

*Knowledge  
replaces  
fear.*

# Disciplinary Conferences at the Illinois Department of Financial and Professional Regulation

By Glen D. Crick, Attorney at Law

*Note: This article is addressed to those who hold professional licenses issued by the Illinois Department of Financial and Professional Regulation. Depending on the laws regulating the professions in force in a particular state, this article may also be applicable in other states. However, one is well advised to check with local counsel or with Mr. Crick regarding the applicable law in a jurisdiction other than Illinois. This article reflects the opinions of Glen D. Crick, an attorney licensed to practice in Illinois only, based on his twenty-seven years' experience investigating, directing investigations and prosecutions, and defending those who become the subject of investigations and prosecutions conducted by regulatory and administrative agencies in Illinois and other states. These suggestions will apply to a greater or lesser extent depending on the individual circumstances of a case. Whatever the circumstances, however, one who becomes the subject of an investigation would be wise to immediately retain legal counsel. The suggestions presented are not to be considered "legal advice" and by reading this article, no attorney/client relationship is formed with Mr. Crick or Glen D. Crick, Ltd.*

A disciplinary conference is an informal meeting with an Illinois Department of Financial and Professional Regulation (Department) attorney assigned to prosecute a case, and with a member or members of the licensing board or committee<sup>1</sup> of the licensee's profession. An administrative law judge is not present during a disciplinary conference and no transcript of the meeting is prepared.

During a typical calendar year, the Department imposes discipline on 3,000 (or more) licensees

in the various professions and occupations it regulates, yet less than 200 formal evidentiary hearings are held. The vast majority of discipline imposed results from negotiated settlements with the Department, which are documented in a Consent Order or a Stipulation of Facts and Recommendation for Settlement. Although they may be negotiated at any stage of a disciplinary proceeding, most settlement agreements are negotiated during or as a result of disciplinary conferences.

Attendance at a disciplinary conference is not mandatory and, in many instances, it is wise **not** to attend a conference. A decision to attend should only be made after consulting with legal counsel familiar with the Department and its processes. Likewise, although one is not required to be accompanied by legal counsel at a disciplinary conference and, being represented by counsel might even be discouraged by Department representatives, it always is in one's best interests to be represented by counsel experienced in dealing with the Department.

It is wise to remember that, by the time a disciplinary conference is scheduled, at least four Department employees who have had the opportunity to recommend that the case be closed have not done so.

At the initiation of a disciplinary conference, the assigned Department attorney typically advises the licensee that what he or she says during the conference will not be used against him or her. That statement is deceptive. It is

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<sup>1</sup>Licensing board and committee members generally are licensed members of the profession they assist in regulating. However, some boards and committees have unlicensed public members. Depending on the board or committee, members are appointed by the Governor or by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation. Boards and committees act in an advisory role to the Department, though they often have statutory powers. Some boards, such as the Illinois Medical Disciplinary Board, have powers that are quite broad.

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true that no transcript of the conference is prepared and that statements made during the conference will not be introduced into evidence if the matter cannot be resolved at the conference and a formal evidentiary hearing is held. However, it also is true that the prosecutor and board member (who will review the matter with the other board members if a hearing is held) will remember what is said at the conference and will use such information to make decisions regarding the outcome of the case. Additionally, information disclosed during a conference may also lead to further investigation of the matter.

A disciplinary conference is conducted by the Department attorney assigned to prosecute the case. The attorney and any board member who attends the conference generally ask the licensee a series of questions related to the allegations made against the licensee or information developed during the investigation. After finishing their questions, they may ask the licensee if he or she has anything else to say or anything further they wish to be considered. Then, it is customary to ask the licensee and his or her attorney to leave the room while the Department attorney and the board or committee member or members discuss the matter together, in private. Following their private discussion, the licensee is called back to the room and the Department attorney presents the Department's settlement offer. Following a conference, the Department has the option to close the case with no further action, but this rarely occurs. The Department also may decide to close the case by issuing an Administrative Warning Letter or, if the licensee is a medical doctor or chiropractor, a Letter of Concern. Neither letter is considered

to be the "public discipline" of a license; the matter is not reported to the National Practitioner Data Bank (Data Bank), and no public record is kept. Formal discipline, which is reportable to the Data Bank and a matter of public record reflected on the Department's web site ranges from a reprimand to license revocation.

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The most important thing to remember is that a settlement offer received after a disciplinary conference is merely that, an offer to settle the matter. It is not an official finding of the board, and no matter how the prosecutor presents it, it is an offer. One can accept the offer, reject the offer, or make a counteroffer.

There are serious consequences to having a professional license disciplined, particularly in the healthcare professions (see the article on this web site titled, "Effects of Discipline of a Healthcare Practitioner's License"), and one must carefully consider whether to accept a disciplinary offer at the conference stage, or to let the matter go further.

If an offer is accepted, a written Consent Order, or in cases where a formal Complaint has already been filed, a Stipulation of Facts and Recommendation for Settlement is prepared and presented to the licensee for signature. It is not unusual for the Order to be presented some weeks or even months after the conference. Upon receipt, a licensee and his or her legal counsel should carefully review the document to ensure it accurately reflects the settlement offer made by the Department, and that additional terms not discussed during the disciplinary conference have been added. Before signing the document, the licensee must also be

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certain that he or she understands what is required by the Order, and that he or she will be able to comply with what he or she agrees to do pursuant to the Order.

When a licensee has signed a Consent Order or Stipulation and Recommendation indicating his or her agreement to settle according to the terms reflected in the document, the signed document is returned to the Department for the Department attorney who conducted the conference and the board member present at the conference to sign. In most instances, the Consent Order is submitted to the full board or committee for its approval. However, for some professions, such as dentistry, only one board member is required to approve a Consent Order. When the board has approved a Consent Order, the order is forwarded to the Director of the Department's Division of Professional Regulation for his or her approval. Only the Director can officially enter the agreement on behalf of the Department, and the Consent Order does not go into effect until the Director signs it.

If the licensee rejects the settlement offer, and makes no acceptable counteroffer, a formal Complaint will usually be filed and the formal process that will lead to a formal evidentiary hearing will begin.

#### *About the Author*

*Glen D. Crick is an attorney who, since 1987, has concentrated his practice in representing healthcare and other licensed professionals before the Illinois Department of Financial and Professional Regulation (IDFPR), the federal Drug Enforcement Administration (DEA), and other regulatory and administrative agencies in Illinois and in other states. Mr. Crick served as Director of Enforcement for the Department from 1980 to 1987, and was responsible for overseeing all investigative and prosecutorial activities of the Department. Prior to that, he was the supervisor of the Northern Illinois Fraud Investigations Unit of the*

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