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## Dentistry and the Law: Winning Your Case and Still Being Sanctioned

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By Dan Schulte, JD  
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# Winning Your Case and Still Being Sanctioned

**Q**uestion: I heard from a colleague who recently went through a licensing case. She described how the state filed a complaint against her

saying she was negligent and incompetent. She had to pay for an expert witness and go through a trial run by an administrative judge. The judge decided that there was no negligence or incompetence. However, the Board of Dentistry put her on probation, fined her, and required 60 hours of additional continuing education. How can this be when the judge decided in her favor?

**Answer:** Ultimately, it is the disciplinary subcommittee of the Board of Dentistry that has the final say on whether a dentist will be sanctioned and, if so, what that sanction will be. This authority is subject to review only by the Court of Appeals.

Here's how the process works: A licensing case begins with an administrative complaint being filed and served on a dentist by the Michigan Department of Licensing and Regulatory Affairs. Following the dentist's receipt of the administrative complaint there is typically a meeting called a compliance conference. At the compliance conference are the dentist, his or her attorney, a representative of the Board of Dentistry who is not on the DSC and, in some cases, an assistant attorney general (who is representing the Board of Dentistry/LARA). The purpose of a compliance conference is to meet informally to discuss the case and attempt to negotiate a resolution. If successful, that resolution is documented in a consent order and stipulation.

If the compliance conference does not result in a resolution, an administrative hearing is scheduled. An administrative law judge presides over this hearing. Witnesses can be heard, and other evidence may be presented. As you describe, this is much like a trial. One significant difference, however, is that at the conclusion of the hearing the administrative law judge does not decide the case. Instead, the administrative law judge issues

"Recommended Findings of Fact and Conclusions of Law," which are provided to the DSC.

Whether the proceedings result in a consent order and stipulation following a compliance conference or Recommended Findings of Fact and Conclusions of Law following an administrative hearing, the DSC must give final approval. The DSC may not approve a consent order and stipulation, sending the case back for an administrative hearing, or it might make a counter proposal. Similarly, the DSC may choose not to follow an administrative law judge's Recommended Findings of Fact and Conclusions of Law. It may instead make a contrary finding and decide to impose a sanction inconsistent with the Recommended Findings of Fact and Conclusions of Law (it sounds like this is what happened in the case you describe). The DSC's decision may be appealed to the Court of Appeals. If an appeal is filed, the court will determine whether the DSC's action was "authorized by law" and supported "by competent, material, and substantial evidence on the whole record."

The process is the same for all health care licensees. Most dentists and other health care licensees are surprised to learn that even if successful at an administrative hearing they are not guaranteed a favorable outcome. Instead of being determinative, Recommended Findings of Fact and Conclusions of Law are only suggestions to be considered by the DSC in making its decision whether there will be a sanction and, if so, what it will be. The DSC has the final say, checked only by the authority of the Court of Appeals to overturn its decision when it is not authorized by law or is unsupported by competent, material, and substantial evidence. ●

*Send questions for publication to Journal Managing Editor Dave Foe at [dfoe@michigandental.org](mailto:dfoe@michigandental.org). Dan Schulte's Most-Asked Legal Questions may be ordered at the MDA Web Store as a free download, or in hard copy form for \$19. You can find other MDA legal resources on the MDA website at [michigandental.org/Legal-Services](http://michigandental.org/Legal-Services).*