

INVESTIGATIONS

A Board or Commission's primary function is that of a regulatory body that makes licensure decisions and monitors compliance with the statute and regulations governing the profession.

All written complaints received alleging a violation of statute or regulations should provide a specific and detailed summary of the complaint and must include any documentation or witnesses they feel supports the allegation of wrongdoing.

Upon receipt, the complaint and evidence are reviewed by investigators in light of case precedents, informal guidelines established by the Board or Commission, and the statutes and regulations of that specific board or commission. If the complaint does not appear to center on a violation that is within the Board or Commission's jurisdiction, the Division may close the case. If the complaint does center on a violation that is within the Board or Commission's jurisdiction, an initial letter may be sent to the licensee against whom the complaint is filed. This letter provides notice of the complaint and allegations and may request records, an interview, or other response by the licensee.

Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as quickly as possible. The steps taken in the investigation are determined on a case-by-case basis by the specifics of the allegations. This portion of the investigative process may be quite lengthy and may require additional information or evidence from the complainant, licensee, businesses, other governmental agencies or state boards, witnesses, or related parties.

Generally, the investigative steps include the following:

- obtaining records, documentation and evidence related to the complaint;
- locating and interviewing the complainant, the client, the subject and any witnesses;
- drafting and serving subpoenas for necessary information.

After investigators have gathered pertinent information or evidence, the matter is reviewed with the Chief Investigator, and when appropriate, the Board or Commission's liaison or panel review. This review may result in a recommendation that more information be obtained, the case be closed, or that the case continue forward. The Board or Commission's liaison or review panel does not determine guilt or innocence; it simply reviews the complaint to determine whether the allegations, supported by un-contested or sufficient evidence, would warrant proceeding with disciplinary action even if contested by the licensee.

The majority of cases are resolved through a Consent Agreement, an amicable settlement of a case short of a public hearing; this Agreement spells out agreed upon disciplinary action between the Board or Commission and the licensee and allows more options in achieving a balanced resolution for both parties.

To determine the disciplinary action, the committee considers the nature of the violation, the standard in effect at the time it was violated, the effect of the violation on the public and the profession, whether the respondent was knowing and willful, previous violations, whether the licensee was cooperative and took responsibility for the violation, any mitigating circumstances, the disciplinary action's effect on improving the licensee's practices, precedents set by other cases for consistency from case to case, and if appropriate, a necessary deterrent for other practitioners to avoid a similar violation.

Consent Agreements may involve any of the following:

- reprimand
- revocation
- assessment of a civil penalty (fine)
- suspension (for a specific period of time)
- probation
- condition to take additional Continuing Education over and above the annual requirement
- restrictions on practice (some Boards)

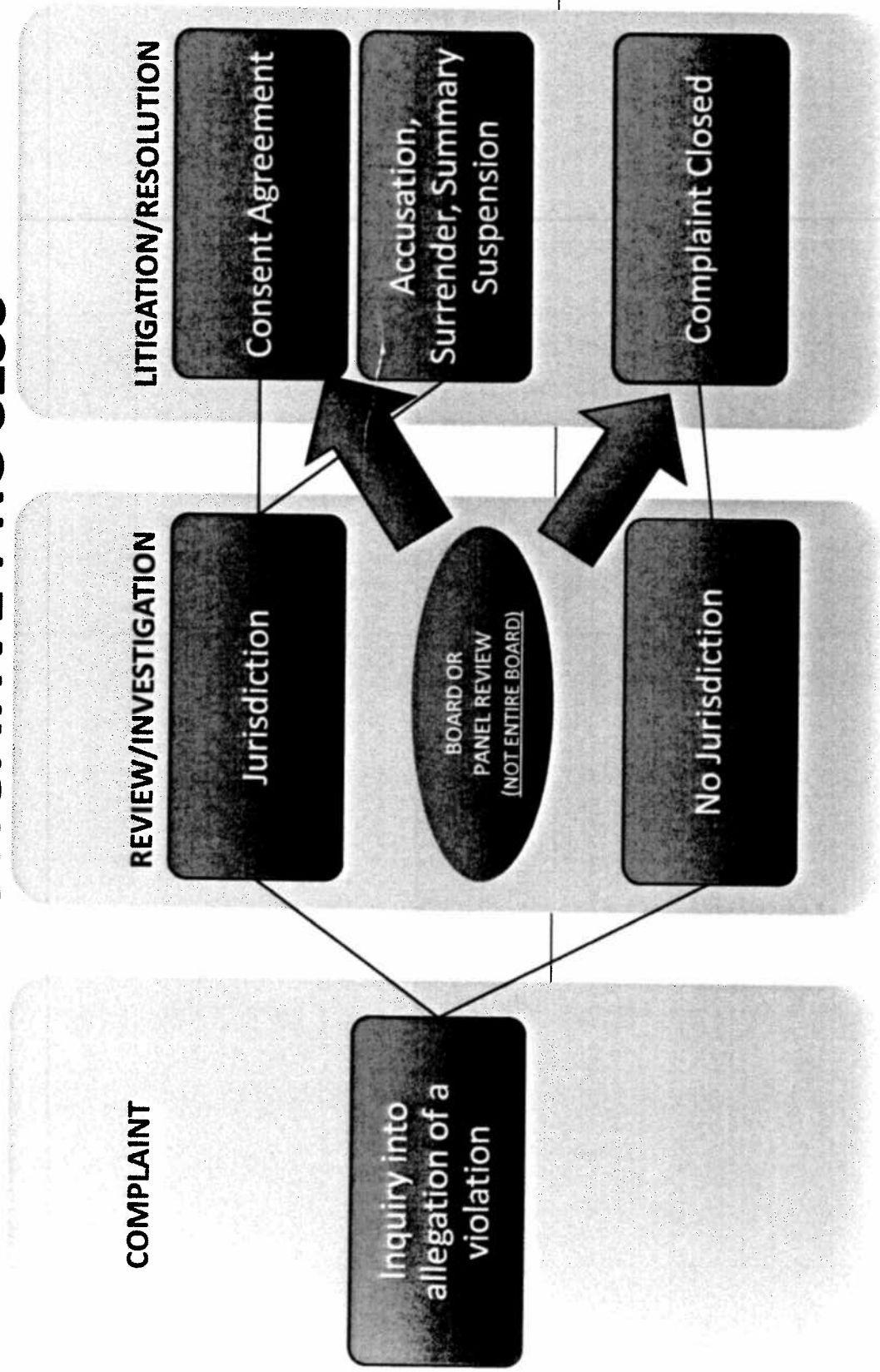
After guidance from the Board or Commission's liaison or panel review, investigators' counsel (AAG) may approach the licensee to negotiate a Consent Agreement for settlement prior to a hearing. If a settlement cannot be reached, an administrative hearing will be held. All involved parties may be requested to appear and testify at the hearing, conducted by the Office of Administrative Hearings (OAH). After the hearing, a proposed decision and order is presented to the Board or Commission for action; the Board or Commission issues a Decision and Order, which the licensee may appeal to Superior Court.

The Division does not intervene in a dispute regarding the fees charged by a licensee. Disciplinary action is considered carefully on a case-by-case basis since the action may drastically affect the licensee reputation and ability to make a living. Remember that it takes more than a claim of wrongdoing to file a complaint with the Board or Commission; the allegation must be substantiated and must be jurisdictional to the statutes and regulations of that Board or Commission or practice area.

Investigations are required by statute to be kept confidential. This often prevents the complainant, licensee, and the Board or Commission from obtaining progress reports or information that may disclose the current status of an open investigation. Cases often involve other agencies, businesses, and practices; disclosing information during an on-going case can compromise the investigation, create conflicts for reviewing Board or Commission members, or result in unnecessary hardship to the licensee.

Attachment: Investigative Process

INVESTIGATIVE PROCESS



Gather records, statements and other information.

Division determines evidence of a violation of statutes, regulations, or code of professional conduct.

Board or panel member is consulted in matters involving practice issues and/or code of conduct violations.

After a hearing, a proposed decision and order is presented to the Board or Commission for action; the Board or Commission issues a Decision and Order, which the licensee may appeal to Superior Court.

(Follows the APA process through OAH)