

## Licenses and the Law Series, Part VIII: The Hearing - Part II



**Stuart Miller**

smiller@mwlaw.com

(479) 464.5670 / (501) 688.8896

06/14/2022

*In addition, this article was co-authored by former Attorneys Lindsey Vechik and Peyton Hildebrand.*

In our [last article](#), we explained the first part of the hearing: the case against you. Now, we discuss the second part of the hearing: your defense.

After the Attorney General presents his case, you have the opportunity to present yours, which should outline your defense to the allegations pending against you.

### **Consider Testifying in Your Defense.**

You can testify in your own defense. If you have an attorney, then your attorney should ask you questions that will elicit testimony favorable to your case. If you are representing yourself at the hearing, then you can testify as a narrative to the board. As we have stated previously, Administrative Law hearings allow for more latitude than criminal or civil courts in terms of evidentiary submissions.

Oftentimes, it is prudent to start your testimony with your educational, licensing, and employment background. This will give the board an idea of your experience and hopefully show your commitment to the profession. Next, we suggest that you walk through any evidence that supports your defense. The “evidence” could simply be your testimony as to the truth of the allegations. However, if you have documentary evidence to support your position, you should present that to the board at this time. We suggest you be as creative as possible in finding documents that support your position. Oftentimes, there is no **one** document that you can pull to exonerate you from the allegations, but several, together, may support your position.

### **Prepare for Cross-Examination.**

After you complete your testimony, the Attorney General will get a chance to ask you questions on cross examination. You need to think through what questions he will ask and carefully consider your potential responses. Be prepared. Formulate answers in advance of the hearing. Know the records/evidence that support your position. Do not rush to respond. Take a minute. Consider the question, remain calm and respectful, and then answer the question. Maintaining professional decorum is almost as important as what you say.

### **Consider Presenting an Expert Witness.**

In addition to testifying on your own behalf, you can present additional witnesses to support your defense. Depending on the allegations, you may want to hire an expert to review your case and offer an opinion as to the allegations pending against you. Boards oftentimes have at least one expert. If the board presents an expert, and you do not, this could give the impression that you could not find a supportive expert.

Not only can you use an expert to support your defense against the specific allegations, but you can also use an expert to support your general competence in your field. For example, suppose that you committed the allegations against you in this particular instance, but generally, you are still a competent professional and a helpful addition to the field. Let your expert say that!

The expert could suggest that the board require additional training, supervision, continuing education, etc., instead of suspending or revoking your license.

#### **Consider Presenting Lay Witnesses.**

You can also bring witnesses that are not experts to support your actions. It may be important to bring co-workers, mentors, or others that have knowledge of the specific actions alleged in this complaint and/or your general competence in the field. Remember, the board has subpoena power to compel your witnesses to come to the hearing and will do so if, under the board's rules, you give it enough notice to have time to do so. However, we always caution forcing a witness to come and testify if they are unwilling to come without a subpoena. You do not want to run the risk of presenting unfavorable testimony in your case, so proceed with caution when asking the board to subpoena witnesses for your case.

#### **Be Organized.**

Overall, your case needs to be organized and well-thought out. You need to practice your testimony and your case so that you look very prepared for the hearing. The board will appreciate you taking the process seriously. Finally, you must be honest and sincere. It is our experience that authenticity and transparency is the key to getting a good result in front of any licensing board.

#### **Prepare a Closing Statement.**

At the close of all of the evidence, both parties will be given the opportunity to give a closing statement to the board. This statement, again, should be brief but may be longer than your opening statement. In closing, it is helpful to recount the evidence that is helpful to your defense as you believe it was presented. Also, it is helpful to point out—in a respectful way—why you believe the Attorney General's case is flawed. But if you believe you have committed the allegations against you, you may want to apologize at this time. Also, if you are in this situation, and in front of the board because you are trying to avoid a license suspension or revocation, tell the board what you are willing to do in order to prove to them your competence in the profession and your commitment to the same (additional training, supervision, etc.). It is important to outline an alternative.

#### **Listen to the Board's Deliberations.**

As stated in the previous installment of this blog series, administrative board hearings are open to the public, including the board's deliberations. Unlike a jury trial in civil/criminal cases, a licensee has unfettered access to the deliberations of the board in your case. Although it is very awkward, you can listen to the thoughts of the board as they deliberate your case. At the end of the deliberations, the board will vote on whether or not they believe you committed the pending allegations against you. If they vote that they do believe you have committed the allegations, they will traditionally move directly into determining what repercussions your license should suffer because of those violations. Again, you will get to listen to these deliberations as well.

---

*This is the eighth 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 ninth article will publish on June 28, 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](#)

*For more information about complaints against professional licenses, contact [Attorney Stuart Miller](#) at [smiller@mwlaw.com](mailto:smiller@mwlaw.com) or [Attorney Peyton Hildebrand](#) at [phildebrand@mwlaw.com](mailto:phildebrand@mwlaw.com).*