



STATE OF WISCONSIN
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Governor Scott Walker Secretary Dave Ross

AUCTIONEER BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Angela Hellenbrand 608-261-5406
October 15, 2013

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Board.

FULL BOARD MEETING
9:15 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. **Adoption of Agenda (1-2)**

B. **Approval of Minutes – April 16, 2013 (3-4)**

C. Administrative Updates

- 1) Staff Changes
- 2) New Board Member(s) – Mr. Randy Stockwell **(5-6)**

D. Legislative Administrative Rule Matters

E. Informational Items

F. Consideration of Items Received After Printing of the Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Presentations of Petition(s) for Summary Suspension
- 3) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 4) Presentation of Proposed Final Decision and Order(s)
- 5) Informational Item(s)
- 6) DLSC Matters
- 7) Status of Statute and Administrative Rule Matters
- 8) Education and Examination Matters
- 9) Credentialing Matters
- 10) Practice Questions/Issues
- 11) Legislation/Administrative Rule Matters
- 12) Liaison Report(s)
- 13) Speaking Engagement(s), Travel, or Public Relation Request(s)

G. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

H. Deliberation of Proposed Stipulations, Final Decisions and Orders Including Any Received After Preparation of the Agenda

I. Case Closings Including Any Received After Preparation of the Agenda

- 1) 13 AUC 003 (7-12)

J. Deliberation of Items Received After Preparation of the Agenda

- 1) Case Closings
- 2) Case Status Report
- 3) Proposed Decisions
- 4) Summary Suspensions
- 5) Objections and Responses to Objections
- 6) Administrative Warnings
- 7) Matters Relating to Costs
- 8) Monitoring Cases
- 9) Appearances from Requests Received or Renewed
- 10) Examination Issues
- 11) Application Issues
- 12) PAP Cases
- 13) Motions

K. Consulting with Legal Counsel

- 1) Case Status Report (13-14)

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

L. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

M. Training (15-16)

- 1) Board Member Training
- 2) Case Advisor Training (17-28)

ADJOURNMENT

**AUCTIONEER BOARD
MEETING MINUTES
APRIL 16, 2013**

PRESENT: Patrick McNamara, Timothy Sweeney, Jerry Thiel, James Wenzler

EXCUSED: Ronald Polacek

STAFF: Tom Wightman, Executive Director; Karen Rude-Evans, Bureau Assistant

CALL TO ORDER

Timothy Sweeney, Chair, called the meeting to order at 9:16 a.m. A quorum of four (4) members was confirmed.

ADOPTION OF AGENDA

MOTION: James Wenzler moved, seconded by Jerry Thiel, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF JANUARY 23, 2013

MOTION: Patrick McNamara moved, seconded by James Wenzler, to approve the minutes of January 23, 2013 as written. Motion carried unanimously.

ADMINISTRATIVE UPDATES

Wisconsin Administrative Code Chapters SPS 128.04(6) – Rule Writing Status

MOTION: James Wenzler moved, seconded by Jerry Thiel, to approve the draft language and appoint Patrick McNamara to review and approve the final draft before forwarding on in the process. Motion carried unanimously.

CLOSED SESSION

Chair Timothy Sweeney read the motion to convene to closed session.

MOTION: Jerry Thiel moved, seconded by James Wenzler, to convene to closed session to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.). Roll Call Vote: Patrick McNamara - yes; Timothy Sweeney-yes; Jerry Thiel - yes; James Wenzler - yes. Motion carried unanimously.

Open session recessed at 9:38 a.m.

RECONVENE TO OPEN SESSION

MOTION: Patrick McNamara moved, seconded by James Wenzler, to reconvene in open session. Motion carried unanimously.

Open session reconvened at 9:57 a.m.

VOTING ON ITEMS CONSIDERED/DELIBERATED IN CLOSED SESSION

MOTION: James Wenzler moved, seconded by Patrick McNamara, to reaffirm all motions made in closed session. Motion carried unanimously.

PROPOSED ORDER RESCINDING FINAL DECISION AND ORDER

MOTION: James Wenzler moved, seconded by Jerry Thiel, to adopt the order rescinding the Final Decision and Order dated January 23, 2013 in the disciplinary proceedings against **Donald A. Wagner, 12 AUC 007**. Motion carried unanimously.

PROPOSED STIPULATION(S), FINAL DECISION(S) AND ORDER(S)

MOTION: Timothy Sweeney moved, seconded by Jerry Thiel, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against **Mark Bingham and All American Sales and Auctions, LLC, 12 AUC 004**. Motion carried unanimously.

MOTION: James Wenzler moved, seconded by Patrick McNamara, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order submitted for the agenda of 4/16/2013 in the disciplinary proceedings against **Donald A. Wagner, 12 AUC 007**. Motion carried unanimously.

CASE CLOSING(S)

MOTION: James Wenzler moved, seconded by Patrick McNamara, to close case **12 AUC 014 for compliance gained (P2)**. Motion carried unanimously.

ADJOURNMENT

MOTION: James Wenzler moved, seconded by Jerry Thiel, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 9:58 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Angela Hellenbrand Executive Director		2) Date When Request Submitted: 4 October 2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Auctioneer Board			
4) Meeting Date: 15 October 2013	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Update 2) New Board Members	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Mr. Randy Stockwell (<i>replaces Mr. Carl J. Theorin</i>)			
11) Authorization			
Signature of person making this request			Date
Supervisor (if required)			Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)			Date
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**State of Wisconsin
Department of Safety & Professional Services**

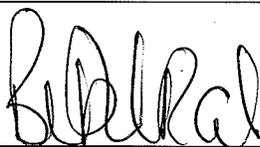
AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Angela Hellenbrand Executive Director		2) Date When Request Submitted: 12 July 2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Auctioneers Board			
4) Meeting Date: 15 October 2013	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Board Member Training & Case Advisor Training (before adjournment)	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input checked="" type="checkbox"/> Yes by _____ (name) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
Signature of person making this request			Date
Supervisor (if required)			Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)			Date
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**State of Wisconsin
Department of Safety and Professional Services**

AGENDA REQUEST FORM

Name and Title of Person Submitting the Request: Beth Cramton on behalf of Attorney Sandra Nowack Division of Legal Services and Compliance		Date When Request Submitted: October 4, 2013	
<p align="center">Items will be considered late if submitted after 4:30 p.m. and less than:</p> <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before meeting for all other boards 			
Name of Board, Committee, Council: Auctioneer Board			
Board Meeting Date: October 15, 2013	Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	How should the item be titled on the agenda page? Case Advisor Training	
Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input checked="" type="checkbox"/> Both	Is an appearance before the Board being scheduled? If yes, by whom? <input type="checkbox"/> Yes by _____ (name) <input type="checkbox"/> No	Name of Case Advisor(s), if required:	
Describe the issue and action the Board should address:			
Authorization:			
		10-4-13	
Signature of person making this request		Date	
Supervisor signature (if required)		Date	
Executive Director signature (indicates approval to add late items to agenda)		Date	
Directions for including supporting documents:			
<ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board's Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			



**OVERVIEW OF
DPS REGULATORY
STRUCTURE**

The Department and the Boards.

The Department of Safety and Professional Services (**Department**) and the attached Boards are distinct legal entities with different functions, working toward the same goal.

The Department was created to perform a wide range of duties, including providing legal expertise and administrative support to the Boards. Legal expertise is provided to the Boards in three ways: by a legal counsel, who has a fiduciary responsibility to provide legal advice to the Board in exercising its duties and responsibilities; by the assignment of an administrative law judge when disciplinary action goes to a formal hearing; and by the prosecutor of each case opened for investigation.

The Department provides administrative support by the assignment of an Executive Director, Bureau Assistant and Rules Coordinator to each Board. These staff members manage Board meeting agendas, handle a range of Board related business and serve as a liaison between the Board and the Department.

The Division of Legal Services and Compliance (**DLSC**) is the part of the Department tasked with the responsibility of enforcing licensee compliance with State laws and professional codes. DLSC is the physical extension of Boards' authority in disciplining misconduct. DLSC works collaboratively as the Board's partner in ensuring that fair and just discipline is imposed on violators of professional rules in a way that accomplishes the State's goals of *protection, deterrence and rehabilitation*.

Boards are established to perform many functions, including setting entry and practice standards through rule-making and regulating the professions through disciplinary actions. Within disciplinary actions, individual Board members may have two roles: the judicial role of a final decision-maker and the consultant role of case advisor.

As a consultant, the case advisor of a particular case assists DLSC's prosecuting attorney with professional expertise on the licensee's misconduct and necessary discipline to bring the licensee into compliance. If the attorney and licensee reach an informal resolution, the Board as a whole (including the case advisor of that case) will hear relevant facts, as the judge, and determine whether the agreed-upon resolution is sufficient. The consulting and judicial roles must be kept distinct and separate. To blur the line between the roles violates due process. Many of the safeguards and specific prohibitions are discussed below.

THE CASE HANDLING PROCESS

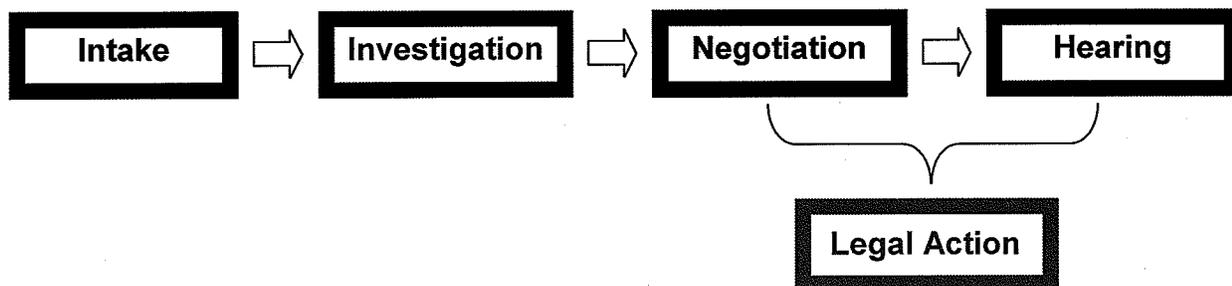
The Disciplinary Process.

The Department operates on a complaint-driven process, meaning all compliance actions are results of submitted complaints against alleged licensee misconduct, not from the Department's active search for misconduct. The Complaint itself may come from a variety of sources, such as consumers, professionals, or other cases that alerted us to misconduct of another licensee.

The State of Wisconsin recognizes and respects an individual's interest in earning a living. However, the individual's interest must be balanced with the public's interest in obtaining services that are safe and effective. In disciplining licensees, the State has three goals:

1. **Protect the public;**
2. **Deter the conduct; and**
3. **Rehabilitate the respondent.**

The State does not punish licensees for misconduct, but provides them with the necessary tools and opportunities to regain compliance. This protects both the public's and the individual's interests.



Intake Process.

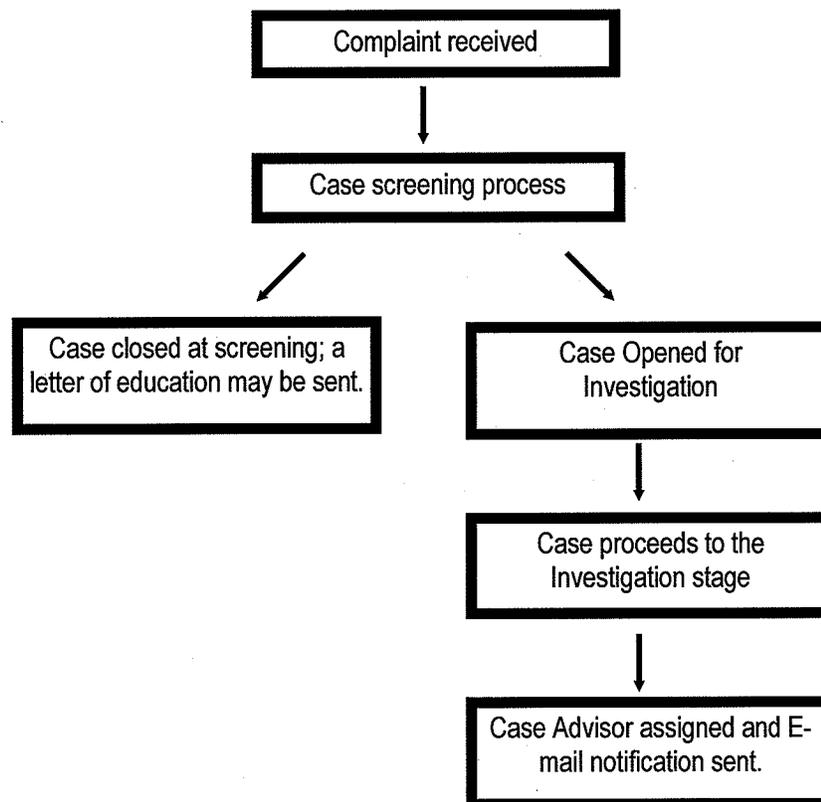
The Intake stage is the first stage in the case handling process.

As a complaint is received by the Department, Intake Staff collects relevant information (such as records, follow-up from the Complainant if the information is incomplete or an initial response from the accused licensee) and send the complaint to the Screening Panel, which may consist of several Board members and a DLSC attorney. The Screening panel, at a predetermined time, will confer and determine whether, from the information provided, a violation may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does not warrant further action, it is closed under appropriate codes depending on the facts of the case, and a letter is sent out to the parties. If a

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complaint does have merit, or requires further investigation, the case is opened and goes on to the Investigation stage.

The Intake stage is especially important as a gatekeeper against trivial complaints and cases without proof. This stage protects licensed professionals from meritless attacks on their reputation and livelihood. In certain circumstances, a licensee may be close to violating a professional standard, but did not violate it. Through the Screening process, the Panel may choose to issue a letter of education that warns the licensee of the risks of his conduct to prevent future violations.



Case Assigning.

When a case is opened, a case advisor will be assigned, along with an investigator, paralegal and attorney. The advisor can be assigned to a particular case by:

1. The screening panel - initial assignment made by screening panel during screening.
2. DLSC staff - when a conflict is identified or replacement for a previous case advisor is necessary, another case advisor will be assigned.

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3. Expertise - in some cases the case advisor is assigned (either by the screening panel or DLSC) based on his or her expertise in a particular area relevant to the case. In cases where professional expertise is not required, a public member may be assigned as the advisor.
4. General rotation - case advisor assignments are made generally based on a rotation system so that the caseload is distributed as evenly as possible among Board members.
5. Geographical area – case advisor is assigned based on *not* being in the same geographical area as Respondent [Exception: Real Estate Appraisers are assigned by geographical area due to the importance of local area knowledge].

Once assigned, the advisor will receive an email or letter from Intake staff with notification of the assignment. The notification will include the case number, name of the Complainant, Respondent, original complaint and all supplemental information obtained since the complaint was received. At this time, the assigned advisor should review the materials and determine if there is any conflict of interest or bias that would require reassignment. If a conflict does exist, or if the advisor is uncertain if one exists, the advisor should contact DLSC staff immediately.

Types of “Discipline”.

It is important to understand and remember that almost all professionals hold a certain level of pride in their professional career. The State does not regulate professionals to all operate at the highest standard possible, which is a system better controlled by the market and individual professional’s reputation. Instead, we regulate professionals to operate *above the minimum standard*. At times, licensees may be careless, incompetent or reckless. As the embodiment of the profession, Boards must make sure that the imposed discipline is appropriate to address the misconduct when the entire circumstance is taken into account. In addition to formal discipline, Boards also have non-disciplinary options that may more appropriately correct the licensee’s failure. The case must always be reviewed and determined case-by-case, taking into account all facts specific to that particular case.

Forms of Informal Discipline: Useful Non-Disciplinary Tools.

1. Case Closure: Prosecutorial Discretion
 - a. Sometimes, the simple act of opening a case against the licensee is enough to alert the licensee to improve his practices.
 - b. Some examples of situations:
 - i. The incident in question was not seriously harmful to the public;
 - ii. Compliance with the statutes or rules has been gained;
 - iii. The expenditure of resources to pursue the violation greatly exceeds the value to the public in pursuing the matter; or

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- iv. The Board has taken action in regard to the licensee that addressed the conduct and no further action is necessary.
2. Remedial Education:
 - a. Requiring licensee to complete education that addresses his failure through a Board Order that does not include specific finding of a violation.
 - b. Remedial education allows the licensee to gain compliance with less embarrassment to his or her professional pride.
3. Administrative Warning:
 - a. Requires that the misconduct is a minor violation, and the misconduct is a first occurrence for the licensee (Wis. Admin. Code ch. SPS 8).
 - b. The fact that the warning was issued is a public record, but the content of the warning is private and confidential.
 - c. Licensee may request review of the warning within 20 days and make an appearance before the Board. If a warning is appealed, the Board may re-examine the case and request DLSC to pursue a different resolution, if warranted.
4. The Professional Assistance Procedure (PAP):
 - a. PAP is an alternative to formal disciplinary process for an impaired professional; it encourages individuals to seek help for their impairment in a non-disciplinary environment.
 - b. If an individual is released from PAP for failure to comply with the program, the Department Monitor at that time may refer the individual to DLSC for formal disciplinary procedures, if appropriate.

Forms of Formal Discipline.

If the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

1. **Reprimand:** to "publicly warn the holder of a credential" (Wis. Stat. § 440.01(1)(e)).
2. **Limited License:** to "impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice" (Wis. Stat. § 440.01(1)(d)).
 - a. A credential can be limited in many ways, allowing Boards to creatively and most appropriately address the credential holder's deficiency. For example:
 - i. Education – can the misconduct be resolved by re-education?
 - ii. Testing – can the misconduct be resolved by re-testing?
 - iii. Assessment or Treatment – can the licensee practice safely and competently if AODA impairment is treated?
 - iv. Supervision, Work Reports or Auditing
 - v. Other options by limiting:
 1. Practice scope
 2. Geographic practice area

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3. Types of procedures
4. Types of clients
- b. Time period – can be permanent or for a set period of time (e.g. until education is completed, testing passed, or licensee is deemed safe to practice).
- c. Measurability – when determining the appropriate limitation, please choose limitations that are clearly measurable and enforceable. Establish guidelines on how the licensee can show his or her compliance with the Board’s intended restrictions.
3. **Suspension:** to “completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(h)).
 - a. Suspension should only be used when the conduct was egregious, as it is a form of deterrence rather than rehabilitation.
 - b. Suspensions can be imposed by length of time, completion of other Board requirements, or indefinitely, requiring a successful petition to the Board to lift the suspension.
4. **Revocation or Voluntary Surrender:** to revoke is to “completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(f)).
 - a. Revocation is only appropriate for the most serious conduct.
 - b. Not all revocations are permanent, licensees may re-apply (but it is up to the Board whether a license will be granted) unless the Order specifically prohibits or limits it.
 - c. Voluntary surrender is essentially identical to a revocation, except that it causes less embarrassment.
5. **Voluntary Surrender or Retirement without a Finding of Violation:**
 - a. There are instances where, regardless of the egregiousness of the conduct, the licensee wishes to stop practicing.
 - b. In these circumstances, the licensee can retire or surrender his or her license without a formal finding of violation.
6. **Forfeiture or Citations:** some Boards have the ability to impose monetary forfeitures or citations, which serve a deterrent function rather than rehabilitative.

The legal team assigned to a case will always assist the case advisor in determining the most appropriate discipline. The legal team may have additional information such as historical data and recent trend or change in discipline for similar conduct. Also, because the legal team has direct interactions with respondents, the team may have important insight as to what may be the most efficient and effective way to bring a particular respondent into compliance.

Summary Suspensions.

Summary suspension is a special tool that allows us to suspend a licensee without a stipulated agreement and before a full hearing. Because this tool circumvents certain due process, it can be used only when the facts establish that the licensee has engaged

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in and/or is likely to engage in conduct that threatens the health, safety or welfare of the public, which requires emergency suspension.

If a Board uses summary suspension, a formal complaint must be filed shortly after and a hearing held promptly. It is critical that all evidence is ready for the hearing.

Obtaining a summary suspension against a licensee does not necessarily mean that licensee has indeed engaged in misconduct; it only means that we have enough reason to believe he did, **AND** that he will continue to do so, placing the public in danger. Without evidence that the dangerous conduct will continue unless the licensee is suspended, summary suspension should not be granted.

Costs.

The Department has the authority to recoup time and money spent on a case if discipline is ultimately imposed. Costs include recovery for investigator, paralegal, attorney time, Administrative Law Judge's time if the matter goes to hearing, witness fees, postage, costs paid out for certified copies of records, court reporter fees, etc.

Case Advisor Role.

The Board member, while acting as a case advisor, has the responsibility to:

1. Review the case materials;
2. Identify additional materials required in order to make a determination;
3. Provide expert and technical advice and assistance to the DLSC staff;
4. Assist the attorney in determining the merits of the case;
5. Assist the attorney in determining whether a violation occurred;
6. Assist the attorney in determining the appropriate discipline if a violation occurred;
and
7. Assist with finding expert witnesses.

The case advisor is the prosecuting attorney's consultant in assessing if a violation occurred, what the exact nature of that violation is, the egregiousness of the violation, and what is necessary to bring the violator back into compliance. While the prosecuting attorney is an expert of the law, without the case advisor's expertise in a particular professional field, the attorney will be unable to adequately determine the facts of the case.

The most important factor in ensuring efficient and effective discipline of a licensee is clear communication between the case advisor and the legal team. With clear direction and expertise, the case advisor can assist the team's investigation and imposition of appropriate discipline. The case advisor and the legal team assigned to a particular case should maintain open communication through telephone, email, fax or regular mail. Complex issues may require telephone discussions. The legal team is always be happy to set up a phone conference at the case advisor's convenience. Communication

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between the case advisor and the legal team is an on-going process, as the case advisor's expertise may be needed each time new information is discovered.

The case advisor should provide the legal team with an opinion or request for additional information within **two (2) weeks** of receiving the investigative materials (**3 days for appraisers**). Timeliness is critical, allowing the legal team to conduct additional investigation or collect evidence as needed. Licensees also wish to have their cases resolved as soon as possible, as any case open against their license may jeopardize their employment or professional pride and reputation. If a case advisor knows there may be a delay, or if an unexpected event occurs, please contact your legal team immediately and we can set a new date for completion or discuss case transfer options.

The case advisor's opinion/communication should be clear and answer each of these questions:

Is additional information required?

- Did a violation occur? What is the violation?
- What would a *minimally competent* licensee have done in the same circumstance?
- How egregious is this conduct?
- What is the root issue?
- What would adequately address this issue and bring the licensee into compliance?

Please keep in mind that the violation often is not as clear to the legal team as to someone within the particular profession. However, the case advisor's analysis should serve to clear up any confusion or lack of understanding.

Being privy to private (oftentimes unproven) information, the case advisor has a duty to maintain confidentiality. Pending cases cannot be discussed with other Board members, colleagues or friends.

Informal Consults with Other Experts.

Occasionally, an issue may arise that is outside the case advisor's specialty or area of expertise. In certain circumstances, the advisor may consult with a colleague in that particular field or specialty in order to form an opinion on the violation and appropriate discipline. However, there are two prohibitions:

1. Consultations may not be with another Board member, and
2. Do not disclose any identifying information specific to the case.

If other questions or concerns arise regarding who may be consulted, the case advisor should discuss those concerns with the legal team assigned to that case.

Ex-Parte Communication.

As both a Board member (who act as the decision maker or “judge”) and a case advisor (who act as the expert witness), it is essential that all decisions or recommendations are made with objectivity. The advisor must protect against conflicts of interest, as well as the *perception* of a conflict. As such, the Board member/advisor must not communicate with individuals involved in a pending case (including complainant(s), respondent(s) and witness(es)).

If a party of a case (whether it’s assigned to you or not) attempts to contact you, please advise him or her that you cannot discuss the case with them, and inform your legal team immediately.

Case Advisor Participation in Board Deliberations.

When a proposed resolution (whether as a result of a stipulated agreement by the respondent or a proposed decision by the Administrative Law Judge) is before the Board for consideration, the Board member that served as advisor for the case may or may not be a part of the deliberation, depending on what type of case it is:

- Proposed stipulations, administrative warnings or case closures – the case advisor may participate in discussions and may vote on the matter. The advisor should be prepared to speak in support of the agreed upon resolution, discipline or closure. The advisor can always contact the DLSC prosecutor prior to the meeting in order to refresh his or her memory on why a particular discipline is the most appropriate one.
- Proposed decision following an evidentiary hearing – the case advisor may not participate in discussions. The advisor likely has access to information that was not presented or admitted as evidence during the hearing, and it would be unfair and unjust to the licensee for the advisor to report on conclusions or information that was not proven at the hearing.

Disposal of Materials.

All materials you receive during the course of the case investigation and disposition are confidential. They should be kept in a secure location and not shared with others. When the case is closed, you may destroy all copies or return them to the Division of Legal Services and Compliance for disposal.

Caution: Please make certain that none of the materials to be destroyed are originals. If they are, please return these items to the Division of Legal Services and Compliance.

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Conclusion.

We are here to assist case advisors and Board members every step of the way to accomplish our joint mission. We thank you for your voluntary service to the State of Wisconsin and your commitment to your profession.