

Procedural Due Process

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This term generally involves the basic legal principle that if an administrative agency of the government is going to take away a person's right to practice his or her profession, the government must give adequate notice of its proposed action and an opportunity for the licensee to be heard. In licensing board actions, also referred to as administrative or enforcement proceedings, these rights to notice and an opportunity to be heard are critical. The timing of the notice, the required content of the notice, and the manner and extent of the opportunity to be heard will vary from state to state, and may also vary depending upon the particular violation involved. For example, in more serious cases, where public safety is deemed at serious and imminent risk, prior notice can be extremely short. The concept of procedural due process is also an important concept in cases brought by ethics committees of professional associations against their respective members.

While many mental health professionals may be familiar with various provisions of their respective codes of ethics relating to prohibited acts or behaviors, most are likely not familiar with, or interested in, the procedures that the particular association uses to investigate, resolve, or "prosecute" complaints. Again, the concepts of notice and an opportunity to be heard are paramount. Some state laws specify fair hearing procedures that govern not only hospital staff privileging actions, but professional society peer review proceedings as well. There are federal laws that govern these proceedings, but states may opt out of those requirements and enact their own requirements. Some have expressed concerns about the lack of fairness in professional association ethics proceedings because, among other things, the accused member may be scrutinized too harshly by competitors and because the opportunities for face-to-face interactions with the ethics committee are often limited.

With respect to the opportunity to be heard, this typically means that before final action is taken, the charged person is entitled to a hearing before a hearing officer (e.g., an Administrative Law Judge) in the case of a state regulatory body or, in an ethics proceeding, before an arbitrator or a panel of unbiased individuals who have not acted as an accuser, investigator, fact finder, or initial decision maker in the matter. The right to a hearing in licensing board actions may involve a variety of other rights that will be enumerated in law or regulation, such as the right to present and rebut evidence, the right to be informed of the procedures to be used by the agency, and the right to challenge the presiding officer for prejudice or bias. The hearing would typically be open to public observation and the decision would be in writing and would include a statement of the factual and legal basis for the decision. In the case of a professional association's ethics committee proceeding, one must review state laws/regulations and those portions of the applicable code of ethics related to procedures in order to determine the rights of the accused member.

