
Best Practices In Managing Complaints

State Auditor's Required Annual Seminar for
Chapter 30 State Licensing Boards

November 27, 2018



West Virginia
Board of
Medicine

Occupational and Professional Regulation

The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

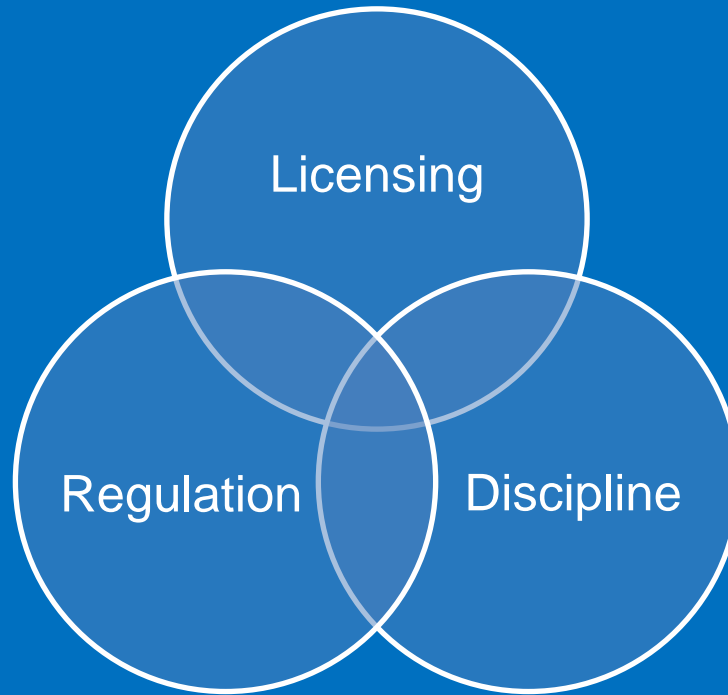
W. Va. Code § 30-1-1a



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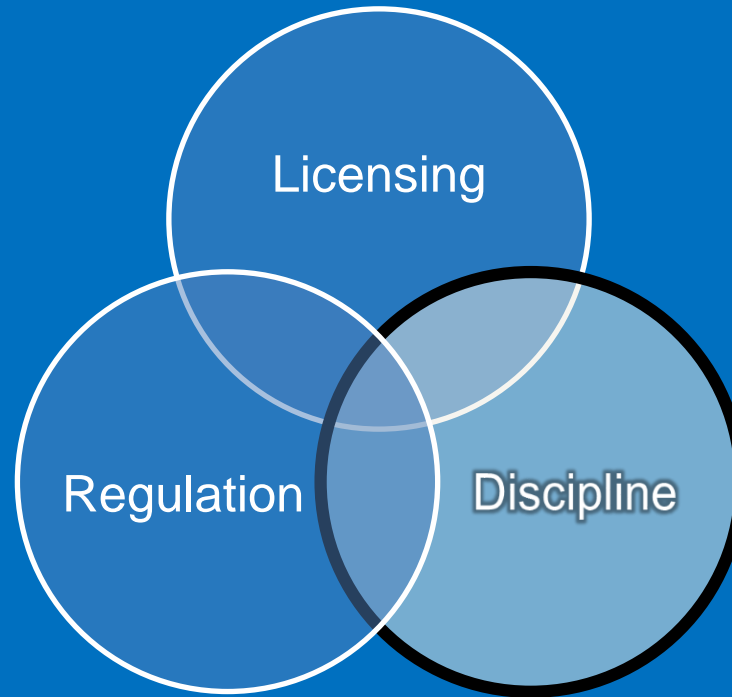
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Chapter 30 Board Functions



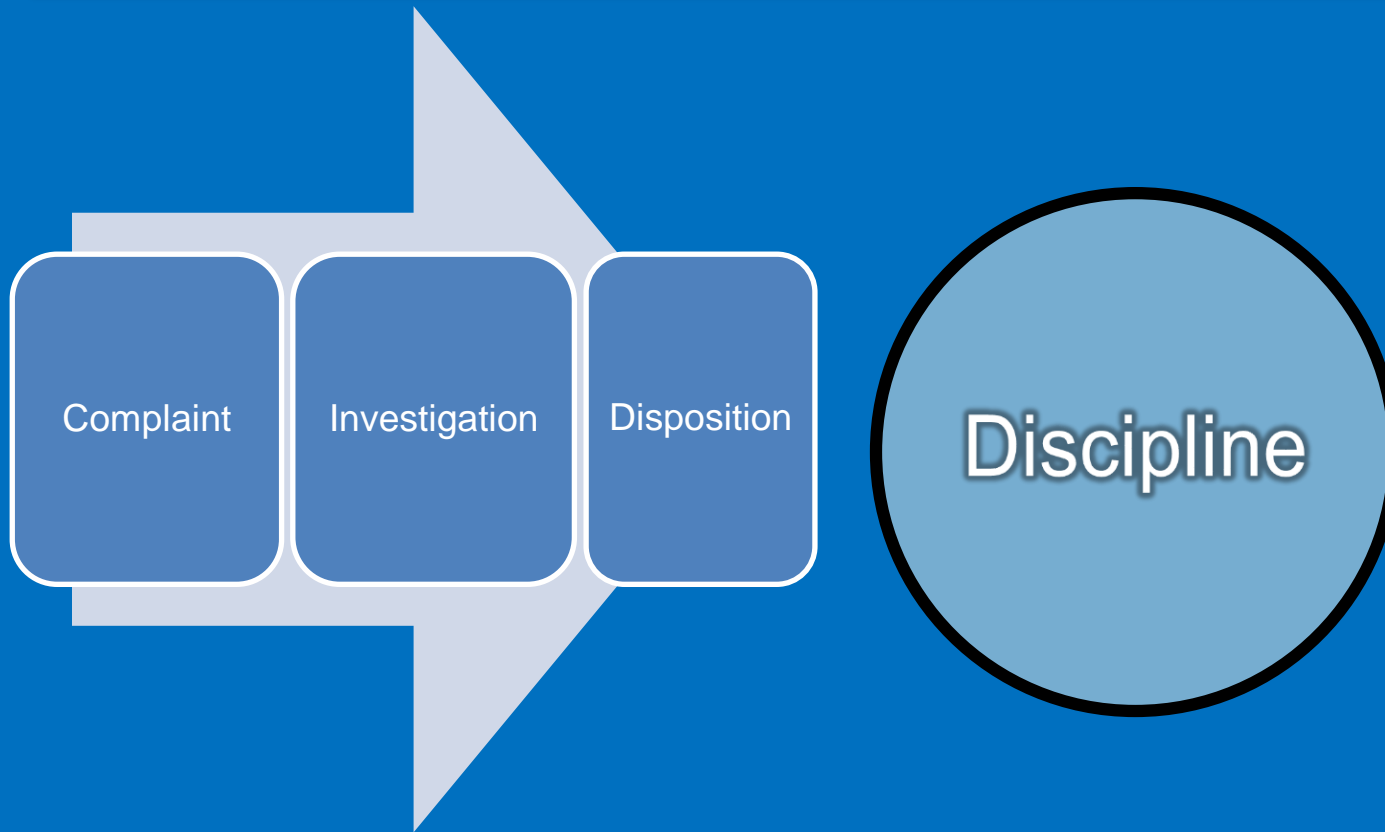
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Chapter 30 Board Functions



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Complaints



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Complaints



Effective Complaint Intake and Tracking



Compliance with Applicable Laws and Rules



Common Investigatory Steps and Tools



Handling and Avoiding Conflicts



Complaint Disposition, Reporting and Recordkeeping



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Chapter 30 Occupations and Professions

Medical Doctors
Dentists
Pharmacists
Registered Professional Nurses
Funeral Service Examiners
Optometrists
Accountants
Veterinarians
Architects
Engineers
Land Surveyors
Osteopathic Physicians
Chiropractors
Sanitarians
Foresters
Private Investigative and Security Services
Athletic Trainers
Physician Assistants

Psychologists
Landscape Architects
Imaging and Radiation Therapy Technology
Nursing Home Administrators
Hearing-Aid Dealers and Fitters
Barbers and Cosmetologists
Occupational Therapy
Social Workers
Professional Counselors
Speech-Language Pathology and Audiology
Dietitians
Respiratory Care
Acupuncturists
Massage Therapists
Real Estate Appraisers
Real Estate
Physical Therapists
Podiatric Physicians
Licensed Practical Nurses



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West Virginia Board of Medicine

The West Virginia Board of Medicine is the state agency charged with protecting the health and safety of the public through licensure, regulation and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs).



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West Virginia Board of Medicine

- 16 board members:
 - Appointed by the Governor:
 - 8 MDs
 - 2 DPMs
 - 2 PAs
 - 3 lay members
 - State health officer (ex officio voting member)
- Meets bimonthly:
 - January
 - March
 - May
 - July
 - September
 - November



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WVBOM Committees

Complaint Committee

Executive / Management Committee

Legislative Committee

Licensure Committee

Personnel Committee

Physician Assistant Committee



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WVBOM Complaints

- Average 170 complaints per year – many alleging multiple violations
- 205 complaints in 2017 – 68 remained under investigation at the start of 2018
- 54 Orders, Consent Orders, or amended Consent Orders entered in 2017
- To date in 2018, the WVBOM has docketed 178 complaints



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WVBOM Complaints

During the pendency of an investigation, complaints regarding a licensee's professional conduct are confidential. Complaint Committee meetings where pending complaints and investigations are discussed are confidential proceedings, and are not open to the public, the complainant or the respondent licensee.



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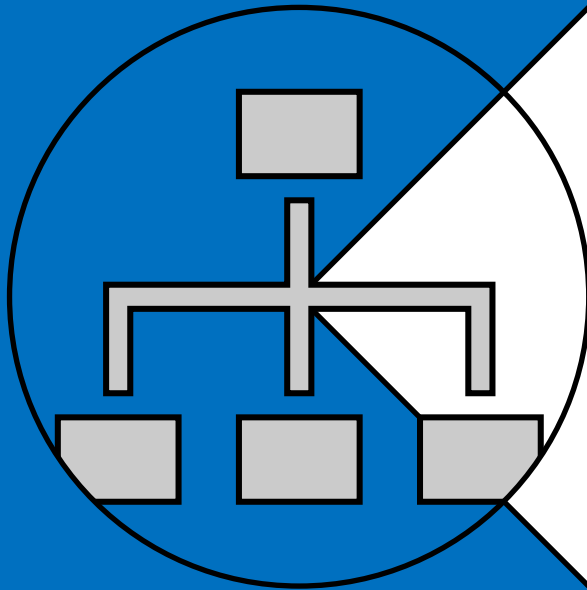
Nature of WV BOM Complaints

- Malpractice or failure to practice acceptably
- Improper prescribing / other prescribing offenses
- Boundary issues
- Unprofessional, unethical conduct
- License application/renewal: false statements
- Failure to meet AMA or APMA standards
- Professional incompetence
- Violation of laws, rules or orders
- Medical recordkeeping



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Complaints



Effective
Complaint
Intake and
Tracking



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Best Practices: Intake and Tracking

- Develop a process for handling incoming complaints and reports in a timely fashion
- Conduct an initial review for jurisdictional concerns
- Create form letters to respond when complaints do not meet jurisdictional requirements
- Establish a process for “docketing” eligible complaints
- Curate necessary information for reporting and case management
- Track the progress of the complaint through the investigatory process and over time



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Complaint Tracking

- At a minimum, a good complaint tracking system should:
 - Provide a current list of all open and active cases
 - Identify all upcoming agency deadlines
 - Ensure no complaints are “lost” or forgotten
 - Assist in prioritizing work responsibilities
 - Identify the status of cases in progress
 - Allow for an analysis of current complaint load



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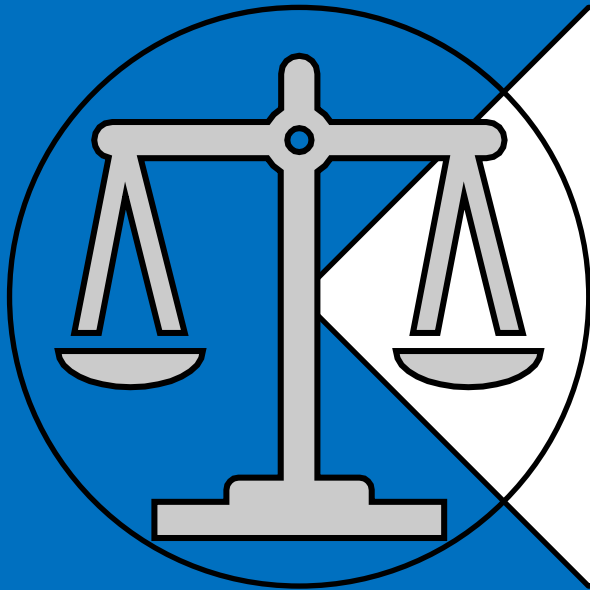
Complaint Tracking

Name	Complaint Number	Date Filed	Six Month Status Update Due	Six Month Status Update receipt date	Deadline for Final Ruling	Status/Extension Agreements
Figg, Leon	17-22-W	11/22/2017	5/22/2018	5/24/2018	5/24/2019	Set for hearing 2/1/2019
Doe, John	18-100-S	9/1/2018	3/1/2019			SDT response due 12/4/2018
Smith, Jane	18-101-Q	9/10/2018	3/10/2019			Complainant's reply due 12/10/2018



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Complaints



Compliance
with Applicable
Laws and
Rules



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Best Practices: Compliance with Applicable Laws and Rules

- Know which laws and rules govern your board's processes:
 - General Provisions Applicable to all Boards
 - Specific Practice/Occupational Act
 - Administrative Procedures Act
 - Board-specific Legislative and Procedural Rules



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Complaints: General Provisions Applicable to All Boards

Every board referred to in this chapter **shall investigate and resolve complaints which it receives** and shall, **within six months** of the complaint being filed, send a **status report to the party filing the complaint and the respondent by certified mail with a signed return receipt** and **within one year of the status report's return receipt date issue a final ruling**, unless the party filing the complaint and the board **agree in writing to extend** the time for the final ruling. The time period for final ruling shall be **tolled for any delay requested or caused by the respondent** or by counsel for the respondent and in no event shall a complaint proceeding be dismissed for exceeding the time standards in this section when such overage is the result of procedural delay or obstructive action by the accused or his or her counsel or agents.

W. Va. Code § 30-1-5(c)



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Complaints: General Provisions Applicable to All Boards

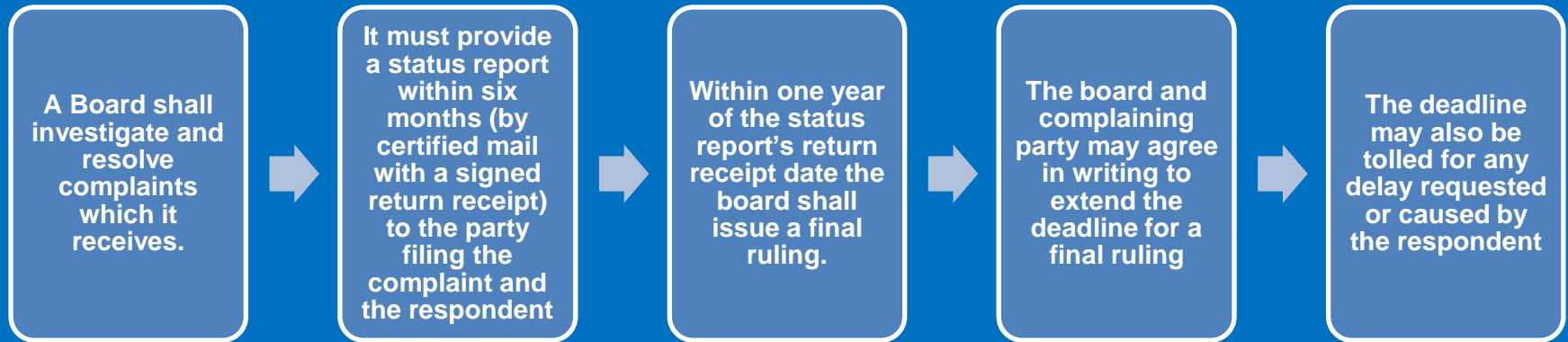
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W. Va. Code § 30-1-5(c)



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Complaints: General Provisions Applicable to All Boards



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Six Month Status Updates

- Send to Complainant and Respondent
- Send to Complainant even if the board or a committee of the board is the party filing the complaint
- Consider separate letters to the respective parties



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Six Month Status Updates

- Maintain good records of efforts to serve six month status letters on both parties
- Have a protocol for follow-up regarding unclaimed /undeliverable status reports



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Extension Agreements



- **The best practice is always to resolve complaints within the statutory time frame**



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Extension Agreements

- **Utilize extension agreements only when absolutely necessary**
 - Complex investigations
 - Delays unrelated to board procedures /processes
 - Unexpected obstacles to completion



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Extension Agreements

Must be in writing

Should include:

- the date of the agreement
- signatures from board representative and complaining party
- a specific new deadline (ex. March 1, 2019)
- factual basis supporting need for extension (when appropriate)



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Extension Agreements

Obtain the agreement **PRIOR** to the existing final ruling deadline

Factor in the possibility of needing time to locate the party filing the complaint

Get an extension even when the party filing the complaint is the board or a committee thereof



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Extension Agreements

Narrowly tailor the length of the extension

Execute extension agreements even when you believe the time frame is tolled



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Calculating Time



- Calculate time in the light most favorable to the party who may raise a procedural objection
- Make sure you have ample time factored into your process to deal with the unexpected



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Complaints: Practice /Occupational Act

- Each Chapter 30 Board has unique procedures and processes set forth within the enabling statute. It is important to be familiar with these requirements.



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Complaints: Practice /Occupational Act

- For example, the WVBOM:
 - must give licensees at least 60 days' notice of a disciplinary hearing
 - must provide prehearing disclosures 20 days after service of a complaint or sixty days prior to hearing whichever is **sooner**



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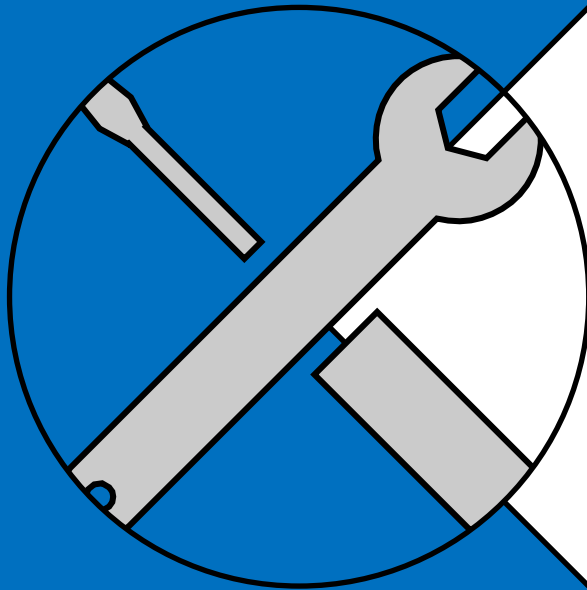
Complaints: Board Rules

- A board must comply with procedures and time frames it has promulgated
- Do not ignore lawful but inconvenient rules/processes
- Make sure your rules do not contravene time frames or processes established in statute



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Complaints



Common
Investigatory
Steps and
Tools



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WVBOM Complaint Process

- Complaint Committee directs all investigations
- Physician/PA notified and has opportunity to respond; can hire legal counsel
- After investigation, Committee determines whether probable cause exists to institute disciplinary charges
- If no probable cause, the complaint is closed
- Due process considerations apply
- If a hearing is convened, the contested case process in Administrative Procedures Act applies



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WVBOM Complaint Process

- The Complaint Committee may consider:
 - Witness interviews
 - Medical records
 - Prescribing records
 - CSMP access and use (in appropriate cases)
 - Expert medical opinions
 - Information submitted by the licensee or any interested party (i.e., patient or reporting entity)



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WVBOM Complaint Process

- In some cases, when the board believes a practitioner's ongoing practice represents an immediate danger, it can order a "summary suspension" of the practitioner's license
- This prohibits the practitioner from practicing, even if the investigation and review is ongoing



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WVBOM Complaint Process

- Summary proceedings are extremely rare and only implemented when there is an immediate and significant threat to public safety



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WVBOM Complaint Process

- While the investigation is pending, complaints regarding a licensee's professional conduct are confidential
- If the board takes action against a licensee, that becomes a matter of public record and information becomes available on the board's website at wvbom.wv.gov
- Closure decisions also are public information



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Investigatory Steps and Tools

Obtain a **written response** from the licensee



Obtain a **written reply** from the party making the complaint (unless prohibited by statute)



Ascertain what additional information is needed to determine whether or not probable cause exists to institute formal charges



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Investigatory Steps and Tools

Issue clear, narrowly tailored **subpoenas** for necessary documents



Conduct any **essential interviews** and prepare all required investigative reports



After all available and relevant information has been collected, obtain any required **expert review**



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Investigatory Steps and Tools

If an expert review is not needed, and/or after it is completed **reassess the evidence and tie down any loose ends**



Assess the appropriateness of pursuing voluntary resolution of the complaint



Make a determination on probable cause and close the complaint or issue formal charges



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Investigatory Steps and Tools: Interviews

Interviews are not always useful evidence

Interviews can create more problems than they solve if they are not handled appropriately

Investigatory interviews are best conducted by trained investigators (contract or staff) with a developed and targeted list of issues to cover

Interviews conducted by board members typically have limited evidentiary utility



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Investigatory Steps and Tools: Subpoenas

Seek what you need and keep the focus limited

Make sure you are asking for documents, not narrative answers

Pay careful attention to the language of your request

Incorporate a reasonable time frame for response



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Investigatory Steps and Tools: Expert Review

If you will need to put on expert testimony to prove a complaint, find and obtain the expert during the investigation

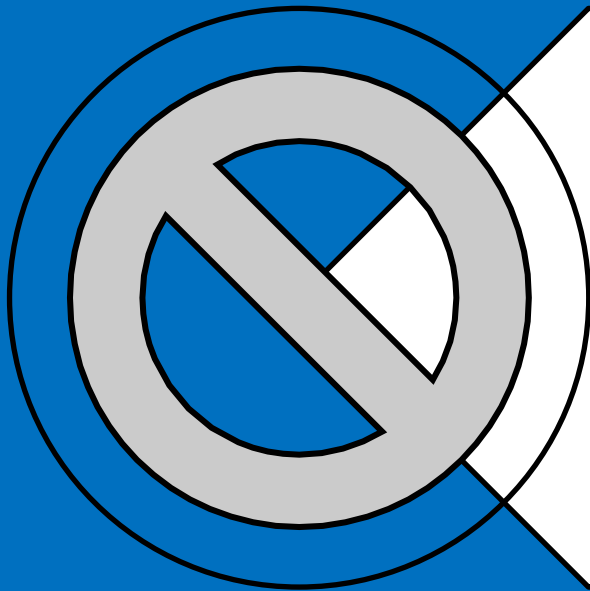
Early use of an expert helps to assess the merits of the charges and can identify unrealized weaknesses

Expert reports can also be useful in negotiating a voluntary resolution of a complaint



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Complaints



Handling
and
Avoiding
Conflicts



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Handling and Avoiding Conflicts

- Ensure board and staff understand applicable Ethics Commission guidance on conflicts
- Adopt customized conflicts policies for
 - board members
 - staff
 - complaints against current and recent board members
- Have policies readily available for review at all meetings



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Avoiding Conflicts

- If Board size permits, consider using a Complaint Committee
- Complaint Committees are conflicted out of participation in deliberations upon disciplinary charges



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Avoiding Conflicts

A Complaint Committee can:

- Confidentially evaluate all complaints
- Direct investigations
- Make recommendations to Board regarding pre-charge resolution
- Make recommendations of probable cause
- Determine when closure of a complaint is appropriate



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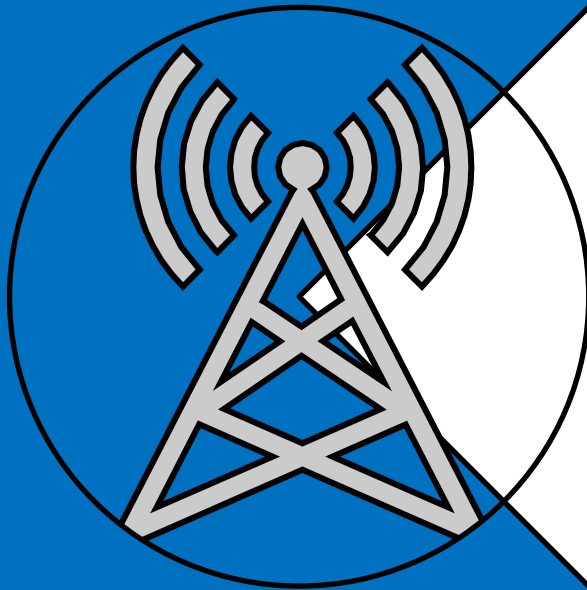
Avoiding Conflicts

- Protect your quorum
 - Limit or eliminate all direct board member interaction with complainants and with responding licensees
 - Discourage or prohibit board members from independent investigations - including on the internet



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Complaints



Complaint
Disposition,
Reporting and
Recordkeeping



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Complaint Disposition

No
cause
exists
to bring
formal
charges

- Close the complaint
- Issue a timely written final decision
 - Include findings of fact and conclusions of law
 - Send to complainant and respondent
- Maintain record of complaint and decision in accordance with record retention requirements



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Complaint Disposition

Cause
exists to
bring
formal
charges:

- Find probable /reasonable cause
- Issue formal charges



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Complaint Disposition

Cause
exists to
bring
formal
charges:

- Notice a Hearing
 - Pay attention to final ruling deadline
 - Provide the licensee adequate notice of the hearing



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Complaint Disposition

Cause
exists to
bring
formal
charges:

- Notice a Hearing
- Coordinate all scheduling with the AG's office for availability of counsel
- Utilize a qualified hearing examiner



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Complaint Disposition

Cause
exists to
bring
formal
charges:

- Follow all applicable rules and regulations including the WVAPA for contested case procedure



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Complaint Disposition

Cause exists to bring formal charges:

- Receive a recommended decision from the hearing examiner
- Issue a timely Final Decision and serve it upon the licensee as required by law



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Reporting and Recordkeeping

Every board shall provide public access to the record of the disposition of the complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this code, and shall provide public access on a website to all completed disciplinary actions in which discipline was ordered. If a board is unable to provide access, the Attorney General shall provide a link to this information on the consumer protection division website, together with a link to the website of all other boards subject to this chapter.

W. Va. Code § 30-1-5(d)



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Reporting and Recordkeeping

- Board actions are a matter of public record
- Health profession boards are required to report all disciplinary action other than purely administrative fines (i.e. unrelated to the delivery of health care services) to the National Practitioner Data Bank (NPDB)
- Disciplinary Orders should be submitted to the West Virginia Secretary of State's Office
- Practice and Occupational Acts may have additional reporting requirements



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