

## **RULE REVIEW ANALYSIS**

**Introduction:** THIS RULE REVIEW IS SUBMITTED TO THE BOARD FOR CONSIDERATION AS A PROPOSED REVIEW

**Short Title:** Code of Conduct

**Rule Number:** Chapter 311

**Statutory Authority:** Government Code, §2001.039, added by Acts 1999, 76<sup>th</sup> Legislature, Chapter 1499, Article 1, Section 1.11.

**Background:** Review of these sections follow the Board's rule review plan.

**TITLE 22 EXAMINING BOARDS  
PART 15 TEXAS STATE BOARD OF PHARMACY  
CHAPTER 311 CODE OF CONDUCT**

**§311.1 Procedures**

(a) Complaints alleging violations of the Board Code of Conduct by a board employee shall be submitted in writing to the executive director. If a board member is notified of a complaint against an employee, the board member shall direct the complainant to file a written complaint with the executive director. Complaints filed against a peace officer employee must comply with §614.023 of the Government Code (relating to Copy of Complaint to be Given to Officer or Employee).

(b) The executive director shall notify the employee's supervisor that a complaint has been filed against the employee. The supervisor shall provide the employee with written notice that a complaint has been filed, which contains the date the complaint was filed and a description of the complaint. An anonymous complaint or a complaint filed by e-mail will not be considered a valid complaint for the purposes of this section.

(c) In order for a complaint concerning violations of the Code of Conduct to be considered valid, such complaint shall contain the following information:

- (1) the date the complaint is filed;
- (2) the date the violation occurred;
- (3) the complainant's name, address, and telephone number;
- (4) the name of the board employee;
- (5) detailed description of the alleged violation;
- (6) any written documentation or name of witnesses to the alleged violation; and
- (7) the signature of the complainant.

(d) The executive director shall acknowledge receipt of the complaint in writing to the complainant. Such acknowledgment may include a request for additional information concerning the complaint or questions about the occurrence or statements.

(e) In reviewing the complaint, the executive director may contact the complainant if necessary and shall conduct a personal interview with the employee and give the employee ample opportunity to present evidence to support his or her explanation of the circumstances surrounding the complaint. The employee shall have the right to submit any relevant records, materials, comments, and documents to the executive director for review. Additionally, the employee has the right to review all documents and records involving the complaint. The employee may request the executive director to allow the board's legal counsel to advise the employee of his or her rights.

(f) Upon completing the review of the complaint and relevant statements or documents, the executive director shall render a decision concerning the complaint within 10 days and provide

written notification of the decision to the employee, and his or her supervisor within five days of rendering the decision. The executive director shall notify the complainant of the disposition of the complaint. If the disposition of the complaint affects the employee's employment status, the employee has the right to exercise the board's grievance procedure.

(g) Complaints alleging violations of the Board Code of Conduct by the executive director shall be directed to the president of the board. The procedures set out in this section shall be followed in disposing of such complaints; provided, however, that for the purposes of this subsection, where the term "executive director" appears in the procedures set out in this section, the term "president of the board" shall be substituted therefor.

### **§311.2 Procedures Regarding Complaints Filed against Board Members**

(a) The following procedures are applicable with regard to complaints against a board member, if the complaint alleges violations of the laws and rules governing the practice of pharmacy.

(1) The complaint shall be reviewed by the executive director, who may refer the complaint to the appropriate board staff for handling, or if deemed necessary, the executive director may refer the complaint to another agency.

(2) If the complaint is investigated and the investigation produces evidence of a violation of the laws or rules regarding the practice of pharmacy, the board staff shall determine if the complaint merits the institution of disciplinary action. This decision shall be made in consultation with one board member who shall be a pharmacist, but who shall not be the subject of the complaint; the board member shall be the president of the board, unless such person is unable to serve because he or she does not meet the criteria of this paragraph or for some other valid reason. If the president is unable to serve, the order of succession shall be vice-president, then treasurer. If none of the pharmacist officers are able to serve, then the board president or designee shall designate another pharmacist board member to serve.

(b) If after consultation with the board member described in subsection (a)(2) of this section, the determination is made that the complaint merits the institution of disciplinary action, the following is applicable.

(1) The complaint shall be directed to the assistant attorney general assigned to the board. The Office of the Attorney General should then assign an assistant attorney general to prosecute the complaint in accordance with board rules.

(2) The board's legal counsel shall act as a liaison between the board's staff and the attorney general's office. The board's legal counsel shall ensure that the board's staff provides any information or assistance requested by the attorney general's office.

(3) The board member shall be sent a preliminary notice letter and offered the opportunity to attend an informal conference for the purpose of settling the matter through an informal conference.

(c) If the board member accepts the opportunity to attend an informal conference, the conference participants shall be as follows:

(1) the assistant attorney general assigned to the case, who shall conduct the informal conference;

(2) the board member who is the subject of the complaint and/or his or her legal counsel;

(3) board staff, as necessary or required; and

(4) one board member, who shall be the same person who was initially consulted about the complaint, as described in subsection (a)(2) of this section, provided, however, if that board member is unable to serve for some valid reason, the board member that shall attend the informal conference shall be a pharmacist, but who shall not be the subject of the complaint; the board member designated to attend the informal conference shall be the president of the board, unless such person is unable to serve because he or she does not meet the criteria of this paragraph or for some other valid reason. If the president is unable to serve, the order of succession shall be vice-president, then treasurer. If none of the pharmacist officers are able to serve, then the board president or designee shall designate another pharmacist board member to attend the informal conference.

(d) The case shall proceed to hearing, if the board member who is the subject of the complaint waives his or her right to attend an informal conference, or if after an informal conference is conducted, the case is not dismissed or the board member does not accept the recommendation for settlement.

(e) If the case proceeds to hearing, the following procedures are applicable:

(1) the assistant attorney general assigned to the case shall prosecute the hearing with the hearings officer presiding;

(2) the hearings officer shall then draft an officer's report which discusses the evidence and contains proposed findings of fact and conclusions of law. The hearings officer shall, as authorized by law, recommend a sanction if he or she determines one is necessary; and

(3) at the next scheduled board meeting, after the hearing officer has issued a proposal and all parties have accepted and replied, the following is applicable.

(A) The board, absent the board member who is the subject of the complaint, shall vote to:

(i) accept or reject each proposed finding of fact and conclusion of law; and

(ii) accept or reject the recommended sanction, if applicable.

(B) If the board rejects the recommended sanction, the board shall then vote on the sanction they deem appropriate.

(C) If the board determines that additional evidence is needed, they can vote to remand the case for further hearing, as provided by law.

(f) For the purposes of this section, a board member is defined as any individual who is serving on the board on the date of the receipt of the complaint, or any individual who has previously served on the board, if the complaint is filed within two years from the date the board member's official duties ended.