



## MEMORANDUM

<b>DATE</b>	October 8, 2021
<b>TO</b>	Multidisciplinary Advisory Committee (MDC) of the Veterinary Medical Board (Board)
<b>FROM</b>	Complaint Process Audit Subcommittee (Subcommittee) Kevin Lazarcheff, DVM Christina Bradbury, DVM
<b>SUBJECT</b>	<b>Agenda Item 6. Update from the Complaint Process Audit Subcommittee</b>

The Subcommittee is tasked with auditing closed enforcement cases to ensure that Board subject matter experts (Experts) are applying the appropriate standard of care when reviewing cases, drafting expert reports, and appearing at hearings as expert witnesses. For purposes of this report, the Subcommittee additionally was asked to review the Board's internal complaint process from start to finish and make recommendations, if any, for process improvement.

### Expert Review

The Subcommittee found several issues with the expert reports used in some of the cases recently reviewed, such as:

#### Citation of Sources

The Subcommittee noted that some of the expert reports failed to cite the sources used. This includes reference to even a basic veterinary textbook establishing tenets in veterinary medicine.

#### Biased Language

The Subcommittee discovered biased language in a couple expert reports. This included personal opinions about the perceived intentions of the subject, as well as emotional language not germane to the facts of the case. In addition, one Expert referenced deception, but failed to point to the evidence that would lead to this conclusion.

#### Standard of Care

A couple cases failed to correctly address all standard of care issues. In one such case, the Expert posited that the cause of an injury was unclear; however, the actual cause was referenced in the records of the subsequent treating veterinarian.

On another case, the Expert opined on the standard of care regarding the treatment rather than the communication that should have led to treatment. In addition, the Expert opined that the cause of specific symptoms was impossible to determine; however, the

Subcommittee found that these symptoms could be determined via testing. Further, the Expert made opinionated statements that were too specific, which makes those statements easily disputed.

### Next Steps

The above concerns (as well as the positive findings) related to the review of Expert reports will be provided to the Expert to strengthen future cases. This type of peer review will be invaluable in sharpening the skills of the Experts and improve expert reports and findings of standard of care violations so the reports, and subsequent expert witness testimony, are legally sound and complete.

### Expert Witness Training

As reported by the Subcommittee during the MDC's July 2021 meeting, the Board's Deputy Attorney General liaison, Karen Denvir, is preparing a training for the Board's expert witnesses (Experts) focusing on veterinary-specific issues. Board staff and the Subcommittee members also will participate and provide input for this training. Normally, Experts attend the Medical Board of California's (MBC) expert witness training, which covers some of the administrative procedures Experts will deal with; however, the MBC training leans toward human medicine.

Ms. Denvir is finalizing the aforementioned veterinary-specific training this month, which will touch on much of the feedback received from the Subcommittee and Experts. This includes establishing and measuring the standard of care, use of biased language, citing sources when appropriate, and opining on enforcement action.

### Internal Complaint Process Review

The Subcommittee reviewed six enforcement cases that were resolved through a variety of means, including citation, stipulated settlement, or proposed decision. The Subcommittee also reviewed the underlying investigative documents for those cases, as well as a document detailing the timeframes of different stages, associated monetary costs, and cost recovery ordered. During this review, the Subcommittee saw some of the same complaint review process issues previously discussed by the Board, which include:

### Cycle Times

The Subcommittee found that several cases had extremely long desk cycle times, which can be attributed to the current backlog of complaints. In the Enforcement Unit's prior complaint investigative process, analysts would begin to investigate cases, gather evidence, and obtain internal consultant reviews. Then, as newer and potentially simpler complaints were received, the analysts would set aside the older, more complex complaints. The Enforcement Unit has been reviewing its processes over the past three years, and analysts have been given redirection to work cases to completion once they have been started. Board staff now continue to work on the oldest cases for which the desk investigation clock has been running (since receipt of the complaint), resulting in a high desk investigation cycle time upon completion.

One case was significantly delayed and spent several years at the Attorney General's (AG) Office, due to the fact that the case was related to another extremely long and expensive case that ultimately went to hearing (ending in revocation).

### Necessity of Outside Involvement

A few cases contained information from an Expert or the DOI, without a discernable need. After the Enforcement Unit process redirection, staff no longer sends all cases to an Expert for initial review and only submits cases to an Expert in which the standard of care needs to be established and measured. Further, DOI, whose services were previously utilized in a high number of cases, is only called in on cases which require a sworn peace officer (undercover operations, witness interviews, safety issues, etc.).

### **Recommendations:**

The Subcommittee recommends the following actions:

1. Board staff and Experts create a resource library to assist Experts with finding and citing references for use in expert reports.
2. Board staff reach out to other similar sized boards to see how those boards are processing complaints. This recommendation corresponds with the Board's 2020-2024 Strategic Plan Goal 1.1.7 to meet with enforcement teams from other boards to identify best practices.