



TEXAS MEDIATOR  
CREDENTIALING  
ASSOCIATION

## SUMMARY of GRIEVANCE COMPLAINT PROCESS

**Note:** The following is a summary of the grievance process of the TMCA Grievance Rules and Procedures and does not contain all of the provisions and requirements of the matters summarized. The full text of the rules and procedures should be reviewed in connection with each matter summarized. Words beginning with an upper case letter, with the exception of headings and titles, indicate defined terms in the TMCA Grievance Rules and Procedures.

### **SUMMARY**

#### COMPLAINT PROCESS (2.01-2.24):

All grievances are initiated by sending to the TMCA a Grievance Form within 2 years after the date of the occurrence or discovery of alleged Ethical Misconduct (5.02).

If the TMCA receives a written statement (not on a Grievance Form) which appears to allege Ethical Misconduct, the TMCA sends to the maker of the statement (2.07):

- A Grievance Form.
- Copy of the TMCA Grievance Rules and Procedures.

If TMCA receives a completed Grievance Form (2.07):

1. TMCA office sends the Grievance Form to the Grievance Committee.
2. Committee sends to Complainant:
  - Names and addresses of Committee members.
  - Notice that Complainant has 20 days to send to the Board a challenge to the qualifications of Committee members.
3. Committee members certify they are not disqualified to consider Grievance Form or withdraw from the Committee (2.05).

If Complainant challenges the qualifications of a member, the Board sends to Complainant notice of the Board's determination of the challenge.

If the challenge is sustained, or a member withdraws from the Committee, the Chair will appoint another Committee member and the Board sends to the Complainant:

- Notice of the name and address of the new member.
- Notice that the Complainant has 20 days to file with the Board a challenge to the qualification of the new member.

This challenge process is repeated for each challenge and Board action on each challenge.

After all challenges to Committee members are resolved, and not earlier than 20 days after Complainant is sent notice of the identity of the Committee members, the Committee evaluates the Grievance Form to determine if it is an Inquiry or a Complaint.

If the Committee determines the Form is an Inquiry, notice is sent to the Complainant that (2.07A):

- The Form has been determined to be an Inquiry.
- Complainant may amend the Form one additional time and request re-evaluation.
- Complainant has 20 days to appeal the determination to Board.

If the Committee determines the Form may constitute a Complaint, and it clearly appears the Form was received by the TMCA after the 2 year limitation period (5.02), the Committee shall dismiss the Complaint and send the Complainant notice that:

- Complaint is dismissed.
- Complainant has 20 days to appeal the dismissal to the Board.

If the Committee determines the Form may constitute a Complaint and it does not clearly appear that the Form was received by the TMCA after the 2 year limitation period, notice is sent to Complainant that (2.07):

- The Form has been determined to be a Complaint.
- Complainant has 30 days to send to the Committee:
  - Statement identifying all Participants in the Mediation and how they Participated in the Mediation.
  - Waivers of Confidentiality from Participants.
  - Statement that Waivers of Confidentiality have been obtained from all Participants.
  - Permission for the Committee to contact Participants in the Mediation.

When all Waivers of Confidentiality are received by the TMCA from Complainant, the TMCA sends to Respondent (2.07):

- Copy of Complaint (Grievance Form).
- Copies of Waivers of Confidentiality received from Complainant.
- Copy of Complainant's statement identifying all Participants in Mediation.
- Copy of Complainant's statement that Waivers of Confidentiality have been obtained from all Participants.
- Names and addresses of Committee members.
- Notice that Respondent has 20 days to challenge Committee members' qualifications.
- Notice that Respondent has 20 days to object that all Waivers of Confidentiality have not been obtained by Complainant and send to the Committee a statement identifying all Participants in the Mediation who have not provided Waivers and how each such person Participated in the Mediation (not delayed by Respondent's challenge to the qualifications of a Committee member).
- Notice that Respondent has 30 days to respond to the Complaint (not delayed by Respondent's challenge to the qualifications of a Committee member).

If Respondent challenges the qualifications of a Committee member, the Committee will take no further action on the Complaint until the challenge is resolved (2.07).

If Respondent objects that all Waivers of Confidentiality have not been obtained from all Participants in the Mediation, and the Committee agrees, the Committee shall send Complainant and Respondent notice that:

- The Committee has determined that all Waivers of Confidentiality have not been provided by Complainant.
- Complainant has 20 days to obtain and send to the Committee the required additional Waivers, or the Complaint will be dismissed.
- Complainant has 20 days to appeal to the Board the Committee requirement of additional Waivers.

#### JUST CAUSE HEARING (2.09-2.11):

Committee Chair convenes Committee for a hearing to determine Just Cause within 60 days after the later to occur of the following:

- Receiving Respondent's response to the Complaint.
- The resolution of all challenges to Committee member qualifications.
- The date the Committee gives the parties notice of the Committee's decision that Respondent has not defaulted after a challenge by Respondent to a notice of default.

The Committee sends Complainant and Respondent at least 20 days prior to the Just Cause hearing, notice:

- Time, date and location (or means) of the hearing.
- That they may appear at the hearing and be heard.
- That they may have counsel present at the hearing.
- That if they intend to appear at the hearing they must send to the Committee, with a copy to the other party, at least 10 days prior to the hearing, written notice that they will appear at the hearing with or without counsel.

If the Committee fails to find Just Cause, the Complaint shall be dismissed and the Committee sends notice to Complainant and Respondent that (2.10 & 2.13):

- The Committee does not find Just Cause.
- Complaint is dismissed.
- Complainant may within 30 days appeal the determination to the Board or re-file the Grievance Form with additional information.

If the Committee finds Just Cause, the Committee shall send the Complainant and Respondent a copy of the Complaint, the response, and notice (2.11):

- The Committee finds Just Cause.
- The date, time, location and proceedings of the hearing on the Complaint with a copy of the Complaint and Respondent's response.
- That they may have counsel present at the hearing.
- To send to the Committee with a copy to the other party, within 20 days:
  - Identification of witnesses to be presented at the hearing.
  - Summary of contested fact issues.
  - List of documents to be presented at the hearing.

- Summaries of witness testimony.
- Estimate of time for entire hearing.
- Whether or not they will have counsel present.
- Other matters required by the Committee.

#### HEARING ON THE COMPLAINT (2.13H):

Committee sets hearing not sooner than 45 days nor later than 120 days after Respondent files the first response to the Complaint.

If Mediation is recommended by the Committee prior to the hearing on the Complaint, the hearing shall not take place any sooner than 20 days nor any later than 60 days after the following, whichever occurs first:

- Mediation completion date set by the Committee.
- Notice to the Committee from a party that he or she will not agree to Mediate.
- Notice to the Committee from a party that Mediation has been unsuccessful.
- Failure to give notice of agreement to Mediate within 20 days of the Committee's notice of Mediation recommendation.

#### DECISION OF THE COMMITTEE (2.13J):

Within 30 days after the Complaint hearing, 30 days after notice to Complainant and Respondent of default by Respondent, 30 days after a default hearing, or, if the parties agree to Mediation or Mediation is recommended by the Committee following any of the foregoing, then 30 days after the earlier of:

- Mediation completion date set by the Committee.
- Notice from a party that he or she will not agree to Mediate.
- Notice from a party that Mediation has been unsuccessful.
- Failure to give notice of agreement to mediate within 20 days of the Committee's notice of Mediation recommendation.

**Notice to Complainant and Respondent of the decision with findings of fact, conclusions and any Sanctions.**

Decision is final if not appealed within 30 days after the notice of the decision.

Publication of a decision of de-Credentialing or non-probated suspension of Credentialing at the TMCA website.

Notice to Complainant and Respondent of right to appeal to the Board within 30 days of the notice of the decision.

#### APPEAL TO THE BOARD AND DECISION OF THE BOARD (2.18):

Initiated by a notice of appeal with a request that the Board review a Committee decision sent to the Board within 30 days of the Committee's decision on the Complaint. No evidentiary hearing. The

Board only considers the record of the Committee hearing and briefs of the parties. Board decisions on appeals are final.

Upon receipt of notice of appeal, the Board sends Complaint and Respondent:

- Copy of notice of appeal.
- Deadlines for briefing.

The Board may affirm, reverse or modify the Committee decision.

If the Board reverses, modifies the Committee's decision, it sends written instructions to the Committee as to how to proceed.

#### DEFAULT BY RESPONDENT (2.13I):

If Respondent fails to file a response (default) to the Complaint or revocation motion, the Committee sends notice to Respondent and Complainant that:

- Respondent has defaulted.
- Respondent has the opportunity to file with the Committee a response and a statement setting out facts that support good cause for the default within 20 days after the notice.

If the Committee sets a default hearing (such a hearing is not required), notice shall be sent to Complainant and Respondent at least 20 days prior to the hearing of:

- The date, time and location (or means) of the hearing.
- That they may have counsel present at the hearing.
- That if they intend to appear at the hearing they must send notice to the Committee and the other party at least 10 days prior to the hearing that they will appear with or without counsel.

The hearing will not be earlier than 30 days after Respondent is sent notice of default.

A written decision, written findings of fact, conclusions, and any Sanctions shall be made in writing by the Committee and sent to Complainant and Respondent within thirty days after the following, whichever occurs first:

- Notice of default to the Respondent, in the event Respondent does not file with the Committee a response and a statement setting out facts that support good cause for a default; or
- The date Respondent files with the Committee a response and a statement setting out facts that support good cause for a default; or
- The conclusion of the last hearing at which the Committee hears evidence on the default.

#### OBTAINING INFORMATION WHEN OTHER PARTY WILL NOT PROVIDE IT (2.13D):

Request to the Committee within 20 days after the date Respondent filed or should have filed the first response to the Complaint or revocation motion with the Committee.

Request sent by the Committee to party who has information with notice that the party has 20 days to respond to the request or object to the request.

If objection to the request is filed the Committee chair will evaluate and rule on the objection. There is no appeal of the ruling until a decision on the Complaint is made.

#### COMMITTEE RECOMMENDATION OF MEDIATION (2.21):

The Committee may at anytime recommend Mediation.

If the Committee recommends Mediation, the Committee shall send to Complainant and Respondent notice that:

- Mediation is recommended, but not required.
- The time for completion of Mediation.
- The parties are to agree on a mediator and a time, date and location of the Mediation.
- Complainant and Respondent must notify the Committee within 20 days that they agree or do not agree to mediate.
- Any other matter the Committee deems appropriate.

If the Committee recommends Mediation, the grievance process will stop until the earlier to occur of:

- The expiration of the time for completion of Mediation.
- Notice from a party that:
  - He or she does not agree to mediate, or
  - The parties have unsuccessfully mediated.

Failure of the parties to notify the Committee within 20 day after the notice of the recommendation to mediate, that they agree to mediate.

#### AGREEMENT BY COMMITTEE AND RESPONDENT RESOLVING COMPLAINT (2.22B):

The parties may agree to resolve the Complaint.

The Complaint continues to proceed through the grievance process until:

- The Complaint is dismissed, or
- The Committee or Board approves some action the parties agree that the Committee or Board is to take as a part of the agreed resolution of the Complaint.

If the parties reach an agreement, they must both send to the Committee notice that an agreement has been reached and:

If there is a full resolution of the Complaint, Complainant must send to the Committee a dismissal of the Complaint.

If there is a partial resolution of the Complaint:

- Complainant and Respondent must send to the Committee a statement of what is and is not resolved and any action to be taken by the Committee or Board as a part of the resolution.

- Complainant must send to the Committee a withdrawal of those parts of the Complaint that have been resolved or the Committee will dismiss those parts of the Complaint that have been resolved.

If a full or partial agreed resolution requires that the Committee or Board take some action, such action requires:

- Unanimous approval by the Committee, if a Committee action. If Committee approval is not unanimous, the proposed Committee action may be reviewed by the Board at the request of both parties, for approval by a majority of the Board.
- Majority approval by the Board, if a Board action.

#### AGREED RESOLUTION BETWEEN COMMITTEE OR BOARD AND RESPONDENT (2.22A):

The Committee (for a Complaint) or Board (for a Committee decision on a Complaint on appeal) may at anytime offer Respondent an agreed resolution of the Complaint or of a Committee decision on a Complaint on appeal to the Board.

If the Committee or Board sends Respondent an offer of an agreed resolution, the Committee or Board sends to Complainant and Respondent the offer in the form of a written decision with findings, conclusions, Sanctions and other terms.

The offer is not accepted by the Committee or Board until it is signed by the Respondent and returned to the Committee or Board without changes to its terms.

The making or consideration of such an offer does not stay or abate any proceedings.

#### REVOCAION OF PROBATED SUSPENSION OF CREDENTIALING (2.17):

A motion to revoke probated suspension of credentialing is initiated by filing it with the Committee with proof that the motion was sent to Respondent. Upon receipt of the motion and proof it was sent, the Committee shall send Respondent:

- Copy of the motion.
- Notice to respond within 20 days.

After receipt of a response the Committee shall send to Complainant and Respondent:

- Copy of the motion and response.
- Notice of time ,date, location (or means) and proceedings of the hearing.
- Notice that within 20 days the parties shall send to the Committee and other party:
  - Identification of witnesses to be presented at the hearing.
  - Summary of contested fact issues.
  - List of documents to be presented at the hearing.
  - Summaries of witness testimony.
  - Estimate of time for entire hearing.
  - Whether or not they will have counsel present.
  - Other matters required by the Committee.

If Respondent defaults (fails to respond to the motion), see the procedure for “Default by Respondent” summary above.

The hearing on the motion is between 45 and 120 days after the filing or deadline for the filing of the response to the motion, or between 20 and 60 days after mediation referral is resolved (see mediation summary).

A decision revoking probation or denying a motion to revoke may be appealed to the Board.

#### REINSTATEMENT OF CREDENTIAL (3.01-3.04):

A petition to reinstate a Credential may be sent to the Board not earlier than 5 years after the date the mediator was de-Credentialed or the Committee accepted the mediator’s resignation of a Credential.

Notice published at TMCA website at least 30 days prior to the hearing on the petition shall include:

- The name and address of the petitioner.
- The hearing date and time.
- Notice to interested persons that they may within 20 days prior to the hearing:
  - Send to the Board statements concerning the petition.
  - They may attend the hearing if they send to the Board a statement concerning the petition, a request to attend the hearing, and agree to be bound by the Grievance Rules and Procedures.
  - Any other information the Board deems appropriate.

The hearing will not be earlier than 60 days after publication of the notice.

Copies of responses to the publication and requests to attend the hearing shall be sent to the mediator at least 10 days prior to the hearing.

If reinstatement is denied, no additional requests may be made for reinstatement for at least one year after denial.

At least 20 days prior to the hearing petitioner shall send to the Board:

- Identification of witnesses to be presented at the hearing.
- Summary of contested fact issues.
- List of documents to be presented at the hearing.
- Summaries of witness testimony.
- Whether or not they will have counsel present.
- Other matters required by the Committee.

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