



David E. Brown

| | | | | | |
|-----------------------|---------------------|----------------|-------|-------------------|-----------|
| Policy Name | Unlicensed Activity | | | Policy Number | 76-40.02 |
| Section Title | Enforcement | Section Number | 76-40 | Former Policy No. | 76-4.2 |
| Approval Authority | Agency Director | | | Effective Date | 7/27/2017 |
| Responsible Executive | Agency Director | | | Revised Date | 7/26/2017 |
| Responsible Office | Director's Office | | | Last Reviewed | 8/9/2017 |
| Responsible Reviewer | Hahn, Lisa | | | | |

Purpose:

The purpose of this policy is to establish procedures for the Department of Health Professions regarding allegations of unlicensed activity

Policy:

It is the policy of the Department to review all allegations of unlicensed practice and report findings of investigations with evidence of unlicensed activity to the Attorney for the Commonwealth for possible prosecution.

This policy is applicable to the handling of information alleging that an unlicensed person or entity has been offering or is offering services or engaged in practice for which a health regulatory license is required. This includes possible violations of §§ 54.1-111, 54.1-2409.1 and 54.1-3008 of the Code of Virginia or any other applicable provision of law. It does not apply to regulatory board decisions regarding consideration of applications for issuance or reinstatement of a license.

Authority:

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license.



David E. Brown

§ 54.1-2506(C). Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.

§ 54.1-3008. Particular violations; prosecution

Definitions:

“License” as used in this policy shall be inclusive of a license, certificate, registration, or permit issued by a board within the Department.

Procedures:

A. Unlicensed Cases

1. All related case information will be entered into the Department’s complaint and licensure systems.
2. The case intake analyst will review all allegations of unlawful conduct and consult with the Director of Enforcement (or designee) and/or Board staff in order to make a determination whether the allegation indicates unlicensed practice or acts, including any violation of law that requires licensure.
3. The complaint and the case correspondence and will be retained for a period of five (5) years.

B. Cases with No Evidence of Harm or Expired Statute of Limitations

1. If the case involves no evidence of harm or injury (physical, mental, financial etc.) to a patient or the public and/ or there are no other previous allegations or convictions of unlawful practice by the unlicensed person, correspondence may be sent to the unlicensed person by the Director of Enforcement or designee informing him of the law which requires a license.



David E. Brown

2. A response may be solicited from the unlicensed person but will not be required. Any responses from the unlicensed person will be reviewed and evaluated by the Director of Enforcement. Counsel may be sought from the Office of the Attorney General if there are concerns regarding the response. In the absence of evidence of injury and where there are no prior complaints or convictions, the Director of Enforcement will close the case undetermined, and closure letters will be sent to the unlicensed person and the source.

C. Cases Involving Harm or Repeated Occurrence.

The following procedures shall be used where there is evidence of harm, ongoing unlawful practice, or a violation of §§ 54.1-2409.1, 54.1-111, or 54.1-3008 of the *Code of Virginia*.

1. If upon review by the case intake analyst and consultation with the Director of Enforcement or his designee, it is determined that there is evidence of either a repeated unlicensed practice or injury to a patient, client, or the public; or, if requested by a Commonwealth's Attorney or law enforcement, the complaint will be sent to an investigator or to a Commonwealth's Attorney for investigation.
2. The investigator will conduct an investigation to thoroughly address the alleged unlicensed practice in order to gather sufficient evidence to warrant criminal prosecution or closure.
3. The case will be referred by the Investigator or Director of Enforcement to the appropriate Commonwealth's Attorney for possible prosecution. If the Commonwealth's Attorney elects to prosecute, a warrant will be obtained through the jurisdiction's magistrate in the jurisdiction where the offense occurred. The original file will be provided to the Commonwealth's Attorney as evidence for prosecution upon request.
4. The investigator will advise the Director of Enforcement in writing of the response from the Commonwealth's Attorney.
5. If the Commonwealth's Attorney declines prosecution, the case may be closed with an



David E. Brown

undetermined finding by the Director of Enforcement or referred to the Office of the Attorney General for review and possible injunction and/or criminal prosecution.

D. Cases involving Issuance of a Summons

Investigators with actual knowledge of unlicensed activity that meets the criteria outline in subsection B of this Policy may issue a summons in accordance with § 54.1-2506(C) of the *Code of Virginia* or obtain a warrant. Investigators with summons authority must use a summons approved by the Department and must have knowledge of available court dates for the applicable Commonwealth's Attorney.

E. Nothing in this directive shall be construed to limit, impede or prohibit cooperation with other law enforcement agencies or the judiciary. The Director for Enforcement or his designee will provide to the Attorney General's Office any information that may be needed to enjoin any person, partnership or corporation and who is in violation of § 54.1-111(1) or § 54.1-111(4) of the *Code of Virginia*.