

Complaints made against you to the Texas State Board of Pharmacy

By Amanda C. Fields, General Counsel for American Pharmacies

The Complaint

Anyone may file a complaint with the Texas State Board of Pharmacy against a pharmacy or pharmacist, but complaints must be received in writing. Each complaint is thoroughly evaluated, first to determine if the complaint (allegations) involves a person or a pharmacy licensed by this Board, and secondly, whether the allegations, if true, would be a violation of the Texas Pharmacy Act or Texas Drug Laws. If the complaint is not under the jurisdiction of TSBP, it may close the complaint with no action or refer the complaint to another agency or entity. TSBP does not have jurisdiction over complaints involving rudeness, customer service, and/or pricing/billing disputes. If the complaint is within the jurisdiction of TSBP, the complaint may be referred to an investigator. An investigator may contact the complainant for additional information about the complaint. The investigator may also contact you, the licensee, for additional information about the complaint and/or your response to the substance of the complaint.

Complaint Resolution

Some complaints are closed with a verbal or written warning. If the complaint is not closed, TSBP conducts disciplinary proceedings in accordance with the provisions of the Texas Administrative Procedures Act. During these disciplinary proceedings, TSBP does not represent the complainant individually and does not seek restitution or money damages on behalf of any individual. TSBP may reprimand, suspend, revoke, retire, or fine the license of a pharmacist or pharmacy that is found to have violated pharmacy or drug laws.

Informal Conference

The licensee is given the opportunity to attend an informal settlement conference. The licensee will be told of the date, time and place of the conference. The licensee will be informed of the issues to be discussed. The complainant may attend the conference at their own expense if permitted by the Texas Pharmacy Act and TSBP Board Rules. Certain informal settlement conferences may be confidential by law. If applicable and permitted by law, the complainant will be notified of the date, time, and place of the conference. At the informal settlement conference, the licensee is given an opportunity to show compliance with the law and an explanation of his/her position in regard to the allegations. A panel (composed of TSBP staff and generally one TSBP Board Member) proposes a recommendation for settlement of the case. This recommendation could be dismissal of the case. If a complaint results in the panel proposing disciplinary action being taken against the licensee, the action may range from a formal warning in the form of a reprimand (public censure) to suspension to the imposition of a fine or other sanctions (such as continuing education) to revocation (license is taken away from the pharmacist or pharmacy). If the panel recommends the imposition of a disciplinary action, TSBP will provide the licensee with a written summation of the recommendation, also known as a proposed Agreed Board Order (ABO). If the licensee agrees with the recommendation contained in the proposed ABO, then it is presented to the TSBP Board Members at their next regularly scheduled meeting. If the TSBP Board Members accept the proposed ABO, the order is entered. The complainant may obtain a copy of the order if the order is a public order.

Appeal of Proposed Agreed Board Order

If the licensee does not accept the proposed ABO, or if the TSBP Board Members reject the proposed ABO, the case will proceed to a public hearing conducted by an Administrative Law Judge (ALJ) employed by the State Office of Administrative Hearings (SOAH). After the hearing is conducted, the ALJ will prepare a Proposal for Decision (PFD), which contains findings of fact, conclusions of law and recommended disciplinary action. The PFD will be presented to the TSBP Board Members who then make a decision in the case.

Appeal of TSBP Board Decision

The TSBP Board's decision may be appealed in accordance with Texas law. Once action has been taken against the licensee by TSBP, the licensee has the right to appeal the action to state courts.

American Pharmacies' Recommendation

During disciplinary proceedings, an attorney may represent a licensee and demonstrate the licensee's compliance with the law and position in defense of the allegations. It is American Pharmacies' recommendation to its members that as soon as they are aware that they or their pharmacy are subject of a complaint and/or investigation by TSBP, they should consider retaining an attorney familiar with administrative law to represent and defend the licensee and navigate these complicated disciplinary proceedings. We hope you will take this advice into consideration when you and/or your pharmacy are subject of a complaint with the Texas State Board of Pharmacy.

Questions? Please contact American Pharmacies General Counsel Amanda Fields at afields@aprx.org