



# Investigative Process

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The investigative process has probably been the area most misunderstood about the Board. The *Investigative Procedure Outlined* (below article) explains the steps in the investigation from opening to closing a case, as advised by the Office of the Attorney General and the Examiners of Public Accounts. The Alabama Administrative Procedure Act governs all boards in many areas, but especially in investigative and disciplinary procedure.

The first step, we must receive a written complaint in order to investigate. Assumptions are sometimes made that the Board knows about all individuals operating without a license or otherwise illegally when, in fact, chances are very good that the allegation has never been reported to the Board. The Board has to prove that it hasn't acted in renegade

fashion and just decided to investigate someone for any reason whatsoever. This is why the law requires written complaints and cannot take anonymous complaints. Additionally, the complainant must be willing to testify.

## Why can't the ASBRT accept anonymous complaints?

Second, the Board does not have police power or the authority to arrest. Very few licensing boards are given these powers by the State Legislature. Upon receipt of a written complaint by an individual willing to

testify, the Board can send an investigator to collect information. The Investigative Committee uses the evidence collected by the investigator to determine probable cause to proceed to a hearing. If probable cause is met, the Board will hold a disciplinary hearing. The Administrative Law Judge and the Board agree on the final order and the respondent is notified.

After the hearing process has been completed, the Board can take the matter to circuit court if the respondent has not complied with the Board's order. There is certainly a mechanism for stopping individuals who operate illegally. Although, not as quick or dramatic as a police arrest, it is legal and effective in the long run.

# Investigative Procedure Outlined

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1. A complete complaint form must be received in the Board office.
2. An investigative file is then opened establishing a case number and taken under consideration by the Investigative Committee, consisting of one Board member, legal counsel, investigator, and executive director. The complainant is notified in writing, verifying receipt of the complaint; and the respondent is given an opportunity to respond in writing.
3. The Committee reviews and actively pursues an investigation to a legal and logical conclusion.
4. Once probable cause has been met, a hearing will be scheduled and the parties notified at least 21 days in advance. If the complaint is not substantiated by the evidence, the case is then closed. The respondent and complainant are both notified of the investigative conclusion.
5. For cases progressing to hearing, the Investigative Committee does have the option of entering into a consent

agreement with the respondent once the investigation has been concluded and the allegation(s) supported by the evidence. The Committee makes a recommendation as to what punishment and/or fines to impose on the respondent. The respondent can then agree by signing the consent order. All consent orders are voted on by the entire Board in open session and, if an agreement is reached, is public information and posted. If the respondent chooses not to agree to the arrangements proposed by the Board, the respondent can choose to continue with a hearing before the entire Board.

## DISCIPLINARY HEARINGS

1. Hearings are conducted at Board headquarters in the conference room. This process is subject to the Open Meetings Act which provides for the forum to be open to the public.
2. An Administrative Law Judge conducts the hearing as argued by

legal Counsel for the Board and the respondent's attorney.

1. Once the hearing is concluded, the Administrative Law Judge will write a final order of the case which is then voted on by the Board to accept, amend, or reject the judge's findings. The Board member serving on the Investigative Committee abstains from voting in order to guarantee due process.
2. The order is then sent to the respondent and the case is closed.
3. Disciplinary actions are then published in the *ABCR Newslines* and on the web site.

## Who?



*Who...Who...  
Who is on the  
ASBRT Staff?*

Who are the staff members of ASBRT? Probably not what you would guess....The ASBRT has been devoted to developing in a cost effective manner since its inception. Therefore, instead of hiring state employees with benefits, etc., ASBRT contracts with a management company for experienced office staff, office

space, furniture, and equipment. This contract was competitively bid through the Department of Purchasing and allows the Board to operate at approximately 66% less than the cost of agencies who hire and purchase these expenses separately.

Leadership Alliance was the low and responsible bidder for these services and provides three experienced staff members

in the area of professional regulation. These staff members and their areas of responsibility and expertise are:

**Paula "Scout" McCaleb, *President of Leadership Alliance and serves as the Executive Director for Client Boards.***

Contact for: Investigation/consumer complaints, legislation/law, rules and regulations, newsletter and publications, and other executive inquiries.

Education/Experience: Ms. McCaleb graduated with a B.S. from Troy University and has fourteen years experience as a professional regulator.

**Brandy L. Isenhour, *Operations Manager***

Contact for: Budgeting, accounts receivable and payable, and required state reports.

Education/Experience: Mrs. Isenhour is finalizing her degree in Accounting at South University. She has two years experience specifically in professional regulation.

**Patrick Woodham, *Licensing Agent***

Contact for: Application, renewal, change of address/name processing, general questions, web site updates, IT Coordinator, records archivist, and Board meeting notice and preparation.

Education/Experience: Mr. Woodham joined our team in 2009. He brings over ten years experience in customer service and five years experience in office administration. He attended Auburn University in Montgomery pursuing a degree in Economics and Finance and will be returning this year.

## What?

What is the purpose of ASBRT and what is the difference between the State Board and the Association? We get this question a lot in our office, and it is a good one.

Let's start with the purpose of ASBRT. Our purpose is very clearly defined by state law: to solely protect the public welfare (and not to promote the profession of respiratory therapy within Alabama). A board carries out this purpose by ensuring that the public is served by competent and honest respiratory therapists by establishing minimum standards of proficiency in

of respiratory therapy. This is done by licensing and discipline procedures. Other goals or objectives may not supersede this purpose. When one serves on a regulatory board, the focus shifts from professional advocacy to the protection of the public.

In contrast, the Alabama Association of Respiratory Care (AARC) is the professional advocate for the respiratory therapy profession in Alabama.

Although our purposes are different, one the consumer advocate and one the professions advocate, it benefits the state as a whole as our two organizations work

together creating confidence in respiratory therapy services in Alabama. This in turn accomplishes both professional advocacy and consumer protection. As a licensed respiratory therapist you can be proud of your License as a representation that you have met or exceeded competency standards established by state law.

*What is the purpose of ASBRT and what is the difference between ASBRT and AARC?*

## When & Where?

All Board meetings are held at the Board office in Montgomery. Meetings are open to the public for observation. Meetings are subject to change, but are always advertised on the Board web site ([www.asbrt.alabama.gov](http://www.asbrt.alabama.gov)) and the Secretary of State's web site ([www.sos.alabama.gov](http://www.sos.alabama.gov)) at least seven days in advance in accordance with the Open Meetings Act (OMA).

In addition, approved Minutes are posted on the Board web site. Now it couldn't be easier to stay current on Board actions and events.

**Remaining 2010**

**BOARD MEETINGS**

**July 16th —10:00 a.m.**

**October 15th—10:00 a.m.**



*Mark your Calendar*

# Disciplinary Actions

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## **Julietta McGowan**

**Date:** October 31, 2008

**Violation:** ASBRT Regulation 798-X-7-.03 (6)(q), exhibiting unethical or unprofessional conduct or behavior in the workplace.

**Disposition:** \$500 Fine and twelve (12) month probationary period.

## **Melinda Cantrell**

**Date:** January 16, 2009

**Violation:** Failure to complete the ART Wellness Program

**Disposition:** ASBRT License temporarily suspended for a period not to exceed 120 days.

## **Lou Ann Whitaker**

**Date:** April 17, 2009

**Violation:** ASBRT Regulation 798-X-7-.03(z); and Ala. Code §34-27B-8(1)

**Disposition:** ASBT License temporarily suspended from May 1, 2009 through May 31, 2009.

## **Christopher Hinson**

**Date:** April 17, 2009

**Violation:** ASBRT Regulation 798-X-7-.03(6)(g); and 798-X-5-.11

**Disposition:** \$300.00 fine; twelve (12) month probationary period

## **Brandi Channell**

**Date:** April 17, 2009

**Violation:** Failure to complete the ART Wellness Program and arrest on August 20, 2008, for attempted possession of a controlled substance.

**Disposition:** ASBRT License temporarily suspended for a period not to exceed 120 days.

## **Stephen A. Wilson**

**Date:** October 16, 2009

**Violation:** Failure to report criminal conviction on original application.



## Cha, Cha, Changes (Cont'd from Page 1)

- **Wellness Program**—The Wellness Program set up through the Medical Association has been discontinued. This program was reviewed after the first year and the Board determined that the program could be administered in house rather than contracting with an outside source. Therefore, the ASBRT has assigned a Wellness Committee who now reviews substance abuse cases.
- **ASBRT CE Provider Program**—The ASBRT Provider program has been discontinued. However, there is essentially no change because all Alabama Hospitals are already approved to provide continuing education and are not required to obtain an ASBRT number. This simply eliminates the redundancy.

ASBRT *Newsline* is an official publication of the Alabama State Board of Respiratory Therapy. This publication is intended for a wide audience to alert licensees to matters of possible procedural, legal, legislative, and regulatory interest. It should not be relied upon, nor is it intended to provide legal, insurance, or accounting advice. Licensees should consult their lawyers, insurance agents, and accountants before taking any action in response to this newsletter, as the opinions expressed herein may be completely altered by the licensees' actual facts.