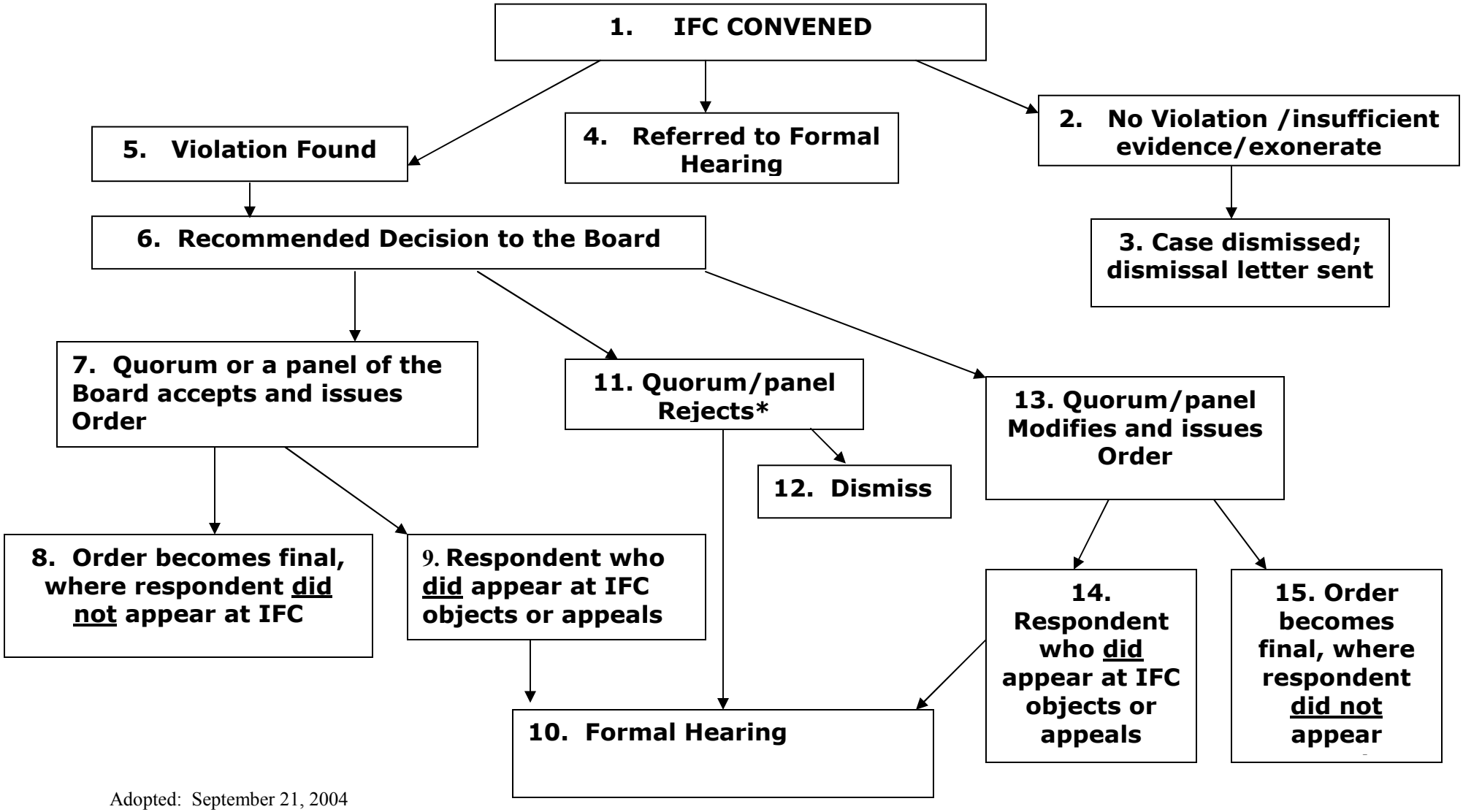
Guidance for Conduct of an Informal Conference by an Agency Subordinate of a Health Regulatory Board at the Department of Health Professions



Adopted: September 21, 2004
Revised: November 17, 2009; August 24, 2010 and January 29, 2013

Narrative explanation of Flow Chart on Delegation to an Agency Subordinate

This describes the process in which an Agency Subordinate ("subordinate") hears a case at an informal conference up to a case that may be referred to a formal hearing.

1. Pursuant to a notice, the designated subordinate will convene the informal conference ("IFC"). An IFC before a subordinate is conducted in the same manner as an IFC before a committee of the board. Following the presentation of information by the parties, the subordinate will consider the evidence presented and render a recommended decision within 90 days regarding the findings of fact, conclusions of law, and if appropriate, the sanction to be imposed.

2. The subordinate may recommend that the respondent be exonerated, that there be a finding of no violation, or that insufficient evidence exists to determine that a statutory and/or regulatory violation has occurred.

3. If the subordinate makes such a finding, the case is dismissed and a dismissal letter is issued to the respondent notifying him of the determination.

4. The subordinate may decide that the case should be referred to a formal hearing. A hearing before the board would then be scheduled and notice sent to the respondent.

5. The subordinate may determine that a violation has occurred and recommend the findings of fact and conclusions of law along with an appropriate sanction.

6. With the assistance of APD, the subordinate drafts a recommended decision, which includes the findings of fact, conclusions of law and sanction. The recommendation is provided to the respondent and to the board and must be ratified by a quorum of the board or a panel consisting of at least five members of the board.

- If the respondent appeared at the IFC, a copy of the Sanction Reference Point Worksheet completed pursuant to Guidance Document #90-7 will be provided to the respondent along with the recommended decision of the subordinate. The respondent has the opportunity to appear and respond in person to the recommended findings of fact, conclusions of law, and recommended sanction when considered by the board, or the respondent may respond in writing."

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- If the respondent did not appear at the IFC, a copy of the Sanction Reference Point Worksheet completed pursuant to Guidance Document #90-7 will not be provided to the respondent. The respondent will not be afforded the opportunity to appear, but may respond only in writing to the recommended findings of fact, conclusions of law, and recommended sanction when considered by the board.
- No new or additional information will be accepted during agency subordinate recommendation consideration by the board. If responding to the recommended decision in person or in writing, the respondent is limited to providing a response to the recommended findings of fact, the recommended conclusions of law, and recommended sanction, if any. If appearing in person, the respondent is allotted five minutes to respond.

7. If the quorum or panel of the board accepts the recommended decision and:

8. If the respondent did not appear at the IFC, the board's decision becomes a final order that can only be appealed to a circuit court; or

9-10. If the respondent did appear at the IFC and objects to and appeals the order, he may request a formal hearing before the board. A case referred to a formal hearing proceeds in the same manner as cases considered by special conference committees convened pursuant to Va. Code § 54.1-2400(10). If the respondent who appeared at the IFC does not request a formal hearing, the order becomes final after a specified timeframe.

11. A quorum or panel of the board may reject the recommended decision of the subordinate, in which case:

The quorum/panel may decide to refer the case for a formal hearing **(10)**; or the quorum/panel may decide to dismiss the case and a dismissal letter is issued to the respondent notifying him of the decision of the board **(12)**.*

* However, upon exception and advice of counsel, the Board may refer a case back to an IFC when there is a concern regarding the Board having provided adequate notice to the respondent prior to the IFC.

13. A quorum or panel of the board may modify the subordinate's recommended decision and issue an order reflecting the modified decision to the respondent.

15. If the respondent did not appear at the informal conference, then the board's decision becomes a final order that can only be appealed to a circuit court.

14-10. If the respondent did appear at the informal conference and objects to and appeals the order, he may request a formal hearing before the board. A case referred to a formal hearing proceeds in the same manner as cases considered by special conference committees convened pursuant to Va. Code § 54.1-2400(10). If the respondent who appeared at the IFC does not request a formal hearing, the order becomes final after a specified timeframe.