

DEFENDING YOURSELF

Suggestions from Dr. John Gilbert

If you receive a letter or summons from a licensing agency in your state or province, answer this letter or summons as soon as humanly possible. In most jurisdictions, if you do not answer the allegations of practicing something without a license, you are guilty as charged. Then the discussion turns to what penalties you will suffer. In my experience you really want to answer the licensing board as quickly as possible.

What do you want to say?

First, you want to deny the allegations unless you know you're guilty as sin and you want to face the consequences of your actions. You can write this letter yourself, hire an attorney to write it, or turn the affair over to your malpractice insurance company. I admit that I think insurance company attorneys do a better job of handling these kinds of situations than most of us and most attorneys. That's why I always consider malpractice insurance as one of my costs of doing business. You just never know when you may need to defend yourself.

In your letter make a firm statement that the equipment you use is registered with the FDA or licensed by Health Canada. You can obtain the registration number or license number from the manufacturer or distributor of your equipment. State this equipment is registered, or licensed, for the purpose of relaxation to help clients manage their stress and muscle re-education to help clients manage their pain. Add that you're certified by such and such a board (if you are) to teach your clients how to relax so they can manage their stress and re-educate their muscles so they can manage their pain.

You definitely want to paint the picture in your letter that you're a biofeedback professional and not practicing anything without a license. Write your letter on professional quality letterhead. Mail it in a professional quality envelope. Write it using correct grammar, spelling and punctuation even if you have to hire a secretarial service to write it for you. You definitely want to paint the picture that you're a very professional biofeedback provider.

Secondly, you want to include a copy of your informed consent form. This document is very powerful proof that you're operating within the laws of your state or province. There's nothing that stops these types of witch-hunts quicker than to hand the board a signed copy of your informed consent form in answer to the question: "Did so and so ever sign such a form?"

If you did what your informed consent form said you were going to do, and nothing but what that form said, you have the perfect defense against practicing anything without a license. Even if your client testifies against you by lying through his or her teeth, that signed informed consent form is very compelling evidence that you're not practicing anything without a license.

Thirdly, you want to include a copy of your professional code of ethics and, if you give a copy of this code to every client, include a note to that effect. By itself a code of professional ethics is not nearly as strong as when used in conjunction with an informed consent form in my experience. A professional code of ethics and a signed informed consent form together are a very power defense against allegations of practicing anything without a license.

Responding to the allegations by denying any culpability and including a copy of your professional code of ethics and informed consent form may be the only thing you're required to do. As a rule, most licensing boards won't want to proceed any further at this point unless they believe they have a very good case against you. They know you have a solid defense and they probably question the veracity of their own witnesses at this point. Weak cases don't win.

In my experience, if you do these three things well, the licensing agency will thank you for your response and drop the matter most of the time. That doesn't mean they won't consider reopening your case in the future. It means they don't have enough strong evidence against you to warrant moving ahead at this time. Therefore, even if you get a positive result, take a look at cleaning up your act and making it even more professional.

If the agency asks for more information, they'll usually want to see your client files. You may assume they're looking for incriminating evidence against you. At this point, if you don't already have an attorney, you may want to consider speaking with one. Just remember, the licensing board didn't ask for more information because they think you're innocent. They think you're doing something very wrong.

This is not the time to clean up your files. For sure, you don't want to take any files filled with medical data or psychological information. For sure, you want to take as many files with signed informed consent forms as possible. You don't want to incriminate yourself, but you don't want to lie or conceal the truth either. For sure, you have to take all of your files unless you can negotiate something else.

It's definitely time to negotiate if you have any doubts about how strong your defense might really be. Negotiating means you probably need an attorney. You need to be willing to make small concessions to add something to your informed consent form or code of professional ethics to satisfy the board you really don't want to practice illegally. Asking if there's something missing in your informed consent form, or asking if they have any suggestions on how you can strengthen your form is usually a good way to open negotiations.

Take their suggestions and comments seriously. Thank them for good ideas and ask if they mind if you use that idea in revising your form. Tell them you'll definitely consider everything they suggest even if they have terrible ideas. Be cooperative, but don't make any commitments. If they press the issue, ask them if you can discuss this with your attorney before making a final decision. You don't want to give in to ridiculous demands, but you don't want to rigidly reject good ideas either.

Asking questions about this matter being settled if you do such and such is a good negotiating tool only if you're prepared to do such and such. If you are, then do it. Asking "if I do this what does the board do to me?" type of questions has also proven to be helpful in negotiating a favorable conclusion.

The stronger your case is, the more the licensing agency wants to settle this matter. But they just spent a lot of taxpayer money and they need some concession to save face. You need to be prepared to give them something. Offering to improve your informed consent form based on their suggestions if this matter can be settled is one way to resolve this into a win-win situation. If everybody wins, nobody loses.

The weaker your case is, the more concessions you'll need to make. If you really are practicing something without a license, you need to be prepared to cease and desist immediately. Ask the members of the board what you can do to make this right, swallow your pride and do what you have to do.

Remember, the people sitting on that license board are there to protect their profession and not yours. Honor that in them and show them what you are doing to avoid practicing their profession by helping your clients relax and re-educate their muscles. Offer to refer your clients to their profession when they need that kind of professional help. At the same time, let them see your passion for helping your clients manage their stress and pain.

Treat the members of the board respectfully and professionally. Be professional. The board members will evaluate you by how well you cooperate with them and by how professionally you handle yourself. Be a biofeedback professional. Talk about relaxation and re-education of muscles. Talk about stress management and pain management. Talk about the FDA, or Health Canada, and what they say your equipment is designed to do - help people relax and re-educate their muscles. Talk about your training to help people relax and re-educate their muscles. Talk about being certified to help people do these things to manage their stress and pain.

If you're intentionally breaking the law, admit it and explain how you're going to operate within the law professionally and ethically starting right now. If you're not breaking the law, talk about biofeedback, relaxation, muscle re-education, stress management, pain management and honestly and firmly deny doing anything else.

Disclaimer: I am not an attorney and I cannot give anybody legal advice about how to handle any legal problem. When a licensing agency sends you a letter or summons alleging wrongdoing on your part, your professional life is on the line. I suggest you do what you have to do to protect yourself and your future income. Contact your malpractice insurance company. Hire an attorney. Ask your certification board, professional association and equipment manufacturer for assistance. Get the help you need to protect your professional life.