

## Licenses and the Law Series, Part VI: Preparing for the Hearing



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05/17/2022

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In this article, we discuss how to prepare for your administrative board hearing. By this point, you have responded to the Complaint, the board has conducted an initial investigation, and you have maintained your innocence of the allegations in the Complaint by refusing to sign a consent order.

The next step is to participate in a hearing before the board. It is of the utmost importance that you are well-prepared for this hearing because the hearing is the last chance for you to make your case to the board before it decides whether to revoke or suspend your license.

Prior to the hearing, you will be given a final complaint that will contain the allegations that will be presented against you at the hearing. This is the document that the Assistant Attorney General<sup>[1]</sup> will likely work off of when he/she presents the case against you to the board. These are the allegations that you will need to defend.

In preparation of the hearing, you should go through each allegation and determine your defense for each. This includes understanding what evidence or proof you will need for each defense and ensuring that you have that evidence to present at the hearing. Are there any records that support your defense? Are there any witnesses who support your defense? Can you testify regarding the allegations?

Regarding witnesses, administrative boards have subpoena power for hearings. They can subpoena witnesses both for the prosecution and for you. Generally, the board will give you a deadline to request that certain witnesses appear at the hearing. Although you can always ask a witness to appear voluntarily, if you have a necessary, but unwilling, witness, the board's subpoena power is essential to ensuring that you have the testimony necessary to defend your case. At the same time, we caution licensees against requiring uncooperative witnesses to be in attendance at the hearing because their lack of cooperation may indicate that they will not appear credible or will present unfavorable testimony.

You can also present documentary evidence to the board. Some common examples of documents you may want to present are (1) an updated curriculum vitae (resume), (2) notarized witness statements from witnesses that cannot attend the hearing and that you do not want to subpoena, and (3) copies of any policies or procedures that show you followed protocol, etc. You should be mindful and creative in determining what types of documentary evidence might be persuasive to the board. Because the normal rules of evidence generally do not apply in administrative proceedings, licensees generally have wide latitude as to what evidence they may offer at the hearing.<sup>[2]</sup>

We strongly caution licensees against presenting no documentary evidence or witnesses and merely relying on their own testimonies. Evidence substantiates any defenses you may have and bolsters your credibility to the board.

If you believe that you have violated one of the rules and there is no defense to the allegations against you, then your defense will need to focus on your rehabilitation/corrective efforts. Depending on the allegations, you may want to begin taking additional continuing education classes, gather personal/professional reference affidavits, and/or do what you can to correct the offending behavior prior to the board hearing. It is our experience that administrative boards appreciate honesty and accountability. However, proceed with caution. If the allegations against you are the basis for criminal charges, be mindful that the testimony you give in an administrative hearing can be used against you in a criminal case.

Depending on the case, obtaining a professional evaluation prior to the hearing may be beneficial. For example, if you are accused of having a substance abuse issue, you may want to get a substance abuse evaluation to give the board recommendations on your recovery.

As a courtesy, you may want to provide the Assistant Attorney General a copy of the exhibits you intend to use at the hearing to work out any objections that they might have to any of your documents. This will prevent any “document” disputes in front of the board and will allow the hearing process to flow easily.

Most boards require that you provide all board members with copies of all of the documents that you intend to produce. We normally make a binder for each board member so that document distribution is seamless.

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[1] Generally, an Assistant Attorney General will be the person prosecuting your case before the board.

[2] The applicable evidentiary rules may vary from board to board. See 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. . . . A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.”).

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*This is the sixth article of the Mitchell Williams “Licenses and the Law” Series, which explains the process of when a licensed professional receives a complaint against his/her license. The series will be published bi-monthly for a total of 10 articles. The seventh article will publish on May 31, 2022.*

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