Department of Health Professions

DIRECTOR'S POLICY # 76-4.5

Disciplinary Cases Involving Board Members

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Purpose: To set forth policy and procedures for the receipt, assessment, investigation, management and adjudication of disciplinary cases involving sources or respondents who are current members of one of the health regulatory boards within the Department of Health Professions.

Policy: At each point in the process from receipt of a complaint or allegation to the final decision in a case involving a current member of a regulatory board, Department and board staff, board officers and other board members should act with objectivity and fairness in the management of the complaint/case to preclude any impropriety or favoritism. As with any other disciplinary matter, there should be strict adherence to confidentiality required by § 54.1-2400.2 in responding to inquiries from board members, respondents, complainants or other interested parties.

Procedures for case in which a board member is the respondent:

A. Receipt of complaint and determination of jurisdiction

1. Complaints or reports of alleged violations may be received by anyone within the organizational structure of the Department, but all such allegations are required to be transferred immediately to the Enforcement Division of the Department.
2. As soon as it is known that the subject of the complaint or allegation is a current member of one of the health regulatory boards, enforcement personnel should report that information to the Director of the Department and the Executive Director of the applicable board.
3. Upon receipt, complaint intake personnel should make a preliminary determination as to whether the complaint or allegation is a possible violation or falls within the jurisdiction of health regulatory boards.
4. If it is determined that the Department does not have jurisdiction or that the complaint should be referred to another agency, the referral should be handled routinely without reference to the board membership of the subject of the complaint or allegation.
5. If it is determined that the Department does have jurisdiction, an appropriate priority and category should be assigned and the complaint or allegation entered as a "case" in accordance with agency policy.
6. Upon receipt of information that a board member is the subject of a complaint, the Executive Director of the applicable board may consult with the Office of the Attorney General for guidance applicable to the case. Executive Directors should refrain from any

discussion of the case with board members except as necessary for the proper administration and management of the case.

B. Investigation of a board member case

1. Once jurisdiction is established and a priority assigned, the case is referred for investigation.
2. Investigation of cases involving board members should be handled in the same manner as all other cases. However, to facilitate timely processing and in the interest of the respondent, the public and the efficient operation of the board, the investigation of such cases should be expedited to the extent possible.
3. Investigators should refrain from any discussion of the case with board members or others unless necessary to conduct an official investigation.

C. Consideration of a board member case by the regulatory board

1. When the investigative report is complete, it is filed with the regulatory board and the Executive Director should be **immediately** informed that the case involving a board member is at board level.
2. Board policies vary with regard to the closing of cases for insufficient evidence or the determination that probable cause exists to believe a violation of law or regulation may have occurred. In some boards, professional board administrators are delegated authority to make a probable cause determination or to close a case. In other boards, the determination is made by one or more members of a disciplinary committee.
3. In **all cases** in which a board member is a respondent, the Executive Director should consult with the board's presiding officer or other duly authorized board member before a case is closed or moved forward for adjudication. If a board's process is to have the probable cause decision made by one or more board members, the presiding officer or duly authorized board member should be utilized.
4. If the presiding officer or disciplinary committee chair is the respondent, management of the case should be delegated to another officer or member. No board member should be involved in the probable cause determination or the adjudication of a case in which he or she is a respondent.
5. All board members who will be involved in the probable cause determination or adjudication of the case should examine their relationship with the respondent and disclose any facts which could give rise to subsequent allegations of bias or prejudice. Such disclosures should be reviewed by board counsel and appropriate action taken.

D. Adjudication of a case by the regulatory board

1. For a case in which a formal hearing is not required by law, the board may adjudicate the case through an informal fact-finding conference (IFC), use of a special conference committee, the offer of a pre-hearing consent order, or the issuance of confidential consent agreement or an advisory letter. For board member cases, the use of an agency subordinate to conduct the IFC may be advisable.
2. If the scheduling of formal proceedings by the full board or a panel of the board is difficult or impossible due to recusal of other board members, the Executive Director should consult with board counsel and consider the need to secure a hearing officer. The hearing officer should be asked to prepare findings of fact and conclusions of law for board consideration. However, the individual regulatory board retains authority to adopt, reject or amend the hearing officer's recommendations.
3. As with other disciplinary cases, the board should avail itself of the guidance provided by its Sanction Reference Points in making a decision in the case.
4. Board members who are respondents should not participate in either the determination of board findings or determination of a sanction for a finding of violation. It is also recommended that a board member respondent refrain from participation in disciplinary matters involving similar allegations, facts, issues or violations while his or her case is in active status.

Procedures for case in which a board member is the source:

1. Notification that a board member is the source of a complaint should be made to the Executive Director simultaneously with referral of the case to the board for probable cause determination.
2. If a board's process is to have the probable cause decision made by one or more board members, the board member who is a source on the case shall not be utilized.
3. No board member should be involved in the probable cause determination or the adjudication of a case in which he or she is a source. All board members who will be involved in the probable cause determination or adjudication of the case should examine their relationship with the board member/source and disclose any facts which could give rise to subsequent allegations of bias or prejudice. Such disclosures should be reviewed by board counsel and appropriate action taken.