



Final orders: the final option?

How does a board or college handle variables following a decision to discipline?

What are the alternatives to a formal hearing, which can run into significant expense, attorney's costs, and time by the time a formal hearing is held and the final order is drafted? Following a disciplinary decision and sanctions, what does a board need to consider when reviewing requests for expungement and reinstatement?

Two sessions of the ASWB Spring Education Meeting, "Storm Clean Up: Immediate Solutions and Outcomes" and "Rebuilding: Post-Disciplinary Consequences," covered these topics and were presented by Dale Atkinson, ASWB legal counsel, whose sessions helped put the rest of the meeting in context with real cases as examples.

What options are there?

"Most all complaints and proceedings that are initiated are resolved short of a formal hearing," Atkinson said, as he opened his discussion of options available to boards and colleges during the session "Storm Clean Up." The challenge, he warned, in finding an alternate solution is not to set aside the public protection standard that boards and colleges carry: there is still a job to do, but there also is "wisdom in informal resolutions."

Negotiated resolutions, including consent orders, can be effective tools in the disciplinary process.

If a negotiated resolution is the option under consideration, boards need to be clear about the decision-making process and the roles of those involved: the attorney, who provides guidance and advice; the investigator, who looks for evidence; the administrator, who provides support; and the board members, who make the decisions.

Also in the equation are the licensee, who is responsible for responding to the board, and often the licensee's attorney, who is responsible for advising the licensee. An attorney representing the licensee can ultimately make the process run smoother, Atkinson noted. The board knows that the licensee received advice and will be made aware of what Atkinson called "collateral consequences."

An agreement reached in a consent order may have far-reaching ramifications if the licensee holds other professional licenses or accreditations or is licensed in multiple jurisdictions. Many attendees who serve on composite boards had experiences to share related to disciplining a licensee under these circumstances.

Working through the elements of the consent order and settlement agreement, Atkinson explained how these options are contractual obligations between board and licensee/respondent. The option of voluntary surrender also was

discussed, with Atkinson providing clear reasons why it is not a recommended solution unless it is backed by a consent order or other disciplinary record. In a negotiated resolution, there is the expectation that all parties will comply with the terms. In all cases, however, Atkinson reminded attendees, “statute wins over the consent order.”

Should the licensee refuse the terms of the proposed consent order, the board still has the option to carry through to a formal hearing. And when that happens, the final order provides the licensee/respondent no room for negotiation. What happens after the terms of the consent order or the final order is structured was a discussion saved for the final session of the meeting: “Rebuilding: Post-Disciplinary Consequences.”

What happens after the final disciplinary order?

Atkinson began his review of the “Rebuilding” process by looking back at where and how a given disciplinary action came to be. As a first step, a review of the following is essential: the complaint, consent order or administrative prosecution with final adverse action, finding(s) of wrongdoing, sanction, and no appeal or affirmation by judiciary.

Next in the review would be the elements of a final order, including the all-important sanctions with specificity and reinstatement rights, if any. It is imperative that these elements be specified, he noted. The key to post-discipline success is to appropriately draft the order determining the sanctions in the first place and the consequences of compliance and noncompliance.

The many various terms and conditions of a final order were reviewed by Atkinson in the context of specific cases and answering the question “what do we intend to accomplish?” The discussion included the differences of terms such as reprimand, censure, letter of admonition, probation, restriction, limit, suspension, and revocation. There are many more terms and concepts incumbent upon a board to know so a disciplinary action can be properly assessed.

How does a board enforce the terms of the final order/consent agreement? What do you do? What are the consequences of noncompliance?

Four key questions were posed by Atkinson and discussed by attendees, with case examples that highlighted some of the jurisdictional differences and capabilities.

Question #1

What does the board do to enforce its final adverse actions/consent orders?

Question #2

Do suspended licensees have to come before the board and petition to have practice rights/privileges restored?

Question #3

What does your board do when a sanctioned licensee comes up for renewal?

More specific ... a suspended licensee comes up for renewal ... how is this handled?

Question #4

Do revoked licensees have the right to petition for reinstatement? Tell us about the process. Do they have a right to a hearing?

The meeting came to a close following a vigorous discussion of expungement (when a judge orders a record to be wiped clean) and why the record still appears in criminal background checks and why it may be considered in license applications and other situations.

The PowerPoint presentation of the last session is available [here](#). DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org