Rule: 884.10. Investigation of Complaints

Action: Proposed Amendments

Comment: The proposed amendment will clarify when a licensee is presumed to be engaging in the scope of practice of their license, and therefore subject to the jurisdiction of the Council, versus when conduct or statements by a licensee that are within the scope of practice will, nevertheless, be considered not done under the authority of their license.

§884.10. Investigation of Complaints.

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

(1) High Priority - cases involving sexual misconduct or a probability of imminent physical harm to the public or a member of the public; and

(2) Regular Priority - cases involving all other violations of state or federal law.

(b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.

(c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint, a complaint that lacks sufficient evidence to identify a specific violation, or a complaint with an uncooperative complainant.

(d) A complainant may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.

(e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.

(f) When a licensee’s conduct or statements could lawfully be made under an authority separate from their license issued by the Council, any conduct or statement that falls within the scope of practice of their license will be presumed to be taken or made under the authority of that license, and therefore within the jurisdiction of the Council, unless the licensee can show:

1. no reasonable person would believe the conduct or statement occurred in the context of a professional relationship, or
2. the licensee clearly and unequivocally disclaimed acting under the authority of their license prior to the conduct or statement, received written acknowledgement and consent from any clients that no professional services would be provided under the authority of their license, and did not otherwise engage at any time in the scope of practice of their license in relation to the conduct or statement.

(f) Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.

(g) Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.

(h) Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.

(i) Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.

(j) The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.

(k) A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.

(l) A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.

(m) The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.

(n) If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.