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VERMONT BOARD OF MEDICAL PRACTICE

INTERNAL GUIDELINES: INVESTIGATION PROCEDURES

INTRODUCTION AND DEFINITIONS

- (a) The Board of Medical Practice has the power and the duty to investigate complaints and information received about unprofessional conduct by licensees, as well as instances of possible unlicensed practice of medicine. 26 V.S.A. § 1353. These guidelines supplement the guidance regarding investigation procedures found in 26 V.S.A., Title 26 and the Board's Administrative Rules.
- (b) The words and phrases that are defined in 26 V.S.A. § 1311 shall have the same meaning here as assigned to them there.
- (c) The term "complaint" means a fully completed and signed complaint form submitted to the Board that alleges or purports to allege unprofessional conduct by a licensee or certificate holder of the Board.
- (d) The term "Respondent" means the licensee or certificate holder of the Board who is the subject of an investigation of unprofessional conduct.
- (e) The term "licensee" means holders of licenses and certificates from the Board.

INITIATION OF INVESTIGATIONS

- (a) Upon a Complaint. The Board will open an investigation upon receipt by the Board staff of a completed and signed complaint form. The Executive Director has the authority to open an investigation that is based on a complaint on behalf of the Board.
- (b) Board-Initiated Investigations. The Board may open an investigation when there is no written complaint based upon information that a licensee may have committed unprofessional conduct or otherwise be unfit to practice. The decision to open an investigation where there is not a complaint are made by an Investigative Committee or by the Executive Director. An Investigative Committee can open an investigation anytime that it finds there is information to suggest that unprofessional conduct may have occurred. Some examples are: receipt of anonymous tips, tips from known sources that do not, however, file a written complaint, or information that comes up about a licensee in the course of another investigation. The Executive Director has the authority to open an investigation on behalf of the Board when there is no complaint and without referring it to an Investigative Committee if there is a clear basis for concluding that unprofessional conduct may have occurred, such as when there is a report of discipline from a health care facility, an arrest or conviction, or other documented indication of an issue. As an alternative to opening an investigation, the Executive Director may elect to present the information to an Investigative Committee as a review case for a determination as to whether an investigation should be opened.

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If the information is limited to only a possible deviation from the standard of care, the Executive Director shall present the information to an Investigative Committee as a review case instead of immediately opening the case, unless in the Executive Director's judgment the information reasonably indicates risk of harm to the health or safety of the public that calls for immediate initiation of an investigation. When the Executive Director opens a case that would normally be presented to an Investigative Committee for review, that will be brought to the Committee's attention at the next occurring meeting.

- (c) Review of malpractice information and staff actions required to be reported to the Board by law. A report of a malpractice settlement or judgment against a license, or a report of a staff disciplinary action reported pursuant to 26 V.S.A. § 1317 will be assigned to an Investigation Committee as a review case. The Investigative Committee may determine that the facts presented do not constitute a reasonable basis on which to conclude that unprofessional conduct may have occurred. In that event, the Investigative Committee may direct that a review case not be opened for investigation.
- (d) Review cases. The Executive Director and other Board staff may gather preliminary information to assist the Investigative Committee in the determination of whether to open an investigation.

NOTICE TO LICENSEE OF INITIATION OF INVESTIGATION

- (a) Notice to Respondent. The licensee who is the named Respondent in a case will be provided notice of the initiation of an investigation. Normally, the notice will be provided promptly upon opening of the case and will be accompanied by the complaint if the investigation is based upon a complaint. If staff or an Investigative Committee identify cause for redacting a complaint that is being furnished to a Respondent, redactions may be made. If the Respondent objects to redactions made to a complaint the Investigative Committee shall consider the objections with input of staff, including the assigned Assistant Attorney General. If there is no complaint, when notice is provided the conduct that may constitute unprofessional conduct that caused the case to be opened shall be identified in writing to the Respondent. If additional instances or forms of unprofessional conduct are identified during the course of an investigation the Board is not limited to the matters identified in the notice.
- (b) Delayed Notice. Board staff members may elect to delay issuance of notice of the investigation to a Respondent. Staff will be guided by the examples listed below when deciding that notice will be subject to this initial delay until the next meeting of the assigned Investigative Committee. If notice is not issued promptly, the staff will bring the delay of notice to the attention of the assigned Investigative Committee at the next occurring meeting. The Investigative Committee may direct that notice be issued or authorize further delay of notice. There are no formal requirements as to the basis for delay of notice, but the Investigative Committee will further delay notice only if it

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concludes that there are reasonable grounds for delay. Some examples of situations in which there are reasonable grounds for delay are: a risk to patient safety; a risk to the integrity of the investigation from witness contact or evidence tampering, or other basis for an unannounced visit as described below. A respondent who is asked to provide information (either in a written response or in person at a meeting of an Investigative Committee) without having been provided written notice of the matters then known to the Committee may submit additional written information and the Committee shall consider it. An Investigative Committee is not precluded from asking a Respondent about matters beyond those noted in the written notice.

OTHER NOTICE PROVISIONS

- (a) Complainant. Complainants will be provided written acknowledgement of their complaints.
- (b) Unlicensed Practice of Medicine. No notice is required to be provided to the subject of an investigation into unlicensed practice of medicine.

UNANNOUNCED VISITS TO PRACTICE LOCATIONS

- (a) In the normal course of business, visits to a practice location of the Respondent will be scheduled in advance with the Respondent.
- (b) Exceptions.
 - a. Visits only to deliver or serve subpoenas, charges, or other documents need not be scheduled in advance, however staff should attempt to avoid interactions beyond the intended purpose of the visit.
 - b. Visits to interview other witnesses or potential witnesses need not be arranged with the Respondent if the visit takes place away from the Respondent's practice location. For Respondents who practice at larger facilities, such as hospitals, visits arranged with witnesses that occur away from the immediate vicinity of the Respondent's practice need not be scheduled with the Respondent. For example, if a witness agrees to meet with an investigator in a different department of the hospital or in a common area where members of the public have free access, that would not be considered the Respondent's practice location even though in the same hospital.
 - c. Visits arranged by other law enforcement or regulatory agencies. If a Board investigator is invited to accompany representatives of another law enforcement or regulatory agency on a visit initiated and led by the other agency, it is not considered an unscheduled visit for the purpose of these Guidelines.
- (c) Unannounced visits to a practice location by an investigator must be approved by either the Executive Director or the assigned Investigative Committee. If there is a

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meeting of the Investigative Committee before the unannounced visit is planned to take place, an unannounced visit may occur only upon approval of the Committee.

- (d) Basis for unannounced visit. The Executive Director or Investigative Committee must conclude that there is a purpose for an unannounced visit. Examples of cases in which unannounced visits may be appropriate include, but are not limited to: cases in which there are concerns about cleanliness or other conditions in a medical office that would be subject to change if advance notice were given; cases in which there are concerns about intimidation of or interference with witnesses by the Respondent or an agent of the Respondent; cases in which there are concerns about alteration or destruction of evidence; cases in which there are concerns about impairment of the Respondent; or cases in which there is reason for concern about Respondent's personal safety and how they will react upon learning of the allegations.

NOTICE TO LAW ENFORCEMENT OFFICIALS OF POSSIBLE CRIMINAL VIOLATION

- (a) When an investigator intends to notify other law enforcement agencies of possible criminal conduct discovered in the course of an investigation the Executive Director shall be informed first unless there is cause for earlier notice. Some examples of cause for notice to other agencies without first notifying the Executive Director include danger to patients, risk of harm to the licensee or any person, risk of additional criminal activity, or risk of compromise of the ability to investigate the matter. An investigator who has notified another agency without prior notice must promptly notify the Executive Director. The Investigative Committee will be informed not later than the next scheduled meeting.
- (b) Notice to other law enforcement authorities does not restrict the Board from continuing an investigation pursuant to its authority. Failure to make a prompt report as called for above will not bar investigation or action against the Respondent.
- (c) Requests for information from other law enforcement agencies made by investigators or other Board staff do not amount to notification for purposes of these guidelines.

TIME FOR RESPONSE AND EXTENSIONS OF TIME

- (a) Licensees are expected to promptly file a written response when requested by the Board. The standard time allowed for response is 20 days. An investigator or the Executive Director may grant up to an additional 20 days for response. If a request is not granted by an investigator or the Executive Director, the Investigation Committee will consider the request and issue direction regarding the time in which to respond at the next occurring meeting. Requests for further delay will be submitted to the assigned Investigative Committee.

PURPOSE AND EFFECT OF GUIDELINES

These Guidelines are for the purpose of supporting orderly and consistent procedures across the spectrum of varying circumstances presented in matters that come to the

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attention of the Board that must or could be investigated. The Guidelines do not create enforceable rights in any party. Staff and Board members shall endeavor in good faith to act consistent with the Guidelines, but no failure or alleged failure to do so shall give rise to a defense against any charge of unprofessional conduct or unlicensed practice of medicine or otherwise limit the ability of the Board to address matters within its jurisdiction.