

# HOW THE BOARD HANDLES COMPLAINTS AGAINST VETERINARIANS

**1. Written Complaint Received** - A complainant is the person who files a complaint. The veterinarian against whom the complaint is made is the respondent. All complaints must be submitted in writing on the Board's complaint form. Complaints may be submitted by mail, fax, or email. The Director of Enforcement assigns the complaint to an investigator unless the complaint is found to be non-jurisdictional.

**2. Complaint Investigated** - The investigator sends a summary of the allegations to the respondent and requests a written response to the complaint along with related patient records be submitted to the Board within 21 days. After the respondent's response is received, the Board will send a copy of the response to the complainant along with notification that the complainant may submit additional comments. The Board will provide a copy of the complainant's comments to the respondent. Upon completion of the investigation, the investigator prepares a report of investigation which is forwarded to the Director of Enforcement. If the Director of Enforcement determines from the report that the probability of a violation exists that involves medical judgment or practice, the report will be forwarded to the Executive Director. If the Executive Director concurs, the Director of Enforcement will forward a copy of the report and complaint file to two veterinarian Board members who will review the case. Non-medical cases will be heard at staff conference by the staff Enforcement Committee comprised of the Executive Director, General Counsel, and the Director of Enforcement. A determination will be made to either dismiss, investigate further, or settle (if a violation is found).

**3. Review by Veterinarian Members** - The two veterinarian members review the case and make a determination that:

- a. A violation may have occurred;
- b. No violation has occurred;
- c. There is insufficient evidence to confirm that a violation occurred; or
- d. Further investigation is required.

The veterinarian members' decisions are sent to the Director of Enforcement.

**4. No Violation Found** - If the medical review determines that there is no violation, then letters are sent to the complainant and respondent informing them that the case is closed to no violation.

**5. Appeal of Determination of No Violation or Insufficient Evidence** - Following receipt of the notice of dismissal of a complaint, the complainant may appeal the dismissal. To do so, the appeal must:

- a. Be in writing;
- b. Be received in the Board office no later than the 60th date of the complaint dismissal notification; and
- c. List the reason(s) for the appeal and provide sufficient information to indicate that additional review is warranted.

Appeals are limited to one time only.

**6. Violation May Have Occurred** - If the medical review finds that a violation may have occurred, the General Counsel will prepare written allegations of the violations. An informal conference is scheduled.

**7. Notice to Parties** - The General Counsel mails a letter to the licensee transmitting the allegations and inviting the licensee to an informal conference to discuss the complaint. The complainant is also notified of the conference and is given a copy of the allegations. The respondent and complainant are notified at least two weeks in advance of the date of the scheduled informal conference. Any telephonic notice will be confirmed in writing. The written notice will include a copy of the allegations that will be discussed at the conference. Neither the respondent nor the complainant are compelled to attend. The respondent may, in writing, waive his right to attend the conference.

**8. Informal Conference** - The informal conference is the final step in the investigation of a case. It is held with the Board's Enforcement Committee which is usually comprised of two veterinarian Board members, a public member of the Board, Executive Director, Director of Enforcement, the investigator assigned to the case, and the Board's General Counsel. The Executive Director normally chairs the conference. In most instances the respondent is present and may be represented by legal counsel. The complainant may be present. No other parties are allowed in the conference unless their presence will substantially benefit the development of the facts. This will be determined by the Executive Director.

The purpose of the informal conference is to review the allegations in detail and develop the facts of the case after receiving input from the complainant and respondent. An informal conference is not a formal hearing, and the Enforcement Committee is not the final decision maker or finder of fact. The makeup of the Committee is intended to ensure a fair disposition of complaints.

Following a thorough discussion of the case, the Committee excuses the parties and meets in private to determine whether the alleged violations are accurate and to formulate a recommendation. The Committee may:

- a. Find that there is no violation or insufficient evidence on which to find a violation;
- b. Continue the investigation because additional information may be available which the Committee needs to make a decision, or information was obtained during the conference that substantially changes the allegations discussed; or
- c. Find that a violation has occurred and discuss sanctions that it will recommend to the Board.

**9. Committee Determination** - The respondent returns to the conference and is informed of the results of the deliberation. If the Committee has found that a violation occurred, the complainant will be informed and the recommended sanction is presented to the respondent.

The respondent is not required to accept or reject the proposed sanction at this time.

**10. No Violation Found** - The parties to the complaint are notified verbally, and later in writing of the decision and the case is closed.

**11. Violation Found** - The General Counsel drafts the alleged violations and proposed sanctions into an Agreed Order which is mailed to the respondent. The respondent, within the specified time, is to accept or reject the Agreed Order.

**12. Respondent Accepts the Agreed Order** - By signing the Agreed Order, the respondent agrees not to contest the allegations and accepts the proposed sanctions. The signed Order is then returned to the Board for formal consideration at its next regularly scheduled meeting.

**13. Board Action (Agreed Order)** - The signed Agreed Order is considered by the Board. Final action on the Order is taken during public deliberations of the Board, but the Board may go into executive session to discuss the Order. In most cases the Board approves the Order without change, but the Board may also amend the Order or reject it.

If the Board amends the Order, the General Counsel will mail the amended Order to the respondent who then has fourteen (14) days from receipt to accept it by signing and returning it to the Board, or reject it. If the respondent rejects the amended Order, the case will be presented to an administrative law judge for a formal hearing.

**14. Respondent Rejects the Allegations and/or Sanctions in the Agreed Order** - If the respondent declines to sign the Agreed Order because he or she objects to any of the findings of fact or conclusions of law or the sanctions proposed in the Order, the General Counsel prepares a Notice of Hearing containing the complaint allegations which is then mailed to the respondent. The General Counsel then refers the case to the State Office of Administrative Hearings for setting of a "contested case" administrative hearing.

**15. Administrative Hearings** - Impartial Administrative Law Judges (ALJs) are employed by the State Office of Administrative Hearings to conduct hearings on contested agency cases. The hearing is conducted much like a trial in district court, and rules of evidence apply to the proceedings. The respondent is entitled to the assistance of legal counsel. The Board is represented at the hearing by the General Counsel and/or an Assistant Attorney General. The parties are allowed to present relevant evidence (including witnesses) on the issues. The ALJ may question any witnesses. After the hearing, the ALJ will prepare a Proposal for Decision (PFD).

**16. The Proposal for Decision** - The ALJ's PFD will contain findings of fact (based on the testimony and evidence received) and conclusions of law (which include the relevant sections of the law involved in the case on which a violation may or may not be found). The PFD is presented to the Board and the respondent and any other named parties. Each party is allowed to file exceptions to the findings and conclusions contained in the PFD. The PFD and any exceptions are then sent to the Board for consideration and action.

**17. Board's Actions on Proposal for Decision** - The Board usually accepts the findings of fact and conclusions of law contained in the PFD. The Board may modify a findings of fact or conclusion of law only under strict legal guidelines. The Board will issue a final order containing the findings and conclusions and assessing sanctions, if indicated.

**18. Appeal of Board Decisions** - If the respondent objects to the findings of fact and/or conclusions of law contained in the PFD, or to the Board's action, the respondent may file a motion for rehearing with the Board. If the motion is declined, the respondent may appeal the case to the district courts of Travis County, Texas. From this point, the case is handled like any other civil matter.