

## Unlicensed Activity

This guidance document establishes procedures for the Department of Health Professions regarding allegations of unlicensed activity.

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 applies to the handling of information alleging that an unlicensed person or entity offered or is offering services or engaged in practice for which a health regulatory license is required. This includes possible violations of Virginia Code §§ 54.1-111, 54.1-2409.1 and 54.1-3008 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.

### Procedures

All case information for unlicensed case allegations will be entered into the Department's complaint and licensure system.

The case intake analyst will review all allegations of unlawful conduct and consult with the Director of Enforcement or designee and Board staff to make a determination regarding whether the allegation indicated unlicensed practice or acts, including any violation of law that requires licensure.

#### Cases with no evidence of harm or expired statutes of limitation

If the case involves no evidence of harm or injury (physical, mental, financial, etc.) to a patient or the public and 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.

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.

#### Cases involving harm or repeated occurrence<sup>1</sup>

- 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

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<sup>1</sup> These procedures will be used where there is evidence of harm, ongoing unlawful practice, or a violation of Virginia Code §§ 54.1-111, 54.1-2409.1, or 54.1-3008.

Commonwealth's Attorney or law enforcement, the complaint will be sent to an investigator or to a Commonwealth's Attorney for investigation.

- 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.
- The case will be referred by the Investigator or Director of Enforcement to the appropriate Commonwealth's Attorney for possible prosecution. The original file will be provided to the Commonwealth's Attorney as evidence for prosecution upon request.
- The investigator will advise the Director of Enforcement in writing of the response from the Commonwealth's Attorney.
- If the Commonwealth's Attorney declines prosecution, the case may be closed by the Director of Enforcement or referred to the Office of the Attorney General for review and possible injunction or criminal prosecution.

#### Cases involving issuance of a summons

Investigators with actual knowledge of unlicensed activity may issue a summons in accordance with Virginia Code § 54.1-2506(C) 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.

Nothing in this guidance document may be construed to limit, impede, or prohibit cooperation with law enforcement agencies or the judiciary, to include referrals of suspected criminal activity to law enforcement agencies having jurisdiction over the suspected violation. The Director for Enforcement or designee will provide the Office of the Attorney General any information that may be needed to enjoin any person, partnership, or corporation and who is in violation of Virginia Code § 54.1-111.

#### References

[Va. Code § 54.1-111](#)

[Va. Code § 54.1-2409.1](#)

[Va. Code § 54.1-2506](#)

[Va. Code § 54.1-3008](#)