

What You Need To Know About the Investigatory Process of the Department of Business and Professional Regulation

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Any business person or professional who is licensed by the [Department of Business and Professional Regulation](#) (“DBPR”) or any of its boards, including real estate agents and brokers, hairdressers, architects and engineers, should have a basic understanding of the investigatory process that occurs after a complaint is made against them. Those who understand the process can make informed decisions regarding next steps. Acting quickly, and within the prescribed time periods, is essential. Upon receipt of notice that you are under investigation or the subject of a formal complaint, there are certain seemingly obvious, but often ignored, steps you must take:

1. Read everything you receive. The importance of this simple step cannot be overstated.
2. Note all deadlines referenced in the documents you receive from your professional board or from DBPR. Compliance with these deadlines is mandatory. Do not expect a second notice.
3. Gather any and all documents you may have regarding the subject of the complaint (including emails). Put them in a safe place. Should you seek legal counsel, you will want to provide copies of these documents to your attorney.

The Complaint and Investigation The following scenarios can cause the DBPR to initiate an investigation concerning your activity: (1) the DBPR receives a written complaint alleging that you have violated one of the statutes or rules that govern your discipline; or (2) the DBPR had “reasonable cause” to believe you have violated such a statute or rule. A written complaint is “legally sufficient” to instigate an investigation if it contains “ultimate facts” that show a violation of statute or rule; that is, it is not sufficient if it contains a bare assertion that the law has been violated, it must contain facts showing how the violations occurred. Once the DBPR determines that the complaint is

sufficient, or that it has reasonable cause, it is required (with certain limited exceptions) to notify you of the investigation and provide you with a copy of the complaint or document that resulted in the investigation. Once you receive the complaint or document, if you so choose, you have **20 days** to submit a written response for consideration by a probable cause panel (“PCP”) that may ultimately decide whether probable cause exists to prosecute the case. This is your opportunity to get your side of the story before the DBPR, to refute the allegations in the complaint, or to explain any mitigating circumstances. However, your statement may also be admissible in a formal hearing concerning the complaint. Therefore, the decision to submit a statement to the PCP is an important one and will depend on the facts and circumstances of the complaint. Make this decision carefully and discuss it with your attorney if you are represented by counsel. When the investigation concludes, the DBPR may decide there is insufficient evidence to prosecute the allegations. If so, it will dismiss the case, and provide you and the appropriate PCP with a detailed investigation report. This report is exempt from public disclosure if the case was dismissed prior to a finding of probable cause. At this point, the PCP has the discretion to hire independent counsel and investigators to continue the investigation. If it chooses not to continue the investigation, the ordeal is over and you can put the experience behind you. If the investigation concludes that there is sufficient evidence to prosecute the allegations, the DBPR will tender its report, findings, and recommendation to the PCP, which will decide if probable cause exists to file a formal complaint. **The Probable Cause Panel** As mentioned above, the PCP is charged with reviewing the complaint and the DBPR’s investigative report to determine whether probable cause exists to file a formal administrative complaint. To find probable cause, the PCP must have a majority vote. A PCP consists of at least one of the professional board’s present members and, one of the board’s present or former consumer members (assuming one is available, willing, and authorized to serve), and a present or former professional member of the board with an active, valid license for that profession. The PCP has 30 days from the receipt of the final investigative report to make a probable cause determination. However, it may make a “reasonable request” for additional investigative information within 15 days of receipt of the final investigative report. Upon receipt of the additional information from the DBPR, if any, the investigative report becomes “final”. The PCP then has 30 days from receipt of the additional information to make a decision. As a practical matter; however, where the PCP requests additional information, there is some uncertainty as to when the determination will be made. Adding another layer of uncertainty, the Secretary of the DBPR may also grant extensions to the 15 or 30 day periods discussed above. **The Determination** Once the PCP has a “final” investigative report, it will determine whether probable cause exists to file an administrative complaint. The PCP has four options: (1) determine probable cause exists; (2) determine probable cause does not exist; (3) in lieu of finding probable cause, it may issue a “letter of guidance” advising on steps to take to avoid further complaints (e.g., stop this practice, begin doing this); or (4) take no action and allow the 30 day deadline (and any extensions) to expire. If the PCP finds probable cause exists, it will direct the DBPR to file a “formal administrative complaint”. The filing of this complaint gives you the right to challenge it under the [Florida Administrative Procedures Act, Chapter 120, Florida Statutes](#). The “formal administrative complaint,” contains a notice of rights that explains that you have a certain

amount of time, generally 21 days from the date of receipt of the “formal administrative complaint”, to contest the charges and claim your right to a hearing. Upon receipt of the complaint, you should strongly consider meeting with an attorney if you have not already. It is extremely important to exercise your rights as described in the notice of rights. If you do not, you will be considered to have waived them. Furthermore, potential punishments can include fines, license suspension, license revocation, or some combination thereof, together with an assessment of the costs of the investigation. These potentially serious consequences should not be taken lightly. If the PCP issues a letter of guidance in lieu of determining that probable cause exists, you have the right to challenge that letter as well under [Chapter 120, Florida Statutes](#). Again, if you have not consulted an attorney, you should strongly consider doing so. Finally, if the PCP takes no action and allows its 30 day timeframe to expire, the DBPR then has **10 days** to determine if it finds probable cause to issue a formal complaint. If it issues a complaint, you have the same right to challenge it pursuant to [Chapter 120, Florida Statutes](#).

Hearings Under the Florida Administrative Procedures Act An in-depth discussion of the procedures and rights available to you under the Florida Administrative Procedures Act is beyond the scope of this article. However, you should know that there are two distinct types of hearings available to you: (1) a hearing before the DBPR or your board in which there are no disputed issues of fact (formerly known as an informal hearing); and (2) a hearing in front of an administrative law judge of the Division of Administrative Hearings in which disputed issues of fact are determined (previously known as a formal hearing).

Conclusion For most licensed individuals, receiving a notice of investigation from the DBPR can be a stressful event. However, by understanding the process and your rights, you should be better equipped to make the important decisions you will face.

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