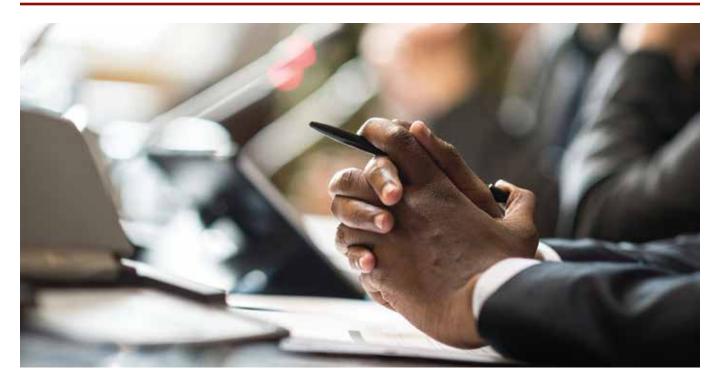
legal notes

By Daniel Pollack

Protect Your Professional License



personal letter you really don't want to find in your mailbox? Well, of course one from the IRS—but just as daunting is a complaint from your state licensing board containing an accusation of wrongdoing or misconduct.

Due Process

Human service agencies hire many licensed professionals, especially social workers. Naturally, the laws, regulations, and standards regarding each professional licensure are unique and complex. Due to a civil or criminal complaint, investigation or lawsuit, the applicable state licensing authority may seek to take some negative action that jeopardizes that license. Such action cannot happen, however, without due process. For instance, Rhode Island [R.I. Gen. L. § 42-35-14 (b) (2012)] states that, "No revocation, suspension, annulment,

or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency sent notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Remember, while licensing boards may advocate for the professionals they cover, their primary charge is to protect the public. For this reason, almost all states have a public safety exception that allows a licensing board

to suspend a professional license without a hearing if public safety would be in immediate jeopardy.

When to get Legal Advice

Securing a professional license is the culmination of years of education, an enormous investment of money, and many other personal and family sacrifices. That is why trying to resolve a professional licensing issue without an attorney may not be advisable—there's just too much at stake. Involving legal counsel early on is the wiser course. By getting legal advice early, potential problems may be resolved before they lead to a license suspension, restriction, or revocation. And, if an administrative hearing is necessary, your attorney will need time to prepare your case.

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Trigger Events

What are some typical events that may trigger an inquiry from a licensing board for which an attorney's advice or representation may be prudent?

- Being convicted of a criminal offense
- Being terminated from a job for cause
- Work performance issues that result in an adverse disciplinary action
- Failing to follow professional standards of care
- Failing to document in a timely or properly fashion
- Breaching or improperly sharing confidential information
- Engaging in boundary violations with clients
- Alcohol and drug abuse issues
- Practicing outside the scope of practice

Contact the Right Attorney

Just as there are many different types of doctors, it is important to contact an attorney whose specialty is professional license defense in your field. Experience and in-depth

knowledge count. Many licensing issues are initially heard in an administrative hearing conducted by an administrative law judge. The rules that are applied are commonly articulated by a state's Administrative Practices Act (APA), with the standard of proof usually being less than a "beyond a reasonable doubt" standard used in criminal law cases; often it is "by clear and convincing evidence" or "by a preponderance of the evidence." Because the standard is lower, it is easier for the state or board to prove its case. In addition, the state's usual civil rules of evidence may not necessarily be in force. For instance, Ohio [OAC 4757-11-04 (N) Hearing procedures; Evidence] provides that the "Ohio rules of evidence' may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling."

New Jersey attorney Susan Berger advises human service professionals: "With an attorney's help, you can review your records and the underlying facts to determine whether a violation of any statute or regulation occurred, and draft a thoughtful response. The response must be candid and fully address each issue raised by the board, without making any essential admissions that may limit your alternatives, and at the same time, give the best possible characterization of both you and your professional conduct. Many cases are successfully concluded without discipline, if the licensee adequately answers the initial inquiry with a clear understanding of the board's concerns."

A licensing board's investigation may start with a seemingly benign letter. The best way to ensure that things stay benign is to contact a professional license defense attorney without delay. 🛂

Daniel Pollack is a professor at Yeshiva University's School of Social Work in New York City. He can be reached at dpollack@yu.edu, (212) 960-0836

