

Putting Your License
on the Line:
*Understanding IDFP's
New Enforcement Actions*

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Polsjelli
Shughart

The Illinois Department of Financial and Professional Regulation (“IDFPR”)

Licenses and oversees nearly 1 million professionals who are required to be licensed in Illinois, including:

- Administrators
- Registered Nurses
- Licensed Practical Nurses
- Other Disciplines

The Illinois Department of Financial and Professional Regulation (“IDFPR”)

The mission of the Division of Professional Regulation is to serve, safeguard and promote the health, safety and welfare of the public by ensuring that licensure qualifications and standards for professional practice are properly evaluated, applied and enforced.

IDFPR Disciplinary Process

It begins with the determination of Substandard Quality of Care

“Substandard quality of care” means one or more deficiencies related to participation requirements under 483.13, resident behavior and facility practices, 483.15, quality of life, or 483.25, quality of care, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

The Illinois Department of Financial and Professional Regulation (“IDFPR”)

Professionals may be called before the IDFPR because:

- “Bad Survey” – Immediate Jeopardy / Actual Harm
- Complaint made to IDFPR
- Mandatory Reporters (Federal regs require IDPH referrals)

IDFPR’s Internal Referral Process

IDFPR

- New focus on administrators and nurses
- Virtually all IJ's are now resulting in complaints against the administrator and in many cases the DON
- Managing the situation early is key
- The good news is that overall the Department and the Board understand the challenges providers face

IDFPR's Disciplinary Process Today

- Open an investigation
- Letters to the registered professional
- Request for information (sometimes)
- Disciplinary conference
- Consent agreement or complaint filed
- Discovery process
- Formal hearing

What Do You Do When You Get a Letter ?

Don't freak out!

Open investigation

**Request for
information**

Take it seriously.

Disciplinary conference

Respond.

Consent agreement
or complaint filed

Discovery process

Formal hearing

Request for Information

- In some circumstances, you may be asked to provide information before an interview is scheduled.
- Provide complete, clear, information.
- Address everything in the letter.
- Put your best foot forward.

Open investigation

**Request for
information**

Disciplinary conference

Consent agreement
or complaint filed

Discovery process

Formal hearing

Anatomy of an IDFPR Disciplinary Conference

- Introductions
- Reason for conference
 - Open investigation
- Questions and discussion about allegations
 - Request for information
- Conference between attorney and board member
 - Disciplinary conference**
 - Consent agreement or complaint filed
- Recommendation
 - Discovery process
- Consent offer (later)
 - Formal hearing

Disciplinary Actions

- The range of disciplinary actions includes:
 - Dismissal
 - Administrative Warning
 - Reprimand
 - Probation
 - License Suspension
 - License Revocation

Open investigation

Request for information

**Disciplinary
conference**

Consent agreement
or complaint filed

Discovery process

Formal hearing

Options

- Dismissal – *case closed*.
 - Open investigation
- Discipline imposed – *consent decree*.
 - Request for information
 - Disciplinary conference**
- Reject recommendation and proceed with “formal” complaint.
 - Consent agreement or complaint filed
 - Discovery process
 - Formal hearing

Anatomy of an IDFPR Case

- Complaint
- Answer
- Discovery
- Motions
- “Formal” hearing before ALJ

Ongoing
Settlement
Discussions

Open investigation

Request for information

Disciplinary conference

**Consent agreement
or complaint filed**

Discovery process

Formal hearing

Other Letters – Skipping Steps

CONSENT DECREE

- The IDFPR is trying to settle your case.
- Read carefully.
- Get help if you need it.

Open investigation

Request for information

Disciplinary conference

FORMAL COMPLAINT

- Can begin with discovery
- Can sometimes be persuaded to hold a disciplinary conference

**Consent agreement
or complaint filed**

Discovery process

Formal hearing

OIG Exclusion

- Section 1128(b)(4) of the Social Security Act (42 U.S.C. 1320a-7(b)(4)) authorizes OIG to exclude any licensed professional from **ALL** federal health care programs.
 - Includes - Medicare, Medicaid, TRICARE, Veterans Administration, etc.
- The OIG action arises when a professional license to practice is revoked, suspected, surrendered or otherwise lost.

Implications of OIG Exclusion

- The scope of the exclusion is broad
- Exclusion will persist *at least* as long as the license is disciplined
- For as long as the exclusion persists, the Federal Health Care program will make no payment for any services furnished, ordered or prescribed in any capacity by the individual with the disciplined license.

Implications of OIG Exclusion

Also

the person holding the disciplined license is prohibited from employment in any capacity to provide any items or services which are billed to a Federal Health Care Program.

IDFPR

- Want to know that you understand and appreciates the problem.
- Confirm that you did not cause problem.
- Confirm that you were aggressive in addressing the problem.
- Confirm you have a proactive attitude.

Common Themes Attorneys See

In our experience, the most common issues that arise in IDFPR actions involve:

- Staff training
- Communication levels
- Failure to Investigate
- Proactive intervention
- Failure to report occurrences

Current Hot Issues for IDFPR

- Abuse
- Pain Management
- Falls
- Med Errors
- Lab Testing / Follow Up
- Blood Sugar Testing
- Bowel & Bladder Programs

QUESTIONS?



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