

Progression of Cases Through the Disciplinary System



New York State
EDUCATION DEPARTMENT

Knowledge > Skill > Opportunity

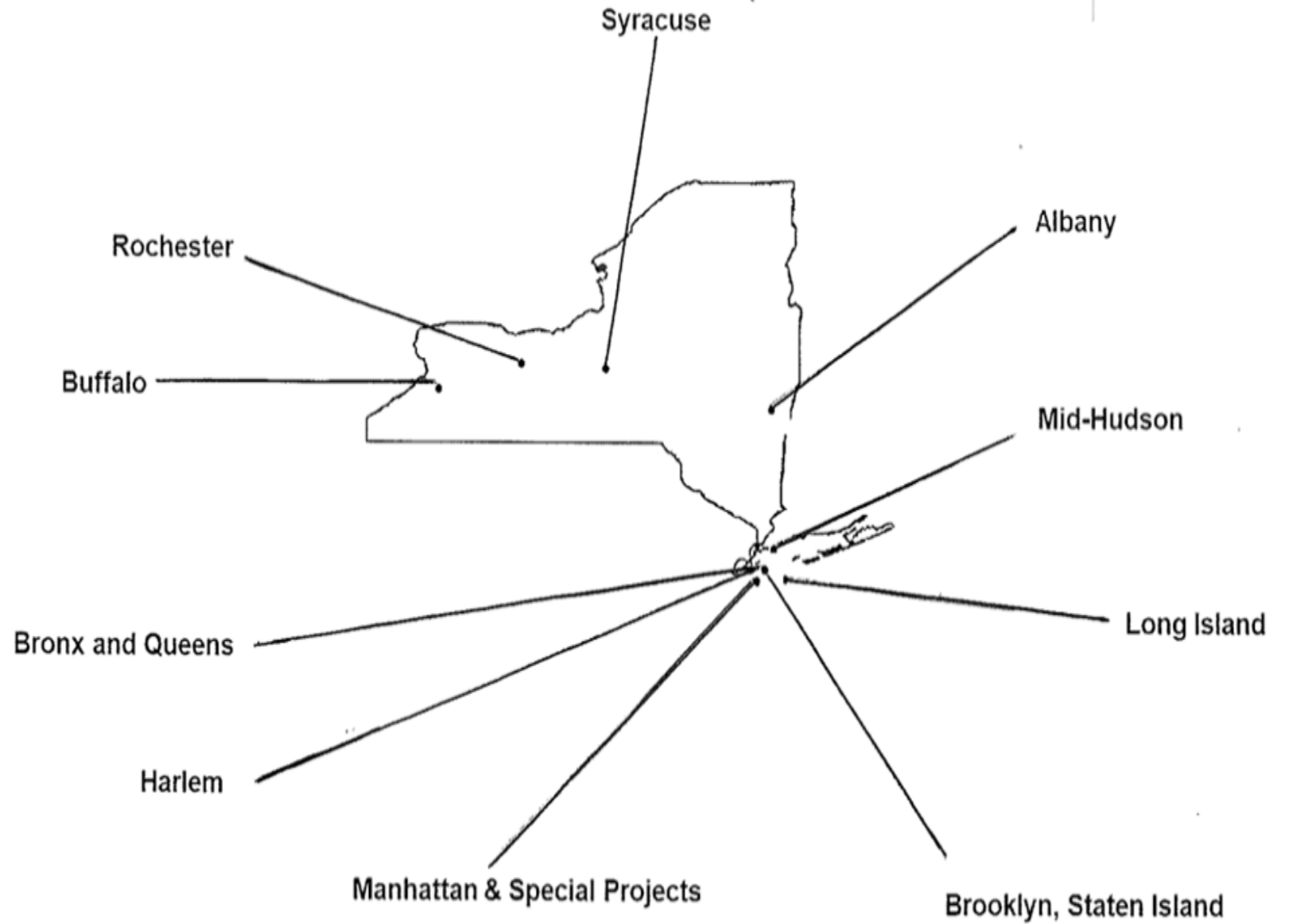
NYS Board for Nursing
May 4, 2023

Types of Cases in Which State Board Members Are Involved

- Disciplinary Cases (Hearing Panel or Consents/Surrenders)
- Direct Referrals (Federal or State Criminal Convictions or out-of-state Board Adjudications)
- License Restoration Cases
- Moral Character Cases

All of these cases are first handled by The Office of Professional Discipline (OPD)

Location of OPD Regional Offices



Division of Investigations (65 Investigators)

Languages Spoken:

- Spanish
- French
- Creole
- Hindi
- Russian
- Bangla

Backgrounds:

- Criminal Investigators
- Registered Nurses
- Retired Military
- Other Law Enforcement Agencies
- Attorney
- Graduate Accountant
- General Investigative Background

Division of Prosecutions (19 Prosecutors)

10 Downstate:

- New York City 4
- Long Island 2
- Port Chester 2

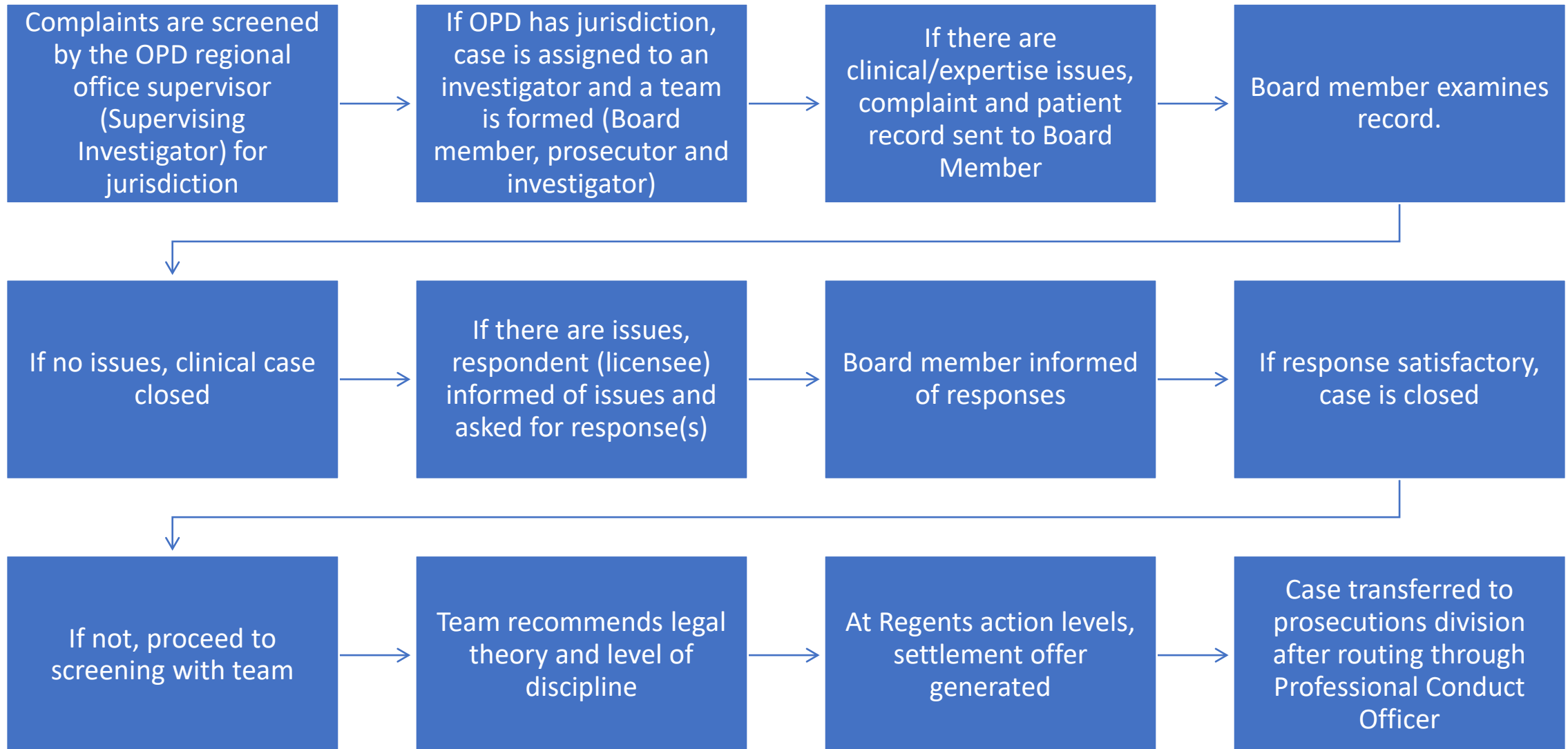
9 Upstate:

- Albany 3
- Buffalo 2
- Syracuse 2
- Rochester 2

Prior Experience:

- District Attorneys' Offices
- Government Offices
- Legal Aid
- Private Practice

Progress of a Disciplinary Case Investigation Division



Levels of Disciplinary Actions



Administrative Warning

- Minor/Technical
- Not Misconduct
- Confidential



Violations Committee

- Minor/Technical
- Licensee Agreement
- Fine and/or Censure
- Not Reviewed by the Regents
- Public Record



Regents Action

- Range of misconduct
- Penalties determined by the Board of Regents
- Penalties range from Censure & Reprimand to Revocation

Prosecutions Division

Assigned prosecutor relays team settlement offer to respondent

If accepted, Application for Consent Offer (ACO) sent to respondent for signature

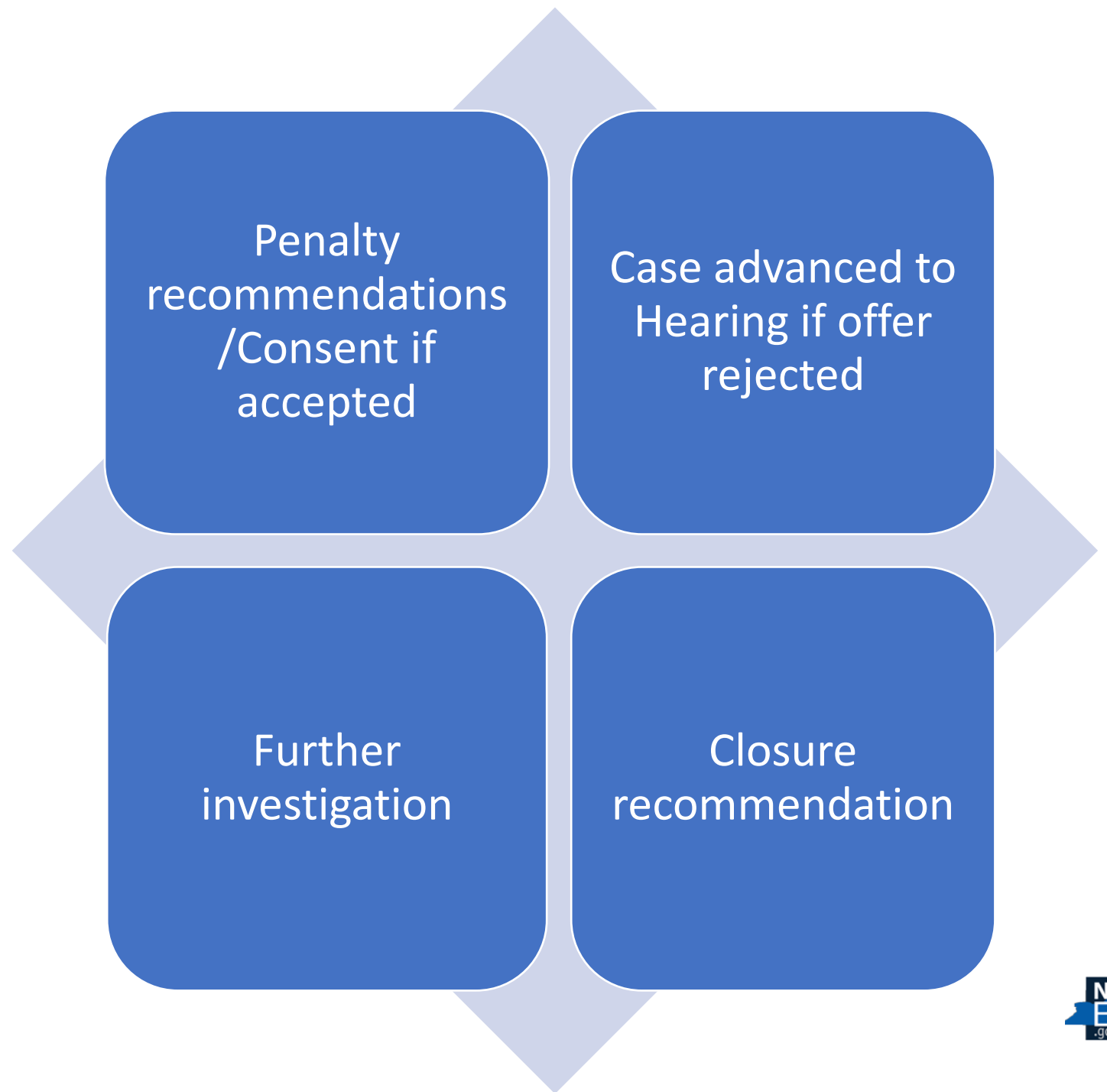
Series of reviews and approvals ending in PPC/Board of Regents (BOR) consideration

If team settlement offer rejected, respondent offered Informal Settlement Conference (ISC)

Informal Settlement Conference (ISC)

- Face-to-face attempt to settle the case by:
 - Respondent (licensee) and his or her attorney
 - A Board Member
 - Prosecutor
 - Professional Conduct Officer

Possible Outcomes of an ISC



Consents

Required Approvals:

- Professional Board Member
- Professional Conduct Officer
- Committee on the Professions
- Member of the Board of Regents
- Professional Practice Committee
- Final Decision – Board of Regents

Process of a Direct Referral Case Investigations Division

Referral comes in from various sources:

Positive answer to conviction question by respondent in re-registration application

NYS Probation Department

Clearinghouses for a particular profession (i.e., NORSYS)

Other state or federal agencies

Supporting paperwork for conviction or adjudication is gathered by investigator

Case transferred to prosecutions division after routing through professional conduct officer.

Process of a Direct Referral Case Prosecutions Division

If criminal conviction, assigned prosecutor discusses settlement offer with supervisor and then relays it to respondent.

If out of state adjudication, special unit relays offer to respondent.

If offer accepted, goes through consent route to PPC/BOR.

If offer rejected, an ISC is offered.

If no settlement, criminal cases go to Regents Review Committee (RRC) penalty hearing then to PPC/BOR.

If out-of-state adjudication, goes to peer panel hearing and then to RRC and PPC/BOR.

Progress of a Restoration Case Investigations Division

Restoration application is sent from OP's Division of Profession Licensing Services (OPLS) to the Central Investigations Unit (CIU) of the OPD investigations division.



Assigned CIU investigator reviews application for completion and confirms any recommendation submitted by applicant.



Respondent is interviewed by CIU investigator.



Case is then referred to prosecutions division for restoration hearing after routing through PCO.



Peer Panel and COB hearings held and then referred to PPC/BOR for final determination on restoration.

Progress of a Moral Character Case Investigations Division

Relevant Law: Section 28-1 of the Rules of the Board of Regents (8 NYCRR)

Moral Character Investigation

All information indicating that an applicant for a professional license or certificate has been convicted of a crime or has committed an act which raises a reasonable question as to the applicant's moral character is referred to the Office of Professional Discipline for investigation.

The OPD regional office supervisor assigns the case to an investigator who will conduct a full and complete investigation of the circumstances surrounding said conviction or act.

If it is determined from the investigation that a reasonable question exists to the applicant's moral character, the investigator shall submit the results of the investigation, including any letters of reference from peers or others which may have been submitted by the applicant, to a screening panel of the applicable state board for its review. The panel shall consist of three or more members of the state board.

Progress of a Moral Character Case

Investigations Division 2

Screening Panel Review

After the review by the screening panel, it may conclude in favor of the applicant to the effect that the moral character is adequate for licensure, thereby fulfilling the licensure requirement, and the applicant and the Director of Professional Licensing Services, shall be notified of such conclusion by the regional office supervisor or the investigator of the Office of Professional Discipline and the applicant will be cleared for licensure. However, if the panel concludes, by a majority vote, that a substantial question exists as to the moral character of the applicant, the applicant shall be so notified and given the option of proceeding to a moral character hearing. If the applicant chooses to proceed to such a hearing, then the applicant must so notify the Office of Professional Discipline in writing. Upon receipt of this notice, the case will be transferred to the OPD Prosecutions Division.

Progress of a Moral Character Case

Prosecutions Division

Moral Character Hearing

The case will be assigned to a prosecutor who will arrange for a hearing to be held, part of which will be to request that three members of the State Board, excluding the screening panel, be assigned to be the hearing panel. A hearing will then be held and all legal issues will be handled by an Administrative Officer. At the conclusion of the hearing, the panel will vote on whether the applicant has or has not fulfilled the moral character requirement and the majority vote will decide the matter. There will be a written decision drafted by the Administrative Officer which must be approved by the panel members; the chair of the panel shall sign the decision. That concludes the involvement of the State Board in this type of case. The case then proceeds to the Committee on the Professions in Albany who will make the final decision on this issue. This type of case does not reach the Board of Regents.

Questions?



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