

MORE DEFINITIONS . . .

COMPLAINT PROCESS

COMPLAINTS AGAINST LICENSEES

DEPARTMENT OF LABOR AND INDUSTRY BUSINESS STANDARDS DIVISION

PO BOX 200513
Helena MT 59620-0513



MEETINGS . . .

● The Respondent and Complainant are notified by letter of the date and time of the Screening Panel meeting in which his or her case will be discussed. If you wish to attend that portion of the meeting, please inform the Board office prior to the meeting.

● At the beginning of each case, the Screening Panel Board members may take a few minutes to review the information before them and any additional materials presented. The Screening Panel meetings are open until the Chairperson of the panel determines whether each individual's right to privacy outweighs the public's right to know. If so, the meeting is closed to the public. Adjudication Panel meetings are open to the public.

● **Open Meeting** - A public meeting in which any member of the public may attend. Open Meeting minutes are public documents. Attendees may observe, but may not participate unless asked a question by a Board member.

● **Closed Meeting** - A meeting closed to the public means only the Respondent, Complainant, and his or her Attorney may attend. Closed Meeting minutes are not public documents. Attendees may observe, but may not participate unless asked a question by a Board member.

● Generally, the Screening and Adjudication Panels consider the cases of those in attendance first to minimize the wait.

For questions or concerns, contact the Department at 406-841-2300 or fax at 406-841-2309.

Economic Affairs Committee Meeting
February 10, 2006

Exhibit #21

● **Dismiss with prejudice** - The complaint is dismissed and may not be considered by the Board in the future.

● **Dismiss without prejudice** - The complaint is dismissed but may be considered by the Board in the future if another complaint of a similar nature is filed against the respondent.

● **Investigation** - The gathering of facts and information surrounding the allegations listed in a complaint. (An investigation could take several months to complete).

● **Letter of warning** - A private letter (not disclosed to the public) informing the Respondent that continued conduct similar to that in the complaint may lead to disciplinary action by the Board.

● **Reasonable Cause** - A finding by the Screening Panel that enough evidence to believe that a violation(s) of the statutes and rules governing the practice has occurred authorizing issuance of a Notice of Proposed Board action).

● **Notice** - A legal document setting forth factual assertions, conclusions of law and notification of the Respondent of the right to request a hearing.

● **Proposed Stipulation** - A tentative settlement agreement between the Department and the Respondent that is presented to the Adjudication Panel for consideration.

● **Hearing** - A legal proceeding (outside the judicial process) before an appointed Hearing Examiner (similar to judge).

● **Final Order** - A legal document signed by the Chairperson of the Adjudication Panel indicating that the panel has accepted the Stipulation to settle the case, or has adopted the Proposed Order of the Hearing Examiner.

● **Final Order of Default** - a legal document issued by the Adjudication Panel to a Respondent for failure to respond to the Notice or request a hearing. This order may be entered with or without prior notification to the respondent.

NOW THAT A COMPLAINT IS FILED

- A complaint against a Respondent is confidential. If a Notice of Proposed Board Action is issued, the information is made public.
- A letter of acknowledgment is sent to the person who filed the complaint (**Complainant**).
- A copy of the complaint and letter requesting a response is sent to the person against whom the complaint is filed (**Respondent**).
- The Respondent may submit a letter of response to the complaint. If a letter of response is not submitted, the complaint process continues without the response.
- The complainant and respondent are sent letters regarding the date and time of the **Screening Panel** meeting where the case will be discussed.

SOME DEFINITIONS

- **Screening Panel** - Made up of Board members **NOT** on the Adjudication Panel. The panel determines the preliminary actions taken on a complaint case.
- **Adjudication Panel** - Made up of Board members **NOT** on the Screening Panel. The panel determines the final outcome of a contested case.
- **Complainant** - The person who filed the complaint.
- **Respondent** - The licensee against whom a complaint has been filed.

AND THEN

- The complaint and the response (if one was filed) proceed to the **Screening Panel** for review and consideration. This is not a hearing, but a committee meeting, set up to review and consider the complaint and response.

Both the complainant and the respondent may attend the screening panel meeting. The parties' participation is at the discretion of the Panel chair, but frequently, the panel will ask questions of the complainant and respondent if they are present. If you can not physically attend the meeting, you may ask to be present via telephone. This is an opportunity for both parties to hear the Panel's deliberations and its reasons for taking action or dismissing the case.

- After the Screening Panel has considered the complaint, the Screening Panel has the option of 1) requesting an **investigation** into the complaint, 2) determining whether **reasonable cause** exists for issuance of a Notice of Proposed Board Action, 3) tabling the complaint until more information is gathered or 4) dismissing the complaint **with or without prejudice**. Again, this is not a hearing, but a committee meeting.
- If an investigation is requested, the complaint will be assigned to a Board Investigator who, during the course of obtaining further information, may request an interview with the Respondent and Complainant and possible witnesses.
- An investigative report is prepared after the completion of the investigation. The report will be presented to the Screening Panel for consideration during the next scheduled meeting.
- Following the Screening Panel's review of the written investigative report, the Panel determines if the complaint will be dismissed or if there is reasonable cause to proceed with disciplinary action against the Respondent.

NOW

- The Screening Panel may dismiss the complaint with or without prejudice. However, at the same time, the Panel may request a private **letter of warning** be sent to the Respondent.
- If the Screening Panel finds reasonable cause to believe a violation of board laws and/or rules has occurred, the Department prosecuting attorney serves a **Notice of Proposed Board Action and Opportunity for Hearing** upon the Respondent. A **Proposed Stipulation** may be included with the Notice. Once a Notice is issued to the Respondent, the Notice becomes public information, and will be disclosed to the public.
- Once the Respondent receives the Notice, he or she has twenty (20) days in which to contest the proposed action. This is accomplished by requesting, in writing, an **administrative hearing**.
- If the Respondent is offered a Stipulation for settlement along with the Notice, he or she has twenty (20) days from the receipt of the Notice to 1) sign, date and return the Stipulation, 2) to request a hearing, or 3) work with the Department prosecuting attorney for a possible settlement.
- A signed Proposed Stipulation proceeds to the **Adjudication Panel** for approval or rejection. If approved, it becomes part of the **Final Order**.
- If the Respondent does not respond within the 20 days, the Department prosecuting attorney will prepare a Request for Entry of Default for the Adjudication Panel to consider. If the request is granted, a **Final Order of Default** will be issued and sent to the Respondent.