



Guide for registered veterinary surgeons to respond to the investigation of a complaint by the Veterinary Surgeons' Board

Introduction

Under the provisions of the *Veterinary Surgeons Act 1960* (WA) (the Act), the Veterinary Surgeons' Board of Western Australia (the Board) must investigate complaints it receives regarding the professional conduct of a veterinary surgeon. Additionally, under some circumstances the Board may instigate an investigation without having received a complaint.

As part of the investigation the veterinary surgeon will be requested by the Board, in a letter of enquiry, to provide information about the allegation. At the conclusion of the investigation, the Board will determine whether there is sufficient evidence to support a finding of unprofessional conduct and if so, will consider whether it is in the public interest to pursue an allegation of unprofessional conduct. If an allegation of unprofessional conduct is to be pursued, it must be referred to the State Administrative Tribunal (SAT).

This document aims to assist veterinary surgeons responding to a letter of enquiry from the Board and provides information on how the complaint process is managed by the Board.

If a veterinary surgeon receives a letter of enquiry from the Board they have a professional obligation to respond in writing. The Board may refer a complaint to the SAT alleging unprofessional conduct if a veterinary surgeon does not respond to a letter of enquiry by the specified date.

From the Board's perspective it is preferable for the veterinary surgeon to provide detailed information about the events surrounding the complaint and to address the specific issues raised in the letter of enquiry. All the information provided by the veterinary surgeon will be considered by the Board when it meets and is a very important component of the Board's consideration of the complaint.

It should be noted that veterinary surgeons may decline to provide information requested by the Board, but they must do so in writing by the specified date. In the event that a veterinary surgeon declines to assist the Board in its investigation the Board may direct its inspectors to utilise warrants for the purpose of obtaining the required information. Further, if necessary, the Board will carry out and finalise its investigation into the complaint in the absence of information from the veterinary surgeon.

While the Board understands a Board enquiry can be very stressful*, veterinary surgeons are reminded that the Board expects any verbal communication with Board staff and written communication with the Board to be courteous and professional. Aggressive, abusive or disrespectful communication with the Board or Board staff may be grounds for disciplinary action.

*Please note the Board is able to provide limited assistance with counselling if required. For confidential assistance regarding counselling please contact the Registrar (08) 9317 2353 or admin@vsbwa.org.au for information

Responding to an enquiry from the Board

Veterinary surgeons who agree to assist the Board in the investigation of a complaint should note the following:

- The Board requires that all evidence provided relating to a complaint is in the form of a statutory declaration. Statutory declaration forms are available at any Post Office, or by downloading from the Attorney General's website at <https://www.ag.gov.au/Publications/Statutory-declarations/Pages/default.aspx> or alternatively you may use the form attached to the end of this document.
- Please limit your response to a maximum of three pages (size 10-12 Arial font) excluding the clinical records. Excessively long documents will be returned to the respondent with a request for the response to be rewritten in compliance with this document. Failure to comply with this request or alternatively submitting a second version which does not comply with these requirements may cause the Board to disregard your response. Unnecessary and irrelevant details should be avoided.
- The clinical records for the animal which is the subject of the complaint are a very important part of your response. If you do not have access to, or the legal right to the clinical records, you need to advise the Board, at the earliest opportunity, of the name of the owner of the practice or the veterinary surgeon appointed as manager of the practice who can provide the clinical records. Where acronyms or initialisms are used, the Board strongly recommends that a key is provided defining the acronyms or initialisms. If the records are handwritten please provide a copy of the original records and a transcribed certified copy of the record (using Microsoft Word or similar).
- It is recommended that you request supporting statements in the form of statutory declarations from other persons who witnessed the events or were involved in the treatment of the animal(s) which were the subject of the complaint.
- The information contained in your response may be sent to the complainant but in most instances your letter of response will not be available to the complainant. However it should be noted under the *Freedom of Information Act 1992* (WA) (FOI Act) some or all of the documentation received by the Board may be obtained by the complainant.
- A checklist is provided on page five which sets out in detail the documents you can provide which will assist the Board in its investigation of the complaint.

The Board is subject to the provisions of the *FOI Act* and the *Information Privacy Act 2000* (WA).

Any enquiries about the complaint or the response should be directed to the Registrar by phone (08 9317 2353) or via email admin@vsbwa.org.au This is particularly important if there is any difficulty in responding by the specified date.

The complaints process takes a minimum of three months. Resolution may take up to six months or longer depending on the level of evidence required and the complexity of the matter being investigated.

Summary of steps involved in processing a complaint

1. Written complaint received by the Board from a complainant or an investigation instigated by Board.
2. The veterinary surgeon is required to provide a written response to the complaint as described above, in the form of a statutory declaration.

3. Relevant witnesses are requested to provide their version of events or documentation in the form of a statutory declaration.
4. The complaint is considered at a Board meeting. Based on the information that the Board has received, it may form the view that:
 - i) there is insufficient evidence to refer an allegation of unprofessional conduct to the SAT and the complaint is dismissed; or
 - ii) there is sufficient evidence for the Board to refer an allegation of unprofessional conduct to the SAT but it is not in the public interest to do so and the complaint is dismissed; or
 - iii) there is sufficient evidence for the Board to refer an allegation of unprofessional conduct to the SAT; or
 - iv) the Board requires additional information before making a decision. This information may be acquired from various sources, including the complainant, the veterinary surgeon, other witnesses, expert opinions, or through legal advice. Once the Board is in possession of the necessary information the Board will proceed to form a view in accordance with option i), ii) or iii) above.

Unprofessional conduct

Unprofessional conduct is defined within section 23 of the Act and regulation 28 of the *Veterinary Surgeons Regulations 1979 (WA)*. The Board has wide authority to consider whether the standard of conduct by a veterinary surgeon falls substantially short of that to be reasonably expected by a veterinary surgeon of good repute and competency.

Without limiting the meaning of the expression, unprofessional conduct may mean all or any of the following:

- i) conduct of a lesser standard than that which the public or other veterinary surgeons may reasonably expect of a registered veterinary surgeon;
- ii) providing veterinary services of a kind that are excessive, unnecessary or not reasonably required for the animal's wellbeing;
- iii) the veterinary surgeon is convicted of an indictable offence that would render them unfit to practise;
- iv) contravention of or failure to comply with a condition, limitation or restriction on the registration of the veterinary surgeon;
- v) the veterinary surgeon has a deleterious drug or alcohol addiction;
- vi) the veterinary surgeon is suffering from a physical or mental illness to the extent that his or her ability to practise as a veterinary surgeon is likely to be affected;
- vii) the veterinary surgeon is guilty of infamous or improper conduct in a professional respect;
- viii) gross carelessness or incompetency; and
- ix) influencing or attempting to influence the conduct of veterinary practice in such a way that an animal's wellbeing may be compromised.

Matters preferred to the SAT

1. **Compulsory Mediation or Conferences**
 - i) Most matters referred to the SAT are sent to mediation or compulsory conferences.

- ii) The Board always has a legal representative at these meetings. While it is not obligatory, veterinary surgeons are strongly encouraged to have legal representation.
- iii) These meetings are without prejudice. This means the matters discussed with a view to resolving the complaint, including any admissions, cannot later be used against either party if the matter is not resolved at mediation and proceeds to a formal tribunal hearing.
- iv) If the veterinary surgeon accepts that their conduct has been unprofessional, an appropriate penalty can be negotiated between the veterinary surgeon and the Board subject to approval by the SAT. Penalties can include any of those which could be imposed by a formal hearing and range from a reprimand through to removal from the register (deregistration) as listed in section 2(iv) below.
- v) In almost all circumstances the findings recorded and penalties agreed at mediation are not appealable.
- vi) In the event that mediation is unsuccessful the complaint is referred to a formal tribunal hearing.

2. Tribunal Hearings

- i) The members of the tribunal consist of a legal practitioner, a registered veterinary surgeon who is not a member of the Board, and a member of the public.
- ii) The Board always has a legal representative. The veterinary surgeon is strongly encouraged to have legal representation.
- iii) While not as formal as a court hearing, the tribunal is conducted in a similar fashion. The legal representatives are entitled to call the complainant or other witnesses for questioning under oath, and these people may also be questioned by the members of the tribunal or the veterinary surgeon.
- iv) Under s23(2aa) of the Act if “the State Administrative Tribunal is satisfied that a registered veterinary surgeon is guilty of unprofessional conduct as a veterinary surgeon, the Tribunal may —
 - (a) reprimand the veterinary surgeon;
 - (b) require the veterinary surgeon to give an undertaking to refrain from such conduct as may be specified by the Board;
 - (c) fine the veterinary surgeon an amount not exceeding \$1000;
 - (d) order the suspension of the registration of that veterinary surgeon for such period not exceeding 12 months, as the Tribunal thinks fit;
 - (e) order the removal of the name of that veterinary surgeon from the Register;
 - (f) order the imposition of conditions as to the registration of that veterinary surgeon or restrictions on the practice of veterinary surgery by that person.”
- v) The SAT may impose an order requiring the payment of costs against a veterinary surgeon found guilty of unprofessional conduct to partially or completely cover the Board’s legal expenses.

The results of all matters which result in a finding of unprofessional conduct are published on the SAT website.

A veterinary surgeon found guilty of unprofessional conduct may appeal the decision.

Veterinary Surgeon's Response Checklist

This checklist is supplied to assist you in preparing your response. The ticked checklist should not be returned to the Board. It is recommended that all of the listed documents are supplied to the Board.

LIST OF DOCUMENTS TO BE SUPPLIED TO THE BOARD	PROVIDED IN RESPONSE
LETTER OF RESPONSE Matters to be addressed - <ul style="list-style-type: none"> • STATEMENT OF EVENTS (in the form of a statutory declaration) <input type="checkbox"/> • SPECIFIC ISSUES TO BE ADDRESSED <input type="checkbox"/> • OTHER COMMENTS <input type="checkbox"/> 	<input type="checkbox"/>
CLINICAL RECORDS	<input type="checkbox"/>
ADMISSION FORMS	<input type="checkbox"/>
CONSENT FORMS	<input type="checkbox"/>
RADIOGRAPHS	<input type="checkbox"/>
PATHOLOGY REPORTS	<input type="checkbox"/>
ANAESTHESIA RECORDS	<input type="checkbox"/>
HOSPITAL IN-PATIENT RECORDS	<input type="checkbox"/>
STATUTORY DECLARATIONS FROM OTHER RELEVANT WITNESSES	<input type="checkbox"/>
OTHER RELEVANT DOCUMENTS/FORMS	<input type="checkbox"/>
CONTINUING PROFESSIONAL DEVELOPMENT LOG	<input type="checkbox"/>

Western Australia

Oaths, Affidavits and Statutory Declarations Act 2005

Statutory Declaration

I, _____ {name of person making declaration}
of _____ {address of person making declaration}
occupation _____ {occupation of person making declaration}

sincerely declare as follows:

{insert above the content of the statutory declaration; use numbered paragraphs if content is long}

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

At _____ {place}

On _____ {date}

By _____ {Signature of person making the declaration}

In the presence of

_____ {Signature of authorised witness}

_____ {Name of authorised witness}

_____ {Qualification as such a witness}

****Important - This Declaration must be made before any of the following persons:***

Academic (post-secondary institution)	Local government councillor
Accountant	Loss adjuster
Architect	Marriage Celebrant
Australian Consular Officer	Member of Parliament
Australian Diplomatic Officer	Minister of religion
Bailiff	Nurse
Bank Manager	Optometrist
Chartered secretary	Patent Attorney
Chemist	Physiotherapist
Chiropractor	Podiatrist
Company auditor or liquidator	Police officer
Court officer (magistrate, registrar or clerk)	Post Office manager
Defence Force officer	Psychologist
Dentist	Public Notary
Doctor	Public Servant (State or Commonwealth)
Electorate Officer (State – WA only)	Real Estate agent
Engineer	Settlement agent
Industrial organisation secretary	Sheriff or deputy Sheriff
Insurance broker	Surveyor
Justice of the Peace (any State)	Teacher
Lawyer	Tribunal officer
Local government CEO or deputy CEO	Veterinary surgeon

Full descriptions of these professions are available via the following website link
http://www.courts.justice.wa.gov.au/files/Professions_witness_statutory_declarations.pdf

Or

any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

Any authorised witness for the State of Western Australia may also witness a Commonwealth Statutory Declaration, as long as they are in Western Australia at the time of witnessing - Schedule 2, item 231 of the *Statutory Declarations Regulations 1993 (Commonwealth)*.

Further information on witnessing documents is available at
www.courts.justice.wa.gov.au.

Last updated on 31 October 2017