Illinois Department of Financial and Professional Regulation Division of Professional Regulation: Professional Licensure and Prosecution

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Quarterly Lecture
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The Illinois Department of Financial and Professional regulation, Division of Professional Regulation, licenses and oversees over one (1) million professionals who are required to be licensed in Illinois.

These Professionals who require licensure to work in Illinois come from over one hundred (100) different industries, ranging from accountants, architects and barbers to funeral home directors, physicians and realtors.
Administrative Law

- Administrative law is a branch of law that governs the establishment, operation, and regulation of local state, or federal administrative agencies.
- A particular body of administrative law is often unique to each agency and is comprised of that agency's procedures, rules, regulations, opinions, and orders.
- Administrative bodies have the power of rulemaking, adjudication of cases, and enforcement of regulations.
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**Cases before the IDFPR**

There are three basic types of cases heard at the IDFPR that relate to professional Licensure:

1. Cases instituted by the department to deny a license after application by potential licensee;

2. Cases instituted by the Department against a licensed professional to discipline or revoke the license;

3. Cases instituted by petitioners against the Department to attempt to restore the license from probation, suspension or revocation.
Cases before the IDFPR

1. Licensing cases: Before a license is granted

- Cases instituted at this point occur when an individual has applied for a professional license through the Department, but the Department has decided to potentially deny that individual's application. This begins with a Notice of Intent to Deny.
Cases before the IDFPR

1. Licensing cases: Before a license is granted

- If the applicant seeks to contest the Department's decision to deny their application for licensure, he or she can request a hearing. There is usually a short time frame in which to request a hearing based on a Notice of Intent to Deny. This can be done with or without and attorney, but it is recommended that a knowledgeable counsel become involved at this stage.
Cases before the IDFPR

1. Licensing cases: Before a license is granted

- Once the applicant requests the hearing, the department has the option of holding an informal conference to see whether the matter can be resolved without proceeding to a full formal evidentiary hearing.
Cases before the IDFPR

1. Licensing cases: Before a license is granted

- If the Department chooses not to offer a conference or appearance before the licensing Board, or if a settlement talks fail, then the applicant has a right to continue to pursue a hearing.

- In pursuing a hearing, the licensee or their attorney can then engage in motions and discovery.
1. Licensing cases: Before a license is granted

- Outcomes of Settlement talks or hearing can be denial, issuance with discipline, or full issuance of the license without any disciplinary action attached.
2. Cases instituted by Department: After an individual is licensed

- **Complaints:** First, the Department must receive a complaint, a mandatory report, or a self-report in order to become aware of a potential violation of the applicable licensing statute and institute a case.
Complaints lodged against licensed professionals relating to some alleged deficient aspect of their practice can be reported to the IDFPR from a number of different sources, some of which are required to report, including:

- From other state and federal agencies
- From law enforcement
- From states attorney convictions
- From unsatisfied clients
- From competitors

2. Cases instituted by Department: After an individual in licensed
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Investigation:

- Initiated in response to the above self-report, or complaint being lodged against a licensed professional. This may include work by an investigator or be referred directly to prosecutions.
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Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Investigation:

- The Department investigator may interview the complainant (if a person and not government entity) or other witnesses.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Investigation:

- The Department Investigator may interview the licensee. This may be the first time the licensee hears about the case. The Department may instead send out a form for the licensee to fill out and respond in writing. Licensees at this stage should hire counsel and not participate in any such interview without an attorney or submit a response without working on the draft with an attorney. Any statement made to an investigator can be used against the licensee at hearing.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Investigation:

- The Department investigators also use this stage of the prosecution to collect documents (arrest report, conviction record, billing records, patient records, etc.)
2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- The Prosecutions unit receives cases from investigations once it has been determined that the prosecutors may proceed with evaluating the case
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Prosecutors decide whether to try to settle the matter informally or go straight to formal proceedings that lead to a formal hearing
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Informal settlement conferences, also called informal disciplinary conferences, mean the licensee meets with the prosecutor and a member of the relevant disciplinary Board, which is made up of other licensed professionals. Licensees should not participate in an informal conference without an attorney. Here, with an attorney, documents tendered and statements made can be done confidentially due to the settlement conference designation.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- A conference can result in recommendation to close the case, issue an administrative warning, a non-disciplinary order, or a discipline being attached to the license (like a reprimand, probation, or suspension).
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- If the matter does not close or settle, or if a settlement conference does not take place, or if a case is just too close to the statute of limitations, the Department will file a formal Complaint.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- After filing an Answer to the Complaint, licenses have a right to exchange discovery – lists of evidence and witnesses; no interrogatories unless agreed to by both parties. No depositions. Both parties are able to supplement discovery as new information becomes available.
2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Can file motions, such as Motion to Dismiss, Motion to Strike, Motion in Limine
2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Can request subpoenas of witnesses, although the Department often denies them, so attorneys should be careful to follow the Administrative Procedure Act, the accompanying rules, and be ready to argue in a pre-trial hearing the necessity of the subpoena.
2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Then, again if no settlement results after discovery, motions and prehearing (the prehearing is optional), the case proceeds to a formal hearing before an Administrative Law Judge with a court reporter and members of the Board may or may not be present in person.
2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- After hearing, the transcript, evidence, and Administrative Law Judge's recommendation go to the relevant Board, which deliberates and creates its own recommendation.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- The Licensee has the right to receive the two recommendations (ALJ and Board) and respond within twenty days by filing Exceptions and Motions to Reconsider or Motion for Rehearing prior to Director's final decision.
Cases before the IDFPR

2. Cases instituted by Department: After an individual is licensed

Prosecutions:

- Ultimately, both recommendations by the ALJ and the Board, and any response motion will go to the Director of the Division of Professional Regulation for review and a final order.
3. Petitions for Restoration:

Cases instituted by the licensee after a license has been placed on probation, suspended, or revoked by the Department.
3. Petitions for Restorations

- To change the conditions on a license or restore the license from probation, suspension, or revocation, the licensee must file a Petition for Restoration with the Department.
While a form exists for licensees to do this pro se, an attorney is recommended and need not use the form, but should follow the requirements in the Rules and take note of each specific profession's possible additional recommendations regarding criteria for restoration when crafting the Petition.
3. Petitions for Restorations

- If the Licensee is suspended or revoked, depending on how long the licensee has been out of practice and not practicing in another jurisdiction, the statute and rules applying to that practice area may have requirements for re-examination and continuing education that must be met. An attorney can recommended to a client whether to do these requirements prior to a petition or to wait until the attorney can determine whether a settlement could be reach if such additional requirements were met.
3. Petitions for Restorations

- After receipt of the Petition, the licensee/petitioner should get a Notice of Preliminary Hearing. The Department will assign an attorney, who may decide to hold an informal disciplinary conference to see whether the Department will settle the matter without going to hearing, much like in a contested case above.
If the matter is not settled at conference, then the petitioner has a right to exchange discovery, motions, and take the matter to a hearing. At this hearing, the burden of proof lies with the Petitioner to show that they are rehabilitated and warrant the restoration they are seeking.
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Other Issues

- Variances

- While the statue is written in stone, the accompanying rules to the Administrative Procedure Act or to the specific practice act allow variances.
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Other Issues

- Variances

  - An attorney can help a licensee draft a variance request and negotiate with the relevant Board's liaison and/or general counsel.

  - Often, this deals with applications and original licensure issues.
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Other Issues

- Health Care Worker Licensure for Sex Offenders

  Public Act 097-0156

  A licensed health care worker who commits certain types of crimes based on sexual misconduct and forcible felonies have their license, by operation of law, revoked permanently without hearing. Additionally, a person who is convicted of any of these crimes or is required to register as a sex offender may not receive licensure as a healthcare worker in Illinois.
Other Issues

- Health Care Worker Licensure for Sex Offenders
  - Public Act 097-0156
  - The offenses in question:
    1. Conviction of any crime that requires registration as a sex offender
Other Issues

- Health Care Worker Licensure for Sex Offenders
  Public Act 097-0156
  - The offenses in question:

  2. Conviction of criminal battery against a patient, including and offense based on sexual conduct;
Other Issues

- Health Care Worker Licensure for Sex Offenders
  Public Act 097-0156
  - The offenses in question:
    3. Conviction of a forcible felony; OR
Other Issues

- Health Care Worker Licensure for Sex Offenders

  Public Act 097-0156

  - The offenses in question:

    4. Required to register as a sex offender as part of sentencing.
Other Issues

- Health Care Worker Licensure for Sex Offenders
  Public Act 097-0156
- The law is currently being attacked in the courts on the grounds of being unconstitutional, but the statute and rules are in effect at this time.
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Other Issues

- Suspension or Denial for Failure to Pay Taxes, Child Support, or any Illinois-Guaranteed Student Loan
  - Licensees

- If a licensee fails to pay taxes, child support, or any Illinois-guaranteed student loan, the Division may refuse to renew that individual's license at its expiration date or even suspend an active license.
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Other Issues

- Suspension or Denial for Failure to Pay Taxes, Child Support, or any Illinois-Guaranteed Student Loan
  - Licensees
  - However, to avoid this or restore from discipline, the licensee may provide certification to that the debt has been paid or a payment plan has been arranged.
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Other Issues

- Suspension or Denial for Failure to Pay Taxes, Child Support, or any Illinois-Guaranteed Student Loan
  - Licensees

  - Attorney's may get involved and are encouraged to help respond in a timely manner and get a payment plan in place with the relevant court or other agency to avoid a suspension or refuse to renew order.
Other Issues

- Suspension or Denial for Failure to Pay Taxes, Child Support, or any Illinois-Guaranteed Student Loan
  
  - Applicants

- If an applicant fails to pay taxes, child support, or any Illinois-guaranteed student loan, the Division may deny the applicant a license.
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Other Issues

- Suspension or Denial for Failure to Pay Taxes, Child Support, or any Illinois-Guaranteed Student Loan
  - Applicants

- Again, to avoid this, the applicant may provide certification to the Division that the debt has been paid or payment has been arranged prior to final decision denying license.
A Complaint for administrative review of an administration decision must be filed within 35 days of receipt of the Director's final Order.

“Administrative decision” is defined as a determination by an agency which affects the rights and duties of the parties and terminates the proceedings; so, by definition, the action must be final.
A Complaint for administrative review of an administration decision must be filed within 35 days of receipt of the Director's final Order.

- The action must also be final in the sense that the licensee/applicant/petitioner must have exhausted all administrative remedies available before the Department before filing for administrative review.
The circuit court will then do a judicial review of the agency's decision – acting like an appellate court, accepting generally the agency's findings of fact and not preferring to overturn findings made by the experienced licensing and disciplinary Boards.
Additionally, a licensee can file for a stay of a discipline to attempt to maintain the status quo of active licensure pending the administrative review decision.
If the attorney sees that a recommendation by the ALJ and/or Board will disrupt practice, it is recommended that the attorney draft the Complaint for Administrative Review and the Motion for Stay prior to the Director's Order and track the issuance of the order with the prosecutor. This way, the Complaint and Motion for Stay can be filed immediately to attempt to prevent disruption of the licensee's practice.
A decision at administrative review can mean:

- Reverse and remand in whole or in part back to the agency
- A finding in favor of the plaintiff (licensee/applicant) changing the decision or reversing the decision; or
A decision at administrative review can mean:

- If the court affirms and the agency wins, then the plaintiff has further appeal rights as in any other civil case.
Recent examples:

- William Joel Kain, MD v. IDFPR, et al., 2012 IL App (1st) 111875 (2012)
- Michael A. Cadogan, MD v. IDFPR, et al., 2013 IL app (1st) 122160-U; 2013 Ill. App Unpub. LEXIS 2956 (December 26, 2013)
If an attorney represents a client who is licensed or may become licensed in the future, the effect on the license should be taken into consideration. For example, a resolution in a criminal or civil matter could negatively impact the ability to get or maintain licensure.
Some practice acts require reporting of arrest, while others require reporting of a conviction. Also, certain acts only require reporting of felonies, others misdemeanors if related to practice, others all convictions.
Related Issues:

- If a licensee is disciplined, this can lead to civil suits, loss of employment, loss of hospital privileges, and loss of insurance providership.

- Other agencies also sometimes take an interest, specifically the Illinois Department of Public Health, the Illinois Department of Healthcare and Family Services, and some federal agencies and the Department of Justice.
Related Issues:

- Other states will also deny licensure or initiate sister state investigations. Attorney should make sure to query clients as to other states where they hold active licenses and expired licenses. Some states require reporting of discipline in Illinois, others require reporting only on a renewal application.
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For More Information
www.IL-Licensing.com