

## **POLICY NUMBER 8: PROCESSING OF A COMPLAINT AGAINST A RPF OR CERTIFIED SPECIALIST (DISCIPLINARY REVIEW PROCESS) Note:**

The disciplinary process is governed by the Public Resources Code (PRC); Title 14 California Code of Regulation (14 CCR), Evidence Code (EC), Code of Civil Procedure (CCP), and Government Code (GC). For the benefit of interested persons, the following provides a representative narrative of the typical sequence followed in implementing these Codes. The attached flow charts are a visual presentation of this process.

Any portion of this policy that is not a summary of existing statutory or regulatory requirements constitutes recommended policies that the Executive Officer is encouraged to utilize as best practices designed to promote a fair complaint resolution process for the RPF/Certified Specialist (CRM). It is within the discretion of the Executive Officer to determine that the facts pertaining to the processing of a particular complaint warrant deviation from these guidelines, provided that the Executive Officer should be prepared to explain the basis for utilizing alternate procedures to the PFEC and the Board.

### **The Complaint**

A complaint can be filed by a person, in writing, with Professional Foresters Registration, or the Board of Forestry and Fire Protection (Board) can proceed upon its own (PRC, Section 775). The RPF's/Certified Specialist's (CRM's) vested property right of the license is protected under "due process". The Executive Officer should initially verify that the allegations in the complaint if substantiated, constitute grounds for possible disciplinary action (i.e., fraud, deceit, misrepresentation, gross negligence, etc; PRC, Section 778). If the matter is, or becomes, a criminal court action, the administrative action will likely be delayed until a judicial determination is rendered.

### **Confidentiality**

A complaint is a CONFIDENTIAL matter (GC §6254(f), and §11183). The identity of the person filing the complaint remains confidential throughout the investigation (EC §1041). This may become public information if hearing testimony from the complainant is required or if the person's identity is otherwise pertinent to the case. If the complaint does not come under the grounds for discipline, the RPF/Certified Specialist (CRM) may still be notified that a complaint was received and of their subsequent exoneration. Confidentiality will likely limit the amount of information that can be provided.

### **Processing a Complaint**

The Executive Officer may take the matter to the Professional Foresters Examining Committee (PFEC) at any stage of processing.

The Executive Officer will investigate all complaints of alleged conduct that are subject to disciplinary action. However, the Executive Officer may exercise discretion as to the level of investigation that is necessary and appropriate under the circumstances. The Executive Officer shall provide a summary of all received complaints to the Professional Foresters Examining Committee and identify the extent to which they were investigated.

For instance, if the failures of RPF/Certified Specialist (CRM) responsibility are well-documented (e.g. violations, citations, court records, or other documents), the Executive Officer may determine that minimal investigation is required. At a minimum, the RPF/Certified Specialist (CRM) should be given an opportunity to provide his or her side of the story in response to the issues of concern (allegations). The RPF/Certified Specialist (CRM) should be advised that the reply may be used against him or her in the

process, and may choose not to respond. If needed, expert witnesses may be involved to establish RPF/Certified Specialist (CRM) prudent standards of conduct given the same set of circumstances. If the RPF/Certified Specialist (CRM) is willing to admit to any failures of responsibility, the Executive Officer may suggest the RPF/Certified Specialist (CRM) sign a Stipulated Agreement implementing specified discipline (i.e., suspension--some portion of which may be “stayed” thereby triggering probation; or revocation).

On the other hand, when the issues are not well-documented, the Executive Officer may initiate a more thorough investigation. This may involve professional investigators from the Department of Consumer Affairs, which is the agency most involved with California licensing boards. The investigator gathers the evidence of what occurred and is subject to the Evidence Code. Professional investigator direction and advice is provided by the Executive Officer, and in some cases, independent RPFs/Certified Specialists (CRMs). The investigator interviews witnesses while stressing the confidential nature of the matter, and gathers leads as appropriate.

As soon as all information necessary for professional investigation is obtained, the RPF/Certified Specialist (CRM) should be notified by the Executive Officer who will explain that Professional Foresters Registration is coordinating an investigation on complaint allegations. The Executive Officer may enumerate the allegations to the RPF/Certified Specialist (CRM) under investigation or the investigator may make the allegations known when presenting questions. When the RPF/Certified Specialist (CRM) is personally contacted by the investigator, the RPF/Certified Specialist (CRM) should be asked if he/she is willing to be interviewed to discuss facts important to the case. The RPF/Certified Specialist (CRM) may also make a written statement. The RPF/Certified Specialist (CRM) may refuse to be interviewed. The investigator may ask the RPF/Certified Specialist (CRM) details about occurrences important to the case. Information gathered may be used against the RPF/Certified Specialist (CRM).

These stages in the process are sensitive because many RPFs/Certified Specialists (CRMs) feel they should be able to face his/her accuser at this point. Because no Accusation has been filed, there is no accuser. Many RPFs/Certified Specialists (CRMs) feel they should have an attorney present when talking with the investigator, but it is not required. Only facts are being gathered for consideration by the PFEC to recommend appropriate action. At any time evidence warrants criminal action, however, the investigator may, prior to gathering statements, remind the RPF/Certified Specialist (CRM) of his or her rights not to answer questions and that any statements made can be used as part of the disciplinary process and any related criminal action. A Criminal Complaint may be independently requested by Consumer Affairs, Division of Investigation, or a District Attorney if the evidence warrants such action.

### **Peer Review**

The Executive Officer reviews the RPF's/Certified Specialist's (CRM's) response to the allegations, stipulated Agreement, or investigation report with the PFEC. Statements made and evidence presented in the review, however, could be used in an Accusation.

When incriminating evidence is sufficient at any time in the process, one or more RPFs/Certified Specialists (CRMs) serving as “Expert Witnesses” may be assigned to examine the situations regarding the complaint.

Consistent with long-standing precedents relating to professional conduct, “standards”

of performance are established using the “prudent forester concept” where the evaluation by independent RPFs/Certified Specialists (CRMs) of similar qualifications and experience, is used to establish proper and prudent actions in any specific situation.

### **Disciplinary Recommendations**

The possible action recommended by the PFEC to the Executive Officer at this point can include: 1) **Exoneration**; no further action warranted, 2) **Confidential Letter** stating the Committee’s concerns, 3) **Private Reprimand** issued by the Board, 4) Board approval of **Stipulated Agreement**, or 5) filing of an **Accusation**. Cases are considered ‘closed’ upon Exoneration, PFEC issuance of a Confidential Letter, or Board issuance of a Private Reprimand. Cases are not considered ‘closed’ upon Stipulated Agreement or the filing of an Accusation.

### **Formal Hearing Procedures of the Administrative Procedures Act**

Formal administrative disciplinary proceedings are conducted pursuant to the adjudicative hearing provisions of the Administrative Procedure Act (GC 11500 et seq.). The remaining provisions of this policy summarize the relevant provisions of that Act, as it read on the date that these PFEC policies were adopted. This policy may not reflect recent amendments to the statutes, which prevail over any inconsistencies in this policy.

### **The Accusation**

If disciplinary action without a Stipulated Agreement is anticipated, the Executive Officer, in coordination with counsel from the Attorney Generals’ Office, prepares a formal Accusation. Filing the Accusation with the Office of Administrative Hearings makes the matter public, and the Accusation is available upon request.

Sent with the Accusation, the Statement to Respondent notifies the RPF/Certified Specialist (CRM) that a Notice of Defense may be filed requesting a hearing. At this point, the RPF/Certified Specialist (CRM) is advised he/she may want to seek representation by legal counsel. The RPF/Certified Specialist (CRM) is not entitled to access privileged investigation working notes or attorney work product. The evidence which will be submitted at the hearing, including reports of any witnesses, can be obtained so he/she may prepare a defense. This is called “discovery.” (GC §11507.6)

If the RPF/Certified Specialist (CRM) finds the evidence to be submitted at the hearing is true and complete, he/she should be provided another opportunity to accept, on the merits of the Accusation, possible Board disciplinary action, instead of proceeding with the hearing. This is done by signing a Stipulated Agreement which imposes license suspension or revocation with conditions satisfactory to the Board as appropriate discipline.

### **Hearing**

In the absence of a Stipulated Agreement, an Administrative Law Judge (ALJ) weighs the investigation evidence and the standards of prudent conduct established by the expert witnesses against the evidence provided by the accused RPF/Certified Specialist (CRM). The cost of each party’s counsel is borne by the respective party. The accused RPF/Certified Specialist (CRM) can provide self-representation (no counsel) proposed decision for Board action. The ALJ is encouraged to utilize the Disciplinary Guidelines in 14 CCR §1612.1 and Criteria for Rehabilitation in 14 CCR §1614.

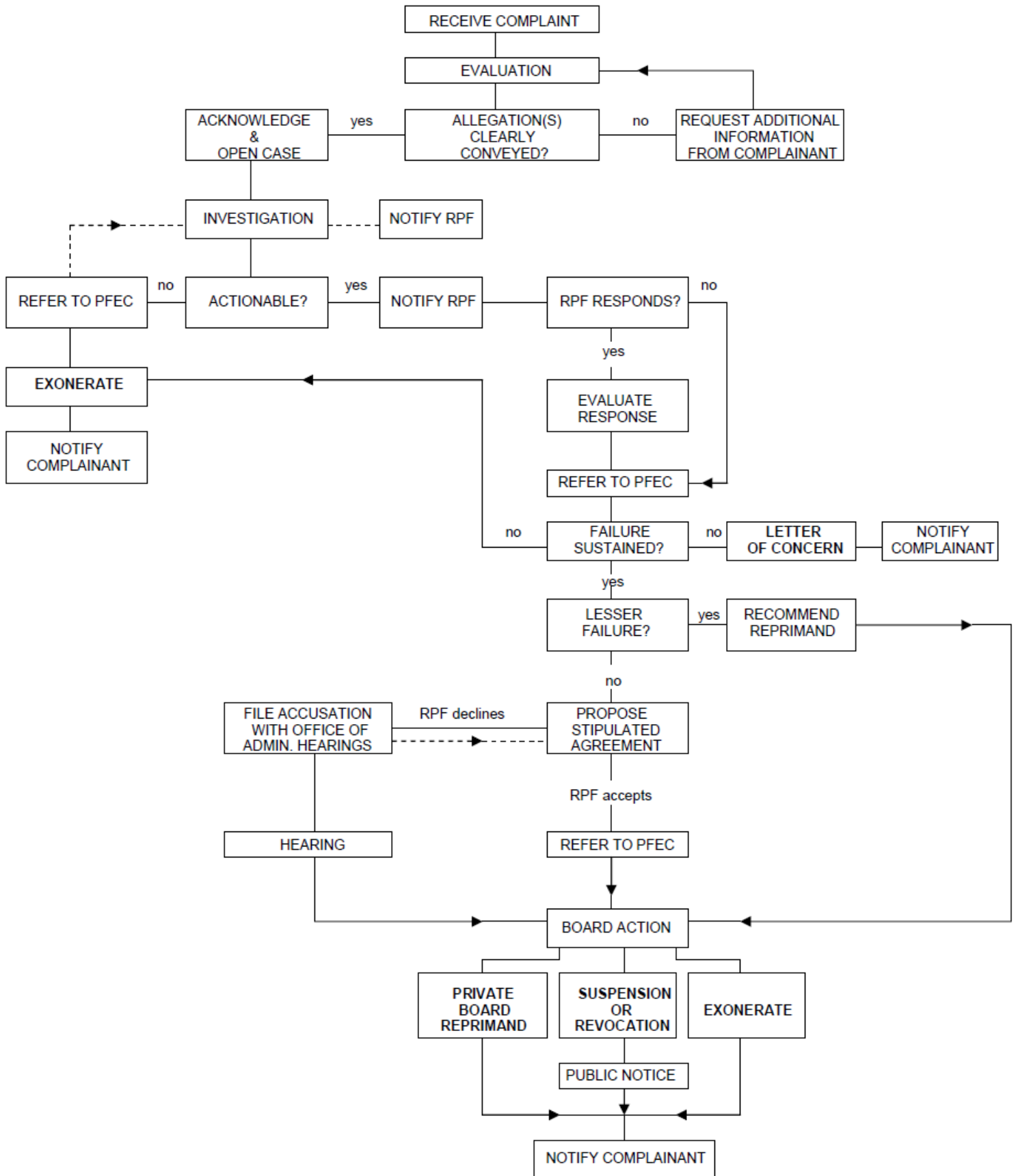
### **Board Actions from Hearings Findings**

A second counsel from the Attorney General’s Office represents the Board in considering the decision of the ALJ. In considering the decision of the ALJ, the Board

may adopt, modify the recommendations, send the entire matter back to the same ALJ, or reject the proposed decision and review the case on the record and arrive at a decision (GC §11517). The proposed decision of the ALJ is not binding, unless the Board fails to act within a specified time period. Acting within the specified time period, the Board shall render the final decision relative to suspension or revocation. The Board's final options are: 1) exoneration, 2) suspension, or 3) revocation of license. The Board may allow the RPF/Certified Specialist (CRM) to complete existing contracts if action is taken. In a suspension, part can be "stayed" which creates probation, provided that the businesses or clients with whom the respondent has a contractual or employment relationship must be notified and public notification of the discipline shall occur as provided per 14 CCR §1612.2. The Board may specify possible conditions for rehabilitation for consideration when the RPF/Certified Specialist (CRM) later requests license reinstatement. The Government Code, Section 11522, requires that a minimum of one year pass before the Board can consider a petition for reinstatement. The applicant may submit evidence of rehabilitation.

PROFESSIONAL FORESTERS REGISTRATION

**Complaint Against RPF**



PROFESSIONAL FORESTERS REGISTRATION

**License Suspension or Revocation**  
 (ref: Government Code §11517)

