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ATTENTION Health Care Providers



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INSIDE THIS ISSUE:

- Important information regarding the Illinois Department of Financial and Professional Regulation.
- What you *NEED* to know about protecting your license.
- What to do if your license is at risk.
- Answers to your questions regarding the Illinois Department of Financial and Professional Regulation.



Our Unique Team of Professionals

Health Care attorney Michael Favia, is a prominent attorney who has held numerous governmental positions, including **Chief Attorney for the Illinois Department of Professional Regulation (IDPR)**, now IDFPR. During his eight years with IDPR, he directed statewide enforcement of the professional licensing statutes, including the Medical Practice Act. As Chief of Prosecutions, he supervised attorneys, investigators and support personnel at IDPR involved in the statewide regulation of health care professionals, including:

- Chiropractors
- Pharmacists
- Clinical counselors
- Physical therapists
- Clinical psychologists
- Physicians
- Dentists
- Psychiatrists
- Nurses RNs, LPNs, APNs
- Podiatrists
- Obstetricians
- Respiratory therapists
- Occupational therapists
- Surgical assistants
- Optometrists
- Surgeons
- Osteopaths
- Veterinarians

Goldberg Law Group, LLC. utilizes the expertise of prominent Illinois medical attorneys, former governmental employees, former licensing/disciplinary board members and other highly experienced consultants to provide the most effective representation of its clients. Rounding out our team are shrewd private investigators, some of whom also previously worked at the IDPR. **Their intimate knowledge of IDFPR's modus operandi is an immeasurably important resource for our clients.**



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HEALTH CARE ALERT

IDFPR: THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION An Overview For Health Care Professionals



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ATTORNEY AT LAW

Former Chief of Medical and Health Related Prosecutions for the Illinois Department of Professional Regulation directed the statewide enforcement of the Illinois Medical Practice Act and numerous other regulatory and licensure statutes; Assistant Illinois Attorney General (1986-1988); counsel to the City of Chicago (1983-1986); John Marshall Law School, J.D. 1982; Loyola University, BBA 1978.

Professional Memberships: Illinois State Bar Association, ISBA Committees: Inter-Professional Cooperation (Past Chair), Voluntary Fee Arbitration (Past Chair), Business Advice and Financial Planning, Health Care Law Section Council (Past Chair); Chicago Bar Association; Justinian Society of Lawyers (Past President); The John Marshall Law School Alumni Association Board of Directors; Government Bar Association; Northwestern Business College Advisory Board (Retired); Illinois College of Optometry (Trustee); Illinois Eye Institute (Board of Directors).

Publications: What Physicians Should Know About the Illinois Department of Financial and Professional Regulation, *Chicago Medicine*, (Vol. 111, No. 4, 2008), Attention Healthcare Practitioners: The National Data Bank Can Ruin Your Career!, *Chicago Medicine*, (Vol. 110, No. 4, 2007), Fee Splitting MRI Imaging Services Case May Pique the IDFPR's Interest, *Chicago Medicine*, (Vol. 109, No. 16, 2007), An Overview of the Illinois Department of Financial and Professional Regulation, *Illinois Bar Journal*, (2007), Vine Street's Impact on PPO/Doctor Business Arrangements - Illinois Supreme Court Decision Warrants Review of Physician Business Arrangements, *Illinois Bar Journal*, (2007)

Lecturer: Moderator, Legal Careers in the Health Field, *Illinois Bar Association*, 2008; Legal Careers in the Health Field - Representing Healthcare Professionals in Licensure/Disciplinary Matters, *Illinois Bar Association*, 2008; Medical Malpractice, *Illinois Institute for Continuing Legal Education*, 2006

Practice: Concentrated in representing all types of medical providers and professionals in licensure matters, investigations and contested hearings before the Illinois Department of Professional Regulation, Illinois Department of Public Aid, Illinois Department of Public Health and at Hospital and Professional Society Disciplinary Proceedings.



JAMES B. GOLDBERG
ATTORNEY AT LAW

James Goldberg received his Juris Doctorate in 1999 from The John Marshall Law School. Current member of the Illinois Bar Association Administrative Law Section Council, Committee for Judicial Screening and Contributing Editor of the Illinois State Medical Society Model Medical Staff Bylaws.

Practice: Experience in the Health Care Field includes representation including but not limited to Physicians, Dentists, Nurses, Chiropractors, Psychiatrists, Veterinarians and Therapists in licensing matters with the Illinois Department of Professional Regulation, representation of Physicians and Residents in Medical Staff Privileging

Every year, roughly 5 percent of doctors and other health care professionals practicing in the state of Illinois find themselves subject to a licensing inquiry or investigation initiated by the Illinois Department of Financial and Professional Regulation (IDFPR). Of those cases in 2006, the IDFPR sanctioned 172 physicians with the loss of license privileges or the restriction of those privileges. The physicians were disciplined for actions ranging from mishandling of payments to gross negligence.

Reorganized in 2004, the IDFPR licenses nearly one million professionals in approximately 100 professions. Its mandate is to promote public welfare by ensuring that licensure qualifications and standards for professional practice are properly evaluated, accurately applied, and vigorously enforced.

To begin the licensure application process, medical professionals must submit a completed application form, supporting documents and appropriate fees. Instructions and an application are available through the IDFPR website, www.idfpr.com. The Acts and Rules section on the site contains detailed licensure requirements.

In addition to licensing, the IDFPR is responsible for statewide enforcement of the 49 professional and occupation legislative acts

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Goldberg profile (cont'd)

disputes and defending all prosecutions involving the Department of Public Aid. In representing licensees, and travels throughout the United States wherever his Illinois clients have duplicate licensing (Sister-State license) matters and has litigated Administrative Hearings in the States of California and Iowa and has represented Illinois clients in their license matters in Arizona, Nebraska, Missouri, Virginia and New Zealand. To this date, he has handled countless matters in the State of Illinois for licensees ranging from Settlement Conferences, negotiating Consent Orders, filing and pursuing Petitions to Restore Licenses, defending Violations of Probation and trying cases to verdict successfully in all the above. Tried many administrative licensee matters in the State of Illinois including but not limited to Mandatory Complaints as a result of Physician Malpractice, patient complaints to the Department of Professional Regulation, Summary Suspension proceedings and various litigation in the circuit courts including but not limited to jury cases to verdict and Appellate Courts in an Administrative Review Capacity. Has defended various licensees in criminal litigation involving Physicians, Nurses and Pharmacists throughout the State of Illinois.

For more detailed information and profiles:

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of professions and occupations in the state. It is divided into investigative and prosecutions divisions.

The investigative division reviews complaints received from the public, other practitioners, as well as from law enforcement and other governmental agencies. The prosecutions division's duty is to ensure that licensees who violate a professional practice act are disciplined appropriately within the bounds of due process.

In Illinois, the rate of disciplinary action has increased for the fifth consecutive year. The state now ranks 12th for its enforcement of disciplinary cases against physicians, according to an analysis released by Public Citizen in June 2006.

Cases referred to the prosecutions division may be addressed through an informal hearing or through a formal evidentiary hearing.

During the informal hearing, both sides will present a case. Although not necessary, the licensee is advised to have legal representation at the hearing. A knowledgeable, well-prepared attorney can be instrumental in assuring that the scope of questions is limited to the charges, that proper protocol is followed and he or she present any available mitigating factors. In addition to the licensee and his and her attorney, the division attorney and a member of a disciplinary board will also be present.

The result of an informal conference can be a recommendation for the case to be closed, the case to be investigated further, for the matter to be referred to a formal hearing or that a consent order be entered. Frequently, an informal conference will result in the drafting of a consent order. The consent order may include either a disciplinary or a non-disciplinary action. Examples of disciplinary actions include: reprimand, suspension, revocation, probation and/or fines. Non-disciplinary actions include remedial continuing medical education, referral to treatment and/or administrative warning. Once the consent order has been issued and forwarded to the respondent, he or she has 30 days to sign and return it.

The formal-level process is governed by the department's procedural rules which address the initiation of the complaint, answers, motions, subpoenas, discovery and evidence. Additionally, the Administrative Procedure Act and each professional and occupational licensing act contain rules for adjudicatory actions. These procedural rules ensure fundamental fairness and due process.

"A knowledgeable, well-prepared attorney can be instrumental in assuring that the scope of questions is limited to the charges, that proper protocol is followed..."

Frequently Asked Questions about the IDFPR (cont'd)

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misconduct can also determine the outcome. Successful appeals, reapplications and continued participation

can often be achieved via forceful advocacy, with the proper assertion and use of mitigation evidence. These appeals and notices are best handled by an experi-

enced attorney, as the recent imposition of a disciplinary sanction puts you at a distinct disadvantage when representing yourself.

"Many agencies will issue probationary, provisional or restrictive licenses..."

I am applying for a professional license and I have a criminal record. Can I be licensed?

This is a complicated matter and is at the heart of a great many licensure disputes and disciplinary actions brought against licensees. Generally, sex offenders have the hardest time getting licensed, as do individuals who have committed a fiduciary crime or a crime that involves moral

turpitude. The burden is not necessarily insurmountable, but it is a process that is best handled by an attorney with experience in this area. Many agencies will issue probationary, provisional or restrictive licenses after an initial hearing on your current moral character and fitness. It is wise to

have counsel to help you prepare your application and advocate for you through the process of gathering mitigating and rehabilitative evidence.

The IDFPR wants to suspend or revoke my license. What should I do?

Hire a lawyer who is experienced in dealing with the IDFPR. When the department becomes aware that they will have a fight on their hands, sometimes their position towards the disciplinary process is altered. In serious cases they will proceed anyway, but often the reality of a long fight tends to aid in nego-

tiations or settlement. In any event, your license is your livelihood and to give up your privileges without the fair assertion of your rights is tantamount to quitting. Finally, it is the department's burden to prove that you are not fit to practice in order to revoke your license; it is your attorney's job to prove that you are

fit upon reapplication. A good strategy would be to keep the burden on the agency while gathering defensive, mitigation and rehabilitative evidence.

What if I am a nurse and I am accused of a controlled substance violation?

If you are a nurse and your administration reprimands or accuses you of misuse of a controlled substance you must be prepared for the fact that the IDFPR will be notified. In this situation, it is essential that you contact a licensing attorney the moment you are accused in

order to be prepared for a disciplinary conference that will be scheduled very soon after the allegations are made. Not only will a licensing attorney prepare you for your defense but he or she will assist you in obtaining the proper course of treatment if you may

have an addiction and present it to IDFPR in a way that can save your license. As a reminder, those nurses who take on this responsibility without advice of an attorney often find themselves prepared too little too late.

I have been convicted of a crime. Is my professional license in jeopardy?

The IDFPR has its own statutes and rules regarding criminal convictions and licensee misconduct. For example, physicians, dentists and pharmacists operate under the rules of the Medical Practice Act. It is best to speak with an attorney regarding your particular situation as the facts and circumstances surround-

ing your arrest and conviction can alter the department's position. In some cases a conviction for certain offenses requires a mandatory suspension or revocation of your professional license, unless it can be demonstrated that the continued issuance of the license would be in the best interest of the public and

the licensee. Under such circumstances, it is prudent to have an attorney represent you before the department and put forth the evidence that is statutorily required for continued licensure.



under a disciplinary order. Our firm can recommend criminal attorneys who are experienced in dealing with IDFPR.

I have been charged with a DUI. Will this affect my professional license and what should I do next?

Contact a criminal attorney immediately to represent you on the criminal case and explain to the lawyer your concerns about your professional license. It is advisable for your criminal lawyer to contact an attorney who is familiar with the licensing statutes and the

attitude the board towards DUI and chemical dependency. In some cases, a proactive approach can overcome the department's presumption that an arrest or conviction for DUI means that you are chemically dependent and need to be in a monitoring program or

I was fired because I was accused of, or caught, diverting controlled substances. How will this affect my professional license?

Under these circumstances, the potential for the filing of criminal charges by state or federal authorities, the filing of misconduct charges by your licensing agency, an attempt by the DEA to revoke your controlled substances license and the loss of your ability to seek reimbursement from Medi-

care and Medicaid are all possibilities. You need to obtain competent legal representation immediately to intervene on your behalf and help you proceed through the process. Whether you admit to or deny the allegations, whether you want recovery help or not, this is not a

situation you should try to handle by yourself. Moreover, once you are represented by an attorney, the authorities are prohibited from talking to you unless you knowingly waive your right to have counsel present.

As a result of an IDFPR disciplinary action against me, the insurance companies are dropping me as a network provider. Do I have any recourse?

Insurance companies view a variety of disciplinary actions differently. Knowing

the insurance company and the findings contained in the disciplinary record are

crucial. The facts and circumstances surrounding the

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“...a proactive approach can overcome the department's presumption that an arrest or conviction for DUI means that you are chemically dependent ...”

For most alleged wrongful actions by physicians, the department must bring an action against a licensee within five years of the receipt of a complaint and not more than 10 years after the date of the incident or act under certain grounds or circumstances. Specifically, the five-year limitation does not apply to alleged violations relating to practicing under false name, fraud or misrepresentation in applying for or procuring a license, or cheating on the licensing exam.

For professional negligence settlements/judgments the department has an additional two years from the receipt of notification. For the licensee, the formal-level process begins with the filing of a written verified complaint setting out the facts for either suspension or revocation of a license under the Medical Practice Act of 1987.

Specifically, the formal hearing is an administrative proceeding, open to the public, involving the licensee and his or her counsel, an administrative law judge, a board or committee member and a department prosecutor. Also, in most cases, both sides retain the services of experts to testify on their behalf.

The hearing may take from several days to weeks to complete. Even if the formal proceeding is already underway, at any time before the conclusion of the hearing the parties may attempt to settle the case.

Although in most cases referred to the department there is a hearing prior to the board taking any action, immediate action can be taken if allowing the accused physician to continue seeing patients would constitute “an immediate danger to the public.”

At the conclusion of the formal hearing, the disciplinary board will recommend what type of disciplinary action, if any, should be given in the case. Such disciplinary action can include license termination, revocation, suspension, probation, reprimand, and censure.

If the evidence demonstrates that the licensee did not violate his or her professional or occupational practice act, the board can order that licensee to remain in good standing.

Committed to protecting Illinois citizens, the IDFPR also serves physicians, says a department spokeswoman. The bearing of an Illinois license certifies a physician's good standing in Illinois and counts as an indicia of professional competence and integrity.

“Such disciplinary action can include license termination, revocation, suspension, probation, reprimand, and censure.”



Frequently Asked Questions about the IDFPR

IDFPR has contacted me regarding allegations of misconduct. Do I need an attorney?

You are not required to retain the services of an attorney, however it is prudent to do so. It is also recommended that you seek an attorney who is familiar with IDFPR statutes and administrative rules and experienced in

representing professionals before the IDFPR board. Once you have secured an attorney's services, IDFPR is prohibited from communicating with you directly without your or your attorney's approval. Furthermore, an attorney can

speak with the department's investigators to determine what the allegations are and what preparations need to be made to prepare a defense.

If I hire an attorney to represent me at an informal hearing with IDFPR, won't that make me look "guilty"?

Your being represented before the IDFPR by an attorney is not interpreted by the department professionals as either guilt or innocence. In fact, it presents you to IDFPR as an astute professional who takes his or her profes-

sional license seriously. Having legal representation whenever you are dealing with governing agencies is a sign of wisdom and good judgment, not guilt.



"Having legal representation whenever you are dealing with governing agencies is a sign of wisdom and good judgment, not guilt."

I was contacted by IDFPR and told that I am under investigation; what should I do?

Call an attorney immediately - one with experience in dealing with IDFPR. If IDFPR contacts you again, tell them that you are in the process of hiring an attorney and that your attorney will contact them soon. IDFPR investigators

are trained professionals who cleverly acquire information about you by asking questions about seemingly irrelevant matters. The existence of an attorney-client relationship will stop any further direct communication be-

tween you and the department.

I have an informal conference scheduled before the IDFPR. Do I need a lawyer?

Although you are not required to have a lawyer with you, it is in your best interest to do so. You will be prosecuted by the department's attorney and his supervisor will most likely be counseling him. Therefore, there will be

two (2) attorneys representing the department. If you have no legal representation, you will be at a serious disadvantage. IDFPR's statutes and administrative rules are complex. Even if you are innocent of misconduct or have

mitigating evidence to offer, proving it up pursuant to statute or department rules requires legal knowledge and experience that may be beyond your abilities.

"...there will be two (2) attorneys representing the department. If you have no legal representation, you will be at a serious disadvantage."

IDFPR has contacted me regarding allegations of misconduct. Do I need an attorney? I have had an informal conference with IDFPR and have been offered a disciplinary order that is unreasonable or unacceptable to me. What are my options?

You can negotiate the terms of the order or reject it, in which case the department will file formal charges against you. If you are unwilling to accept the offer, then obtaining legal representation is wise. Successful negotiation requires an un-

derstanding of the department's case. To successfully combat the department in a formal administrative hearing requires technical knowledge of IDFPR rules, the Administrative Act and evidentiary rules and procedures. This is best han-

dled by an attorney who has negotiation and litigation experience with IDFPR.

The IDFPR has filed formal charges against me. Do I need a lawyer?

At this point, the only thing that stands in the way of your license being revoked or suspended is the formal administrative hearing. Therefore, your case requires the polished presentation of an attorney who is familiar with IDFPR formal administrative statutes and rules and

experienced in formal administrative hearings. Representing yourself through this process puts you and your license at a severely unfair disadvantage. Remember, the department has a team of investigators and lawyers preparing its case against you. It is in your best interest to

also have competent legal representation.

