Rule: 884.11. Informal Conferences.

Action: Proposed Rule Amendment

Comment: The proposed rule amendments are intended to streamline the enforcement process and better align it with other agency rules.

§884.11. Informal Conferences.

(a) The purpose of an informal conference shall be to provide the complainant with an opportunity to be heard, the respondent with an opportunity to show compliance with the law, and for the agency staff’s or member board’s Disciplinary Review Panel to make a recommendation regarding the informal disposition of the complaint. An informal disposition may be made of any complaint by stipulation, ~~conditional letter of agreement,~~ agreed or consent order, or dismissal.

(b) ~~Agency staff may conduct an informal conference if counsel for the agency reasonably believes that expert testimony is not required to prove a violation of a standard of care or the scope of practice for the profession.~~ Agency staff shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard ~~by staff,~~ at a time separate and apart from the other.

(c) Agency staff may solicit input from and request the assistance of board members if there are concerns about the standard of care, scope of practice, or ethical practice shown by a licensee. ~~A Disciplinary Review Panel shall consist of not more than three board members selected by the member board. The panel shall confer with each other and select a chair for the informal conference. The panel chair shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard by the panel, at a time separate and apart from the other.~~

(d) Complainants and respondents may appear with legal counsel at informal conferences and shall be provided with an opportunity to present witnesses and any evidence they believe 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) Complainants and respondents are encouraged to attend informal conferences, but attendance is voluntary.

(1) Failure by a respondent to attend an informal conference does not constitute professional misconduct or failure to cooperate with a Council investigation, but a respondent is not entitled to a new or additional informal conference if agency staff or the panel makes a disciplinary recommendation regarding the licensee in absentia.

(2) Failure by a complainant to attend an informal conference may result in a recommendation for dismissal of the complaint.

(f) A complaint which is not dismissed or resolved by agreement following an informal conference, shall be filed as a contested case with the State Office of Administrative Hearings.

(g) An attorney for the agency must be present at all informal conferences.

(h) Informal conferences are not open meetings subject to Chapter 551 of the Government Code and no formal record of the proceedings shall be made or maintained.

(i) The Council finds and declares that informal conferences are part of the confidential complaint and investigation process, and as such, the Disciplinary Review Panel and agency staff shall take any and all steps necessary to ensure the confidentiality of informal conferences in accordance with §507.205 of the Occupations Code.