

IDFPR DEMYSTIFIED: AVOIDING DISCIPLINE

INTRODUCTION

Nothing strikes more fear into the heart of a practicing health-care professional than receiving a phone call that starts out “I am an Illinois Department of Financial & Professional Regulation (“IDFPR”) investigator and have some questions about an incident” that happened last month, last year or five years ago. This apprehension is especially true with a veterinarian facing a pet owner’s complaint – the owner may lose all rationality and proportion in the event of a vet misstep or a treatment that did not produce the hoped-for therapeutic result.

INVESTIGATIONS: THE INITIAL ENCOUNTER

IDFPR does not prescreen its complaints. That means there is no initial review for a complaint’s veracity or if the complaint has even alleged a violation of Veterinarian Practice Act or Rules. In fact, the initial complaint may not address any of the statutes and rules governing the practice of veterinary medicine in Illinois.

It is typical that an investigator be assigned to veterinary cases without training and instruction. IDFPR supervision or managerial guidance is almost non-existent. Additionally, an investigator assigned to do a vet investigation works in a unit that also handles dentists, nurses, psychologists, social workers, and pharmacists, to name a few. The broad spectrum of occupations that an investigator must handle does not lend itself to developing expertise within a single profession over a period of time.

Worse, IDFPR often recruits its investigators from retired police officer ranks which further compounds the problem of lack of training. If you assume that hiring a retired police officer is a step in the right direction, you would be wrong for a number of reasons.

A police officer, who has spent decades in patrol at a local or county police department, brings to their new IDFPR investigative position multiple bad habits, a less-than-positive attitude that has been honed by a life-time spent in government, and a “I am in charge” attitude that is conveyed toward veterinarians, vet staff, and the lawyers who represent them. Clearly a toxic combination. We do not claim that IDFPR investigators are malicious, unethical or even mean-spirited. Instead, they tend, as a group, to be misguided while performing investigative duties.

TIPS FOR THE INVESTIGATION

It is important to remember a few simple guidelines when an IDFPF investigator confronts you with the start of an investigation:

- Do not panic. The world is not ending.
- Limit your conversation:
 - Get the full identity of the person talking to you.
 - Be especially wary of talking on the phone.
 - Ask for the type of complaint and all circumstances or nature of the complaint.
 - Do not answer any questions.
 - Tell the investigator that you will cooperate, but that your attorney will respond to the investigator on your behalf.
 - STOP THE INTERVIEW!
- You have no statutory duty to agree to be interviewed. Stop talking. This advice is no different than you would receive from a criminal defense attorney after you are arrested. Here, the risks are even higher – you could lose the right to practice your chosen profession.
- If the investigator begins to become a nuisance or is disruptive to the clinic, your owners or employees, you have the absolute right to **ASK THEM TO LEAVE IMMEDIATELY.**

INVESTIGATOR TACTICS

The average retired police officer (or a veteran investigator) may be pushy, threatening, or hostile after you say that you “will cooperate fully, but my attorney will handle all contact with you.” The investigator may spin a tale of woe if you do not immediately give your full and undivided attention and complete cooperation. Do not forget that you have rights. This is free country. You have the absolute right – at all times – to be treated with the respect and dignity. Know that if you sense that you are being interrogated, or if the investigator gives the slightest hint of condescension, you must walk away or ask the investigator to leave: you will need competent representation from that point forward.

Be especially careful when you hear the words “**I have a complaint and just need a couple answers before I close it.**” One tactic an investigator uses is to tell you they think the complaint is bogus, and that helps to get you on their side. When you hear these words or some variation, proceed with extreme caution. You are encountering a professional, highly competent

investigator. There is nothing unethical about an investigator lying to you about the strength of the complaint. The tactic is not used often by IDFPR investigators, but when it is, we admire them for their professionalism. Simply put, those investigators tend to be very good at their job.

Once you regain control of the situation, you must choose how to respond. Many licensed professionals – in all practice areas – get lulled into the false belief that if they give the investigator what he/she wants, the matter will go away. Doing that could, in a small percentage of cases, work.

But understand that in a significant amount of our disciplinary cases, the original complaint against the veterinarian, physician, nurse, etc., was completely unfounded. Once the investigator has an open line of communication with you, the investigator will literally and metaphorically look around until they find a violation to write up. That work ethic is popular with retired police officers.

Accordingly, the initial phase of the investigation is often critical to the end result of the enforcement process: public discipline or not. If you consult with competent counsel at the very beginning of the process, the attorney can act as a buffer between you and IDFPR. If you are on your own, you may become susceptible to the intimidation and hostility from the state agency; an experienced attorney will have no problem saying NO to an investigator. Experienced attorneys may even tell the IDFPR investigator that the allegation being pursued is not a violation of the Act or Rules and therefore cannot be prosecuted. One example of this is a pet owner disputing your invoice for services.

DOCUMENT REQUESTS

After the initial encounter, the investigator may issue a ‘30-day letter’ or a subpoena in order to request your practice clinic documents. At this point, there is no question that you need representation. IDFPR investigators (and sometimes prosecutors) often overestimate the legal authority they possess when demanding that you produce documents. You are unlikely to be aware if that request is legal, typical, or even permitted. Responding on your own usually results in giving IDFPR more than which they are entitled.

INTERVIEW REQUESTS

Absolutely not. Under no circumstances should you ever consent to be interviewed by anyone from IDFPR. Think of the experience as a lamb being led to the slaughter. Even if the interview is conducted by a reasonable, professional investigator, you have no control over how your answers will be recorded. Once a particular fact, thought, or explanation is recorded into an official IDFPR report, it is chiseled in stone. You may provide a highly nuanced explanation about a very difficult clinical situation that was compounded by a highly distraught, emotional owner, but none of that is going to make it into the report. IDFPR investigators do not spend time crafting neutral, impartial reports. Instead, the facts that seem important to them are included and the rest is ignored. You may think that your long, detailed explanation of the facts and circumstances surrounding a clinical decision or procedure will be preserved in the report. No, it will not – the report will instead state: “Dr. Jones admitted that she failed to diagnose the cancer.”

Statements as above are routinely included in reports, and then take on an imprimatur of accuracy and truthfulness – that presumption is almost impossible to overcome. We have had IDFPR Board members – your peers that act as a judge or jury – actually tell us at Informal Conferences that if the police officer / IDFPR investigator make a claim in a report, it “must be true!”

PROSECUTIONS

Once an investigator compiles enough facts and documents that they deem sufficient to prosecute you (for a real or imagined violation of the Act) your case is sent from the Investigations Unit to the Prosecutions Unit, which is composed of staff attorneys. At this point, the prosecutor has two choices of how to prosecute: informal or formal. Depending on the circumstances, the prosecutor may send you a Notice of Informal Conference, which is an “informal” way to resolve the allegation. It involves you, the Department prosecutor, and one or more Board members. The ‘Board’ refers to the Veterinary Licensing and Disciplinary Board which is composed of practicing veterinarians appointed by the Governor. Professional associations, including ISVMA, often propose these members.

INFORMAL CONFERENCE

If you agree to participate in an informal conference, you and your attorney enter a small IDFPR Chicago conference room and sit across a table from a prosecutor and at least one Board member. The prosecutor delivers a preamble or opening statement. Our practice is to not allow questioning to begin until we deliver a short opening of our own. We do this to humanize you and to showcase our theme, i.e. the facts in correct order with the appropriate nuance as required. From there, you answer questions from both the prosecutor and the Board member(s). If done correctly, the questioning should start out with, "Tell us what happened regarding the incident." Sometimes, you will experience an aggressive cross-examination that is not designed to elicit the truth, but is a fishing expedition for unrelated facts, and sometimes a quest to get an admission from you that will help with their prosecution.

Having competent IDFPR attorneys next to you is absolutely critical at this point. We regularly see licensed professionals who handle their own Informal Conference and then come to us after IDFPR makes an offer of public discipline to resolve the case. Those offers of public discipline happen because the Informal Conference devolved into a total disaster. We also literally receive calls from other attorneys that admit they should never have taken their client – a licensed professional – to an Informal Conference. We are asked to take over the defense and consulting, and to mitigate the damage already done. Unfortunately, this is a common occurrence.

If the informal conference has been handled professionally, IDFPR and the Board will make an offer of settlement. The offer can absolutely be that of no discipline (closing the case) or an administrative warning letter. These are settlements on the low end. More serious violations may result in an offer of suspension or revocation. Between the two ends are reprimands and periods of probation with practice restrictions. Fines – usually calculated in the thousands – are also common. In order to evaluate the reasonableness of the settlement offer, you must have competent representation. You cannot reject the offer without learning the consequences, nor can you accept the offer without learning how it can impact you in the future, or how it can impact your DEA registration. We do not recommend turning to your real estate or corporate lawyer at that time, as neither can give you competent advice.

COMPLAINT

If you receive a document from IDFPR titled “Notice of Preliminary Hearing” or “Complaint”, you need to retain an attorney immediately. IDFPR has chosen to escalate the matter based either on the individual whim of the prosecutor or the perceived egregiousness of the alleged violations. Same advice: do not panic. It is not the end of the world. Your case is now on the formal hearing call, which means that the prosecutor and your attorney have to appear periodically before IDFPR’s Chief Administrative Law Judge and report on the case progress. You may still have an opportunity to resolve the case via an Informal Conference, but if that is not available to you (it is not guaranteed for every case) the matter will be set for a formal evidentiary hearing. Formal hearings are similar to trials in civil and criminal courts, but with different rules.

After a formal hearing, you have multiple rights of reconsideration and appeal, but usually only the most serious cases proceed all the way to a formal hearing. In short, a veterinarian formal hearing is a rare occurrence. It signifies that either the evidence points to a serious violation or the case was mishandled and should have been settled earlier.