The Board's Disciplinary Process

Licensees frequently have questions about the Board's disciplinary process, especially if you have been involved in an investigation. The following information is designed to give you more information about the Board's disciplinary process. If you have questions, please contact the Executive Director at 971-673-0087 or via email at Erin.Haag@state.or.us.

****

The Oregon State Board of Examiners for Speech-Language Pathology and Audiology is the agency charged with regulating Speech-Language Pathology and Audiology in Oregon. The Board was created by the legislature and operates under authority granted by statute. The statute and rules provide standards for licensure and for professional practice and conduct.

Oregon Revised Statute (ORS) 681.490 allows the Board to investigate any alleged violation of ORS 681 and the rules in Oregon Administrative Rules (OAR) 335 promulgated in accordance with ORS 681. Further, ORS 681.490(1)(b) *requires* the agency to investigate any complaint made by an Oregon resident involving an alleged violation of ORS 681.

If the agency investigates an alleged violation of ORS 681, the agency has the authority to:

(a) Take evidence;
(b) Take the depositions of witnesses, including the person charged, in the manner provided by law in civil cases;
(c) Compel the appearance of witnesses, including the person charged, before the Board in person as in civil cases;
(d) Require answers to interrogatories; and
(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.

In most cases, after a complaint is received, the agency will contact the person named in the complaint. Depending upon the nature of the complaint, the agency will request records from the licensee or the licensee's employer depending on who has custody of the records. The agency will often interview the individuals involved. The subject of the complaint may choose to be represented by an attorney throughout the investigation process. The investigation is confidential and the Board is prohibited from informing either the licensee or the public of the identity of the complainant. The Board is also prohibited from informing the public that the licensee is under investigation.

As the investigation progresses, reports are made to the Board. At the conclusion of the investigation the Board may choose to:

1. Find no violation
2. Take no action
3. Issue a notice of discipline

If the Board finds no violation, then the Board has found that a violation of the law has not occurred. If the Board decides to take no action, that does not necessarily mean that the Board found that a violation of the law did not occur.

If the Board decides to issue a notice of discipline, the notice may take one of two forms:

> First, ORS 183.430(2) allows the Board in any case where it finds a serious danger to the public health or safety, and sets forth specific reasons for such findings, to suspend or refuse to renew a license without a hearing. This action is referred to as an emergency suspension. The licensee must cease practicing immediately upon the issue of an emergency suspension. The licensee may request a hearing within 90 days; however the emergency suspension is still in effect while the hearing is pending. If a hearing is not requested within 90 days, the emergency suspension stays in effect until lifted by the Board. The Board may lift the emergency suspension at any time if the serious danger to public health or safety is abated.
>
> Second, in a case where the Board does not make a specific finding of serious danger to the public health or safety, the Board may deny an application; suspend or revoke a license; issue a reprimand; place a licensee on probation; and/or levy a civil penalty against a licensee for a violation. The civil penalty may be up to $5,000. The licensee has 21 days to request a hearing. If a hearing is not requested within 21 days, a default order is issued and the sanction outlined in the notice goes into effect.

If you request a hearing, you must submit a written answer within fourteen days of the request for hearing, pursuant to OAR 335-001-0008. The answer must admit or deny all facts stated in this notice. Any fact that is not denied shall be admitted. The answer must state any and all claims or defenses. Failure to state a claim or defense shall be a waiver of the claim or defense.

If a hearing is requested, the agency refers the case to the Office of Administrative Hearings (OAH). OAH will assign an Administrative Law Judge (ALJ) to hear the case. The OAH and

ALJ are not affiliated with the Board. The licensee may represent themselves or be represented by an attorney. The Board will be represented by an Assistant Attorney General from the Oregon Department of Justice. The licensee or their attorney may request discovery, call witnesses at the hearing, and cross examine the Board's witnesses. The Board must prove its case by a Preponderance of the Evidence--in other words, that the violation "more likely than not" occurred.

In any of its disciplinary actions, the Board may assess the licensee for costs of the disciplinary process, including the costs of the administrative hearing and the agency's legal fees to prepare and defend its actions regarding the licensee.

Within 45-60 days after the hearing, the ALJ will issue a proposed order. The Board will meet to accept, modify, or reject the ALJ's findings, and issue a final order. If significant modifications are made, the Board must explain its reasons for doing so, but the Board has the authority to issue the final action. The licensee may also file exceptions to the ALJ's proposed order before the Board takes final action. If the licensee disagrees with the Board's final order, a petition for judicial review may be filed with the Oregon Court of Appeals.

At any time, the licensee and Board may enter into an agreement to settle the case for agreed upon terms. These agreements are often titled "Consent Order" or "Stipulated Order". Once an agreement is entered into, the licensee may not request judicial review of the agreement.

The investigation records and other documents are not public record and may not be disclosed to the public with the exception of: the Notice of Discipline (including an Emergency Suspension), the Final Order, and the Consent Order or Stipulated Order.