

33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License



www.TheHealthLawFirm.com



Main Office:


1101 Douglas Avenue
Altamonte Springs, Florida 32714

Phone: (407) 331-6620


Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com

The investigation of a complaint against your nursing license could lead to the revocation of the license, and the assessment of tens of thousands of dollars in fines, as well as a number of adverse collateral consequences. Yet it usually starts usually with a simple letter from the state regulatory authority, in Florida, the Department of Health (DOH).



This is a very serious legal matter and it should be treated as such by the nurse who receives it. Yet, in many cases, we are consulted by nurses after the entire investigation is over, the case has been presented to the Probable Cause Panel or to the Board of Nursing, and formal charges have been filed against them. They have attempted to represent themselves throughout the case, unsuccessfully. They have made statements which can be used to prove the case against them. Often, the mistakes that have been made severely compromise our ability to achieve a favorable result for the nurse.




These are the 33 biggest mistakes we see in the cases we are called upon to defend after a licensure complaint investigation has been initiated against a nurse




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

1. Failing to maintain good, inexpensive professional liability insurance that has coverage for payment of your attorney's fees and legal defense costs for complaints against your nursing license (e.g., NSO Insurance, HPSO Insurance, CPH & Associates Insurance). Get this coverage now; after a complaint is filed it will be too late.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

2. Failing to keep a current, valid address on file with the state licensure authority (in Florida, the Department of Health or DOH), as required by law. This may seriously delay the receipt of a notice that an investigation is occurring, letters, and other important correspondence related to the investigation. It may also lead to an additional charge against you.



33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License


3. Failing to go online immediately after receipt of any complaint or notice of investigation and confirming that your address of record and all other information (on your provider profile, if an advanced nurse practitioner) is up to date and completely correct.



33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License


4. Contacting the investigator and providing him/her an oral statement or oral interview. (Note: In Florida, there is no legal requirement to do this.¹) We recommend that you never do this. Anything that you state may be used to help the state prove its case against you. The DOH investigator is the equivalent of a police investigator attempting to make a case against you. Don't help them.

In some states there may be a requirement to "cooperate" with the investigation. In these states it is even more imperative that the nurse obtain experienced legal counsel immediately and respond only through that attorney.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

5. Making a written statement in response to the "invitation" extended by the DOH investigator to do so. (Note: In Florida, there is no legal requirement to do this. See above.)




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

6. Failing to carefully review the investigation letter or complaint to make sure it has been sent to the correct nurse. (Note: Check the name and license number, especially if you have a common name.)




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

7. Believing that your employer is going to provide you a legal defense in such an investigation. Many nurses believe that because they work for a large health care system such as a hospital or nursing home chain, that their employer is going to pay for their defense in such an investigation. This is often the reason given for not purchasing their own independent nursing malpractice insurance, as well. We have found that often it is the employer that has made the complaint against the nurse and often after the employer has fired the nurse. In most cases, employers do not cover such legal defense expenses.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

8. 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 nurse'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, failure to comply with instructions from the Intervention Project for Nurses (IPN), or default on a student loan.)




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

9. Providing a copy of the nurse's curriculum vitae (CV) or resume to the investigator because the investigator requested you to do so. Note: There is no legal requirement to do this in Florida. We have actually had information from the health professional's CV or resume used against him/her in the case later presented against that professional.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

10. Believing that if they "just explain it," the investigation will be closed and the case dropped. This just about never happens. More often, a statement made by the nurse is actually used against her to prove the nursing violations charged. In Florida, virtually every case is presented to and reviewed by the Probable Cause Panel of the Board of Nursing. Again, statements you make, no matter how innocent they seem, can be used against you to prove the charges.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

11. Failing to submit a timely objection to a subpoena for records made to you when there are valid grounds to do so. If there are valid grounds for objecting to a subpoena issued by an Investigator (or by an order from the Surgeon General or another authority to do so) then it can and should be made. For example, if the patient's medical record is subpoenaed from you and you are not its actual custodian. Not also, in Florida, the Department of Health does not have any authority to independently enforce subpoenas.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

12. Trying to obtain and forwarded a copy of a patient's record to the investigator when you are not the custodian of the patient's record. If you are the employee of a clinic, hospital, nursing facility, institution or medical group, any request for records should be made to the actual records custodian by the investigator and should be provided only by the actual records custodian. It is not your job to do this.



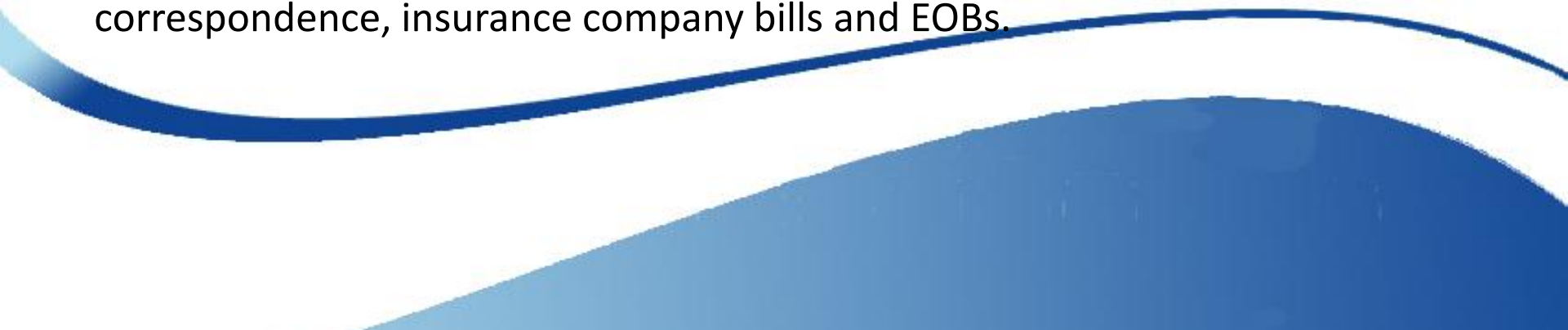
33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

13. Delaying obtaining legal counsel in the belief that you can explain the allegations away or represent yourself in the matter. Remember, this is a legal proceeding that is considered to be a "quasi-criminal proceeding" since it can result in discipline against you that will remain on your record forever.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

14. If you are the custodian of the patient medical record and it must be produced to the investigator, forwarding only a portion of it or failing to forward a complete copy of the patient's health record when subpoenaed by the investigator as part of the investigation (if no objection is going to be filed). We have seen this problem, especially with electronic health records. If you do provide a copy of the patient's health record (whether to the investigator or to your attorney) you must be certain you produce each and every part of it. This includes, daily journal entries, progress notes, periodontal charts, bills, treatment plans, x-rays, photographs, history & physical, informed consent forms, notes and telephone messages, correspondence, insurance company bills and EOBs.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

15. Signing a verification affidavit or "Certificate of Completeness" attesting that the copy of whatever record you provided is the "complete copy." This is a trap for the unwary. Often lab reports, consults, correspondence, or other documents are not located until later, and you must be able to use these. In Florida, there is no requirement to do this. You cannot be forced to sign such a certificate of completeness and we advise our client not to do so.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

16. If providing a copy of the patient record, delegating the task to someone else in your office, often resulting in an incomplete or partial copy being provided.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

17. Failing to keep an exact copy of any health records, documents, letters or statements provided to the investigator.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

18. Believing that the investigator has knowledge or experience in nursing procedures, medical procedures or the health care matters or the specific care or procedures being investigated.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

19. Believing that the investigator is merely attempting to ascertain the truth of the matter and this will result in the matter being dismissed.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

20. Failing to check to see if your nursing malpractice insurance carrier will pay the legal fees to defend you in this investigation. In the absence of coverage by an insurance carrier, failing to retain the services of a health care attorney experienced in nursing board cases to represent them from the beginning of the investigation.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

21. Talking to investigators, nursing board staff or attorneys, in the mistaken belief that they what they say will not be used against them. Note: Every in Florida, it is our understanding that every telephone conversation with DOH personnel is entered into their computer data base and often internal e-mails are exchanged among investigators, attorneys and staff sharing this information afterwards.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

22. Believing that because you haven't heard anything for several months matter has "gone away." The matter does not ever just go away. You will receive a letter or an order if the case is dismissed and it will clearly state this.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

23. 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.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

24. Failing to wisely use the time while the investigation is proceeding to interview witnesses, obtain written witness statements, obtain character references, obtain records such as military service records and performance evaluations, conduct research, obtain experts, and perform other tasks that may assist defending the case once the investigation has been completed.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

25. 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 (in Florida) of your licensing board for a decision. This should be done through your experienced attorney.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

26. Taking legal advice from your colleagues regarding what you should do (or not do) in defending yourself in the investigation. Everyone's opinion is different. Everyone's experiences are different. Only an attorney who has seen a large number of similar cases can provide valid advice that you may be able to rely on.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

27. Retaining "consultants" or other non-lawyer personnel to represent you in the matter, instead of experienced legal counsel.



33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

28. Believing that the case is indefensible so there is no reason to even try to defend yourself or to attempt to have it dismissed. Remember that, just as in a criminal case, in a licensing disciplinary case, the burden of proof is on the state. The state must put on sufficient evidence to prove that you have committed the offenses and often it is not able to do so.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

29. Attempting to defend themselves in the case.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

30. Believing that because you 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. This is definitely not the case. If you do know someone on the Board of Nursing, that person is required by law to recuse (disqualify) herself/himself from any discussion or vote on your case.




33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

31. Failing to immediately retain the services of a health care attorney who is experienced in such matters to represent them, to communicate with the investigator for them, and to prepare and submit materials to the hearing panel on your behalf.



33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

32. Immediately contacting the state impaired nurses program (in Florida, the Intervention Project for Nurses or "IPN"), because the investigator or your employer tells you that you must. Contact an experienced attorney first. This is often not the right thing to do.



33 Biggest Mistakes For a Nurse to Avoid After Being Notified of a Complaint Against the Nurse License

33. Believing that if an Emergency Suspension Order (ESO) or Emergency Restriction Order (ERO) is entered against you that it may be successfully appealed. In reality, ESOs and EROs are reviewed by the appellate courts (if there is an appeal) based solely on what is contained "within the four corners of the document." Nothing outside the document may be considered. If the ESO or ERO appears to state a sufficient case for an emergency suspension or restriction (whether the facts it states are actually true or not), the court of appeal is required to uphold the emergency suspension.

