

Anatomy of a Grievance: The Basics of the Disciplinary Process

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Most veterinarians have never had to navigate the disciplinary process. Nonetheless, because the receipt of a grievance is generally a very stressful and upsetting event for a veterinarian, it is important for all veterinarians to have a basic understanding of the grievance process before becoming the subject of a grievance. This month's Legal Brief provides a very broad overview of the basics of the disciplinary process for veterinarians.

The Basics

In all 50 states, veterinarians are licensed professionals subject to discipline by the state or states in which they hold a veterinary license. In Wisconsin, the department that credentials and regulates veterinarians is the Department of Safety & Professional Services ("DSPS"). If you have never heard of "DSPS" before, you are not alone. DSPS was recently created by Governor Scott Walker by combining the Department of Regulation & Licensing and parts of the Department of Commerce. This structural change was part of the 2011-2013 state budget.

Within DSPS, the Division of Enforcement is the arm that prosecutes grievances filed against veterinarians. Therefore, if a grievance is filed against a veterinarian, the Division of Enforcement will investigate and, if appropriate, prosecute the veterinarian for any alleged violations. This process is generally accomplished through a four stage process.

Stage One: Intake and Screening

A grievance is typically initiated by the filing of a complaint, usually by a client. However,

a grievance can be initiated by anyone. As a threshold matter, the Division of Enforcement ("Division") will screen the grievance to determine whether it has authority to act. The Division will consider: whether the veterinarian is licensed; whether the violation is a fee dispute; whether the matter, taken as a whole, is trivial; and whether the matter alleged is a violation of any statute, rule or standard of practice. For example, if the grievant is simply upset over a billing dispute, that is not a matter that the Division would investigate or act upon. Many grievances are resolved and closed at the intake and screening stage.

Stage Two: Investigation Stage

If a complaint passes the intake/screening stage, the next step is investigation by the Division. During this stage, investigators with the Division will collect and compile information so that the lawyers within the Division can assess whether there is a prosecutable violation. Investigators

will generally contact all persons with information about the case. It is, however, very important for the veterinarian to provide all facts supportive of his or her position at the investigation phase because cases that do not warrant professional discipline may be closed in this stage.

Stage Three: Legal Action Stage

Once the investigation is complete, lawyers from the Division will decide whether the investigation has uncovered information that warrants legal action. The case may be resolved at this stage by a stipulated agreement, formal settlement, or administrative warning. Alternatively, if the facts warrant it, the case may proceed to a formal administrative hearing.

Stage Four: Hearing Stage

If the case proceeds for formal disciplinary action, the veterinarian has the right to a hearing before an administrative law judge



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("ALJ"). The veterinarian has the right to be represented by an attorney at the hearing. At the conclusion of the hearing, the ALJ issues a proposed decision which is reviewed by the Veterinary Examining Board ("VEB"). If a violation is found, the VEB may revoke, suspend, limit (or any combination of those actions) the veterinarian's license. The VEB may also impose a forfeiture of not more than \$5,000 for each violation, as well as require the veterinarian to pay for any portion or all of the costs of the proceeding.

Best Practices

If a grievance is filed against you, it is easy to panic. Try to avoid doing so. Instead, take a deep breath and then consider the following best practices as you move through the process:

- It is important for the veterinarian to refresh him or herself about the facts of the matter at the outset of the investigation. We, therefore, recommend that the veterinarian review the client or patient records and any other relevant materials early on. Since the veterinarian against whom the complaint is filed may be too emotionally involved to be objective, consulting with colleagues is often also a good idea.
- Veterinarians have a duty to timely cooperate with an investigation by DSPS. A failure to timely cooperate is unprofessional conduct that may subject the veterinarian to discipline. If a veterinarian takes longer than 30 days to provide requested information, he or she has the burden of demonstrating that he or she acted in a timely manner. It is, therefore, important to promptly cooperate with an investigation.
- The duty to timely cooperate does not mean that a veterinarian may not defend him or herself against a grievance. To the contrary, a

veterinarian who receives a grievance should speak with an attorney to ensure that his or her legal rights are protected. It is important to have this conversation as soon as possible after the veterinarian becomes aware that a grievance has (or will be) filed.

- Because the filing of a grievance may indicate that the complainant will also file a malpractice action against the veterinarian and/or the veterinary clinic, a veterinarian who receives a grievance should promptly inform his or her employer of the grievance.
- For this same reason, the veterinarian should determine whether there is an insurer who should be placed on notice of the grievance. If there is applicable insurance, and the veterinarian fails to advise the insurer, he or she may jeopardize insurance coverage.

Being the subject of a grievance can be stressful, confusing and frustrating for veterinarians. Knowing what to expect during the process is an important first step to effectively navigating the disciplinary process. For more information, visit the DSPS Website at <http://dsps.wi.gov/>.

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