

APPENDIX 14-3

THE 27 BIGGEST MISTAKES NURSES MAKE IN DOH INVESTIGATIONS

Following are the 27 biggest mistakes that we have seen nurse make over and over again that cause them the worst trouble in DOH investigations.

1. Failing to keep a current, valid address on file with the DOH (as required by law), which may seriously delay the receipt of the Uniform Complaint (notice of investigation), letters, and other important correspondence related to the investigation.
2. Contacting the DOH investigator and providing him/her an oral statement or oral interview. (Note: There is no legal requirement to do this.)
3. Making a written statement in response to the "invitation" extended by the DOH investigator to do so. (Note: There is no legal requirement to do this.)
4. Failing to carefully review the complaint to make sure it has been sent to the correct nurse. (Note: Check name and license number).
5. Failing to ascertain whether or not the investigation is on the "fast track" which may then result in an emergency suspension order (ESO) suspending the physician's license until all proceedings are concluded. (Note: This will usually be the case if there are allegations regarding drug abuse, alcohol abuse, sexual contact with a patient, mental health issues, or failure to comply with IPN instructions.)
6. Providing a copy of the nurse's curriculum vitae (CV) or resume to the investigator because the investigator requested her to do so. (Note: There is no legal requirement to do this.)
7. Believing that if they "just explain it," the investigation will be closed and the case dropped.
8. Failing to submit a timely objection to a DOH subpoena when there are valid grounds to do so.
9. Failing to forward a complete copy of the patient medical record when subpoenaed by the DOH investigator as part of the investigation, when no objection is going to be filed. Will usually not apply to nurses but may apply to ARNPs and nurse midwives.

10. Failing to keep an exact copy of any medical records, documents, letters or statements provided to the investigator.
11. Failing to submit correspondence and documents via certified mail, return receipt requested, so that you have proof of mailing and proof of receipt.
12. Believing that the investigator has knowledge or experience in hospital procedures, nursing procedures or the health care matters or procedures being investigated.
13. Believing that the investigator is merely attempting to ascertain the truth of the matter and this will result in the matter being dismissed.
14. Failing to check to see if your nursing malpractice insurance carrier will pay the legal fees to defend in this investigation.
15. Talking to DOH investigators, staff or attorneys, in the mistaken belief that they are capable of doing so without providing information that can and will be used against them.
16. Believing that because they haven't heard anything for six months or more, that the matter has "gone away." The matter does not ever just go away.
17. Failing to submit a written request to the investigator at the beginning of the investigation for a copy of the complete investigation report and file and then following up with additional requests until it is received.
18. Failing to wisely use the time while the investigation is proceeding to interview witnesses, obtain witness statements, conduct research, obtain experts, and perform other tasks that may assist defending the case.
19. Failing to exercise the right of submitting documents, statements, and expert opinions to rebut the findings made in the investigation report before the case is submitted to the Probable Cause Panel of the Board of Nursing for a decision.
20. Taking legal advice from their colleagues or employers regarding what they should do (or not do) in defending themselves in the investigation.
21. Retaining "consultants" or other non-lawyer personnel to represent them.
22. Retaining criminal defense attorneys, trial attorneys or other attorneys to represent them in such matters when that attorney does not have experience in appearing before the Board of Nursing in such cases (always ask the attorney how many times she or he has actually appeared before the Board of Nursing.)

23. Believing that the case is indefensible so there is no reason to even try to have it dismissed by the Probable Cause Panel. The case is usually defensible.
24. Attempting to defend themselves.
25. Believing that because they know someone on the Board of Nursing, with the Department of Health or a state legislator, that influence can be exerted to have the case dismissed.
25. Communicating with the Department of Health about the pending case.
27. Failing to immediately retain the services of a health care attorney who is experienced in such matters to represent them, to communicate with the DOH investigator for them, and to prepare and submit materials to the Probable Cause Panel.