



MEMORANDUM

DATE	March 26, 2021
TO	Multidisciplinary Advisory Committee (MDC)
FROM	Complaint Process Audit Subcommittee (Subcommittee) Kevin Lazarcheff, DVM, Vice Chair Margaret Warner, DVM
SUBJECT	Agenda Item 8. Update from the Complaint Process Audit Subcommittee

Status Update

On March 1, 2021, the Subcommittee was provided eight cases to review. Usually, the Subcommittee reviews only files for cases that resulted in formal disciplinary action in which a Board subject matter expert provided an opinion. Unlike prior audits, this batch of cases was not limited to those formal disciplinary actions and included citations, petitions to revoke probation, and other disciplinary actions. This selection of various case types was aimed at giving the Subcommittee a look at multiple outcomes of enforcement processes. The Subcommittee was also provided the cycle times for each step in the investigative process, as well as the monetary costs related to those steps.

The Subcommittee found the following when reviewing the five cases that involved subject matter expert review:

- All experts properly identified the standard of care.
- Two of the reviews did not cite sources where it would have been appropriate.
- Four reviews contained biased language.

Consequently, management reached out to all experts to provide constructive feedback based on the findings of the Subcommittee. As was the case during the prior audit, the experts were both receptive and appreciative of the phone calls, stating they thought it was great they are now getting consistent feedback in conjunction with the updates to the expert review process. One expert reported that they now focus on keeping their reports as factually-based as possible. Several experts said they understood how essential it is to link allegations and violations to the standard of care and stated the feedback was “logical.”

In addition, since these finalized cases involved investigations that may have been several years old, the Subcommittee noted several investigative issues that were previously recognized and addressed by Board staff/management (as well as relayed to the Board), which include:

- Cases that involve multiple experts. The Subcommittee noted that these reviews had conflicting opinions, which could affect the strength and outcome of the case.

- Board staff stopped sending cases to multiple experts in late 2018 and make every attempt to utilize the minimum number of individuals to take a case through the enforcement process.
- Cases involving an expert who is hesitant in their findings or unsure about an opinion. This affects the direction of a case and can result in delayed and/or reduced outcome if the Board is unaware of the expert's hesitation.
 - Board staff have instructed the experts to opine on whether there is a "departure" or "extreme departure" from the standard of care, to help assess whether a case should go to the Attorney General (AG)'s Office. Further, staff frequently contact the Deputy Attorney General (DAG) and the experts to get clarification on the strength of the findings and prospective case outlook.
- Cases which should not require an expert. In cases involving criminal convictions, the Subcommittee questioned why an expert would be necessary.
 - Board staff only utilize an expert witness when it is necessary to opine on the standard of care related to the practice of veterinary medicine. This should not include criminal convictions; however, one of the experts informed management during the recent feedback session that the prior policy was that all of these types of cases were to be reviewed by an expert.

Further, the Subcommittee recognized multiple resource issues (time and cost) related to these cases that Board staff/management have been aware of and have been addressing since 2019, such as:

- The reduction in case cycle time and costs associated with a stipulated settlement.
 - Board staff/management will always seek a stipulated settlement to expedite discipline, save costs, and protect consumers, provided the settlement is consistent with adequate consumer protection based on the violation.
- Long cycle times at the desk and AG's Office.
 - Some of the reviewed cases were transmitted to the AG's Office without Board staff verifying the existence of additional complaints against the same individual. Board staff now ensures all active cases against the individual are investigated and submitted to the AG's Office (whenever possible) to take appropriate action based on all existing violations. Intake staff are directed to inform analysts of newly-submitted complaints involving subjects being actively investigated.
- Large blocks of time at Division of Investigation (DOI) and Inspections Unit.
 - DOI usage has dropped considerably in the past couple of years, and cases submitted to DOI are monitored closely by Board staff to ensure quick turnaround. Complaints that require an inspection are now expedited by the Inspections Unit, and the initial inspection is typically done within a couple of weeks to one month.

It is important to note that Board staff/management implemented these improvements in 2019. However, the Subcommittee and Board staff believe that additional improvements should be made to eliminate duplicative and/or unnecessary steps, streamline the process, reduce costs,

and maintain the same level of consumer protection. The Subcommittee will monitor the next steps in improving the enforcement process.

The Subcommittee found that if staff/management had implemented the improvements, discussed above, on the eight cases reviewed by the Subcommittee, the Board would have seen the following savings:

- Limiting cases to a single expert (instead of two experts) could have saved the Board between \$450 and \$1,150 per case.
- Fully vetting cases based on a clear expert opinion and avoiding transmission of lower-level action cases to the AG's Office could have saved the Board a total of \$34,163.
- Utilizing the investigative report from the DEA instead of utilizing the additional, duplicative DOI report could have saved the Board a total of \$6,915.

These unnecessary steps led to a total of \$47,767 in costs to the Board.

Currently, Board staff/management make every attempt to get full cost recovery for all cases. However, in the eight cases reviewed by the Subcommittee, it appears some investigative costs, totaling \$12,761, were not conveyed to the AG's Office when the cases were transmitted. As a result, there was no attempt to recoup those costs through cost recovery. Board staff now include investigative costs in the AG transmittal memo and later cross-checks the drafted cost recovery condition to ensure it captures all investigative costs.

It should be noted that prosecution and investigation costs cannot be recovered for Statements of Issues, Petitions to Revoke Probation, and Board costs associated with a hearing. Further, in cases resulting in revocation or surrender, the Board cannot be reimbursed its prosecution and investigation costs until the license is reinstated, if ever. For these eight cases, \$92,979 in Board prosecution and investigation costs were unrecoverable. Further, in accordance with *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, various factors must be considered in determining the amount of costs to assessed against a respondent. Accordingly, cases that are heard before an administrative law judge likely will result in reduced cost recovery.

The complaint audit process remains a powerful and useful tool in ensuring that improvements made to the expert witness review and enforcement processes bear fruit. In addition, the provision of cycle times and enforcement costs to the Subcommittee by Board staff will further clarify the individual resource costs of taking enforcement action and highlight the areas in which staff/management are making improvements. Further, the continued selection of multiple case types for review will give the Subcommittee a more comprehensive understanding of enforcement, permitting insight into other areas which could see improvement.