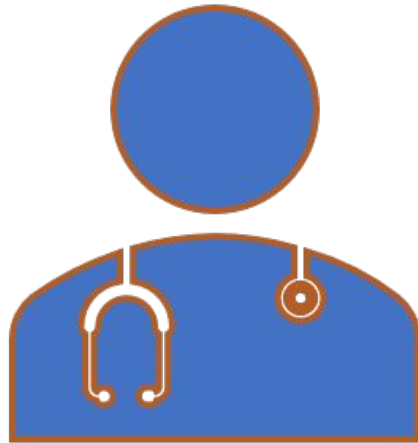


Florida Laws & Rules

- ▶ Jason D. Winn, Esq.
- ▶ WINN LAW
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Disclosure Statement

I have no financial
relationship in regard to
the content of this
presentation - JDW



Educational Objectives Florida Laws & Rules

- ▶ Understanding of applicable Laws & Rules for licensed Podiatric Physicians.
- ▶ Knowledge of the disciplinary process.
- ▶ Learning of rights afforded to physicians in licensure disciplinary cases.
- ▶ Ability to locate applicable statutes and rules through online resources.

What Fla Statute applies to ALL health care practitioners?

A. Florida Statute 459

B. Florida Statute 456

C. Florida Statute 461

D. Rule 64B15

Answer -

What Fla Statute applies to ONLY Florida Podiatric Physicians?

A. Florida Statute 458

B. Florida Statute 456

C. Florida Statute 464

D. Florida Statute 461

Answer -

PODIATRIC PHYSICIANS PRACTICE ACT

Florida Statutes:

- **Chapter 461: Podiatric Medicine Practice Act**
- **Chapter 456: Health Professions and Occupations: General Provisions**
- **Chapter 120: Administrative Procedure Act**
- **Chapter 119: Public Records**
- **Chapter 408: Health Care Administration**
- **Chapter 112: Public Officers and Employees: General Provisions**

Florida Administrative Code:

- **Rule 64B18**

<http://floridaspodiatricmedicine.gov/resources/> link to
Statutes and rules

LICENSE RENEWAL

Current licenses expire midnight *March 31, 2022*

First Biennium Renewal: Podiatric Physicians initially licensed in the biennium or within 24 months of initial licensure must attend one (1) full day at a Florida Board of Podiatric Medicine meeting at which disciplinary hearings are conducted as provided in subsection 64B18-17.005, F.A.C. The practitioner is then exempt from any other continuing education requirements for his or her first renewal **except** for hours mandated for prevention of medical errors and HIV/AIDS. Podiatric Physicians initially licensed and are renewing a license for the first time are required to complete two (2) hours of prevention of medical errors and one (1) hour of HIV/AIDS

LICENSE RENEWAL 40 TOTAL Hours

General Hours 36 *Up to eight (8) hours per biennium is allowed for home study course.*

Medical Error 2

Laws and Rules 1

Risk Management 1

Controlled Substance Prescribing Course 2

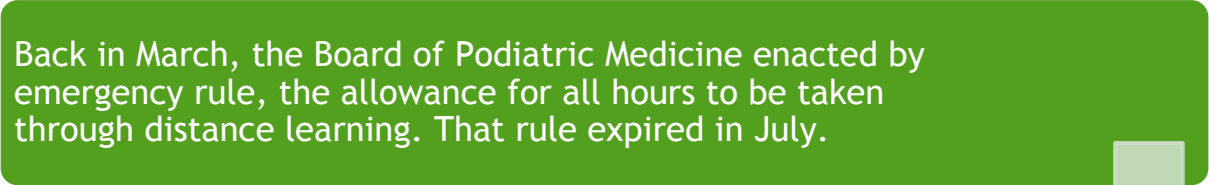
Required for Podiatric Physicians who are registered with the United States DEA. Must complete prior to January 31, 2019 and each subsequent renewal. The 2-hour course is included within the 36 total general hours required.

Human Trafficking 1

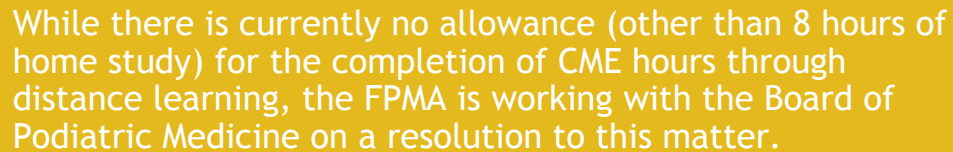
Each licensee or certificate holder shall complete a board-approved, 1-hour continuing education course on human trafficking. The 1-hour course is included in the 36 total general hours required. This course must be completed by January 1, 2021 as required in accordance with Section 456.0341, Florida Statutes.

IN Person vs. Distance Learning

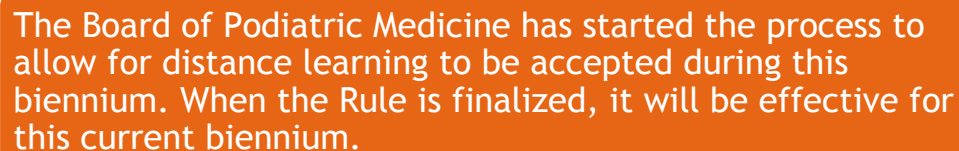
Back in March, the Board of Podiatric Medicine enacted by emergency rule, the allowance for all hours to be taken through distance learning. That rule expired in July.



While there is currently no allowance (other than 8 hours of home study) for the completion of CME hours through distance learning, the FPMA is working with the Board of Podiatric Medicine on a resolution to this matter.



The Board of Podiatric Medicine has started the process to allow for distance learning to be accepted during this biennium. When the Rule is finalized, it will be effective for this current biennium.



The FPMA is working closely with the Board to ensure distance learning will be accepted during this biennium.



Changes in Laws

Executive Orders

#2020-92 Executive Order amends Executive Order 20-91 re: Essential Services and Activities During COVID-19 Emergency 04/01/2020

#2020-91 Executive Order re: Essential Services and Activities During COVID-19 Emergency 04/01/2020

DOH Emergency Order 20-007. This order extends Emergency Order 20-002 to May 31, 2020.

Emergency Order 20-006 waives certain Florida DOH statutes and rules.

The Surgeon General issued Emergency Order 20-002 in response to the threat posed by COVID-19. This concerns prescribing and Telehealth

Executive Order Number 20-91: Essential Services and Activities During COVID-19 Emergency are extended until April 30.

<https://www.flgov.com/2020-executive-orders/>

Updates for COVID-19

COVID-19 positive patients and COVID-19 laboratory results are subject to mandatory reporting to the Florida Department of Health under Section 381.0031, Florida Statutes.

Pursuant to Rule 64D-3, Florida Administrative Code and to ensure a rapid public health response and disease control interventions, healthcare providers and facilities must immediately report all COVID-19 cases in the following persons to their County Health Departments (www.FLhealth.gov/chdepcontact):

- ▶ Persons who live or work in long term care facilities, senior living centers, permanent supportive housing, or similar congregate settings (shelters, correctional facilities) who house persons at high risk of severe outcomes.
- ▶ All healthcare personnel (medical, nursing, AND any other facility employee, EMS)
- ▶ Persons employed in public safety occupations (e.g., law enforcement, firefighter).
- ▶ Hospitalizations associated with COVID-19.
- ▶ Deaths associated with COVID-19.

Suspected or confirmed outbreaks (≥ 2 cases in 96 hours) of COVID-19 in long-term care facilities or similar group settings should be reported immediately.

All positive and negative COVID-19 laboratory results should be reported to the department via electronic laboratory reporting or by fax.

Patients with confirmed or suspected COVID-19 or close contact with a case should be provided the following resources to help prevent disease transmission:

- ▶ Persons with confirmed COVID-19
- ▶ Persons with suspected COVID-19
- ▶ Cases should inform their close contacts
- ▶ Close contacts to COVID-19
- ▶ Households affected by COVID-19

For additional information please visit <https://floridahealthcovid19.gov/>

Changes in Laws - Non-Opioid Alternative 2021

743: Nonopioid Alternatives

Effective Date: July 1, 2020

<http://www.flsenate.gov/Session/Bill/2020/743/BillText/er/PDF>

The bill revises the requirements for certain health care practitioners providing an opioid drug listed as a Schedule II controlled substance to inform the patient about possible nonopioid alternatives, discuss the advantages and disadvantages of nonopioid alternatives, and provide the pamphlet as required in section 456.44, Florida Statutes by:

Requiring that the pamphlet provided to the patient be printed;

Authorizing a health care practitioner to discuss non-opioid alternatives with, and provide the pamphlet to, the patient's representative rather than the patient;

Specifying that only those health care practitioners ordering or prescribing or providing care that requires the administration of anesthesia using an opioid must meet the requirements and removing the requirement to address non-opioid alternatives when a drug is dispensed or administered; and

Exempting health care practitioners providing hospice services and providing care in a hospital critical care unit or emergency department from the requirement to discuss non-opioid alternatives with a patient or the patient's representative and provide a printed copy of the pamphlet.

2020 Bill - CANNOT BE GIVEN IN ELECTRONIC FORMAT

2021 Bill - CAN BE GIVEN IN ELECTRONIC FORMAT beginning July 1, 2021

<http://www.floridahealth.gov/programs-and-services/non-opioid-pain-management/documents/alternatives-facts-8.5x11-eng.pdf>

Florida Changes in Laws

456.44 Controlled substance prescribing.

(1) DEFINITIONS. AS used in this section, the term: (a) "Acute pain" means the normal, predicted, physiological, and time—limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The term does not include pain related to:

1. Cancer.
2. A terminal condition. For purposes of this subparagraph, the term "terminal condition" means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life—sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.
3. Palliative care to provide relief of symptoms related to an incurable, progressive illness or injury.
4. A traumatic injury with an Injury Severity Score of 9 or greater.

Florida Changes in Laws

(4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.*The applicable boards shall adopt rules establishing guidelines for prescribing controlled substances for acute pain, including evaluation of the patient, creation and maintenance of a treatment plan, obtaining informed consent and agreement for treatment, periodic review of the treatment plan, consultation, medical record review, and compliance with controlled substance laws and regulations. Failure of a prescriber to follow such guidelines constitutes grounds for disciplinary action pursuant to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

Florida Changes in Laws

(5) PRESCRIPTION SUPPLY.' (a) For the treatment of acute pain, a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 may not exceed a 3-day supply, except that up to a 7-day supply may be prescribed if:

1. The prescriber, in his or her professional judgment, believes that more than a 3-day supply of such an opioid is medically necessary to treat the patient's pain as an acute medical condition;
2. The prescriber indicates "ACUTE PAIN EXCEPTION" on the prescription; and
3. The prescriber adequately documents in the patient's medical records the acute medical condition and lack of alternative treatment options that justify deviation from the 3-day supply limit established in this subsection. (b) For the treatment of pain other than acute pain, a prescriber must indicate "NONACUTE PAIN" on a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

(6) EMERGENCY OPIOID ANTAGONIST. For the treatment of pain related to a traumatic injury with an Injury Severity Score of 9 or greater, a prescriber who prescribes a Schedule II controlled substance listed in s. 893.03 or 21 U.S.C. s. 812 must concurrently prescribe an emergency opioid antagonist, as defined in s. 381.887(1).

Changes in Laws - Telehealth

Florida passed Telehealth, Chapter 2019-137, Laws of Florida, which establishes standards of practice for telehealth services, including patient evaluations, record-keeping, and controlled substances prescribing. The law also authorizes out-of-state health care practitioners to perform telehealth services for patients in Florida upon meeting certain eligibility requirements and registering with the department of health.

The Department is currently working on the implementation of the Telehealth law and expects the application for out-of-state providers to be available in early fall 2019. Please continue to check the website for updates.

For questions, contact the Florida Department of Health at MOA.Telehealth@flhealth.gov

Changes in Laws for CE on Human Trafficking

Florida passed Human Trafficking, Chapter 2019-152, Laws of Florida, which establishes new profession requirements including newly required signs, CE/CME, and more for the following professions: Acupuncture, Medicine, Osteopathic Medicine, Chiropractic Medicine, Podiatric Medicine, Optometry, Pharmacy, Dentistry, Nursing Home Administration, Occupational Therapy, Dietetics and Nutrition, Respiratory Care, Massage Therapy, and Physical Therapy.

The Department has launched an informational website that includes a breakdown of the new law and addresses areas of: (1) signs; (2) CE/CME; (3) FAQs; (4) Specific Board of Massage requirements; and (5) Human Trafficking Reporting.

For more information please visit: <http://www.flhealthsource.gov/humantrafficking/>

Changes in Laws - OFFICE SIGNS

Human Trafficking

For more information please visit:

<http://www.flhealthsource.gov/humantrafficking/>



SIGNS - <http://www.flhealthsource.gov/humantrafficking/#signs>



Each healthcare provider licensed by one of the named Boards must post a sign regarding human trafficking in a conspicuous place accessible to employees by January 1, 2021. The sign must be at least 11 x 15 inches and in at least 32-point type. The sign must contain statutorily required language and be posted in English and Spanish. The Department has also provided Mandarin translations of these signs for use in offices where those languages are spoken. The links below contain signs that meet the statutory requirements when printed at the listed size.

- Human Trafficking (English/Spanish)
- Human Trafficking (English/Spanish/Mandarin)

FPMA and CE Broker

- ▶ THE FPMA REPORTS THE HOURS YOU RECEIVE HERE TODAY TO CE BROKER ON YOUR BEHALF! CE BROKER IS THE STATEWIDE CLEARING HOUSE FOR ALL CONTINUING EDUCATION HOURS FOR HEALTH CARE PROFESSIONALS. **FPMA REPORTS FOR YOU!**

Section I

Laws and Rules for Podiatric Physicians

Florida Statute 456

GENERAL PROVISIONS

HEALTH PROFESSIONS AND OCCUPATIONS:

- 456.001 Definitions
 - THROUGH
- 456.50 Repeated Medical Malpractice
- GENERAL HEALTH CARE PROVISION
FOR ALL LICENSED HEALTH CARE
PROVIDERS

Florida Statute 461 Podiatric Medicine

461.001 Legislative findings; intent; scope.

461.002 Exceptions.

461.003 Definitions.

461.004 Board of Podiatric Medicine; membership; appointment; terms.

461.005 Rulemaking authority.

461.006 Licensure by examination.

461.007 Renewal of license.

461.008 Inactive status.

461.009 Itemized patient billing.

461.012 Violations and penalties.

Florida Statute 461 Podiatric Medicine

461.013 Grounds for disciplinary action; action by the board; investigations by department.

461.0131 Emergency procedures for disciplinary action.

461.0134 Prescription or administration of dimethyl sulfoxide (DMSO); written release and information requirements.

461.0135 Operation of X-ray machines by podiatric X-ray assistants.

461.014 Residency.

461.018 Limited scope of practice; area of need.

STATUTES APPLIES TO ALL Podiatric Physicians, Certified Podiatric X-ray Assistant, and Podiatric Residents

Florida Rule 64B18

Podiatric Medicine

<u>64B18-10</u>	<u>GENERAL PROVISIONS</u>	<u>3</u>
<u>64B18-11</u>	<u>APPLICATION AND EXAMINATION FOR LICENSURE</u>	<u>2</u>
<u>64B18-12</u>	<u>FEES</u>	<u>10</u>
<u>64B18-13</u>	<u>LICENSE RENEWAL; INACTIVE LICENSES</u>	<u>4</u>
<u>64B18-14</u>	<u>DISCIPLINARY MATTERS</u>	<u>12</u>
<u>64B18-15</u>	<u>MEDICAL RECORDS OF PODIATRIC PHYSICIAN WHO DIES, TERMINATES HIS PRACTICE OR RELOCATES; RETENTION; TIME LIMITATIONS</u>	<u>2</u>
<u>64B18-16</u>	<u>PODIATRIC RESIDENCY</u>	<u>3</u>
<u>64B18-17</u>	<u>CONTINUING EDUCATION</u>	<u>5</u>
<u>64B18-18</u>	<u>CERTIFIED PODIATRIC TECHNICIAN</u>	<u>5</u>
<u>64B18-23</u>	<u>STANDARDS AND SCOPE OF PRACTICE</u>	<u>1</u>
<u>64B18-24</u>	<u>CERTIFIED PODIATRIC X-RAY ASSISTANTS</u>	<u>1</u>

Section II

DEPARTMENT OF HEALTH (DOH) INVESTIGATIONS

I. DOH investigation and Notice



How can an investigation begin?



1) Upon written complaint signed by complaining individual; 2) Anonymous Complaint; 3) Confidential Informant complaint; and 4) DOH.



Does the Department tell me if I am being investigated?



Notice of Investigation - letter of investigation.

Exceptions = Criminal charge or DOH believes notice will be detrimental to investigation

The Phone Call After the Letter

You need to fully understand your rights.

After you receive written notification about investigation, you will receive a phone call from a Department Investigator

He/She will try to convince you he/she is your friend

Try to convince you there is nothing to this matter -
“Tallahassee” will close it out

Responding to Letter

At this point, you **SHOULD HAVE** an attorney - sound legal advice

DOH - **MUST** promptly furnish a copy of complaint or document

Within 45 days - you **MUST** submit a written response - it **MUST** be considered by probable cause panel for the Board of Podiatric Medicine

An attorney is able to extend the response timeframe through properly filed motions

Your Right to Remain Silent

Constitutional right to remain silent

5th Amendment Due Process right to remain silent as applied to the Federal Government

14th Amendment Due Process right to remain silent as applied to the States

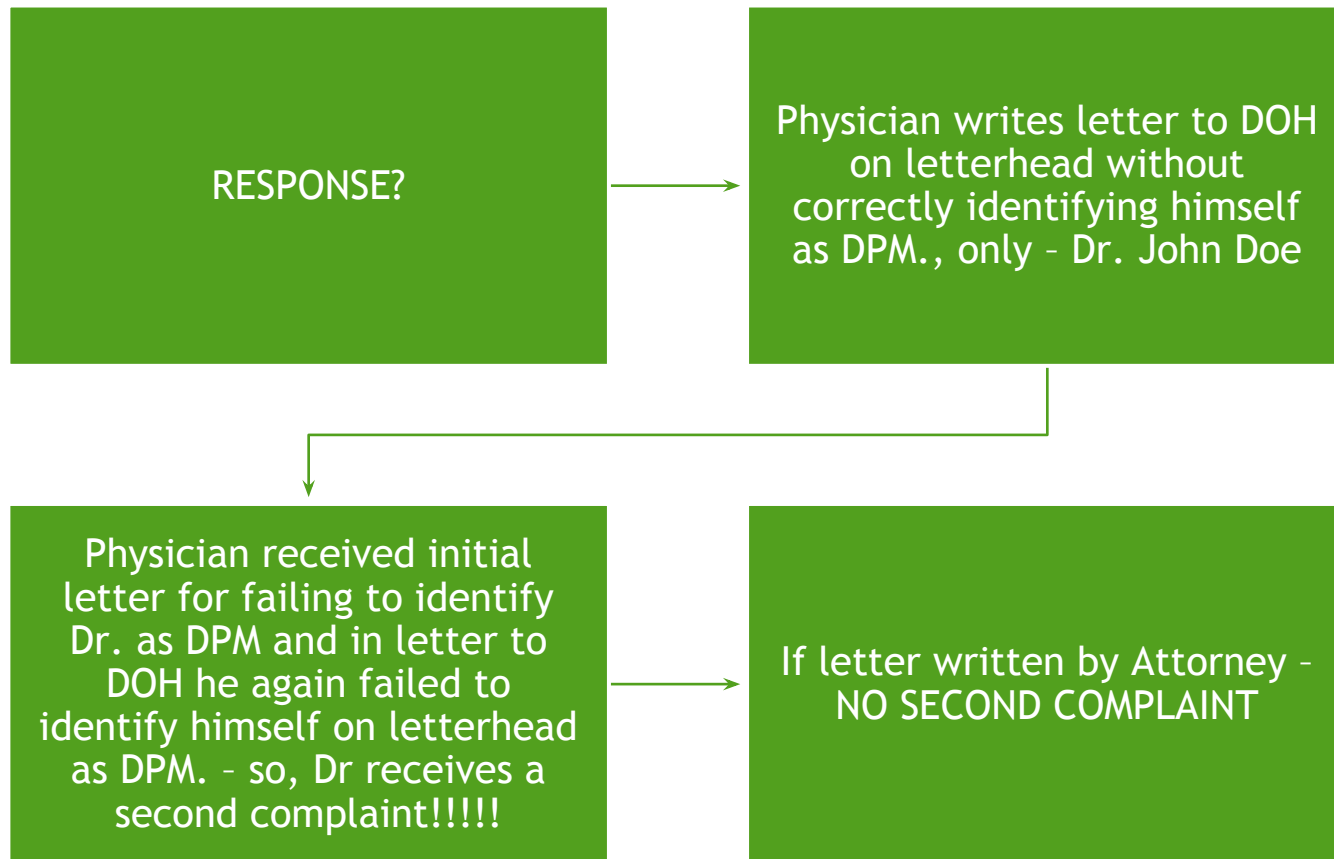
- You **DO NOT** have to respond to any questions by DOH investigator
- **ALL** communications - through your attorney

Why should I invoke my right to remain silent?

PHYSICIAN RECEIVES LETTER OF INVESTIGATION INTO IMPROPER ADVERTISING BECAUSE THE PHYSICIAN FAILED TO CONSPICUOUSLY IDENTIFY THE PODIATRIC PHYSICIAN BY NAME IN THE ADVERTISEMENT OR FAILED TO CONSPICUOUSLY IDENTIFY THE PODIATRIC PHYSICIAN REFERRED TO IN THE ADVERTISING AS A PODIATRIC PHYSICIAN.

PHYSICIAN DECIDED NOT TO REMAIN SILENT BUT TO WRITE THE DOH ON HIS OWN BEHALF....RESULT?

Why should I invoke my right to remain silent?



WHAT RIGHTS?

Question: What exactly does it mean when an officer says, "You have the right to remain silent?"







DOH RESOURCES

Investigative Subpoena's

- Supported by Affidavit
- Departments initiative or request by probable cause
- The validity may be challenged
 - a. Was unlawfully issued
 - It is unreasonably broad in scope
 - Requires production of unreasonable materials

Investigative Depositions

- Be aware - using deposition at subsequent formal hearing against you
- Department may take depositions - own initiative or request probable cause panel; They DO NOT have to notify you

When Investigation is Concluded:

Entire investigative report with all exhibits is forwarded to Departments legal section in Tallahassee -

*If a Minor Violation or Citation, then case does not go to PC panel - licensee receives notice of Minor Violation or Citation and must comply.

Presented to probable cause panel -determine whether probable cause exists and an administrative complaint issued; if no probable cause - case dismissed

SECTION III



**MINOR VIOLATIONS RULE
64B18-14.009**



CITATIONS RULE 64B18-14.010

Minor Violations 64B18-14.009

(1) Section 456.073(3), F.S., authorizes the Board, when enforcing rules and statutes, to permit the Department to issue a notice of noncompliance for any initial offense which is a minor violation as defined by Board rule. A minor violation under this statute is defined as one which does not endanger public health, safety, or welfare and does not demonstrate a serious inability to practice.

(2) Section 120.695, F.S., authorizes the Board, when enforcing rules, to permit the Department to issue a notice of noncompliance when there is a first time offense that is a minor violation as defined by Board rule. A minor violation is defined as one in which there is no economic or physical harm; no adverse effect to the public health, safety, or welfare; and no significant threat of such harm.

(3) A notice of noncompliance in lieu of other actions is authorized only if the violation is not a repeat violation and only if there is only one violation. If there are multiple violations, then the Department may not issue a notice of noncompliance, but must prosecute the violation under the other provisions of Section 456.073, F.S. There is only one exception to the prohibition against use of a notice of noncompliance when there is more than one violation. A notice of noncompliance may be issued to a registered dispensing practitioner for a first time violation of one or more of the violations listed in subsection (4), paragraphs (f), (g), (l), (m), (n), (o), and (p), if there is not evidence of diversion.

Minor Violations continued

(4) The Board hereby establishes the following as minor violations which the Department may act upon by issuing notices of noncompliance for an initial offense: (partial listing)

(b) Patient records deficiencies encompassed by Section 456.057(1) and 461.013(1)(m), F.S.;

(c) Failure to provide the disclaimer required by Section 456.062, F.S.;

(i) Failing to properly store medications which require refrigeration, contrary to Rule 64B16-28.104, F.A.C.

(j) Failing to remove outdated medications from stock, contrary to Rule 64B16-28.110, F.A.C.

(k) Failing to have proper labeling on all stock medications, contrary to Section 499.007, F.S.

Licensee receives Notice of Non-Compliance for a Minor Violation – Licensee must take corrective action within 15 days; failure to correct results in regular disciplinary proceedings against licensee.

Citations 64B18-14.010

(1) Pursuant to Section 456.077, F.S., the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the penalty to be imposed. In addition to any administrative fine imposed, the Respondent shall be required by the Department to pay the costs of investigation. The form to be used is specified in rules of the Department of Health.

(2) Citations may only be issued for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 456.073, F.S., to be followed. In addition, should an initial offense for which a citation could be issued occur in conjunction with other violations, then the procedures of Section 456.073, F.S., shall apply.

Citations continued

THE FOLLOWING VIOLATIONS MAY BE DISPOSED OF BY THE DEPARTMENT BY CITATION WITH THE SPECIFIED PENALTY OF EITHER A FINE, AND/OR A REPRIMAND:

CME VIOLATIONS

PRACTICE ON DELINQUENT LICENSE

FAILURE TO NOTIFY DOH OF CURRENT ADDRESS AND PLACE OF PRACTICE

FAILURE TO PROVIDE MEDICAL RECORD OF ONE PATIENT IN A TIMELY MANNER

SOLICITING PATIENTS

FAILURE TO SUBMIT OR UPDATE PROFILING

Accepting Minor Violation or Citation

If you accept, you do so without an opportunity for a hearing; However, a Minor Violation or Citation is better than a formal administrative complaint!

Choice is yours - always seek the advice of legal counsel.

Be aware - finding of the minor violation remains on the departments records as a violation; Because you are only eligible if FIRST TIME OFFENSE

Citation Examples

Failure to document 40 of the 40 required hours = \$5,000 fine and REPRIMAND

Failure to document required 2 hour medical errors, HIV/Aids, Laws and Rules, or Risk Management = \$500 fine per category


Section IV

THE PROBABLE CAUSE PANEL

64B18-14.001 Probable
Cause Determination

Probable Cause Panel

Your professional license is not officially placed in jeopardy until a determination of probable cause has been made by no fewer than two and no more than three members of the Board of Podiatric Medicine, in lieu of current member of Board, chair may appoint former member to serve on PC Panel



Licensing Board function or department function


Board of Podiatric Medicine makes it a Board Function



Florida Statute 456.073

Consideration by PC Panel

Majority vote - two/three -
member panel; if two
members, and tie, Chair
appoints 3rd member



Exempt from “Sunshine Law”

You CANNOT be
present

Some boards do
it without
notice to
licensee under
investigation

Notice is not
given when it
could be
detrimental to
the
investigation

Some boards do
notice licensee
- to appear
before panel
with counsel

Panel may
request the
department to
provide
additional
investigative
information

Recordings of PC Panel



Electronically
record all
proceedings



Recorded by a
certified court
reporter



Transcripts may
be obtained
from the court
reporter

Must be some
evidence to
reasonably indicate

The Department
must justify actions

Not just “rubber
stamp”
recommendation

Transcript - the best
place to start



Request copy of
transcript of the
probable cause
panel
proceeding



Transcript is
also important -
must meet test
of being
“meaningful” -
Discussion of
evidence by PC
members

*PC or
NO PC*

Letter of concern

- Violation exists - formal charges not being filed
- Issued without an opportunity for hearing or to refute or dispute allegations
- Becomes public record
- Unclear - considered disciplinary actions

Formal charges - The formal charges take the form of an administrative complaint.

The background features abstract, overlapping green geometric shapes in various shades, creating a modern, layered effect. The shapes are primarily triangular and polygonal, with some areas appearing more translucent than others.

THE ADMINISTRATIVE COMPLAINT AND YOUR ELECTION OF RIGHTS

Section V

Prepared exclusively for the FPMA



HIRING THE RIGHT LAWYER, HELPS!!!

**The
Guardian**

I. Service

- ▶ States clearly that it is an administrative complaint, shouldn't be ignored, is always served and includes an election of rights.

II. Election of Rights

Once received, you must file within 20 days

Failure to file - licensee in default

Extension of time from department

Three ways to proceed:

- **Formal hearing**
- **Informal hearing**
- **Settlement agreement**

III. Formal Hearing

- ▶ Formal hearing before a hearing officer Division of Administrative Hearings
- ▶ Full evidentiary hearing - department must meet its burden of proving up the material
 - ▶ *Quite similar to a criminal or civil case*
 - ▶ *Absolute fool - try and go this route WITHOUT legal assistance*

IV. Informal Hearing

DO NOT dispute
the material
factual
allegations.

If you dispute
then **YOU MUST**
GO FORMAL.

Informal hearing -
held before full
board of Podiatric
Medicine

Mitigate

Go informal - take
a calculated risk

NEVER - without
conferring with a
lawyer

V. Stipulated Settlement

- ▶ Usually enclosed with administrative complaint. It is the Department's offer to settle the case, upon acceptance by the Board of Podiatric Medicine.
- ▶ You may Negotiate and modify proposal
- ▶ The Department must agree - or there is NO settlement agreement
- ▶ Board has various options:
 - ▶ Accept the agreement
 - ▶ Reject the agreement
 - ▶ Counteroffer

VI. ***Stipulated Settlement***

- ▶ Avoid both formal and informal - “stipulated settlement agreement”
- ▶ Agreement between the licensee and the Department and Board
- ▶ Must fully and completely agree upon all terms
- ▶ CANNOT unilaterally bring proposal before regulatory board
- ▶ Must be a joint settlement proposal
- ▶ Certain advantages in seeking a stipulated settlement before filing an “election of rights form”
- ▶ Immediate reaction from Department
- ▶ Resolve matter - without sizeable legal bill

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

Section VI

Prosecutions of

Administrative Complaints

Licensee Rights



5th & 14th Amendments to the US Constitution



Your license...is a property right



Due process of law

Due Process Means?

Due process includes:

Proper and
adequate
notice

Adequate
time

See agency's
investigative
file

Discovery

Subpoena

Counsel

Examine and
cross
examine
witnesses



**You MUST understand what your
due process rights are...**

Decision

After completion of the case, and a finding of guilt by either the Board or ALJ, an Order is entered with penalties:

Penalties can include a reprimand, probation, practice restrictions, or revocation of licensure.

Penalties

Rule 64B18-14.002 which include:

(d) Advertising in a manner which is false, deceptive or misleading. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$10,000.

(f) Failing to report to the Department any person the licensee knows to be in violation of Chapter 461, F.S., or the rules of the Board or Department. The Board shall impose a penalty of a reprimand and a fine of \$500 to \$2,000.

(hh) Failure to report a criminal conviction or plea to the Board in writing within 30 days. The Board shall impose a penalty ranging from reprimand to probation and a \$500 to \$1,000 administrative fine.

Administrative Proceedings

Upon Order, one party wins - one party loses. If you lose, you can file a Motion to Stay the Order while you Appeal!

- You will be the unhappy party
- Rarity - Department feels need to appeal the decision!

The burden of proof is on the agency to prove probable danger

Seek judicial review - District Court of Appeal.

- Five District Court of Appeals
- Each has jurisdiction to hear appeals from licensing boards

Section VIII

- ▶ ***CHANGES IN LAWS AND
RULES***
- &
- ▶ ***RECENT RULINGS
BOARD OF PODIATRIC
MEDICINE***

DEA Actions

- ▶ **Determination To Transfer Hydrocodone Combination Products (HCPs) to Schedule II**
 - ▶ DEA rescheduled hydrocodone Based on consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of HCPs. As such, the DEA has rescheduled HCPs as a schedule II controlled substance under the CSA.

DEA Actions (cont.)

- ▶ Placement of Tramadol Into Schedule IV
 - ▶ Based on consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of tramadol. As such, the DEA is scheduling tramadol as a controlled substance under the CSA.
 - ▶ Based on these findings, the Deputy Administrator of the DEA concludes that tramadol, including its salts, isomers, and salts of isomers, warrants control in schedule IV of the CSA. 21 U.S.C. 812(b)(4).

Rulings by Board

- ▶ An administrative complaint alleged violation of ss. 461.013(1)(r) and (cc), F.S., by being unable to practice podiatric medicine with reasonable skill and safety due to his abuse of alcohol and for being terminated from the Professionals Resource Network (PRN).
- ▶ Department recommendation for discipline:
 - ▶ • administrative fine of \$5,000.00
 - ▶ • suspension for a period of two years
 - ▶ • prior to reinstatement the respondent shall demonstrate rehabilitation and/or ability to practice with reasonable skill and safety as determined by PRN and/or the Board.
- ▶ Board decided to impose discipline as recommended by the Department and cost of \$1,075.16.

Rulings by Board

- ▶ An Administrative Complaint filed alleging violations of Section 461.013(1)(u), F.S., Section 461.013(1)(m) and (ff), F.S., by practicing beyond his license, and having undue influence over patient.
- ▶ Department recommendation for discipline:
 - ▶ • reprimand (this stays on your medical record for life)
 - ▶ • administrative fine of \$5,000.00, payable within 60 days
 - ▶ • administrative costs of \$6,2918.00, payable within 60 days
 - ▶ • probation for a period of three (3) years with indirect supervision
 - ▶ • monitor shall review 20% of respondent's active patient records at least once every quarter and respondent shall submit quarterly reports
 - ▶ • tolling provision applies
 - ▶ • leaving active practice for a period of 1 year or more - respondent shall appear before the board and demonstrate his ability to practice podiatric medicine in this state.
- ▶ Board moved to and did accept the settlement agreement.

What if I
don't
like...

A Rule as promulgated by the Board of Podiatric Medicine?

File for Variance or Waiver of a Rule - 120.542, FAC. Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. Hearing before the Board of Osteopathic Medicine.

A Law in statute?

Requires the Florida Podiatric Medicine Practice Act to be opened up and subject to change in all sections of the Practice Act of 461, FS. Through legislative process.

I have ethics, yes I do, I have ethics, how about you?



Searching the Web!!!

- ▶ www.myflorida.com
- ▶ www.floridahealth.gov
- ▶ www.floridaspodiatricmedicine.gov/
- ▶ www.leg.state.fl.us/Statutes/index.cfm
- ▶ www.flrules.org/default.asp
- ▶ www.jwinnlaw.com

Thank you for your time!

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