

The Disciplinary Process  
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I have had many questions regarding the disciplinary process and how the department handles administrative actions against a licensee. The department may conduct an investigation upon its own motion and must conduct an investigation if it receives a written complaint that alleges a violation of Chapter 4707. Once a complaint is received and reviewed, it is assigned for investigation. Once the investigation is completed, the file is reviewed by the division chief and the auction program manager. If there is sufficient evidence of a violation, the department has several options on how to proceed based on the severity of the violation. The department may issue a letter of instruction, issue a letter of reprimand, assess a civil penalty, suspend or revoke the license, seek criminal charges, or any combination thereof.

If the department determines that the violation warrants a civil penalty, suspension or revocation, or a letter of reprimand it must issue a letter that is referred to as a "Notice of Violation" or a "Notice of Opportunity for Hearing". The letter will detail what violations the department believes have occurred, the facts surrounding the violations, and the proposed penalty. A licensee has thirty days from the date of the issuance of the letter to request an administrative hearing if they disagree with the proposed charges and/or penalty. Failure to request a hearing will be deemed a waiver by the department and the proposed penalty in the NOH will be imposed by the director.

Once a hearing is requested, the department assigns an impartial hearing officer. Administrative hearings are held at the department in Reynoldsburg, Ohio. The hearing officer is an attorney who is under contract with the department to conduct hearings and provide recommendations to the director. The administrative hearing is conducted in accordance with Chapter 119 of the Ohio Revised Code. The licensee has the choice of having a non-oral hearing in which the licensee would submit legal arguments and evidence in writing to the hearing officer, instead of traveling to the department in Reynoldsburg, Ohio for an in-person hearing. This choice however, is at the election of the licensee, not the department. At the hearing, a licensee may be represented by an attorney or may represent him/her self. However, if the licensee is a corporation it must be represented by an attorney. The department is represented by an Assistant Attorney General.

The hearing will be conducted before the hearing officer and a court reporter and is conducted very similar to a court trial. The department will first present its case by calling witnesses and presenting evidence. The licensee will have the opportunity to cross examine department's witnesses. Once the department has finished presenting its case, the licensee will have the opportunity to present its case by calling their own witnesses and presenting evidence. At the conclusion of the hearing, the hearing officer returns to his office to review testimony and evidence. He then will issue a written report and recommendation to the director of agriculture. It is important to remember that the report and recommendation is not issued the same day as the hearing. Once the hearing officer issues the report and recommendation, a copy is sent to the licensee by the department. The licensee has ten days from the date of receipt of the report to submit written objections to the director. The director reviews any objections along with the hearing officer's report and recommendation. If no objections are submitted within the ten days allowed under R.C. Chapter 119, the director reviews just the hearing officer's report. The director may choose to adopt the hearing officer's report in full, or he may adopt it in part and overrule it in part, or he may completely overrule the hearing officer's report and make a completely different decision. The director will then issue a Director's Order, which is mailed to the licensee by certified mail; the licensee has 15 days, from the day the Order is mailed to file a notice of appeal in the Court of Common Pleas in the county in which they reside or their business is located. Information on where to appeal and how much time a licensee has to appeal is contained in the Director's Order.

At anytime during the administrative process, a licensee may ask the department to see if it is interested in entering into a settlement agreement to resolve the matter. The decision to settle a case is left solely to the discretion of the licensee and the department. Neither can force a settlement on the other party, should one party not wish to settle the matter. Also, no settlement discussions are used by the department in a hearing, should the licensee decide he wishes to have a hearing instead of settling the matter.

If you have questions regarding your legal rights afforded to you under Chapter 119 of the Ohio Revised Code, please seek legal advice from your own legal counsel.