comply with specific conditions. Signing the order is considered an admission of wrongdoing and binds the licensee to the consequences laid out in the order.

Refusing to sign the consent order entitles the licensee to a formal hearing in front of the licensing board.

4. Hearing

The hearing is governed by the Administrative Procedure Act, as well as that board's specific rules and regulations. Thus, the hearing normally consists of live testimony and the submission of documentary evidence. *See* Administrative Procedure Act, 5 U.S.C. § 556(d). At the conclusion of the hearing, the board votes on whether the licensee violated its rules and regulations. If it finds a violation, the board will vote on the consequences that it feels is appropriate for the licensee's proven violations. These consequences can range from additional continuing education hours, rehabilitation services, and even in some cases, suspension and/or revocation of one's professional license. All of the board's findings and conclusions, or sanctions if ordered, will be laid out in a Final Order. *Id*. § 557(c).

5. Appeals

Appeals from decisions of Arkansas licensing boards are difficult to perfect and their decisions are hard, although not impossible, to overturn. Because of this, it is imperative that a licensee put their best defense forward in front of the Board at the formal hearing. Any appeals are made before the Arkansas state circuit courts.

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[1]We will explore this process in further detail in a forthcoming article.

This is the first article of the Mitchell Williams "Licenses and the Law" Series, which explains the process of when a licensed professional receives a complaint against his/her license. The series will be published bi-monthly for a total of 10 articles. The second article will publish on March 15, 2022.

View the first article of the series: Licenses and the Law Series, Part I: Overview of the Process

View the second article of the series: Licenses and the Law Series, Part II: Receiving a Complaint

View the third article of the series: Licenses and the Law Series, Part III: Who Can File a Complaint

View the fourth article of the series: Licenses and the Law Series, Part IV: Responding to a Complaint Against Your License

View the fifth article of the series: Licenses and the Law Series, Part V: Potential Board Sanctions Against Licensees

View the sixth article of the series: Licenses and the Law Series, Part VI: Preparing for the Hearing

View the seventh article of the series: Licenses and the Law Series, Part VII: The Hearing: Part I

View the eighth article of the series: Licenses and the Law Series, Part VIII: The Hearing - Part II

View the ninth article of the series: Licenses and the Law Series, Part IX: The Appeal

View the tenth article of the series: Licenses and the Law Series, Part X: A Review

The upcoming articles in this series will explore each step of this process in more detail. For more information about complaints against professional licenses, contact Attorney Stuart Miller at smiller@mwlaw.com or Attorney Peyton Hildebrand at phildebrand@mwlaw.com.