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Title 22@ Social Security

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Division 1.8@ California Department of Aging

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Chapter 6@ Office of the State Long-Term Care Ombudsman

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Article 3@ Violations and Enforcement

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Section 8040@ Interference with Actions of Office

8040 Interference with Actions of Office

(a)

No person shall willfully interfere with any lawful action of the Office. Violations of this Section may be the basis for the assessment of a civil penalty under Section 8045. No person shall: (1) Willfully interfere with entry into a long-term care facility by duly authorized representatives of the Office in the lawful exercise of their responsibilities. (A) Whenever a representative of the Office is seeking entry into a long-term care facility, they shall have on their person clearly visible photographic identification that is issued by the Office. (B) Whenever a representative of the Office is seeking entry into a long-term care facility, they shall make available, upon request, a written copy of the laws and regulations that authorize the Office to, in performance of their duties, access the facility, residents and records. (C) A person's interference with a representative of the Office after the representative has satisfied the requirements of sub-paragraphs (A) and (B) of this section, shall be deemed willful. (2) Willfully interfere with confidential communications with complainants, patients, residents, or witnesses by representatives of the Office in the lawful exercise of their responsibilities. This includes the maintenance of confidentiality when requested by complainants, witnesses, patients or residents. (3) Willfully interfere with access to, and the examination or copying of patients' or residents' medical or personal records requested under Section 9724 of the Welfare and Institutions Code, or other

records necessary to carry out the responsibilities of the Office requested under Section 9723 of the Welfare and Institutions Code. (4) Willfully interfere in any other way with the lawful work of duly authorized representatives of the Office. (5) Discriminate, discipline, or retaliate against any employee, patient, resident, or volunteer in a long-term care facility for any communication made, or information given, to aid the Office in carrying out its duties and responsibilities.

(1)

Willfully interfere with entry into a long-term care facility by duly authorized representatives of the Office in the lawful exercise of their responsibilities. (A)

Whenever a representative of the Office is seeking entry into a long-term care facility, they shall have on their person clearly visible photographic identification that is issued by the Office. (B) Whenever a representative of the Office is seeking entry into a long-term care facility, they shall make available, upon request, a written copy of the laws and regulations that authorize the Office to, in performance of their duties, access the facility, residents and records. (C) A person's interference with a representative of the Office after the representative has satisfied the requirements of sub-paragraphs (A) and (B) of this section, shall be deemed willful.

(A)

Whenever a representative of the Office is seeking entry into a long-term care facility, they shall have on their person clearly visible photographic identification that is issued by the Office.

(B)

Whenever a representative of the Office is seeking entry into a long-term care facility, they shall make available, upon request, a written copy of the laws and regulations that authorize the Office to, in performance of their duties, access the facility, residents and records.

(C)

A person's interference with a representative of the Office after the representative has satisfied the requirements of sub-paragraphs (A) and (B) of this section, shall be deemed willful.

(2)

Willfully interfere with confidential communications with complainants, patients, residents, or witnesses by representatives of the Office in the lawful exercise of their responsibilities. This includes the maintenance of confidentiality when requested by complainants, witnesses, patients or residents.

(3)

Willfully interfere with access to, and the examination or copying of patients' or residents' medical or personal records requested under Section 9724 of the Welfare and Institutions Code, or other records necessary to carry out the responsibilities of the Office requested under Section 9723 of the Welfare and Institutions Code.

(4)

Willfully interfere in any other way with the lawful work of duly authorized representatives of the Office.

(5)

Discriminate, discipline, or retaliate against any employee, patient, resident, or volunteer in a long-term care facility for any communication made, or information given, to aid the Office in carrying out its duties and responsibilities.

(b)

For purposes of subsections (a)(1), (2), (3), and (4), any interference with the lawful actions of the Office shall be deemed willful if the interference persists after the representative of the Office makes available to such person(s) photographic identification issued by the Office and a written copy of the laws and regulations that authorize the Office access. (1) This subsection shall not apply when the

person interfering with the representative of the Office is acting under the direction of an identified person who is authorized to take or recommend the taking of adverse employment actions against them. (2) Any representative of the licensee who is authorized to take or recommend adverse employment action against an employee of a long-term care facility and who authorizes that employee to interfere with the lawful actions of the Office shall be deemed to have committed a willful violation under this section.

(1)

This subsection shall not apply when the person interfering with the representative of the Office is acting under the direction of an identified person who is authorized to take or recommend the taking of adverse employment actions against them.

(2)

Any representative of the licensee who is authorized to take or recommend adverse employment action against an employee of a long-term care facility and who authorizes that employee to interfere with the lawful actions of the Office shall be deemed to have committed a willful violation under this section.

(c)

The representative of the Office whose lawful actions under this section are interfered with shall, no later than twenty-four hours after such interference, submit a report describing the interference to the appropriate licensing agency and to the State Ombudsman.

(d)

The representative of the Office whose lawful actions under this section are interfered with may seek the assistance of law enforcement as needed to carry out their responsibilities.

(e)

If the State Ombudsman determines that any person or persons are continuing to interfere with the lawful duties of the Office, the State Ombudsman has the discretion to pursue appropriate legal remedies.