2018 BEST CARE PRACTICES IN THE POST-ACUTE &LONG-TERM CARE CONTINUM Orlando, florida



SUNDAY - OCTOBER 14, 2018 9:10 AM - 10:10 PM

GREGORY A. CHAIRES, ESQ. BOARD CERTIFIED IN HEALTH LAW

CHAIRES, BROODERSON & GUERRERO, P.L. 283 (RANES ROOST BLVD., SUITE 165 ALTAMONTE SPRINGS, FLORIDA 32701 (407) 834-2777 WWW.CHLAWYERS.COM

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
- Develop knowledge of your rights and protections related to licensure investigations
- Where to find the laws and rules you may need

WHO REGULATES THE PRACTICE OF MEDICINE AND NURSING?

The Department of Health, through the Boards of Medicine, Osteopathic Medicine and Nursing, regulate the licensure and practice of allopathic and osteopathic physicians, as well as physician assistants, nurses and nurse practitioners in the state of Florida.





WHERE TO START THE ALPHABET SOUP

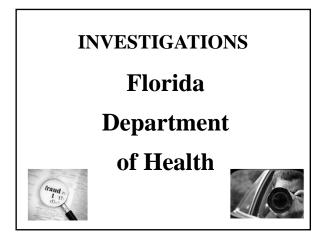
<u>Dept .of Health (DOH)</u> – licenses health care practitioners after approval from Board – also provides attorney prosecutors from the Prosecution Services Unit to prosecute cases

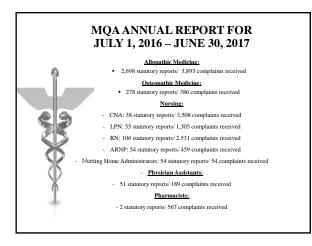
<u>Board of Medicine (Board)</u> – governs practice through rules, discipline

Attorney Generals Office (AGO) – provides legal counsel to be Board's General Counsel

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

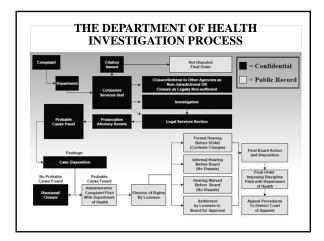
<u>District Courts of Appeal (DCA)</u> – the appellate courts that consider appeals from the Boards





PER THE MQA ANNUAL REPORT FOR JULY 1, 2016 – JUNE 30, 2017

- ■Emergency Suspension Orders (285)
- Complaints received 18,216 Legally sufficient 5,960 Probable Cause found 2,672
 - Administrative Complaints filed 2,512
- ■Revocations 264
- ■Voluntary surrenders of license 321
- ■Suspensions 467



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HOW DO INVESTIGATIONS INITIATE?

• Complaints may be filed by:

- A patient or a patient's family member
- An attorney
- A fellow practitioner
- An anonymous source
- Health care facility/entity (ex: Code 15 Report)
- Closed Claim Report
- Department of Children and Families

"CLOSED CLAIMS REPORTING"

■<u>Reported</u>

- Final Judgments
- Settlements
- Final Dispositions not

resulting in payments



■<u>Report Includes</u>

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

REPORT ALSO INCLUDES...

- · Date of suit
- Injured person's age and sex
- Total # and names of all defendants named in suit
- · Date & amount of judgment or settlement
- Miscellaneous financials
- Summary of rationale for disposition if other than judgment or settlement
- · Summary of the occurrence upon which report is being made

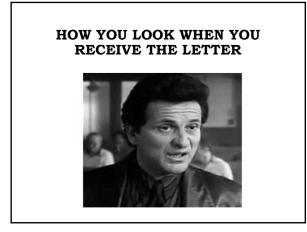
The Disciplinary Investigation Process

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 Uniform Complaint Form, which will detail the specific allegations against your license.





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.

- Notify your insurance carrier.
- It is <u>strongly recommended</u> that upon receipt of the letter, you contact a health care attorney immediately.



CRITICAL DUE PROCESS RIGHTS

- Constitutional right to remain silent further to the $5^{\rm th}$ and $14^{\rm th}$ 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.

WHY YOU SHOULD NOT TALK TO THE DEPARTMENT OF HEALTH INVESTIGATOR

- You do not know the rules.
- They do not make decisions.
- They may inaccurately record or reflect what you say.
- They are permitted to tell you misleading things or give you assurances when they do not know what will happen.

Let's discuss.

BUT IF I DON'T TALK TO THEM DOESN'T THAT MAKE ME A RED FLAG FOR AN INVESTIGATION





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.
- They have subpoena authority.
- 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.

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 investigat 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.

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.



ADMINISTRATIVE COMPLAINT

- Charging document.
- •Becomes public record.
- Attached to your Practitioner Profile for all to see.

WHAT ARE MY OPTIONS?• ELECTION OF RIGHTS

- Entering into a settlement agreement
- Proceeding with a formal hearing
- Proceeding with an informal hearing
- Other strategy
- ■21 DAYS –
- ■Need legal counsel



ELECTION OF RIGHTS FORMAL HEARING

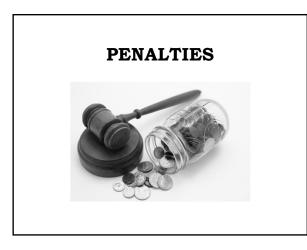
- Formal Hearings or Hearings of Disputed Facts
- Referred to the Division of Administrative Hearings
- Before an Administrative Law Judge
- Like a trial with no jury heightened burden of proof
- Costly route
- Still the Board's call on penalty

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.
- Appear before the Board and present testimony/evidence regarding mitigation of any potential penalty.
- Should be represented by counsel.
- Least controllable outcome.

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 dear. A count-offer can be offered to resolve the Administrative Complaint.



GROUNDS FOR DISCIPLINARY ACTION?

Florida Statute 458.331 specifically sets forth the various grounds for disciplinary actions for allopathic physicians and physician assistants.

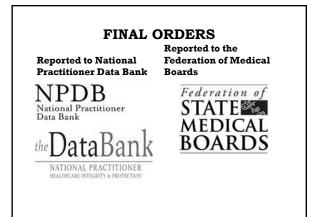
- Florida Statute 459.015 specifically sets forth the various grounds for disciplinary actions for osteopathic physicians.
- Florida Statute 464.018 specifically sets forth the various grounds for disciplinary actions for nurses.
- Florida Statute 468.1755 specifically sets forth the various grounds for disciplinary actions for nursing home administrators.
- Florida Statute 465.016 specifically sets forth the various grounds for disciplinary actions for pharmacists.

Be familiar with the law governing your license!

PENALTIES MAY INCLUDE:

- Letter of Concern or Reprimand - Fines - Costs - Continuing education - Probation - Suspension or revocation - UF CARES Program - PRN





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 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

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, FMQIA, 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.

WHAT CAN YOU DO TO PROTECT YOUR LICENSE?

Remember that the mere occurrence of an investigation of a practitioner's license, even if it is dismissed without a finding of probable cause or any filing of an Administrative Complaint, can potentially impact that practitioner in terms of credentialing. Contact a health care attorney to discuss how best to respond on applications for licenses, reapplications/applications for privileges at hospitals and ASCs, to specialty boards and so forth.

Example: History of license being "investigated" vs. "disciplined"

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 bit at the apple Right to legal counsel

FOR INFORMATION CONCERNING SPECIFIC LICENSES, INCLUDING EVERYTHING FROM THE PERTINENT LAWS AND STATUTES GOVERNING LICENSES, AS WELL AS PROFESSIONAL UPDATES RELATED TO A LICENSE AND INFORMATION ON CONTINUING PLEASE EDUCATION, VISIT THE FOLLOWING WEBSITES:

Board of Medicine

 $\underline{http://doh.state.fl.us/mqa/medical/index.html}$

Board of Nursing

http://doh.state.fl.us/mqa/nursing/index.html

Board of Nursing Home Administrators

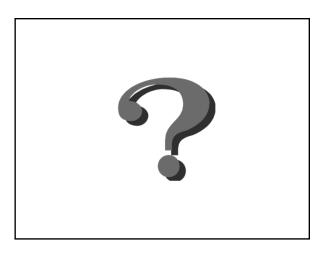
 $\underline{http://doh.state.fl.us/mqa/nurshome/index.html}$

Board of Osteopathic Medicine

http://doh.state.fl.us/mqa/osteopath/index.html

Board of Pharmacy

http://doh.state.fl.us/mqa/pharmacy/index.html



Gregory A. Chaires, Esq. Board Certified in Health Law



283 Cranes Roost Blvd., Suite 165 Altamonte Springs, Florida 32701 Telephone (407) 834-2777 Fax (407) 834-2778 <u>www.chlawyers.com</u> Email: <u>gchaires@chlawyers.com</u>