

CONSUMER GUIDE TO THE DEPARTMENT OF PUBLIC HEALTH'S INVESTIGATION AND HEARING PROCESS

The prosecution of a case by the Department of Public Health can be a lengthy and complex process. The following information is to provide guidance to those individuals who will actively participate in this process with the department investigators and attorneys, as well as for those individuals who would like to know more about how the process works.

THE COMPLAINT

The process starts with a complaint. The department investigates a person whom it suspects has engaged in some wrongdoing or suffers from a condition that interferes with safe practice. That person is referred to as a Respondent. The department may become aware of a Respondent from a number of different sources such as:

- a person affected by the respondent such as a patient;
- an institution such as a hospital;
- a peer or work supervisor;
- a separate unit of the Department of Public Health;
- notice in the media, TV, newspaper, etc.;
- filing of a civil suit;
- another state agency such as the Drug Control Division of the Department of Consumer Protection, which has become aware of a trend in the Respondent's behavior that indicates drug diversion or excessive use of controlled substances.

THE INVESTIGATION AND YOUR ROLE AS A

COMPLAINANT OR WITNESS

During an investigation of a health care practitioner a department investigator will request copies of the records pertinent to the care and services provided by the respondent. In certain instances it may be necessary for the department investigator to request consent from the complainant or the parent in order to

obtain records from a practitioner. Your cooperation with this request will enable the department to conduct a thorough investigation.

In the course of the investigation, a department investigator may contact witnesses and complainants in order to gather information. You may play a role in this part of the case.

You can help the investigator by:

- trying to share every detail about the situation the investigator is asking you about, no matter how minor or unrelated it may appear on the surface;
- providing any documents that you think may be helpful. The investigator cannot ask for them if he/she does not know they exist;

The investigator will also request a statement from the Respondent detailing his response to your allegations.

The department may ask professionals practicing in the same field as the respondent to review the department's case. These professionals are referred to as consultants. At times, the use of consultants may cause a delay in the investigation due to the consultant's busy schedule at his/her own practice, as well as his/her responsibility to thoroughly evaluate the case. The reason for seeking the opinion of a consultant is to determine whether the respondent's alleged conduct falls below the standard of care for that field.

The investigation may take a few weeks or it may take longer than a year to complete. The length of time of the investigation depends on the details and the complexity of the case. The average length of time to conduct an investigation is six_months. During the investigation and the prosecution of the case you may periodically contact the assigned investigator and/or attorney. They will keep you informed on the progress of the case.

PROSECUTION AND YOUR ROLE AS A COMPLAINANT OR WITNESS

After the investigation is complete, the department decides whether there is sufficient evidence to pursue the matter. If so, the case is referred to the Legal Office for prosecution. The Legal Office prosecutes cases in administrative hearings. The Legal Office assigns an attorney to the case who is responsible for preparing the case for a hearing. The attorney prosecutes the case on behalf of the department. Not all cases are prosecuted by the department, some cases are settled via consent orders, stipulated agreements, voluntary surrender of licenses or dismissals.

This stage of the process may proceed quickly, or it may take longer depending on the complexity of the case. The more complex a case is, the more time it will take before the case is settled or goes to a hearing.

As the attorney prepares the case, he/she will contact the witnesses and the complainant(s). When the attorney speaks to you he/she will:

- explain the department's position;
- explain the attorney's role;
- explain the rules of the process;
- explain your role;
- encourage you to ask questions.

It is imperative that you provide the attorney with full and complete information. If you do not want to be involved in the case but the attorney feels your testimony is critical, the attorney can subpoena you. A subpoena is an enforceable court order that requires you to attend a hearing and testify. The law requires you to comply with the subpoena. With that in mind, it is much easier to work cooperatively with the attorney so that he/she can adequately prepare you for the hearing.

THE COMPLIANCE CONFERENCE

Before a Statement of Charges is issued, a compliance letter is issued to the respondent. This letter informs the respondent that there is a case pending against him/her and provides the respondent with an opportunity to meet with the department in order to:

- show why he/she did not breach any standard of care or engage in other inappropriate behavior;
- explain the process to the respondent;
- discuss the opportunity to negotiate a settlement.

CASE SETTLEMENT PRIOR TO HEARING

Before the board reaches an administrative hearing decision, a settlement may be reached in the form of a consent order. The length of time to negotiate a consent order varies and may take several months. If the department's attorney feels that a respondent is sincere in his/her attempts to find a compromise, the attorney may continue to work with the respondent to reach agreement on the consent order.

If a respondent and the department agree on a consent order, the department then presents it to an administrative board for approval. Three different things could happen.

- the order could be approved. If it is approved, the order can take effect and the case will be closed.
- the order could be rejected. If it is rejected, the case will continue.
- the order could be rejected with suggestions for modifications.

THE STATEMENT OF CHARGES

If the matter is not resolved via a consent order, the next step is for a Statement of Charges to be issued. A Statement of Charges is the document that contains the department's allegations against a respondent. In the most severe cases, a Motion for Summary Suspension could be requested if, in the opinion of the department, the respondent's ongoing practices place the public in imminent danger. A Summary Suspension suspends the respondent's license to practice until an administrative board or a hearing officer makes a final decision. The respondent and the department could also agree to an interim consent order. This is a consent order in which the respondent agrees to give up practicing in his/her field until a hearing takes place. A respondent cannot work in his/her licensed field when he/she is under summary suspension or an interim consent order.

THE ADMINISTRATIVE HEARING

Once the Statement of Charges is issued, the staff attorney assigned to the case prepares for the hearing. He/she will go over questions that he/she will ask and try to anticipate questions that an opposing attorney may ask. At this point, feel free to ask the attorney any questions regarding the hearing or the process.

The hearing is the final step in the process. If you are a witness at a hearing there are several things you should remember:

- listen to the questions carefully.
- answer the question that has been asked honestly.
- prepare for the respondent's attorney to question you extensively regarding your testimony.
- do not take questions personally or respond personally to questions asked.
- remember that you are not being judged.
- try not to be nervous.
- tell the hearing officer or administrative panel if you think you are being harassed.

- it is okay to say “I don’t remember” or “I don’t know.”
- try not to surprise the department’s attorney with new information.
- expect inconveniences at hearings; you may have to wait to testify.

We are interested in your feedback regarding comments concerning this Consumer Guide.

1. Did you find our Consumer Guide helpful? _____
2. Should other information be included?
If so, please specify. _____
