# Department of Health Professions

DIRECTOR'S POLICY # 76-3.6

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

**Effective Date: April 5, 2012**

**Approved By:** D. Reynolds-Cane MD

**Dianne Reynolds-Cane, M.D., Director**

**Purpose:**

The purpose of this Policy is to promote the prompt adjudication of allegations which may present evidence that a hospital or other health care institution or a licensed assisted living facility has failed to properly report disciplinary actions against and certain disorders of health professionals.

**Statutory Basis:**

This Policy covers all matters which may result in action by the Director of the Department of Health Professions ("DHP Director") pursuant to Sections 54.1-2400.6 of the Code of Virginia (the "Code"), as amended.

**Procedures:**

1. A question of non-compliance with § 54.1-2400.6 of the Code, as amended, is raised, most likely, in the context of investigating a complaint against a licensee, certificate holder or registrant.

2. The Director of Enforcement or his designee conducts an investigation of the question of non-compliance with § 54.1-2400.6 of the Code.

3. The investigation report is sent to the DHP Director or his 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 § 54.1-2400.6. The DHP Director will then issue a closure letter to the hospital or other health care institution or the assisted living facility.

   b. Determine that probable cause exists for a finding of non-compliance with § 54.1-2400.6. The DHP Director may then:

      1) Send a letter of concern to the offending hospital or other health care institution;

      2) Issue a pre-hearing consent order (PHCO); or

      3) Refer the matter for an administrative proceeding.

4. If it is determined that the § 54.1-2400.6 non-compliance case may be settled by a pre-hearing consent order, the Administrative Proceedings Division ("APD") will draft a consent order,

containing findings of fact, conclusions of law, and, if appropriate, a monetary penalty for the Director's review and approval. The Director may then offer the pre-hearing consent order to the respondent. If accepted by the respondent, the consent order will be presented to the Director for entry. If a draft pre-hearing consent order is not approved by the Director or is offered to and rejected by the respondent, the case will proceed to an Informal Conference ("IFC").

5. If not closed or settled by a pre-hearing consent order, the DHP Director may appoint one or more subordinate(s) to consider the case at IFC.[1] The subordinate(s) will convene an IFC pursuant to a notice drafted by APD. An IFC before the subordinate(s) will be conducted in the same manner as an IFC before a committee of the 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(s) to support their respective positions. Following the presentation of information by the parties, the subordinate(s) will consider the evidence presented and do one of the following:

   a. The subordinate(s) 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(s) may recommend to the DHP Director that the case be referred to a Formal Hearing. (See No.6 below)

   c. The subordinate may determine that a violation of § 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(s) are incorporated into a draft consent order, which is presented to the DHP Director for his 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 Director or a consent order is offered to and rejected by the respondent, the case proceeds to a Formal Hearing. (See No. 6 below)

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[1] Section 2.2-4001. Definitions. "Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

6. If, after an IFC, a case is referred to a Formal Hearing or is not settled by a consent order, a Formal Hearing is convened. A notice of Formal Hearing will be drafted by APD staff and, after being approved by the Attorney General's Office, will be sent to the respondent under the appropriate designee's signature. The rules that normally apply to a Formal Hearing will apply here, i.e., the case will be prosecuted by APD staff or the Attorney General's Office, 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 and examined and cross-examined, testimony will be under oath and recorded by a court reporter.

   a. Formal Hearings will be heard by a hearing officer appointed pursuant to §2.2-4024 of the Code.

   b. The provisions of §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 of 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 then enter an order.