

## **FREQUENTLY ASKED QUESTIONS CONCERNING THE INVESTIGATION OF THE COMPLAINT AGAINST YOUR LICENSE BY COLORADO DORA**

Following is a list of questions and answers that has been published by the Colorado Department of Regulatory Agencies (DORA), Division of Professions and Occupations. These are being provided verbatim and have not been changed, even though we, as attorneys defending such complaints, may disagree with some of them. This is being provided for informational purposes only and does not constitute legal advice.

For the purposes of this document, the professional board or licensing program regulating a particular profession is referred to as the "Regulatory Authority" instead of the "Board."

### **What is a basis for disciplinary action?**

Each profession has a practice act, also known as an organic act or statute. These practice acts contain laws that govern a particular profession. The legal grounds for disciplinary action against a particular type of professional are set forth in the applicable practice act.

### **What is a board or licensing program?**

Colorado's Division of Registrations is responsible for the licensing boards and programs established by the Colorado Legislature to promote public protection through licensure and regulation. The Division's boards and programs regulate more than 50 professions, occupations, and entities. Most of these professions are regulated by licensing boards comprised of members

of the profession and public members. Some professions are regulated by programs housed within the Division.

### **How does the disciplinary process begin?**

The disciplinary process begins when a complaint is filed with the regulatory authority by any member of the public, or when a regulatory authority initiates a complaint on its own.

### **What is a complaint?**

In the context of a professional disciplinary action, a complaint is an allegation that a licensee, certificate holder or registrant has violated the laws set forth in the applicable practice act. It is filed with or initiated by the appropriate regulatory authority, and it marks the beginning of the disciplinary process against a licensee, certificate holder or registrant.

### **What happens after the complaint is filed?**

The regulatory authority or its staff will review the facts alleged in the complaint to determine whether, if proven to be true, these facts constitute reasonable cause to believe a violation of the practice act has occurred. If the initial review determines that the regulatory authority does not have jurisdiction or that the regulatory authority does not have reasonable cause to believe that a violation has occurred, the complaint will be dismissed, possibly with a confidential letter of concern to the licensee, certificate holder or registrant from the regulatory authority.

If the regulatory authority determines that it has reasonable cause to believe a violation of the practice act has occurred, a letter of admonition may be issued, the matter may be referred for

disciplinary action, the action may be tabled to gather information, or a request may be submitted for a formal investigation with the Office of Investigations.

### **What is the Office of Investigations?**

Some complaints are investigated internally by the staff for a particular regulatory authority. However, the regulatory authority may also refer the complaint to the Office of Investigations, a program within the Division of Registrations, Department of Regulatory Agencies.

### **If the complaint is forwarded to the Office of Investigations, do I receive notice?**

You generally will receive a letter from the individual regulatory authority informing you that your complaint has been forwarded to the Office of Investigations. In some circumstances, however, the first contact you have regarding a complaint will be from the investigator assigned to handle the complaint.

### **Do I need an attorney at this point?**

A license, certificate or registration is an important property interest. It is important to remember that the regulatory authority, its staff, and the Office of Investigations cannot provide you with legal advice. You are not required to hire an attorney, but you have the right to be represented by an attorney at any stage of the proceeding. You are responsible for any costs associated with hiring an attorney. Your professional liability insurance carrier might provide assistance with legal costs associated with a professional disciplinary action.

### **What happens in an investigation?**

When a complaint is referred to the Office of Investigations, the assigned investigator acts as an impartial, fact-finding third party and does not "represent" the complainant, the regulatory authority, or the licensee, certificate holder or registrant. The Office of Investigations receives 500-600 cases a year. The average time to complete a case is 6 to 8 months depending on the complexity, witness cooperation and caseload of the investigator.

The investigator normally reviews the complaint and the response, subpoenas or otherwise obtains copies of pertinent documents or records, interviews witnesses and the licensee, certificate holder or registrant, and, where appropriate, retains an expert consultant to review the case. The investigator then prepares a written report that is reviewed by the regulatory authority, which will then determine whether to pursue disciplinary action. The investigator does not make any recommendations to the regulatory authority regarding what disciplinary action, if any, to take.

### **How long does an investigation take?**

The time frame to complete an investigation will vary. However, investigators try to process a complaint within 180 days of receipt of the complaint in the Office of Investigations. At times, the investigation of a case may take longer than 180 days. You may ask the investigator assigned to your case for an estimate of when the Report of Investigation will be prepared and presented to the regulatory authority.

### **Do I get a copy of the Report of Investigation?**

Generally, reports are not available to the public or to the licensee, certificate holder or registrant during the investigative stage of the proceeding or review process.

**Do I get notice of when the regulatory authority will review the Report of Investigation in my case?**

This varies between programs. You may contact the regulatory authority or the investigator to inquire about the status of the investigation and the dates and locations of any meetings where the matter might be discussed. Some programs review Reports of Investigation in a closed meeting, which is not open to the public, including the licensee, certificate holder or registrant. Even if the disciplinary portion of the meeting is open to the public, generally you will not be permitted to address the regulatory authority and will only be allowed to listen to the discussion. Please check with the staff of your program.

**Can the public review government documents?**

Regulatory authorities are governed by the Colorado Open Records Act, which provides the public access to certain government documents. Confidentiality requirements vary from program to program, and the investigator assigned to your case cannot advise you on this topic.

**What happens after the regulatory authority reviews the Report of Investigation?**

If the regulatory authority finds that no violation occurred or that disciplinary action otherwise is not warranted, the case will be dismissed. If the regulatory authority finds that disciplinary action is not warranted, but that it has concerns about the conduct at issue, it may dismiss the case with a confidential letter of concern. If the regulatory authority finds that a violation occurred, it may impose discipline, including but not limited to a public letter of admonition, a probationary license, a suspension or a revocation. Disciplinary cases will be referred to the Office of

Expedited Settlement (ESP) for settlement or the Office of the Attorney General (OAG) for formal prosecution of the matter.

**What happens when your case is referred to ESP?**

If your case is referred to ESP, you will be contacted by a staff member from ESP who will provide you with the offer of settlement approved by the regulatory authority. Generally, if a settlement is not reached within 90 days, the matter will be referred to the Office of Attorney General (OAG).

**What happens if the case is referred to the OAG?**

If your case is referred to the OAG, the assigned Assistant Attorney General will provide legal representation to the regulatory authority. The Assistant Attorney General may prepare formal charges based upon the alleged violations of the practice act. If formal charges are filed, a hearing will be conducted before an administrative law judge at the Office of Administrative Courts to determine whether the charges are proven. At the hearing, you would have the right to be represented by counsel, and would have the opportunity to present and confront oral and documentary evidence, and to testify in your own defense.

**What happens if, after the hearing, I am found to have committed a violation?**

Following the hearing, the administrative law judge will issue an initial decision, which will include factual findings, conclusions of law and a recommended sanction. Either party may challenge the initial decision by filing exceptions with the regulatory authority. The regulatory authority will review the initial decision and issue a final agency order that may adopt, partially

adopt or reverse the initial decision. If a violation of the practice act is established, the final agency order may impose sanctions, which can include a letter of admonition, a fine, continuing education, probation, suspension or revocation of your license, certificate or registration. You have the right to appeal the final agency order to the appropriate court.

**[Warning:** The above questions and answers are those published by DORA as of July 2021. They are of general applicability and may or may not apply in your particular circumstances. We recommend that you always consult with a health lawyer who has experience in defending this type of matter, before speaking with an investigator or anyone else.]