


MEMORANDUM

DATE	April 25, 2018
TO	Psychology Board Members
FROM	 Sandra Monterrubio, Enforcement Program Manager Board of Psychology
SUBJECT	Overview of the Role of the Office of the Attorney General in the Administrative Enforcement Process, Item 19

Gloria L. Castro, Senior Assistant Attorney General of the Health Quality Enforcement Section Civil Division, at the Attorney General's Office and Joshua Templet, Deputy Attorney General will provide an Overview of the Role of the Office of the Attorney General in the Administrative Enforcement Process.

Action Requested

This item is for informational purposes only.

Attachment: PowerPoint Presentation

The Role of the Attorney General's Office in the Board of Psychology's Disciplinary Process

May 2018

Joshua Templet, Deputy Attorney General
Gloria Castro, Senior Assistant Attorney General



Disciplinary Process

- Investigation by DCA/DOI
- Referral to AGO
- Accusation
- Discovery and settlement
- Administrative Hearing
- Decision
- Post-Decision



Section 2920.1: Public Protection Priority

Protection of the public shall be the highest priority for the Board of Psychology in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.



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Investigation

- Complaint received.
- Board staff reviews complaint.
- Board staff refers case for investigation by investigator.
- Board staff retains expert to review evidence gathered and opine on whether there has been unprofessional conduct.

Investigation

- Investigation and Enforcement Unit.
- Health Quality Investigation Unit: Vertically enforced cases, as requested:
 - Sex misconduct cases are handled as VE cases.
 - Other cases on a case-by-case basis.

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Referral to the Attorney General's Office

- Attorney General's Office, California Department of Justice.
- Deputy Attorneys General of the Health Quality Enforcement Section serve as the Board's prosecutors.
- The Board is one of several clients that HQE serves. (Gov. Code § 12529.)





Evaluation of Case for Prosecution



- Sufficient evidence to prove unprofessional conduct?
- Burden: “clear and convincing evidence to a reasonable certainty.”

Levels of Proof

Preponderance of evidence (51%)



Clear and convincing evidence (75%)



Beyond a reasonable doubt (95%)





Accusation: Charging Licensee with Unprofessional Conduct

- DAG drafts an Accusation, a document notifying the charged psychologist (Respondent) of the charges that are being brought against her.
- When the Accusation has been reviewed and signed by the Executive Officer of the Board, a copy is sent to the Respondent and is published online.

Accusation: Charging Licensee with Unprofessional Conduct

- Quality of Care: Gross Negligence and/or Repeated Negligent Acts
- Sexual Misconduct
- Multiple Role Relationship/Boundaries Violation
- Excessive Treatment
- Mental or physical impairment of the licensee
- Violations of APA Code of Conduct
- Violations of BOP Rules of Professional Conduct
- General Unprofessional Conduct
- Incompetence

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Discovery and Settlement

- **Discovery:** During the discovery process, the Deputy Attorney General provides a copy of non-privileged investigation materials to the charged psychologist (Respondent). Likewise, the Respondent provides to the Deputy Attorney General a copy of any relevant documents or evidence in her possession. This often includes mitigating evidence in support of possible settlement.
- **Settlement:** The DAG will assess her ability to prove the charges in the Accusation to an Administrative Law Judge, based on the state of the evidence (documents, the expert report, anticipated witness testimony, Respondent's anticipated defenses, etc.). The DAG will then communicate with Board staff to determine an appropriate settlement, if any, based on the strength of the case, the charges in the Accusation, and any mitigating or aggravating factors.

Settlement: Range of Discipline

- Public reproof
- Revoke license and stay revocation with probation conditions
- Accept surrender of license
- Revoke license

The Board's Disciplinary Guidelines frame the appropriate discipline in each case, including the length of probation and recommended terms and conditions, based on the nature of the misconduct.

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Hearing

- Scheduled with the Office of Administrative Hearings and heard by an Administrative Law Judge.
- Hearing preparation: DAG meets with witnesses and prepares their testimony, organizes the evidence (documents and sometimes audio and video), and prepares her presentation to the ALJ (opening statement, witness examinations, and closing argument).
- At hearing, the DAG endeavors to prove the charges in the Accusation by clear and convincing evidence.



Decision

- After the ALJ hears evidence, the ALJ writes a Proposed Decision and submits it to the Board for adoption as its final Decision.
- If the Board adopts the Proposed Decision, it becomes final.
- If the Board does not adopt the Proposed Decision, the Board may:
 - Decide the case itself, based on the administrative record;
 - Remand the case back to the ALJ with instructions for further proceedings; or
 - Adopt the decision with modifications.

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Post-Decision

- **Petition for Rehearing/Reconsideration**
- **Petition for Writ of Administrative Mandate**

The Respondent may petition the Board for reconsideration if he is dissatisfied with the Board's decision.

The Respondent may also file a Petition for Writ of Administrative Mandate in Superior Court to contest the Decision. The Superior Court rules on such petitions based on the record of the administrative hearing, including the hearing transcripts and exhibits (no witnesses are called).

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