

Disciplinary Process for Cases Involving Non-compliance with Virginia Code § 54.1-2400.6

The purpose of this policy is to promote the prompt adjudication of allegations which may present evidence that a hospital, other health care institution, home health, hospice, or a licensed assisted living facility failed to properly report disciplinary actions against certain categories of health professionals. The policy covers all matters which may result in action by the Director of the Department of Health Professions (“DHP Director”) pursuant to Virginia Code § 54.1-2400.6.

For purposes of this policy, “subordinate” means (1) one or more members of a board, (2) one or more staff members or employees of a board, or (3) any other persons designated by the DHP Director.

Procedures

1. A question of non-compliance with Virginia Code § 54.1-2400.6 arises, most likely in the context of investigation of a complaint against a licensee, certificate holder, or registration holder.
2. The Enforcement Division investigates the potential non-compliance with Virginia Code § 54.1-2400.6.
3. The report of investigation is sent to the DHP Director or designee. The DHP Director may take one of the following actions:
 - a. Determine that probable cause does not exist for a finding of non-compliance with Virginia Code § 54.1-2400.6. The DHP Director will then issue a closure letter to the hospital, other health care institution, home health organization, hospice organization, or assisted living facility stating that the matter is concluded.
 - b. Determine that probable cause exists for a finding of non-compliance with Virginia Code § 54.1-2400.6. The DHP Director may then:
 - i. Send a letter of concern to the entity at issue;
 - ii. Issue a pre-hearing consent order (“PHCO”); or
 - iii. Refer the matter for an administrative proceeding.
4. If the case may be settled by a PHCO, the Administrative Proceedings Division (“APD”) will draft a PHCO which contains findings of facts, conclusions of law, and, if appropriate, a monetary penalty for the DHP Director’s review and approval. The DHP Director may then offer the PHCO to the respondent. If accepted by the respondent, the PHCO will be presented to the DHP Director for entry. If a draft PHCO is not approved by the DHP Director or is offered to and rejected by the respondent, then the case will proceed to an Informal Fact-Finding Conference (“IFC”).
5. If not closed or settled by a PHCO, the DHP Director may appoint one or more subordinates to consider the case at IFC. The subordinate will convene an IFC pursuant to a notice drafted by APD. An IFC before the subordinate will be conducted in the same manner as an IFC before a committee of a regulatory board. The case will be presented by APD staff, the respondent may be represented by counsel, and all parties may present information to the subordinate to support their respective positions. Following the presentation of information by the parties, the subordinate will consider the evidence presented and do one of the following:

- a. The subordinate may recommend to the DHP Director that there be a finding of no violation or that insufficient evidence exists to determine that the statute has been violated, resulting in a dismissal letter to the respondent;
- b. The subordinate may recommend to the DHP Director that the case be referred to a formal administrative hearing; or
- c. The subordinate may determine that a violation of Virginia Code § 54.1-2400.6 has occurred and recommend findings of fact, conclusions of law, and a monetary penalty. With the assistance of APD, the recommendations of the subordinate are incorporated into a draft consent order, which is presented to the DHP Director for approval, rejection, or modification. If approved or modified by the DHP Director, the consent order is then offered to the respondent. If accepted by the respondent, the consent order will be presented to the DHP Director for entry. If a consent order is not approved by the DHP Director or a consent order is offered and rejected by the respondent, the case proceeds to a formal administrative hearing.

6. After an IFC is conducted, if a case is referred to a formal administrative hearing and not settled by a consent order, a formal administrative hearing will be convened. A notice of formal hearing will be drafted by APD staff and, after approval by the Office of the Attorney General, will be sent to the respondent under the appropriate designee's signature. The rules that normally apply to formal administrative hearings will apply. The case will be presented by APD staff or the Office of the Attorney General, the respondent may be represented by counsel, evidence may be presented on behalf of the Commonwealth and the respondent, witnesses may be subpoenaed to testify, witnesses may be examined and cross-examined, and the proceedings will occur on the record and transcribed by a court reporter.

- a. Formal administrative hearings will be heard by a hearing officer appointed pursuant to Virginia Code § 2.2-4024.
- b. The provisions of Virginia Code § 2.2-4020 C, D, and F will apply to cases heard by a hearing officer, to include the requirement that the hearing officer make recommendations to the DHP Director regarding findings of fact and conclusions of law. After considering the hearing officer's recommendations, as well as any exceptions filed, the DHP Director will accept, reject, or modify the hearing officer's recommendations and enter an order.

References

[Va. Code § 54.1-2400.6](#)