



When OPD Knocks on Your Door



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YOUR REGULATOR: STATE EDUCATION DEPARTMENT

Board of Regents

17 Members

Responsible for General Supervision of the Dept.



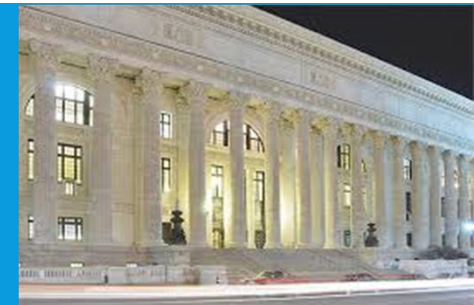
Office of the Professions / Professional Discipline (OPD)



Investigations Division



Prosecutions Division



OFFICE OF PROFESSIONAL DISCIPLINE

FACTS AND FIGURES

- Regulates over 50 professions, covering 900,000 practitioners and 30,000 practice entities.
- 7,000 – 10,000 investigations per year.
- Each investigator carries about 60 cases at a time.
- 649 cases investigated last year.
 - Of those, 149 were referred for charges (mostly cats and dogs, 10 horses)
- Investigators must have 8 years investigative experience to work for OPD.
 - They do not specialize in one profession or another (i.e., there are no “veterinarian specialist” investigators).

WHAT “PROFESSIONAL MISCONDUCT” DOES OPD INVESTIGATE?

- **Where can I find the rules of professional conduct?**

- New York State Education Law Articles 65 and 67
- Rules of the Board of Regents Part 29 (11 NYCRR Part 29)
- The Office of the Professions publishes these rules on its website:

<http://www.op.nysed.gov/title8/part29.htm>

- **What are some examples of “professional misconduct?” (non-exhaustive list)**

- Practicing with “gross negligence” or “gross incompetence” on a particular occasion.
- Practicing with ordinary negligence or incompetence on more than one occasion.
- Failure to keep adequate treatment records.
- Practicing while impaired by alcohol, drugs, or disability.

WHAT “PROFESSIONAL MISCONDUCT” DOES OPD INVESTIGATE?

- Examples of professional misconduct (cont’d)

- Being convicted of a crime.
- Permitting, aiding or abetting an unlicensed person in the practice of veterinary medicine or veterinary technology.
- Paying fees or compensation to a third-party for the referral of business.
- Performing services which have not been authorized by the client.
- Failure to respond to inquiries of the Department, and failure to provide treatment records to the Department upon request.
- Being found guilty of professional misconduct in another jurisdiction where you are licensed.

COMMON TRIGGERS FOR COMPLAINTS

Very often, pet owners make complaints to OPD when one or more of the following has occurred in connection with an episode of care:

- Death of animal (emotional)
- Death of animal (economic)
- Other adverse health effect in animal
- Large veterinary bill
- Lack of clear diagnosis / lack of communication
- Unnecessary tests (as perceived by pet owner)
- Another vet gives a second opinion different than yours
- Insufficient treatment records

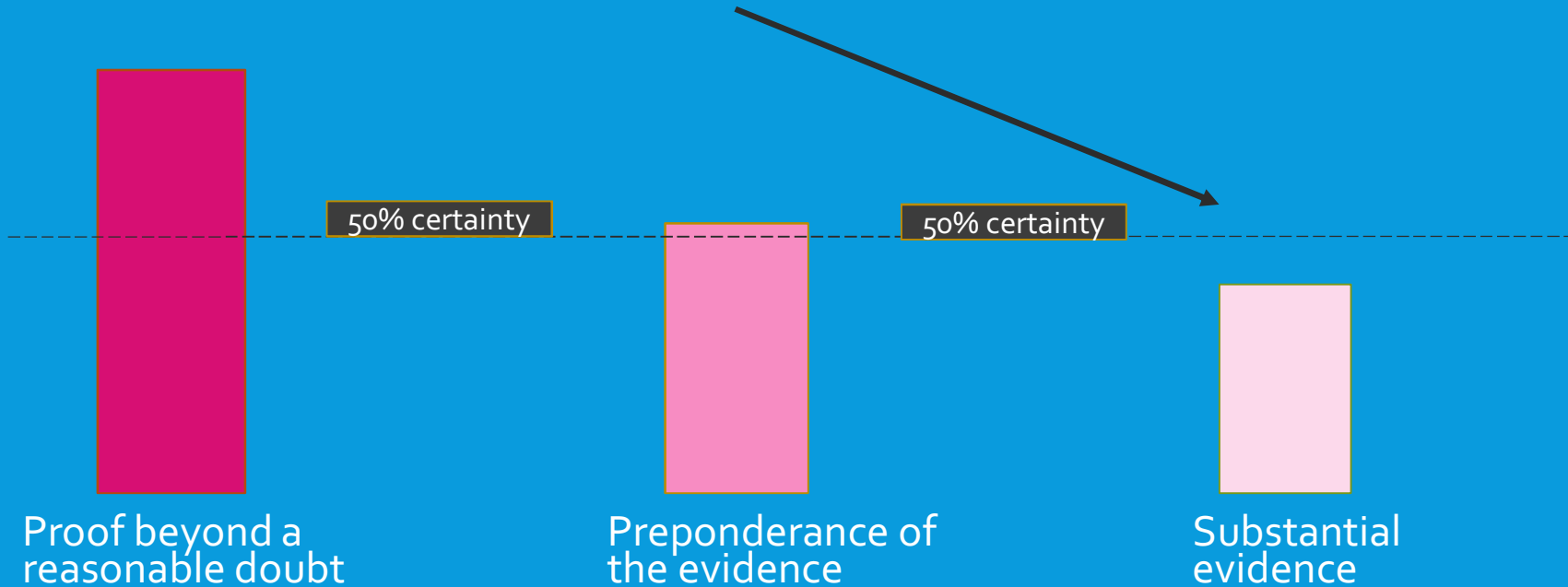


STAGES OF AN OPD INVESTIGATION

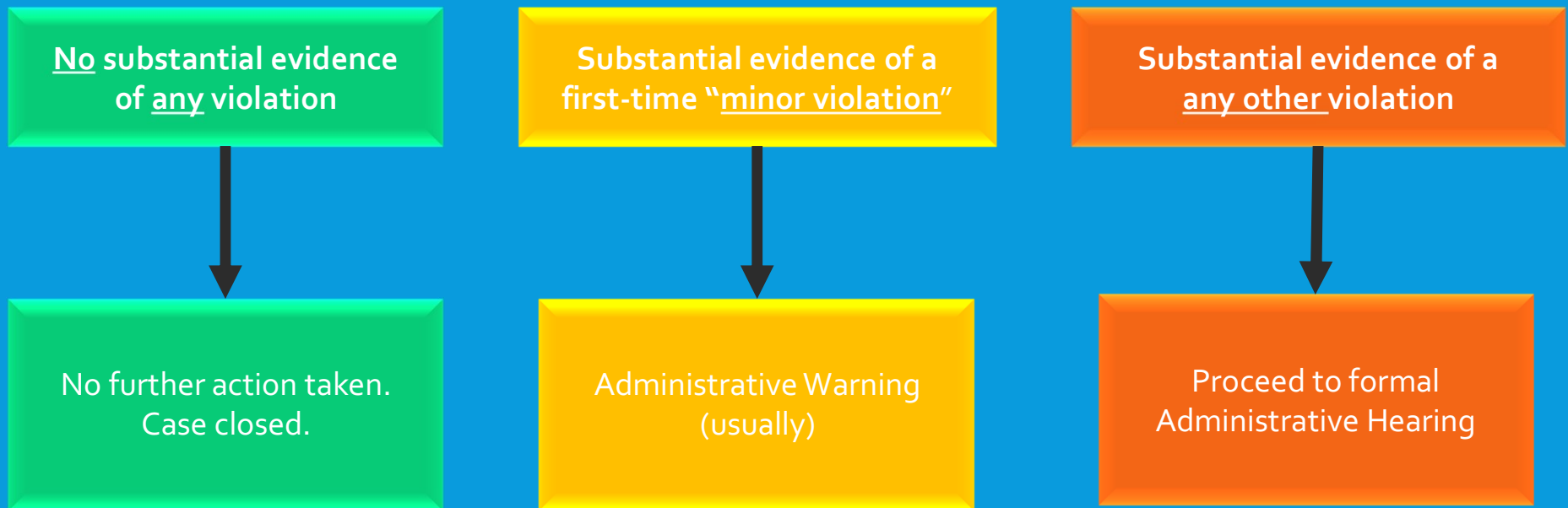


STAGES OF AN OPD INVESTIGATION

What is "substantial evidence" of misconduct?



POTENTIAL INVESTIGATIVE DETERMINATIONS



FORMAL ADMINISTRATIVE HEARINGS



- Tried before a panel (jury) of three people, two of whom will be veterinarians or vet techs.
- Presided over by a hearing officer to rule on objections, etc.
- Attorneys.
 - OPD is represented by a prosecuting attorney.
 - The veterinarian has the right to be represented by defense counsel.
- The hearing operates like a trial.
 - Witnesses testify under oath and are subject to cross-examination.
 - A stenographic record is created.
 - The three panel (jury) members can also ask questions of the witnesses.

FORMAL ADMINISTRATIVE HEARING

- **Important:** The administrative hearing is your only opportunity to present evidence on your behalf, such as:
 - Testimony of fact witnesses.
 - Testimony of expert witnesses.
 - Records and other documents.
- The evidentiary record is closed forever when the hearing ends.
- Although you can appeal the outcome (discussed below) in your appeal you will be limited to relying on the testimony and other evidence you presented at the hearing.

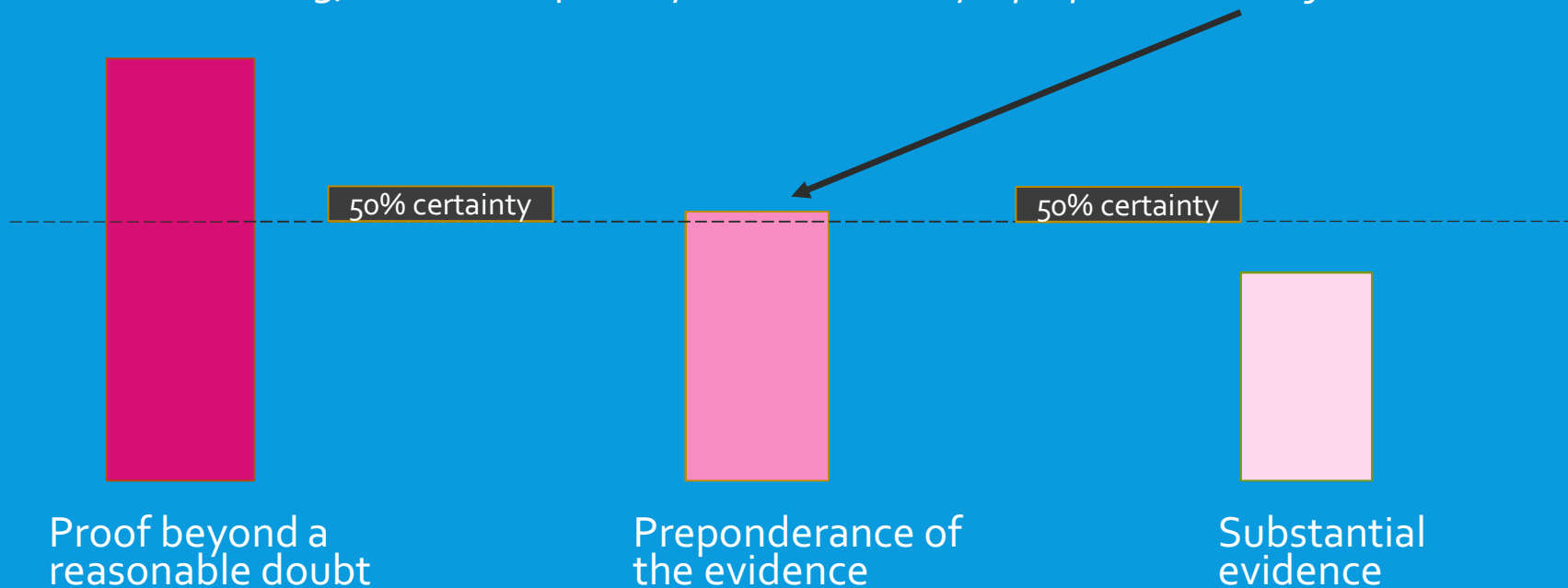


FORMAL ADMINISTRATIVE HEARINGS

- You will be found guilty of misconduct only if at least two (2) of the three (3) panelists find that you committed a violation by a “preponderance of the evidence.”

FORMAL ADMINISTRATIVE HEARINGS

At the hearing, OPD must prove your violation by a preponderance of the evidence



FORMAL ADMINISTRATIVE HEARINGS

- If the hearing panel finds you guilty of professional misconduct, the panel will recommend a penalty.
- The possible penalties are:
 - Censure and reprimand
 - Requiring the licensee to pursue a course of education or training
 - Public service of up to 100 hours
 - Probation.
 - Fine of up to \$10,000 per violation
 - Suspension of the license
 - May be for a fixed period of time, or
 - May be until the licensee completes a course of education or training
 - Stayed vs. Actual suspension
 - Revocation of the license
 - Restrictions against future licenses

REVIEW BY THE REGENTS REVIEW COMMITTEE AND BOARD OF REGENTS

- **Regents Review Committee.** The hearing panel's decision will be reviewed by a so-called "Regents Review Committee."
 - The Regents Review Committee consists of at least one member of the Board of Regents, and two other persons appointed by the Board of Regents.
 - The Regents Review Committee will write a report, either recommending that the hearing panel's decision be upheld, or recommending that the hearing panel's decision be modified or reversed. They will send that report to the full Board of Regents.
- **Review by Full Board of Regents.** The 17-member Board of Regents will then review the hearing panel's report and the Regents Review Committee's report. The Board of Regents makes the final determination of whether to uphold the findings of guilt and the penalty, or to modify or reverse them.

APPEAL TO THE COURTS (“ARTICLE 78 REVIEW”)



- If the Board of Regents sustains findings of guilt and a penalty against the licensee, the licensee may appeal that outcome in a court of law. This is called an “Article 78 proceeding.”
- The appeal must be brought in the Appellate Division of the Supreme Court, Third Department in Albany.
 - A panel of five (5) judges will hear the appeal.
 - You (or your attorney) are allowed to submit new legal briefs and make an oral argument before the court.
 - But you are *not* allowed to present new *evidence* in the court (such as new witness testimony or exhibits). You are limited to the evidentiary record that you made at the hearing.
- **Limited Scope of Review:** Generally, the appellate court must affirm the Board of Regents’ final determination as long as it was supported by “substantial evidence.”

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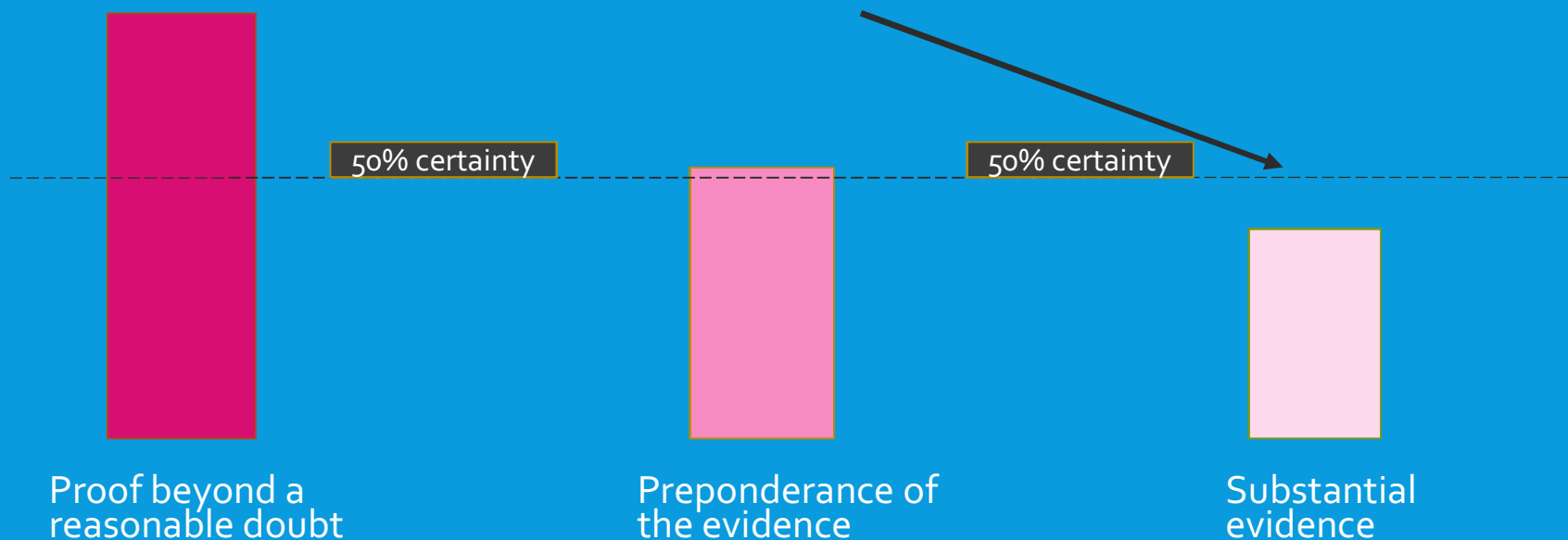


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APPEAL TO THE COURTS (“ARTICLE 78 REVIEW”)



The appellate court will affirm the Board of Regents' final determination if it is supported by "substantial evidence."



TRENDING VIOLATIONS AND PENALTIES

- From 2014 through 2016, there were a total of fifty (50) cases in which OPD found professional misconduct veterinarians or vet techs. In some cases, the licensee committed more than one type of professional misconduct. The following types of misconduct were the most commonly recurring:
 - Practicing negligently or incompetently: 18 cases
 - Failure to keep adequate/accurate treatment records: 13 cases.
 - Delegating professional veterinarian tasks to unlicensed persons/failure to adequately supervise: 9 cases.
 - Being convicted of a crime (usually DWI): 6 cases.

TRENDING VIOLATIONS AND PENALTIES

- 2014 – 2016, ten (10) license revocations or voluntary surrenders (veterinarians):
 - 5 cases: committing negligence in practice (typically causing harm or death to the animal)
 - 2 cases: being found guilty of misconduct in other states (Mass. and Md.)
 - 1 case: licensee addicted to controlled substance (Valium)
 - 1 case: making false statements in registration renewal papers
 - 1 case: inadequate/inaccurate records
- 2014 – 2016, nineteen (19) actual license suspensions (veterinarians):
 - 13 cases: committing negligence in practice (1 – 6 mos.)
 - 2 cases: delegating veterinarian tasks to unlicensed person (1 mo.; 1 yr.)
 - 1 case: failure to maintain adequate/accurate records (3 mos.)
 - 1 case: violating terms of prior probation (3 mos.)
 - 1 case: DWI conviction (indefinite)
 - 1 case: petit larceny conviction (1 mo.)

TRENDING VIOLATIONS AND PENALTIES

- 2014 – 2016, fines (veterinarians):
 - Fines awarded in 35 cases.
 - Average fine: \$2,229.
 - Median fine: \$500 (in 10 cases)
 - Highest fine: \$7,500 (1 case)
 - Reason: negligence -- failure to remove urinary calculi resulting in demise of the animal.
 - This licensee was also suspended for 6 mos.
 - Total dollars in fines: \$78,000