

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

The prosecution of a case by the Federal 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. The process starts with a complaint. The department investigates a practitioner/respondent whom it suspects has engaged in wrongdoing or suffers from a condition that interferes with safe practice. 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 the department investigator may request consent from the complainant or the parent in order to obtain records from a practitioner. The department will conduct a thorough investigation. In the course of the investigation, a department investigator may contact witnesses and complainants in order to gather information. The investigator will also request a statement from the respondent detailing his/her response to the allegations.

The case will be reviewed by a conflict resolution specialist. The length of time of the investigation depends on the details and complexity of the case. The average length of time to conduct an investigation is six months or 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. During the investigation and the prosecution of the case the assigned investigator and/or attorney may be contacted periodically concerning the progress of the case. After the investigation is complete, the department decides whether there is sufficient evidence to pursue the matter. If so, the case is decided by an administrative panel of the Federal Department of Health who are professionals in the field. The administrative panel will decide whether the respondent's alleged conduct falls below the standard of care for the field. The administrative panel prosecutes cases in administrative hearings but an attorney may be responsible for preparing and prosecuting more complex cases on behalf of the department. Not all cases are prosecuted by the department; some cases are settled via consent orders, stipulated agreements and voluntary surrender of licenses or dismissals.

It is imperative that the administrative panel or the attorney be provided with full and complete information. 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. Before 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. The attorney may continue to work with the respondent to reach an agreement on the consent order. If a respondent and the department agree on a consent order, the department then presents it to the administrative panel for approval. Three different things could happen.

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

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 panel 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 until a hearing takes place. A respondent cannot work when he/she is under summary suspension or an interim consent order. Once the Statement of Charges is issued, the administrative panel or attorney for the case will prepare for the hearing. The hearing is the final step in the process.