

# Investigation and Discipline Process

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## REGULATORY BOARD'S MISSION

To protect the health, safety and welfare of the public by the licensure and regulation of licensees.

This is done through the board's statutory authority, which sets forth the framework for the board's disciplinary authority including grounds for discipline (in practice act) and the formal disciplinary process (in the APA).

## PURPOSE OF DISCIPLINE

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## COMPLAINT DRIVEN PROCESS

- Complaints are received from third parties
  - Patients, coworkers, other professionals
  - NPDB reports
  - Renewal applications
  - Law enforcement or other regulatory agencies
- What about litigation / prelitigation matters?
- Media reports?

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## COMPLAINT TRIAGE

- Is it against a licensee?
- Did the care occur while practicing under the Idaho license?
- Does the alleged conduct trigger a ground for discipline?
  - Idaho Code § 54-1814, IDAPA
- Is more information necessary?

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## INVESTIGATION

- Unbiased investigators
- Licensee/Respondent is provided the complaint to provide a response
- Medical records are requested
  - Patient consent is not required by HIPAA per the health oversight exception (45 C.F.R. § 164.512(d))
- If investigation involves a consultant review, licensee/respondent provided an opportunity to review and respond.
- Failure to cooperate is an independent ground for discipline.
  - Witness intimidation is also an independent ground for discipline.

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## INFORMAL PROCESS

- COPD review and recommendation
- Board review
- Both review information obtained through investigation
  - Complaint, response, records, etc.
- Determine whether there was a violation of a ground for discipline set forth in statute or rule.

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## INFORMAL PROCESS

- Options
  - Close with no action
  - Close with advisory letter
  - Negotiate a confidential alternative to discipline agreement
  - Negotiate a stipulated order
- Confidential Options
  - Will not be produced to third parties absent a subpoena
  - Federal law limits the use (Section 1921 of Social Security Act)
    - Cannot utilize for public reprimands, restrictions on licenses

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## FORMAL PROCESS

- If a licensee/respondent rejects the proposed confidential agreement or stipulated order, then the board will consider filing a formal administrative complaint.
- Before filing an administrative complaint, the licensee/respondent will be provided an opportunity to appear before the COPD or board staff
- All filings are public records and will be disclosed in response to a public records request

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## FORMAL PROCESS

- Will comply with APA and AG Rules (OAH rules)
- Gets assigned to hearing officer
  - Determines scheduling
  - Discretion re: whether to allow discovery
  - Discretion re: motion practice
  - Handles evidentiary hearing
  - Issues a recommended order for board review

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## RECENT STATUTORY CHANGES

- Expungement - Idaho Code § 67-9413
- Review of Criminal Convictions
  - H074 amended Idaho Code § 67-9411
  - Effective July 1, 2023

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## CONSIDERATIONS

- Fully participate in investigation / informal process
  - Do not withhold requested medical records
  - Provide a full response, including any records you believe are supportive
- Do not unnecessarily delay
- Due consideration to settlement offers from board
- Make concessions where appropriate