

Disciplinary Action Training Handout

After the Investigation is completed and the assigned IC gives the authority to file a Formal Complaint:

Matter proceeds to a settlement agreement that is negotiated between the licensee and the assigned IC **or** a hearing before a hearing officer.

A settlement agreement is a full resolution of the case that is brought to the Board at a public meeting for approval.

- The settlement agreement includes a summary of the alleged violations, information about which violations the Board will deem proven upon approval of the settlement agreement, and the discipline that will be imposed by the Board, if the agreement is approved. Generally, the Board votes to accept or reject as presented.

After a hearing, the Board will be asked to adjudicate the matter. The Board receives the full record from that hearing (transcript of hearing, evidence received, hearing officer's recommendations) and determines whether a violation of Nevada law has occurred. Only Board members and the Board's Deputy Attorney General participate in this discussion.

- It is helpful if the Board members discuss the record from that hearing and explain why they do or do not believe that a violation of Nevada law has occurred. The IC's burden of proof is a preponderance of the evidence.
 - A preponderance of the evidence means evidence that enables the Board to determine that the existence of the contested fact is more probable than the nonexistence of the contested fact. NRS 233B.0375.
- At the end of the discussion there should be at least one motion either finding that a violation of law has or has not been proven. The Board can choose to accept, reject, or modify the hearing officer's recommendations.
- After the Board makes a finding regarding violation(s) of Nevada law, Counsel for the assigned IC will provide a disciplinary recommendation. The licensee and/or his or her attorney is then

allowed to provide comments on the disciplinary recommendation.

- The Board can assess any penalty allowed under the Board's chapter (NRS 630.352 and NRS 622.400).
 - From NRS 630.352(4)
 - (a) Place the person on probation for a specified period on any of the conditions specified in the order;
 - (b) Administer a written public reprimand to the person;
 - (c) Limit the person's practice or exclude one or more specified branches of medicine from his or her practice;
 - (d) Suspend the person's license for a specified period or until further order of the Board;
 - (e) Revoke the person's license; *[NRS 622A.410 requires that this be for a minimum of one year to a maximum of ten years]*
 - (f) Require the person to participate in a program to correct an alcohol or other substance use disorder or any other impairment;
 - (g) Require supervision of the person's practice;
 - (h) Impose a fine not to exceed \$10,000 for each violation;
 - (i) Require the person to perform community service without compensation;
 - (j) Require the person to take a physical or mental examination or an examination testing his or her competence; and
 - (k) Require the person to fulfill certain training or educational requirements.
 - NRS 622.400 allows the Board to recover its reasonable attorney's fees and costs if the Board finds that the licensee violated Nevada law.

Voluntary Surrender in Lieu of Other Disciplinary Action

- This is essentially an agreed to revocation. Because the licensee agrees to it, it cannot be appealed. Like a revocation, minimum of one year, maximum of ten years.

Summary Suspensions

- This is an emergency action. From NRS 233B.127(3)
 - If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.

- For summary suspensions, Counsel for the IC will present the evidence gathered and explain the need for the summary suspension to the IC for approval prior to issuing the summary suspension. The Board's Executive Director also always approves the summary suspension before it is presented to the IC.
- Usually these result in two hearings:
 - A "show cause hearing" within 45 days and a regular hearing (see above).

Suspension for Failure to Comply with a Board Order or Settlement Agreement

- Similar to a summary suspension, except that the health, safety, and welfare threshold is not required. These suspensions are authorized by the Board Order or term in the Settlement Agreement. There will be two hearings, a "show cause hearing" within 45 days and a regular hearing (see above).