

ABVMA Complaints Process

The ABVMA is the professional regulatory organization responsible for regulating the practice of veterinary medicine in the province of Alberta, pursuant to the *Veterinary Profession Act*, the *Veterinary Profession General Regulation*, the *ABVMA Bylaws* and *ABVMA Council Guidelines*. The *Veterinary Profession Act (VPA)*, Part 5, Complaints, provides for a process to receive complaints regarding the conduct of a veterinarian. This article provides an explanation of the process for members of the public.

The Complaints Director frequently describes the ABVMA complaints process to members of the public, veterinarians and registered veterinary technologists. Members of the ABVMA (hereafter referred to as members) who attend the ABVMA Leadership Weekend may receive training on this professional regulatory process. All newly registered members are informed about the complaints process during their mandatory attendance at Registration Day. Members who have a complaint against them also have the process explained to them in detail.

Notwithstanding the efforts above, there are many members that are not fully informed about the complaints process, which in turn may lead to a certain amount of concern about the process. This article attempts to enlighten members regarding the complaints process in an effort to minimize stress and uncertainty when faced with a complaint. This article also informs the public about the process, as well as inform ABVMA members of their responsibilities when faced with a formal complaint.

This article is to provide information that is general in nature, and is by no means comprehensive regarding all discipline matters.

Discipline Process Review:

The complaint process described in Part 5, Division 1 of the VPA is the product of a review conducted in 1996 - 97 by the Discipline Review Task Force (DRTF). The mandate of the task force was, in part, to review the purpose and function of the discipline process, including the various committees that existed at the time, and to make recommendations for improvement within the existing framework of the VPA. Over the course of two years, an extensive review was conducted with the involvement of many members.

It was noted that the review of the discipline process would be undertaken with the intent to uphold the responsibilities as a self-governing profession. Those responsibilities dictate that we must protect the public interest and provide a discipline process that is administratively fair and unbiased for all involved. The review process would not under any circumstances lessen or undermine that obligation.

The amendments to the discipline section of the Veterinary Profession Act (VPA) were proclaimed into force on September 2, 2003.

Informal Complaints

The Complaints Director receives many calls and emails from the public regarding issues or concerns about veterinary medical services. Many of these calls are handled in an informal manner, and do not progress to a formal letter of complaint. The Complaints Director, during these calls, often describes in detail the legislated discipline process, the expected outcomes as well as the limitations of the process.

The Complaints Director also describes the “informal process” of resolving a concern. This informal process necessitates effective communication between the complainant and the member, and as such the member must take an active role in resolving the complaint. The informal process is a common and effective way to resolve issues regarding fees or problems with communication. There is no record of these cases and in fact the identity of the member is not necessarily revealed by the complainant. It is important to note that matters of unskilled practice or unprofessional conduct may not be resolved in this manner.

The informal process begins with some type of effective communication, usually a letter, from the complainant to the member. The letter should set out the position of the complainant and request a specific action, such as a meeting, an explanation, an apology or notice regarding what is necessary such that the complainant could consider the matter resolved. The member will then determine if the request is reasonable and if so, may comply. This informal resolution is successful in many cases, and those concerns do not normally progress to the formal process.

Formal Complaints

As described in the VPA, upon receipt of a written complaint the Complaints Director must initiate the legislated complaint process. The current interpretation of a written complaint is the receipt of a signed original letter through the mail. The complaint process may also be initiated if the Complaints Director has information that, on reasonable grounds, causes him to believe that the conduct of a veterinarian constitutes unprofessional conduct. This provision is used infrequently and the vast majority of complaint cases originate with a letter of complaint from the public.

Upon receipt of a letter of complaint, the typical step for the Complaints Director is to appoint an investigator pursuant to section 28(2)(e) of the VPA. There are other options available as described in section 28(2) of the VPA which include; referring the matter to Alternate Complaint Resolution, obtaining a report from an expert in

the field, referring the member for appropriate counseling (substance abuse), or referring the matter directly to the Complaint Review Committee for a decision.

The Complaints Director may also encourage communication between the complainant and the investigated member and may resolve the complaint. This action is taken in cases where the complaint is regarding a fee or an issue with communication, and will only proceed with the consent of the complainant and the investigated member.

Upon receipt of a written complaint by the Complaints Director regarding a member, the member becomes formally involved in the complaint process. Compliance with the provisions of the complaint process is the responsibility of all registered veterinarians who are part of our self-regulated profession. The member's responsibility to participate and cooperate with the process is not viewed differently than their duty to comply with the registration process, acquire continuing education or fulfill practice self-verification and audit responsibilities.

The Complaints Director typically contacts the member by phone prior to sending a registered letter that serves to formally notify the member of the complaint. The letter will provide the investigator's name. A copy of the letter of complaint, a copy of the VPA and a copy of Information for Investigated Members is attached to the notification letter. The member is required to provide a response to the letter of complaint and forward all information, including the relevant medical records. The full co-operation of the member is expected and required during the investigation.

Investigation

The Complaints Director typically appoints an investigator to investigate the complaint. The investigator's role is to serve as the unbiased collector of the facts relevant to the matter. The investigator may conduct interviews, gather and review medical records and other documents, and may, in some cases, seek an expert opinion. The investigation may be broad and far-reaching, and any matter that comes before the investigator in the course of the investigation may be investigated and acted on by the Complaint Review Committee ("CRC"). Matters initially unrelated to the substance of the complaint may be investigated with due notice to the member.

The investigator may inform the Complaints Director if it becomes apparent that both the complainant and the member are willing to resolve the matter. The Complaints Director may work to resolve the matter subject to section 28(2)(a) or (b) if he feels that a resolution would be appropriate.

The investigator does not make findings or recommendations, and as such is not a decision maker in the complaints process. The investigator prepares an investigator's report which is submitted to the CRC.

The Complaint Review Committee

The CRC is composed of six registered veterinarians, two members of the public and two registered veterinary technologists. This committee makes the preliminary threshold decision on a complaint. The members of the CRC evaluate the investigator's report and determine if there is information in the report, that, if it is proven to be true at a hearing, may reasonably lead to a finding of unprofessional conduct. If that is the case, the matter is referred to the Hearings Director for a hearing. Alternatively, if the CRC determines there is insufficient or no evidence of unprofessional conduct or that the complaint is trivial or vexatious, the CRC may dismiss the complaint. The CRC may also refer the complaint for further investigation.

This preliminary decision of the CRC is a peer review step that is not present in all professional regulatory legislation. For example, in the Health Professions Act of Alberta, the complaints director alone makes the preliminary decision to dismiss a complaint or proceed to a hearing. The veterinary profession determined that this decision should not be made by a single individual but rather by a committee of peers.

CRC Decision and Reasons

If a complaint is dismissed by the CRC, the committee provides a written decision (including reasons for dismissal) to both the investigated member and the complainant. The reasons describe how and why the CRC reached their decision to dismiss the complaint. The VPA provides that the complainant be informed of their right to apply to the Hearings Director for a review of the CRC decision to dismiss. If the complainant has reason to, they may apply in writing to the Hearings Director for a review of the decision to dismiss which is undertaken by a committee of ABVMA Council.

If a review of the decision to dismiss is requested, the complainant and the investigated member may be given the opportunity to make additional submissions to the Committee of ABVMA Council (COC). The COC may make a decision to refer the matter for a hearing, to confirm that the complaint is dismissed, or to request additional investigation.

The Hearings Director

If the CRC or the COC makes a decision to refer a complaint for a hearing, the process becomes adversarial by nature.

The Hearings Director is responsible for setting the date, time and location of a hearing and issues a Notice of Hearing and a Notice to Attend. The Notice of Hearing contains the specific allegations or charges that are advanced against the member. The allegations of unprofessional conduct are prepared and advanced based on input from members of the CRC. The Hearings Director is responsible for the selection of the members that will sit as the panel judges on the Hearing Tribunal.

It is the legislated responsibility of the ABVMA, as a regulatory body, to bring forth and advance the specific allegations against the member at a hearing. ABVMA legal counsel will act as the prosecutor for the ABVMA. The investigated member is strongly urged to retain their own legal counsel to act in their defense.

Hearing

Hearings are normally open to the public, but may be closed if so ordered by the Hearing Tribunal. Hearings take place not in a courtroom but in a boardroom, usually at the office of the ABVMA legal counsel. For a hearing involving a veterinarian, the Hearing Tribunal is composed of three registered veterinarians and one member of the public. For a hearing involving a registered veterinary technologist, the Hearing Tribunal will consist of two registered veterinary technologist, one registered veterinarian, and one member of the public. The Hearing Tribunal is the second group of peers that reviews the matter, and is the 'panel of judges' that will make the determination whether there is a finding of unprofessional conduct.

The Hearing Tribunal receives evidence, hears sworn testimony and asks questions of the witnesses regarding the matter. It will decide if the conduct of the member does or does not constitute unprofessional conduct as defined in the VPA.

Orders of the Tribunal

If the Hearing Tribunal makes a finding of unprofessional conduct against the member, the Hearing Tribunal has the authority to impose sanctions, as outlined in section 41.1 of the VPA. Orders of the tribunal may include:

- a letter of reprimand or caution issued as against the member,
- completion of a specific course of study,
- payment of partial or actual costs of the investigation and hearing,
- suspension or cancellation or member registration,
- payment of a fine,

- publication of the case on a with or without names basis, and/or
- any order deemed appropriate by the tribunal.

Appeal

The investigated member has the right to appeal the findings or orders of the Hearing Tribunal to Council of the ABVMA. Council will undertake the appeal on the record of the Hearing Tribunal. Ultimately, the member may appeal any finding, order or direction of Council to the Alberta Court of Appeal.

Consent Orders

An investigated member may take responsibility for their conduct at any time during the process, from the time of a complaint up to the point where the Hearing Tribunal makes a decision. The investigated member must submit a written admission of unprofessional conduct to the Hearings Director. Consent discussions are held to arrive at a consent order, which details the agreed statement of facts, the agreed findings of unprofessional conduct and the agreed sanctions. An admission of unprofessional conduct and an agreed upon consent order proposal are presented as a joint submission to the Hearing Tribunal.

Conclusion

Historically, most complaints are dismissed at the preliminary level by the Complaint Review Committee. Approximately 2/3 of the formal complaints are dismissed due to insufficient or no evidence of unprofessional conduct and 1/3 proceed to a hearing. Consent orders are agreed to by the investigated members in approximately 2/3 of the cases that are referred for a hearing.

The ABVMA has an obligation to administer the complaints process according to the legislation. All complaints are considered equally and those parties involved in the process undertake their responsibilities diligently. Administering the complaints process in accordance with the VPA protects the profession's privilege of self-regulation, the integrity of the profession, and the public interest.

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