FLORIDA MEDICAL DIRECTORS ASOCIATION

LEGAL UPDATE FOR PRACTITIONERS

September 19-22, 2023

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EDUCATIONAL OBJECTIVES

- Understand applicable laws and rules for licensees
- Knowledge of investigation and disciplinary process of the Department of Health and the various regulatory boards
- Where to find the laws and rules you may need
- New Laws affecting your professional practice and the care and treatment you provide to patients
- Ethics

Who`s On First ?

WHERE TO START
THE ALPHABET SOUP

Dept. of Health (DOH) – licenses health care practitioners after approval from Board – also provides attorney prosecutors from the Prosecution Services Unit to prosecute cases

Agency for Health Care Administration (AHCA) – amongst other things, regulates facilities through the Bureau of Health Facility Regulation

Boards of Allopathic and Osteopathic Medicine, and Nursing (Board) – governs practice through rules, discipline

Attorney Generals Office (AGO) – provides legal counsel to each Board as its General Counsel

Div. of Administrative Hearings (DOAH) – hears certain disciplinary matters through Administrative Law Judges

District Courts of Appeal (DCA) – the appellate courts that consider appeals from the Boards

ORGANIZATION OF THE DEPARTMENT OF HEALTH

- It is organized into seven divisions:
  - Administration
  - Emergency Preparedness and Community Support
  - Disease Control and Health Protection
  - Community Health Promotion
  - Children's Medical Services
  - Public Health Statistics and Performance Management
  - **Medical Quality Assurance (MQA)**

ORGANIZATION - MQA

- MQA is responsible for regulatory activities of various health care practitioners, facilities and businesses. This is done through three Bureaus.
- Bureau of Enforcement –
  - inspections, analyzing companies, education the public, conducting complex investigations, issuing emergency restriction/suspension orders and monitoring compliance, enforcement of regulations and prosecution of unlicensed practice.
- Bureau of Operations –
  - Operation and infrastructure for MQA and the health care regulatory boards and councils. Background screening and practitioner notification services, licensure support services, operation support services, strategic planning and system support.

ORGANIZATION - MQA

- Bureau of Health Care Practitioner Regulation -
  - Policy making and programmatic activities related to licensure of health care practitioners and regulated facilities. Credential and license designated health care practitioners.
  - Regulates seven types of facilities and over 200 license types in over 40 healthcare professions through coordination through 22 boards and councils.
  - Board members share authority with the DOH for developing rules for licensure, establishing exams, setting fees, establishing guidelines for discipline, and reducing the unlicensed practice of healthcare professions.
  - The board offices evaluate applications for licensure and examination, conduct board meetings, administer policies, draft communications to licensees.

ORGANIZATION - BOARDS

Board Members are volunteers (unpaid) who are appointed by the Governor who are charged with upholding applicable practice acts – the Boards of Medicine, Osteopathic Medicine, and Podiatric Medicine.

Board of Medicine –

- 15 Members – 12 physicians and 3 consumer members

Board of Osteopathic Medicine

- 7 Members – 5 physicians and 2 consumer members

Board of Podiatric Medicine

- 7 Members – 5 podiatric physicians and 2 consumer members

Board of Nursing

- 13 Members – 7 RNs, 3 LPNs, and 3 consumer members

They license, monitor, discipline, education, rehabilitate, and quasi-legislate through rulemaking things such as standards of care, discipline, education. This power is delegated from the Florida legislature to the Boards.

LAWS AND RULES

Chapter 456, F.S. – Health Professions and Occupations applicable to all practice acts

Chapter 458, F.S. – Allopathic Medicine and PAs

Chapter 459, F.S. – Osteopathic Medicine and Pas

Chapter 464, F.S. – Nursing Practice Act

Chapter 465 – Pharmacy Practice Act

Chapter 893 – Controlled Substances Act

Chapter 120 – Administrative Procedures Act

Florida Administrative Code

Rule 64B9 – for M.D.s

Rule 64B15 – for D.O.s

Rule 64B9 – for Nurses

Rule 64B16 – for Pharmacists

Many other statutes and rules

Investigations

FLORIDA

DEPARTMENT

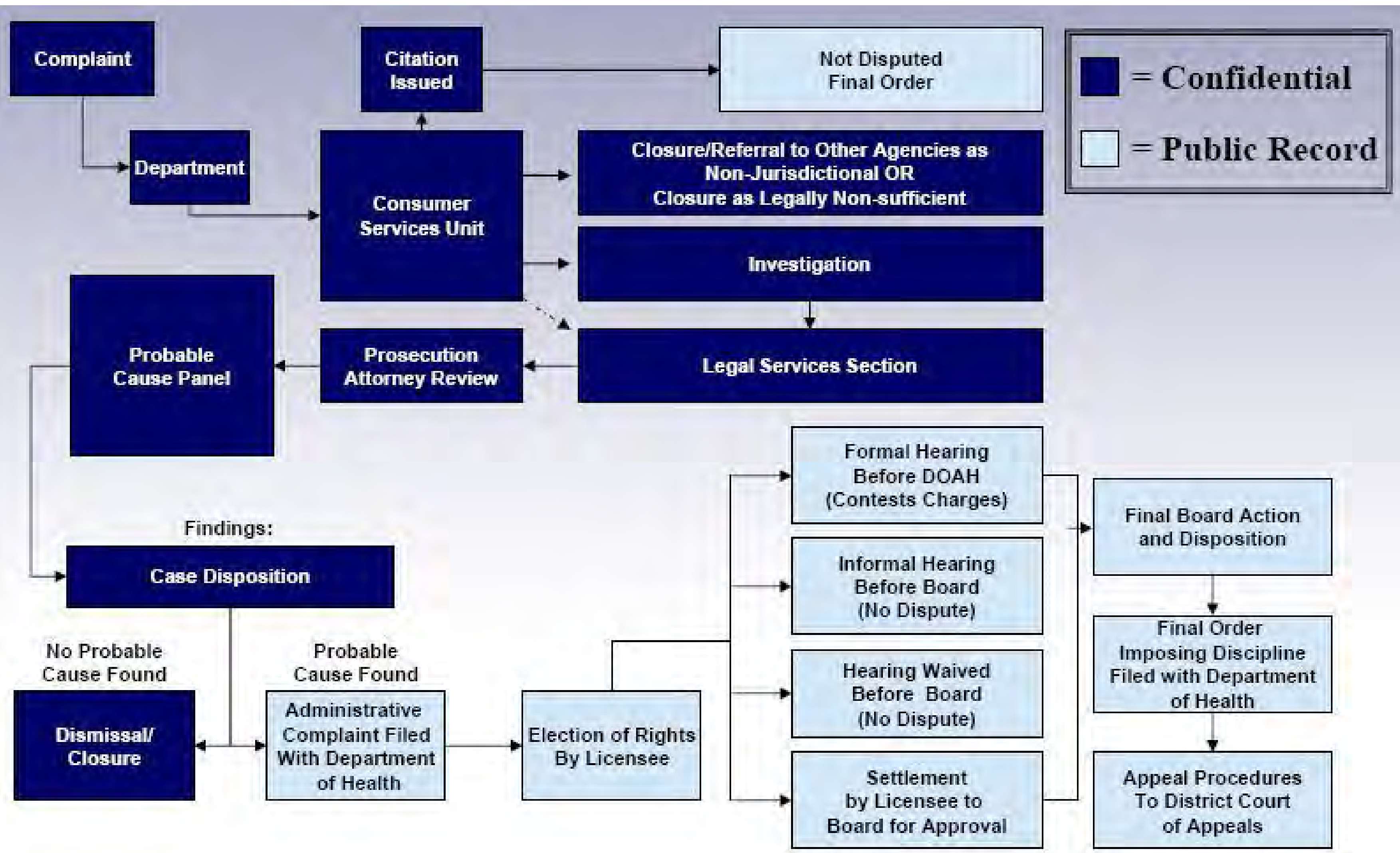
OF HEALTH

BUREAU OF PRACTITIONER REGULATION

Division of Medical Quality Assurance Enforcement Process

Consumer Services (CSU)
Investigative Services (ISU)
Prosecution Services (PSU)
Boards
Compliance Management (CMU)
Courts of Appeal
Confidential
Public

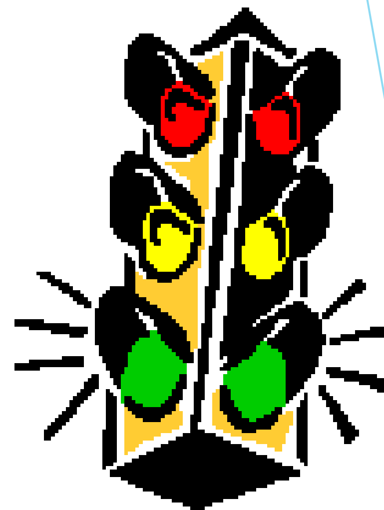
Complaint
Department
Citation Issued
Disputed
Not Disputed Final Order
Receipt and Analysis
Closure/Referral to Other Agencies as Non-Jurisdictional OR Closure as Legally Non-sufficient
Mediation
Complaint Closed
Investigation
Prosecution
Prosecution Attorney Review
Probable Cause
Mediation
Appeal Procedures To District Courts of Appeal
Compliance Monitoring
Findings:
Case Disposition
Formal Hearing Before DOAH (Contests Charges)
Informal Hearing Before Board (No Dispute)
Hearing Waived Before Board (No Dispute)
Settlement by Licensee to Board for Approval
Final Order Imposing Discipline Filed with Department of Health
Final Board Action and Disposition
No Probable Cause Found
Dismissal/ Closure
Probable Cause Found
Administrative Complaint Filed With Department of Health
Election of Rights By Licensee
Settlement Rejected


Complaint
Citation Issued
Not Disputed Final Order
= Confidential
= Public Record
Department
Consumer Services Unit
Closure/Referral to Other Agencies as Non-Jurisdictional OR Closure as Legally Non-sufficient
Investigation
Probable Cause Panel
Prosecution Attorney Review
Legal Services Section
Formal Hearing Before DOAH (Contests Charges)
Final Board Action and Disposition
Findings:
Case Disposition
Informal Hearing Before Board (No Dispute)
Final Order Imposing Discipline Filed with Department of Health
No Probable Cause Found
Probable Cause Found
Hearing Waived Before Board (No Dispute)
Dismissal/ Closure
Administrative Complaint Filed With Department of Health
Election of Rights By Licensee
Settlement by Licensee to Board for Approval
Appeal Procedures To District Court of Appeals

THE DISCIPLINARY INVESTIGATION PROCESS

HOW DO INVESTIGATIONS INITIATE?

- Complaints may be filed by:
  - A patient or a patient's family member
  - An attorney or law enforcement
  - A fellow practitioner or competitor
  - An anonymous source
  - Health care facility/entity (ex: Code 15 Report)
  - Closed Claim Report
  - Department of Children and Families
  - Department of Health inspectors for OSR or PM
  - Self Reports
  - Hospital Disciplinary Actions



CLOSED CLAIMS REPORTING

- **Reported**
  - **Final Judgments**
  - **Settlements**
  - **Final Dispositions not resulting in payments**

- **Report Includes**
  - **Name, Address & Specialty of Practitioner**
  - **Policy Number**
  - **Date of Incident**
  - **Date Reported to Carrier**
  - **Name & Address of Injured (confidential)**

DISCIPLINARY PROCESS

- It is governed by Section 456.073, F.S.
- The Department of Health is required to investigate any complaint that is filed if it is in writing and is legally sufficient.
- A complaint is legally sufficiency if it contains ultimate facts that show that a potential violation of the law, or any of the practice acts, or of any rule has occurred. The Department can request other information for that determination.
- The statute permits investigations of anonymous complaints so long as the written anonymous complaint is legally sufficient.
- The "complaint" are reviewed in the Consumer Services Unit.

CONSUMER SERVICES UNIT

- All complaints are funneled to the Consumer Services Unit ("CSU") which generally means one person is "analyzing" the complaint to determine legal sufficiency.
- CSU will either –
  - Issue a citation.
  - Dismiss the complaint because it is legally insufficient or there is no jurisdiction.
  - Refer it to mediation.
  - Refer the Complaint to the Investigative Services Unit.

INVESTIGATIVE SERVICES UNIT (ISU)

- ISU receives the complaint from CSU and a process then begins for the investigation.
  - You must be notified of the investigation.
  - You will be asked to be interviewed or submit a written response.
  - You can obtain the complete investigative file after the complaint of the investigation but must ask for it in writing.
  - You have the right to counsel.

A LETTER FROM THE DOH

- If a Complaint has been filed, you will receive a letter from the Department of Health. This letter will advise you that the Department has received a Complaint or has, on its own, initiated an investigation.
- With the letter, you will receive a Summary of Allegations, which will detail the specific allegations against your license.
- It will also assert statutory violations many of which are premature and may be inaccurate.

WHAT DO I DO IF I RECEIVE THIS LETTER?

- You have the right to respond to the allegations against your license, but for a limited time period detailed in the letter. You are not required to respond.
- Notify your insurance carrier.
- It is **strongly recommended** that upon receipt of the letter, you contact a health care attorney immediately that practices before the Boards and the Department.

CRITICAL DUE PROCESS RIGHTS

- Constitutional right to remain silent further to the 5th and 14th Amendments.
- State ex rel. Vining vs. Florida Real Estate Commission – seminal case regarding 5th Amendment right to remain silent
- Do not, do not, **do not** pick up the phone and contact the Department of Health or its personnel.
- You cannot be compelled to speak with the Department's investigators.
- You will not become a "red flag" if you do not speak with them – the Department is already reaching out to you.

WHY YOU SHOULD NOT TALK TO THE DEPARTMENT OF HEALTH INVESTIGATOR

- You do not know the rules.
- They do not make decisions regarding the viability or continuation of cases.
- They may inaccurately record or reflect what you say.

THE CONTINUING INVESTIGATION…

- The DOH will continue a field investigation, which will include interviewing witnesses, the patient or patient′s family and gathering relevant medical records and documents.
- The DOH has subpoena authority and it will obtain records and seek information. It will seek your personnel file.
- Once documents and statements have been obtained, the matter will be reviewed by DOH attorneys and possibly an expert practitioner.
- A DOH matter can last from months to <u>YEARS</u>.

CASES RETURNED TO DOH AND SENT TO LEGAL

- Once a case is investigated in the field (though sometimes it is investigated in Tallahassee), it is forwarded to the Prosecution Services Unit of the Department of Health.
- They are Assistant General Counsels that are assigned to prosecute cases before the various Boards.
- They evaluate cases and ultimately make recommendations to a panel of the respective Board know as the Probable Cause Panel. This is done through submission of all the investigative materials, including where applicable expert opinions.

IMPORTANT RIGHT!!

You have the right to obtain the complete investigative file from the Department of Health.

That request must be in writing pursuant to Section 465.073, F.S. and should request everything.

You are permitted to respond a second time after review of the file.

PROBABLE CAUSE PANEL

- Example – Board of Medicine PCP:
- The Panel consists of two physicians and one layperson.
- The Panel will review all of the information collected in the investigation and will determine if probable cause exists.
- If no probable cause is found, the investigation will be dismissed or dismissed with a letter of guidance.
- All Medical Quality Assurance Boards have Probable Cause Panels – they are the screeners and hold the key between something becoming public record or not. What they say is recorded; Can request transcripts.
- The Panel directs the filing of an Administrative Complaint, Closure with a Letter of Guidance, Dismissal of the investigation, or a Referral back to DOH for further investigation.
- This process is confidential until ten days after probable cause is found.

WHAT IF PROBABLE CAUSE IS FOUND?

The Probable Cause Panel will recommend that the DOH file an Administrative Complaint against the practitioner′s license. The matter, which was previously confidential up to this point, will then become a matter of public record and the DOH will then move the case forward to take disciplinary action.

CHOICES IF AN ADMINISTRATIVE COMPLIANT IS ISSUED.

- Charging document.
- Becomes public record.
- Attached to your Practitioner Profile for all to see.
- You will be given the choices to:
  - Dispute the allegations and have a formal hearing before an Administrative Law Judge. Must be done within 21 days.
  - An Informal Hearing where you appear before the Board and admit the allegations and address penalty.
  - Enter into a Settlement Agreement that must be approved by respective Board – generally with your appearance before it at the time of consideration of the settlement proposal.
  - Relinquish your license – a poor and permanent alternative.

ELECTION OF RIGHTS FORMAL HEARING

- Formal Hearings or Hearings of Disputed Facts
- Referred to the Division of Administrative Hearings
- Before an Administrative Law Judge
- Like a trial with no jury – heightened burden of proof
- Costly route and labor-intensive process.
- Still the Board's call on penalty, in other words, the Proposed Recommend Order issued by the Administrative Law Judge will be presented to the Board to adopt or reject and determine penalty.

ELECTION OF RIGHTS INFORMAL HEARING

- This is where you admit the allegations as alleged in the Administrative Complaint.
- Cannot dispute the allegations at any time and if you do the proceeding is canceled and the matter is referred to the Division of Administrative Hearings.
- Appear before the Board and present testimony/evidence regarding mitigation of any potential penalty.
- Should be represented by counsel.
- This is the least controllable outcome, and you are subject to any penalty issued by the Board within its penalty guidelines.

SETTLEMENT AGREEMENTS

- Negotiated between the licensee and the Department of Health prosecutor.
- Depending on the Board, may have to appear and answer questions at the time of consideration of the proposed Agreement.
- Board may accept or reject the Agreement after consideration of the investigative materials, and any testimony you may give. A count-offer can be offered to resolve the Administrative Complaint.
- The advantage to such a proceeding is that technically all the Board can do at your appearance is accept or reject the proposed Settlement Agreement. It cannot at that time, reject and issue a different penalty.

PENALTIES

PENALTIES MAY INCLUDE:

- Letter of Concern or Reprimand
- Fines up to $10,000
- Assessment of Costs
- Continuing Education
- Probation
- Suspension or Revocation
- UF CARES Program
- PRN

GROUNDS FOR DISCIPLINARY ACTION?

- Florida Statute 458.331 specifically sets forth the various grounds for disciplinary actions for allopathic physicians and physician assistants.
- Florida Statute 459.015 specifically sets forth the various grounds for disciplinary actions for osteopathic physicians.
- Florida Statute 465.016 specifically sets forth the various grounds for disciplinary actions for pharmacists.

Be familiar with the law governing your license!

FINAL ORDERS

Reported to National Practitioner Data Bank

NPDB
National Practitioner
Data Bank

the DataBank
NATIONAL PRACTITIONER
HEALTHCARE INTEGRITY & PROTECTION

Reported to the Federation of Medical Boards

IMPORTANT REMINDER

- There may be obligations to report discipline to facilities and other states in which you have a license.
- Need to check bylaws, management care agreements. Specialty Board rules, and other state laws where you have a license.
- How might it affect your participation in managed care plans, Medicare, etc.

IF YOU HAVE A DRUG OR ALCOHOL PROBLEM, PLEASE CONSIDER:

Physician′s Recovery Network (“PRN”) (http://www.flprn.org/)

or

Intervention Project for Nurses (“IPN”) (http://www.ipnfl.org/)

WHAT CAN YOU DO TO PROTECT YOUR LICENSE?

- Follow the Rules which means know the Rules.
- Review your licensing Board's website weekly for updates.
- Also document thoroughly.
- Do you have broad form coverage? Some new carriers may not! In addition to coverage in the event of a malpractice claim, broad form provides coverage for your attorney fees should you be investigated by the Department of Health and sometimes, KEPRO, etc.
- Remember: It will cover your attorney fees, but it will <u>not</u> cover any potential fine or costs assessed against you by your licensing board.

REMEMBER YOUR RIGHTS

- You have a property right in your license
- Right to remain silent
- Proper notice and time to respond
- Review Department of Health investigative file – second bite at the apple
- Right to legal counsel

THE DAY TO DAY MUST KNOWS

MEDICAL DIRECTORS

- Each nursing home licensee must will have only one physician who is designated as Medical Director.
- The Medical Director must be a physician licensed under Chapter 458 or 459, F.S., the nursing home administrator may require that the Medical Director be certified or credentialed through a recognized certifying or credentialing organization.
- A Medical Director who does not have hospital privileges must be certified or credentialed through a recognized certifying or credentialing body, such as The Joint Commission, the American Medical Directors Association, the Healthcare Facilities Accreditation Program of the American Osteopathic Association, the Bureau of Osteopathic Specialists of the American Osteopathic Association, the Florida Medical Directors Association or a health maintenance organization licensed in Florida.

MEDICAL DIRECTOR
CONTINUED

- A physician must have his or her principal office within 60 miles of all facilities for which he or she serves as Medical Director. The principal office is the office maintained by a physician as required by Section 458.348 or 459.025(3)(c)1., F.S., and where the physician delivers the majority of medical services. The physician must specify the address of his or her principal office at the time of becoming Medical Director. A rural facility is a facility located in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other nursing home facility within the same county.

MEDICAL DIRECTOR
CONTINUED

- (d) The nursing home licensee must appoint a Medical Director who must visit the facility at least once a month. The Medical Director must review all new policies and procedures; review all new incident and new accident reports from the facility to identify clinical risk and safety hazards. The Medical Director must review the most recent grievance logs for any complaints or concerns related to clinical issues. Each visit must be documented in writing by the Medical Director.

- A physician may be Medical Director of a maximum of 10 nursing homes at any one time. The Medical Director, in an emergency where the health of a resident is in jeopardy and the attending physician or covering physician cannot be located, may assume temporary responsibility of the care of the resident and provide the care deemed necessary.

- The Medical Director must meet at least quarterly with the risk management and quality assurance committee of the facility and participate in the development of the comprehensive care plan for the resident when he or she is also the attending physician of the resident.

PRACTITIONER PROFILES

- Pursuant to 456.02, F.S., a physician must update his or her Practitioner Profile within 15 days related to any of the following changes:
  - Address
  - Medical staff privileges
  - Medical malpractice settlements or judgments
  - Changes to financial responsibility
  - Matters related to Board Certification
  - Education matters
  - Disciplinary or criminal history

  Also, important to note that if you are disciplined in another jurisdiction, you have an affirmative obligation to notify the Board of Medicine within 30 days of any such disciplinary action. Failure to do so is grounds for discipline.

OTHER MUST KNOWS

- Do not pre-sign prescriptions no matter what good intentions you may have. Will be subject to discipline which could include a reprimand to your medical license, a $5,000 fine, payment of administrative costs, a laws and rules course, and probation.
- The Board Rules on Patient Record Retention –
  - Must maintain records at lease five years (but HIPAA and Medicare Managed Care Plans require longer).
  - Must notify patient by sign or letter of where records may be obtained if physician moves.
  - Newspaper notice and notify the Board within 30 before you move.

MEDICAL RECORDS MINIMUM WRITTEN CONTENT

- Written records shall contain, at a minimum, the following information about the patient –
  - Patient histories;
  - Examination results;
  - Test results;
  - Records of drugs prescribed, dispensed or administered;
  - Reports of consultations; and
  - Reports of hospitalization.

RECORDS MINIMUM CONTENT
(CONTINUED)

- Purpose for keeping complete and accurate medial records:
- To serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment.
- To furnish documentary evidence of the course of the patient's medical evaluation, treatment and change in condition.
- To document communication between the practitioner responsible for the patient and other health care professional who contributes to the patient's care.
- To assist in protecting the legal interest of the patient, the hospital and **the practitioner responsible** for the patient. IT PROTECTS YOU.

SUPERVISION OF APRNS

- Frequently asked questions from the Board of Medicine website.
- According to Rule 64B8-35.002, F.A.C.:
  The number of persons to be supervised shall be limited to insure that an acceptable standard of medical care is rendered in consideration of the following factors:

  (a) Risk to patient;
  (b) Educational preparation, specialty, and experience of the parties to the protocol;
  (c) Complexity and risk of the procedures;
  (d) Practice setting; and
  (e) Availability of the physician or dentist
- This applies in the office setting and those exempt sections under 458.348. F.S.
- Must enter into a protocol with the supervising physician and must be maintained at the location where the APRN practices. Example protocol at the Board of Nursing website.

SUPERVISION OF PHYSICIAN ASSISTANTS

- Governed by Sections 458.347 and 459.022, F.S.
- Can supervise up to 10 PAs at a time and is not required to co-sign charts. However, third party payors may still require this. Remember the distinction between onsite and offsite supervision.
- Physician providing supervision must be qualified in the medical areas in which the PA is to perform and SHALL be individually and collectively responsible and LIABLE for the performance and the acts and omissions of the PA.

SUPERVISION OF PHYSICIAN ASSISTANTS (continued)

- Supervisory physicians may delegate to PAs the authority to prescribe or dispense any medication used in the supervising physician's practice unless prohibited by the formulary established by the PA Council.
  - PA must identify he/she is a PA to the patient.
  - The supervising physician must notify the Department of his or her intent to delegate before delegating any prescriptive privileges to the PA.
  - The PA can also procure medical devices.
  - The PA must complete a 10-hour CME course in the specialty practice, 3 of which regard safe and effective controlled substance medications.
  - PA, when delegate, can provide services in hospital and nursing homes.
  - The PA may sign DNRs, death certificates, physical exams, for PT, OT, SLP, home health and DME.
  - IMPORTANTLY, PAs now may supervise medical assistants.

WHAT CAN MEDICAL ASSISTANTS DO

- First – Under the direct supervision and responsibility of a licensed physician, a medical assistant may undertake the following duties:
- (a) 1. Performing clinical procedures.
  - 2. Taking vital signs.
  - 3. Preparing patients for the physician's care.
  - 4. Performing venipunctures and non-intravenous injections.
  - 5. Observing and reporting patients' symptoms.

(b) Administering basic first aid.

(c) Assisting with patient examinations or treatments.

(d) Operating office medical equipment.

MEDICAL ASSISTANTS
(CONTINUED)

(e) Collecting routine laboratory specimens as directed by the physician.

(f) Administering medication as directed by the physician.

(g)Performing basic laboratory procedures.

(h) Performing office procedures including all general administrative duties required by physician.

(i) Performing dialysis procedures, including home dialysis.

They are not licensed by the state of Florida or the Department of Health and not required to have a national certification.

OTHER ISSUES THAT CAN CAUSE TROUBLE

- Misleading advertising including incorrect statements on your website. Also make sure your credentials are up to date, in particular your Board Certification.
- Financial relationships you enter into or other persons in your practice. Examples self-referral laws, anti-kickback statutes, patient brokering.
- Aiding the unlicensed practice of medicine. Be careful what you delegate and how you use medical assistants and other personnel.
  - Supervision required for MAs – law now allows physician assistants to supervise. Section 458.347(4)(j), F.S.

RECENT CHANGES IN FLORIDA LAW

PATIENT SELF-REFERRAL ACT

- SB 768 – significant change. The definitions of "direct supervision" and "present in the office suite" were removed from Florida's Patient Self-Referral Act. In doing so, section (3)n3.f. was amended regarding the exceptions to the definition of referral stating that direct supervision is no longer required, but the supervision that will be required must comply with applicable Medicare payment and coverage services.
- This will impact any practice that provides designated health services. That includes practices that do things such as lab work, diagnostic imaging, etc.
- This took place on July 1, 2023

NEW LAWS
NURSING HOMES AND NURSES- QMAs

- SB 558 – A nursing home, may authorize an RN to delegate tasks, including medication administration, to a certified nursing assistant that meets certain requirements. Once the requirements are met, the CNA is designated a "Qualified Medical Aide." Those medications include oral, transdermal, ophthalmic, otic, inhaled, or topical prescription medication.
- Those requirements are set forth in Section 400.211(5), F.S., and include a 34 hour Nursing Board approved course in medication administration and associated tasks, including, blood glucose level checks, dialing oxygen flow meters to prescribed settings, and assisting with continuous positive airway pressure devices.
- There is an annual validation requirement and two hour in-service training required thereafter.
- The Board of Nursing is to write rules to implement this law.

NEW LAWS

MEDICAL MARIJUANA, TELEHEALTH, ASSAULT ON HEALTH CARE PROVIDERS AND PHYSICIANS ASSISTANTS.

- HB 387 – now permits physicians to renewal approval for medical marijuana via telehealth. There must be an in-person visit for the initial determination that approves a patient for medical marijuana.
- HB 267 – amends the definition of telehealth under Section 456.47, F.S., to now provide that audio-only phone calls are permitted and included in the provision of permissible telehealth services. Emails and faxes are still not permitted.
- HB 825 – changing assault on hospital personnel from a second-degree misdemeanor to a first-degree misdemeanor. Raising battery to a third-degree felony from a first-degree misdemeanor, aggravated assault to a second-degree felony from a third-degree felony, and aggravated battery to a first-degree felony from a second-degree felony.

NEW LAWS

PHYSICIANS ASSISTANTS AND CNAS

- HB 1133 – revised eligibility requirements for physician assistant licensure who matriculate through a program on or before 12/21/20 and permits the Boards to grant licensure if an applicant does not meet the statutory educational requirements but has passed the Physician Assistant National Certifying Examination.
- SB 558 – creates a new designation of "qualified medication aide" (QMA) for certified nursing assistants (CNA) who work in a nursing home and meet specified licensure and training requirements. It allows a nursing home to authorize an RN working in that nursing home to delegate medication administration to the QMA under direct supervision o the RN.
- HB 1317 – adds board-eligible or board-certified family medicine physicians as health practitioners eligible to certify brain death in certain situations.

NEW LAW - SB 1718

IMMIGRATION REFORM

- Employers may not knowingly employ, hire, recruit or refer workers who are not authorized to work in the United States. Florida employers with 25 or more employees and all Florida workers who contract with public agencies must use the E-Verify system with few exceptions.
- It requires hospitals accepting Medicaid to ask, on patient admission/registration forms, whether the patient is a U.S. citizen or lawfully present in the United States or is not lawfully in the U.S. The form is required to state that the response will not affect patient care or result in a report of patient’s immigration status to immigration authorities. Patients can decline to answer.
- Hospitals must submit quarterly reports to AHCA. AHCA must submit an annual report to the Governor and Legislature that includes estimates of uncompensated care for those individuals not lawfully in the U.S.

NEW LAW – HB 1471

HEALTH CARE PROVIDER ACCOUNTABILITY

- Addresses health care provider accountability related to nursing home residents' rights, unlicensed facilities and standards of care for office surgeries.
- Sets forth an extensive list of resident rights that a nursing home must afford its residents, including the right to refuse medication and treatment, and be free from sexual abuse, neglect, and exploitation.
- Authorizes AHCA to seek ex parte temporary injunctions to prevent continued unlicensed activity by a provider that has received a cease and desist demand.

NEW LAW – SB 1580

CONSCIENCE BASED OBJECTIONS TO CARE

- SB 1580 – provides that health care providers (including physicians) and payors may make a "conscience-based objection" to the provision of certain "health care services" if such objection is based on a sincerely held religious, moral, or ethical belief. The statute which can be found at Section 381.00321, F.S., provides for the requirements for such an objection, including notice to a health provider's supervisor or employer, and documentation in the patient's chart (if applicable).
- This section does not allow a patient or payor to opt out of providing health care services to any patient or potential patient because of race, color, religion, sex or national origin.
- A health care provider may not be discriminated against or suffer adverse action because the health care provider declined to participate in a health service on the basis of a conscience-based objection.

NEW LAW - SB22

PROTECTION FROM DISCRIMINATION BASED ON HEALTH CARE CHOICES

- Prohibits business and governmental entities from requiring a person to provide documentation or requiring a COVID-19 test to gain access, entry or services or any relationship with the business or governmental entity.
- Prohibits mask mandates, vaccinations, mRNA vaccinations, as well as the requirement that a person wear a mask, face shield, or any facial covering or denying access to, entry to, services from, or admission to such entity based on the refusal to wear a mask (with an exception related to health care providers). AHCA is required to develop standards for the use of masks and that each health care provider adopt such similar rules.
- Prohibits hospitals from interfering with COVID-19 treatment options, requires health care practitioners obtain specific informed consent related to COVID-19 prescriptions, and prohibits pharmacists from being disciplined for properly dispensing COVID-19 medications.

NEW LAWS
DEA OPIOID TRAINING

- DEA new training requirement – a one time training requirement which is that practitioners take eight hours of training on treatment and management of patients with opioid or other substance abuse disorders.
- DEA requirement that beginning June 27, 2023, practitioners are required to check a box on their one DEA registration form, regardless of whether a registrant is completing their initial registration application or renewing their registration, affirming that they have complete the new training requirement.

CONTROVERSIAL LAWS

ABORTION AND TRANSGENDER TREATMENT

- SB 300 – prevents abortions after six weeks of pregnancy while allowing abortions up to 15 weeks for cases of rape, incest or human trafficking.
- SB 254 –Makes it a third-degree felony for health care providers to render gender-affirming treatments such as puberty blockers, hormone therapy or surgical procedures to minors. Requires that adults seeking such treatment must sign consent forms developed by the Boards of Medicine and Osteopathic Medicine.

ETHICS

ETHICS

Physicians are held to a high standard in our society. Patients need to be able to TRUST their physicians:

- Physician-patient relationship
- Financial
- Personal

The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare.

AMA Code of Medical Ethics Opinion 1.1.1

ETHICS CONTINUED

- Their historical development are reflected in:
- Local and state medical society records.
- AMA & AOA Code of Medical Ethics.
- AMA Journal of Ethics – Cases and Polls.
- Declaratory Statements from the Boards like the Board of Medicine and Boards of Osteopathic Medicine.
- Ethics are not laws and are not enforced in Courts of Law.
- They are actions that reduce trust.
- What you think is ethical may not be lawful.

ETHICS – THREE MAIN AREAS OF CONCERN

- Personal
- Economic
- Personal Issues

PHYSICIAN-PATIENT RELATIONSHIP

- Personal Physician–Patient Relationship
  - Communication – informed consent, its importance
  - Patient Rights – dignity and access to things like their medical records, right to privacy and continuity of care. Florida has a Patient Bill of Rights and there are many rights that can be gleaned from the various practice acts that regulate the practice of medicine.
  - Refusal of treatment and patient autonomy.
  - Boundary Issues – these occur all too frequently and some are legitimate, and others are not. Sexual misconduct is broadly defined and much more then you think it is. It includes verbal or sexual activity and is subjective as to how it is received by the patient.

IMPORTANT STATUTES IN THIS REGARDING SEXUAL MISCONDUCT.

- Exercising influence within a physician-patient relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician. 458.331(1)(j) and 459.015(i)(l), F.S.

- The physician – patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine violates the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage in sexual activity outside of the practice or the scope of generally accepted examination or treatment of the Patient Sexual misconduct in the practice of medicine is prohibited.

BOARD RULES

(CONTINUED)

- (2) For purposes of this rule, sexual misconduct between a physician and a patient includes, but it is not limited to:

(a) Sexual behavior or involvement with a patient including verbal or physical behavior which:

1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it,

2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or any third party, or

3. May reasonably be interpreted by the patient as being sexual.

SEXUAL MISCONDUCT

(continued)

(b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a), above, and which:

1. Results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship,

2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs, or

3. Is an abuse or reasonably appears to be an abuse of authority or power.

- Rule 64B8-9.008, F.A.C.

WHEN IS THE PHYSICIAN-PATIENT RELATIONSHIP OVER

- The mere passage of time since the patient's last visit to the physician is not solely determinative of whether or not the physician-patient relationship has been terminated. Some of the factors considered by the Board in determining whether the physician-patient relationship has terminated include, but are not limited to, the following:

(a) Formal termination procedures;
(b) Transfer of the patient's case to another physician;
(c) The length of time that has passed since the patient's last visit to the physician;
(d) The length of the professional relationship;
(e) The extent to which the patient has confided personal or private information to the physician;
(f) The nature of the patient's medical problem; and,
(g) The degree of emotional dependence that the patient has on the physician.

BEST PRACTICES

- Best Practices would be to have someone else in the examination room with you at all times. It is not always realistic but best practices. Certainly, have someone present for any physical examination.
- The law requires that licensees report allegations of sexual misconduct to the Board. It does not say what time frame but does require a report. The fact that a practice conducts its own investigation and concludes that there was no "sexual misconduct" in and of itself does not mitigate the reporting requirement.

ETHICS – FINANCIAL/ECONOMIC

- Section 456.072(1), F.S. – Exercising influence on the patient or client for the purposes of the licensee or a third party, which shall include the promotion or selling of services, goods, appliances or drugs. Also, in Sections 458.331(1)(n) and 459,015(1)(q), F.S.
- Referrals
- Testing
- Billing
- Fee Splitting
- Kick-Backs
- Loans/Investments
- Gifts
- Products Sold
- Financial Responsibility

ETHICS – PERSONAL ISSUES

- Personal issues include –
- Being an expert witness and the potential influence associated with being compensated for your testimony.
- Impairment – inability to practice medicine with skill and safety due to any form of impairment.
- The Professional Resource Network (PRN) or the Intervention Project for Nurses (IPN) .
- Reporting obligations where a license may be disciplined for the failure to report to the Department any person who the licensee knows is in violation of the applicable practice act or Chapter 456, F.S. Those that are impaired can be reported to PRN or IPN rather than the Department for illness or use of alcohol, drugs, narcotics, chemicals or as a result of mental or physical condition.

OTHER RESOURCES

- Information vs. Advice – do your homework but do speak with competent and trained counsel. This is a unique area of the law, different from mainstream litigation, and thus, providers are urged to seek counsel from individuals who are experienced in this specific area of the law concerning licensure, board and health law matters.
- Read the Declaratory Statements issued by the Boards use such to obtain information on how certain activities or conduct are addressed by Boards.

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