


2018
BEST CARE PRACTICES
IN THE POST-ACUTE & LONG-TERM
CARE CONTINUUM
ORLANDO, FLORIDA

**PROTECTING YOUR LICENSE
- YOUR MOST VALUABLE
COMMODITY**
SUNDAY - OCTOBER 14, 2018 9:10 AM - 10:10 PM

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



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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
- 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.

APPLICABLE FLORIDA STATUTES

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

Chapter 458, F.S. – Allopathic Medicine

Chapter 459, F.S. – Osteopathic Medicine

Florida Administrative Code

Rule 64B9 – for M.D.s

Rule 64B15 – for D.O.s

Chapter 120, F.S. – Administrative Procedures Act

Many other statutes and rules





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

Board of Medicine (Board) – governs practice through rules, discipline

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

INVESTIGATIONS

Florida Department of Health



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



- Allopathic Medicine:
 - 2,698 statutory reports/ 3,893 complaints received
- Osteopathic Medicine:
 - 278 statutory reports/ 386 complaints received
- Nursing:
 - CNA: 38 statutory reports/ 3,508 complaints received
 - LPN: 55 statutory reports/ 1,305 complaints received
 - RN: 106 statutory reports/ 2,531 complaints received
 - ARNP: 54 statutory reports/ 459 complaints received
- Nursing Home Administrators: 54 statutory reports/ 54 complaints received
 - Physician Assistants:
 - 51 statutory reports/ 189 complaints received
 - Pharmacists:
 - 2 statutory reports/ 567 complaints received

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

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.



HOW YOU LOOK WHEN YOU RECEIVE THE LETTER



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 **strongly recommended** 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 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.

**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 YEARS.

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 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.



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 deal. A counter-offer can be offered to resolve the Administrative Complaint.

PENALTIES



GROUND 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



FINAL ORDERS

**Reported to National
Practitioner Data Bank**



**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 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 not 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
EDUCATION, PLEASE VISIT THE
FOLLOWING WEBSITES:**

Board of Medicine

<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

<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>



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