

193E—18.11(17A,272C,543B) Closing complaint files.

18.11(1) *Grounds for closing.* Upon the recommendation of the administrator pursuant to subrule 18.6(5), the recommendation of the disciplinary committee pursuant to rule 193E—18.9(17A,272C,543B), or on its own motion, the commission may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the commission may close a complaint file. The commission will take into consideration the severity of the alleged violation, the sufficiency of the evidence, the possibility that the problem can be better resolved by other means available to the parties, whether the matter has been the subject of a local board proceeding, the clarity of the laws and rules which support the alleged violation, whether the alleged violation is likely to recur, the past record of the licensee, whether the licensee has previously received a cautionary letter concerning the act or omission at issue, and other factors relevant to the specific facts of the complaint. The following nonexclusive list illustrates the grounds upon which the commission may close a complaint file:

- a. The complaint alleges matters outside the commission's jurisdiction.
- b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the commission.
- c. The complaint is frivolous or trivial.
- d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rulemaking.

- e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.

- f. Resources are unavailable or better directed to other complaints or commission initiatives in light of the commission's overall budget and mission.

- g. Extenuating factors exist which weigh against the imposition of public discipline.

18.11(2) *Closing orders.* The commission's administrator may enter an order stating the basis for the commission's decision to close a complaint file. If entered, the order cannot contain the identity of the complainant or the respondent, and cannot disclose confidential complaint or investigative information. If entered, closing orders will be indexed by case number and are a public record pursuant to Iowa Code section 17A.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The commission's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

18.11(3) *Cautionary letters.* When a complaint file is closed, the commission may issue a confidential letter of caution to a licensee which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the commission may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

18.11(4) *Reopening closed complaint files.* The commission may reopen a closed complaint file if, after closure, additional information arises which provides a basis to reassess the merits of the initial complaint.

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