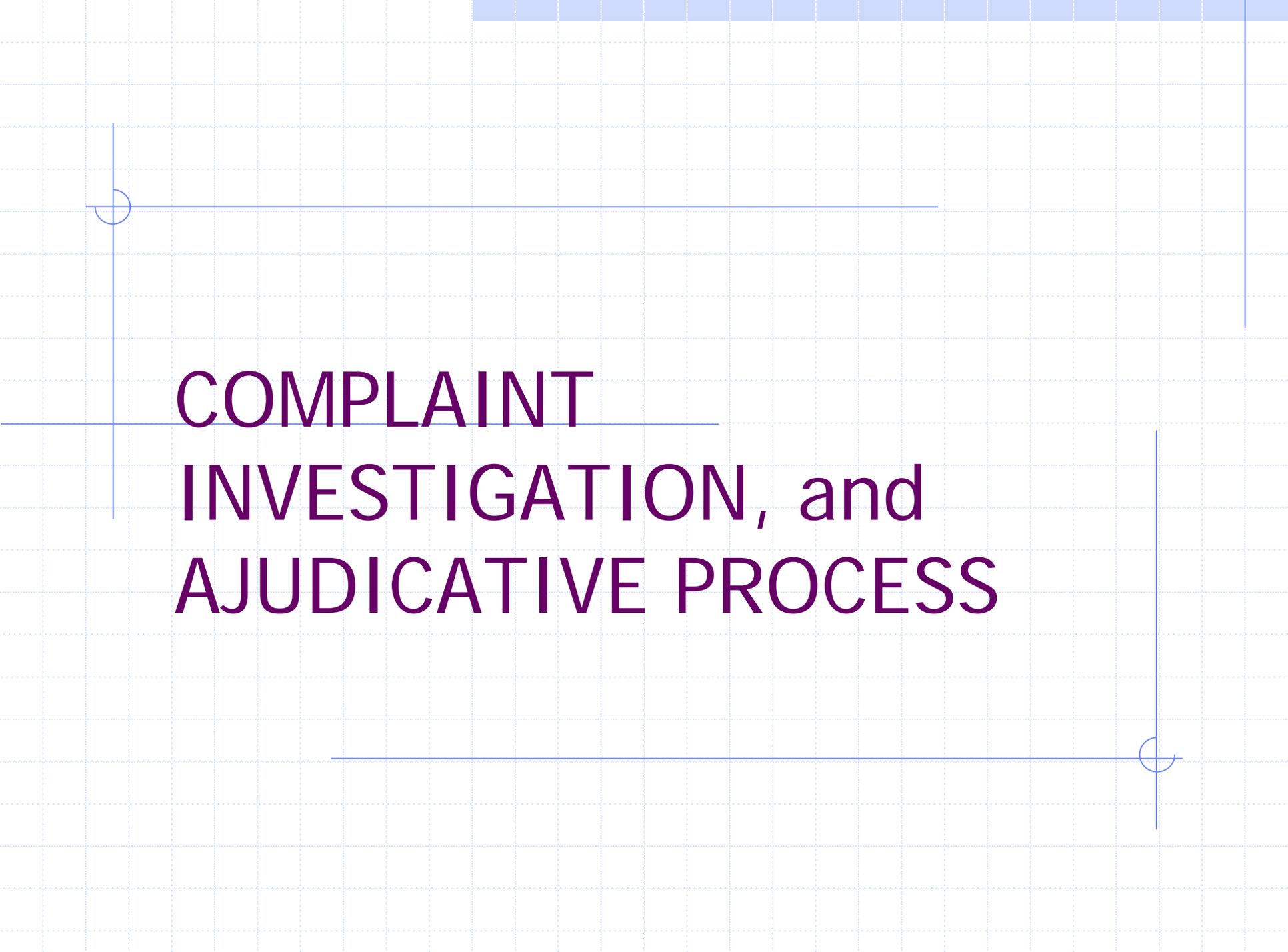


Licensing Boards

Disciplinary and Adjudicative
Proceedings Workshop



COMPLAINT INVESTIGATION, and AJUDICATIVE PROCESS

Board's Authority for Investigations and Disciplinary Actions

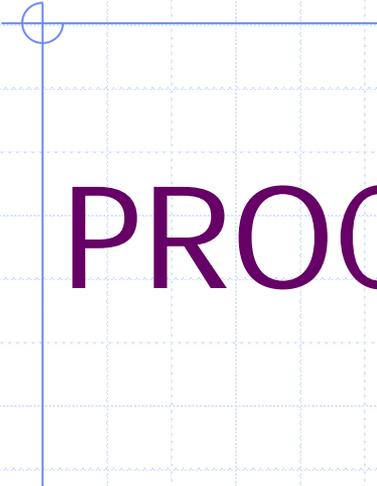
- ◆ Chapter 18.235 RCW Uniform Regulation of Business & Professions (URBP)
- ◆ Chapter 18.08 RCW (Architects)
- ◆ Chapter 18.96 RCW (Landscape Architects)
- ◆ Chapter 18.22 RCW (Geologist)
- ◆ Chapter 18.39 RCW (Funeral)
- ◆ Chapter 68.05 RCW (Cemetery)

Board's Scope of Authority is Over:

- ◆ Professional Licensees
- ◆ Unlicensed individuals who practice or offer to practice a regulated professional services for others in the state of Washington

Disciplinary Actions Include:

- ◆ Actions to address allegations of unlicensed practice
- ◆ Actions to address allegations of unprofessional conduct against a licensee



PROCESS OVERVIEW

Basis for Disciplinary Actions/Unprofessional Conduct

Chapter 18.235.130 RCW (URBP)

- ◆ Moral Turpitude, dishonesty or corruption “related to” the practice of the profession
- ◆ Misrepresentation in applications for license
- ◆ False Advertising
- ◆ Incompetence or Negligence that creates risk to consumer
- ◆ Disciplinary actions by other jurisdictions
- ◆ Interference in an investigation

Basis for Disciplinary

Actions/Unprofessional Conduct

Chapter 18.235.130 RCW (con't)

- ◆ Failure to cooperate with board investigation
- ◆ Failure to comply with board order
- ◆ Violating board rule
- ◆ Aiding and Abetting unlicensed practice
- ◆ Practice beyond scope of profession
- ◆ Misrepresentations in conduct of business or profession
- ◆ Failure to supervise staff to extent consumers may be harmed
- ◆ Conviction related to practice
- ◆ Interference with investigation or prosecution

Basis for Disciplinary Action

- ◆ Violation of requirements the profession's RCW
- ◆ Failure to comply with settlement terms to cease particular conduct ("assurance of discontinuance")
- ◆ Acts or failures to act which are "customarily regarded" as contrary to accepted professional conduct or standard expected of those practicing the profession

Complaint Processing

- ◆ Complaints must be in writing, complaint form preferred
- ◆ Sworn to by complainant
- ◆ Cannot promise complainant absolute confidentiality
- ◆ Program may initiate complaint
- ◆ Licensees notified of allegations
- ◆ Unlicensed individuals notified of allegations

Initial Review by Reviewing Board Member and Program

- ◆ Review copy of complaint
- ◆ Staff provides needed supplemental info
 - Licensing Record
- ◆ Review will result in one of three outcomes:
 - ◆ No basis for investigation
 - ◆ Insufficient information to make determination
 - ◆ Allegations should be investigated

Investigation Process

- ◆ Reviewing Board Member is Case Manager (CM)
- ◆ Determine investigative plan
- ◆ Interaction between staff, investigator and case manager throughout process
- ◆ Case manager, in consultation with program staff and Prosecuting AAG, recommend next action

Process Cautions

- ◆ Case manager not to discuss with other board members or AAG Advisor
- ◆ Board staff not to discuss with other board members or AAG advisor, except can discuss procedural status

Post Investigation Processes for Licensees

- ◆ Allegations unfounded, no action taken

- ◆ Allegations substantiated, negotiated settlement (agreed order) sets sanction

- ◆ Allegations substantiated, no settlement, formal hearing and deliberations, final order of board sets sanction

Post Investigation Processes for Unlicensed Individuals

- ◆ Informational letter requesting compliance
- ◆ Notice of Intent to issue Cease & Desist Order OR
- ◆ Issue Temporary Cease & Desist Order before hearing if board finds public would be harmed by delay
- ◆ Hearing on Cease & Desist Order
- ◆ Issue Permanent C & D order



SPECIFICS OF ADJUDICATIVE PROCESS

Adjudicative Process For Licensees

- ◆ Violations determined by CM, Prosecuting AAG and staff
- ◆ Statement of Charges drafted (prosecuting AAG assists)
- ◆ Statement of Charges Served on Licensee
- ◆ Licensee Responds and Requests Hearing (no response is default and sanction is imposed)

Adjudicative Process For Licensees (cont.)

- ◆ Settlement may be offered
- ◆ If settlement is negotiated the settlement becomes an Agreed Order
- ◆ Agreed Orders include sanctions

Adjudicative Process For Licensees (cont.)

- ◆ No Settlement and Hearing Occurs
- ◆ In appropriate circumstances hearing is in form of Brief Adjudicative Process (BAP)
- ◆ BAP conducted by the BAP Officer
- ◆ BAP is review of documents - no witnesses
- ◆ Presiding Officer enters initial order
- ◆ Full board (except case manager) issues final order

Adjudicative Process for Licensees (cont.)

- ◆ BAP Not Used, Formal Hearing Convenes
- ◆ Presiding Officer is board member (not case manager)
- ◆ Board hears case
- ◆ Case presented by Prosecutor AAG with witnesses and evidence
- ◆ Respondent rebuts allegations with witnesses and evidence

Adjudicative Process For Licensees (cont.)

- ◆ Hearing Completed
- ◆ Board (except RBM or any others participating in charging) deliberates based upon testimony and evidence
- ◆ Board issues Findings of Fact, Conclusion of Law

Adjudicative Process For Unlicensed Individuals

- ◆ CM, Prosecuting AAG and/or staff determine if unlicensed activity has occurred
- ◆ CM decides course of action
 - ◆ Not serious, issue instructional letter to correct infraction
 - ◆ More serious, follow adjudicative process for licensees except Board action is to issue C & D order
 - ◆ Most serious, suit for injunction or pursue criminal charges with county prosecutor (very rare remedy)



Key Differences Between Prosecution of Allegations of Unlicensed Activity and Prosecution of a Licensee

Action Against Licensee

- No Time Limit
- Burden of Proof
 - ◆ Preponderance (case law suggests clear cogent and convincing, not decided)
- Board has sole jurisdiction
- Fines: \$5,000 per violation
- Board enforces orders
- Court has jurisdiction to enforce a board order if the licensee disregards or violates board order

Action Against Unlicensed Individual

- Arguable Time Limitations (duty to act quickly to prosecute a cease and desist to avoid excessive fines accruing)
- Burden of Proof
 - ◆ Beyond a reasonable doubt if a criminal prosecution (rare)
 - ◆ Preponderance if administrative hearing on cease and desist order
- Fines: Up to \$1,000 per day of unlicensed activity
- Courts enforce cease and desist orders

Board's Available Sanctions Against Licensees

Chapters 18.220 and 18.235 RCW

- ◆ Revocation
- ◆ Suspension
- ◆ Reprimand
- ◆ Fines
 - \$5,000 / violation
(RCW 18.220)
- ◆ Limitation on practice
- ◆ Remedial Education
- ◆ Denial of Renewal
- ◆ Corrective Action
- ◆ Monitoring of practice
- ◆ Probation
- ◆ "other corrective action"

Board Remedies for Unlicensed Practice

- ◆ Letter requesting compliance.
- ◆ Notice of Intent to issue permanent C&D (right to hearing)
- ◆ Board can issue temporary C&D without a hearing if health safety and welfare criteria of 18.235.150 are met
- ◆ Hearing may be requested after temporary C&D order issues
- ◆ Temporary C&D may impose civil fine up to \$1,000/day.
- ◆ Permanent C&D may impose civil fine up to \$1,000/day.

Draft Sanctions And Tolling Guidelines for Unlicensed Practice (see tab 3)

- ◆ Intended to help guide decision making on magnitude of violation.
- ◆ Tolling guideline (see tab 4) – Intended to help quantify number of days unlicensed activity has occurred.
- ◆ If fine is to be applied, helps CM determine an appropriate amount to include in C&D.



STIPULATED SETTLEMENT AGREEMENTS

Development of Settlements

- ◆ Used as an alternative to a formal hearing
- ◆ Instrument that can contain customized terms of resolution
- ◆ CM & Prosecuting AAG negotiate terms agreeable to licensee
- ◆ Must be approved by full board before it is finalized
- ◆ It is useful to have terms that are “self-enforcing”
- ◆ Compliance with order monitored by staff
- ◆ If settlement violated legal action to enforce settlement agreement is possible

Negotiations

- ◆ Initial terms of settlement identified by CM
- ◆ Terms presented to licensee along with a Statement of Charges
- ◆ Negotiations may involve a settlement conference with licensee
- ◆ Preliminary agreed terms presented to board for final approval
- ◆ Board approves, disapproves or sends back with changes to continue
- ◆ If terms cannot be reached or board does not approve, hearing is held

Terms of Settlements

- ◆ Will usually be less stringent than state would ask for in hearing
- ◆ May include any combination of sanctions or corrective actions

- ◆ Sample items:
 - Reprimand
 - Fines
 - Correct plans
 - Ethics courses
 - Restriction on practice
 - Probation

Enforceability of Settlements

- ◆ Settlement is in form of Final (Agreed) Board Order
- ◆ Since a settlement is developed over many weeks of discussions, pains are taken to insure clarity of purpose, performance and enforceability.
- ◆ If licensee does not perform as required the order needs to specify what will happen.
- ◆ Dispute on level of compliance will usually be adjudicated by BAP or may be before the full board in a formal hearing.



BOARD HEARINGS & DELIBERATIONS

Participants

- ◆ A quorum of the board who have not been involved in case investigation.
- ◆ AAG advisor
- ◆ AAG Prosecutor
- ◆ Selected board staff
- ◆ Respondent / licensee and legal counsel
- ◆ Court Reporter
- ◆ State and defense witnesses
- ◆ General public (only Board deliberations can be closed session)

Hearing Process

- ◆ State presents testimony and evidence in support of charges (Prosecuting AAG).
- ◆ Licensee (or through attorney) presents testimony and evidence in argument against charges.
- ◆ Both sides may cross-examine witnesses.
- ◆ Presiding officer rules on objections and admissibility of evidence (Can be assisted by Advisor AAG).

Conclusions and Deliberations

- ◆ In executive session, board deliberates decision based upon appropriate standard of evidence (at least preponderance, possibly clear cogent and convincing).
- ◆ Deliberations include only the quorum of the board and AAG advisor.

Conclusions and Deliberations

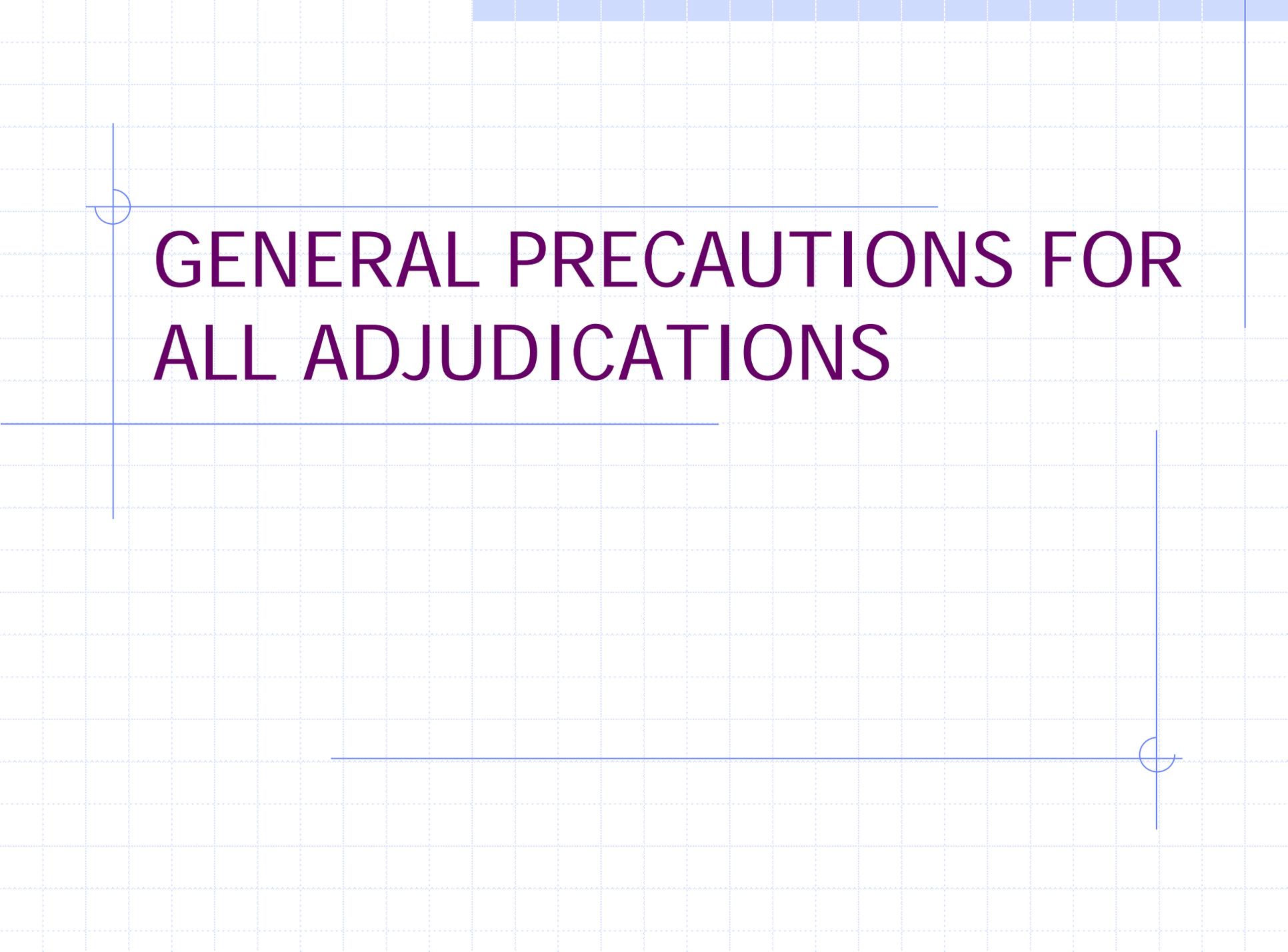
- ◆ Draft findings of fact, conclusions of law and final order are developed by AAG advisor based upon instructions during deliberations.
- ◆ Draft versions may be reviewed as needed by board members until terms are finalized.

Final Order and Appeal

- ◆ When final order is set, it is signed by the presiding officer from the hearing and sent to licensee and Program.
- ◆ Program Clerk serves final order (and all official documents)
- ◆ Order may be appealed to Superior Court by licensee or Program.

Compliance Monitoring

- ◆ Terms of final order (including agreed orders on settlement) that identify performance expectations of licensee are entered into compliance tracking system.
- ◆ Licensee is notified of deadlines and expectations.
- ◆ RBM reviews compliance on all orders.



GENERAL PRECAUTIONS FOR ALL ADJUDICATIONS

Precautions

- ◆ Ex parte communications (any substantive communication between respondent and board regarding an action that is active or pending before the board – if occurs even inadvertently must be promptly disclosed to all parties)
- ◆ Confidentiality (do not discuss with those who could hear the case or with the general public)
- ◆ Program staff member is assigned as clerk, responsible for service of all documents and maintenance of hearing file (screened from communication or contact with case manager and investigative file)

Wrap up and Summary

- ◆ It is a varied and complex process.
- ◆ Lots of checks and balances against conflicts and unfairness
- ◆ No due process problems found so long as “Chinese walls” between prosecution and decision maker are observed.

Questions and Answers

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