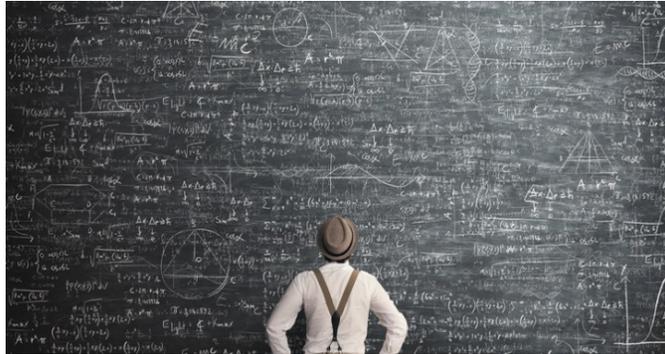


Understanding the Basics of NCDOL Licensee Complaints

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Facing an investigation by a licensing board can be one of the most stressful and emotionally taxing challenges that licensed professionals face in their careers.

Learning about and understanding how the licensing board's investigatory and disciplinary process works is a crucial step in navigating that process and protecting the

professional's license.

This article provides an overview of the investigatory and disciplinary process that the North Carolina Department of Insurance ("NCDOL") utilizes when investigating complaints made against its licensees and the types of regulatory action that can be taken against a licensee.

The Who (no, sadly not the English rock band)

Investigations into complaints against the NCDOL's licensees are handled by the agency's Agent Services Division ("ASD"), which oversees licensing and continuing education for insurance licensees.

The complaints that the ASD investigates may come from a licensee's client/customer, the general public, or even a fellow licensee. The ASD may also initiate an investigation of a licensee in the absence of a formal complaint if the NCDOL receives or discovers information concerning a licensee or its conduct that warrants an investigation.

In the event of a licensee's misconduct, wrongdoing, or violation of the law, North Carolina's Insurance Commissioner is authorized, through the ASD, to take a number of actions against a licensee and the licensee of him/her/it (licensed entities are subject to disciplinary measures too!). The Commissioner can place the licensee on probation, suspend the license, or revoke the license, and for licensees who seek reinstatement of a suspended or revoked license, the Commissioner can refuse to renew or reinstate the license. Monetary penalties/fines can also be assessed against a licensee.

The Triggers

The scope of conduct that falls within the ASD's purview and can trigger an investigation and discipline is broad. We list herein but a sampling of the types of conduct that could be implicated in an investigatory and disciplinary proceeding handled by the ASD. Such conduct by the licensee includes:

- Lying/falsifying or otherwise misrepresenting information on the license application,
- Violating the State's General Statutes governing insurance law or another state's insurance laws,
- Converting or misappropriating property or money received,
- Making intentional misrepresentations on an insurance application,
- Intentionally misrepresenting an actual or proposed insurance contract's terms,
- Use of dishonest or fraudulent practices,
- Demonstrating incompetence,
- Soliciting, negotiating, or selling insurance in North Carolina for unauthorized insurers (even if the licensee has no knowledge the insurer was unauthorized), and
- Willfully over-insuring property.

The What Now

Once the licensee receives a letter from ASD informing the licensee that an investigation is being conducted, the licensee has reached an important moment of decision: whether to secure legal representation or handle the investigation without such representation.

Licensees have the right to choose to be represented by legal counsel at any stage in the investigatory and disciplinary process. In weighing if/when to engage representation, it's worth considering that, in reality, securing representation out of the gate can be more cost-effective and can better position the licensee for a favorable or palatable outcome than in later stages of the proceeding.

The Process and the Potential Outcomes

Typically, the investigatory/disciplinary process starts out with a less formal, information gathering phase. During this phase, a voluntary settlement agreement is an option available to the licensee and the ASD for resolving the matter. Entering a voluntary settlement agreement requires the licensee to waive his/her/its right to a hearing, and it is not uncommon for a monetary penalty to be imposed against the licensee as part of a voluntary settlement agreement. If the parties don't resolve the matter at the informal stage, the ASD will refer the matter for a formal hearing by filing a Notice of Hearing. Once that occurs, the licensee and the ASD can voluntarily agree to what the regulatory action will be against the licensee and can memorialize that in a consent order. However, the consent order is subject to approval by a hearing officer who is appointed by the Commissioner to preside over the matter. A licensee can also choose to surrender his/her/its license in lieu of a regulatory hearing by signing a notarized document surrendering the license and agreeing in writing that the right to a regulatory hearing has been waived. If the licensee and ASD don't reach a settlement or the licensee doesn't want to surrender his/her/its license, the matter is set for a public evidentiary hearing that's akin to a trial. The licensee is entitled to present evidence by calling witnesses and introducing exhibits. The licensee may raise objections and cross-examine witnesses called by the ASD and present a closing argument. After a full hearing, the hearing officer can: dismiss the case or enter a decision imposing the types of discipline outlined above.

If a licensee is unsatisfied with the hearing officer's decision, the next step is the appeals process. However, prevailing at the appellate level is typically difficult for a licensee even if legal counsel is retained due to a number of constraining factors that exceed the scope of this article.

The Good News

Facing an investigation by a licensing board can be one of the most stressful and emotionally taxing challenges licensed professionals face in their careers. Unfortunately, this statement is as true at this point in the article as it was at the beginning of the article. The good news is, licensees don't have to face or handle these investigations alone. Ward and Smith has a dedicated Professional Licensing Group comprised of a team of attorneys with a wealth of experience representing licensees through investigatory and disciplinary proceedings before the State's various licensing boards, including the North Carolina Department of Insurance.

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