

Florida Department of Health

# NEW BOARD MEMBERS HANDBOOK

Division of Medical Quality Assurance





# Welcome Board Members

to the Florida Department of Health, Division of Medical Quality Assurance

Within this packet you will find the information below:

Overview of the Department of Health ■ Boards ■ Legal Overview ■ Enforcement  
Impairment Programs ■ Acronyms ■ Travel

After reviewing the general information, please select your Board below  
for information directly related to your profession.



[Board of Acupuncture](#)



[Board of Athletic Training](#)



[Board of Chiropractic Medicine](#)



[Board of Clinical Laboratory Personnel](#)



[Mental Health Professions](#)



[Board of Dentistry](#)



[Board of Hearing Aid Specialists](#)



[Board of Massage Therapy](#)



[Board of Medicine](#)



[Board of Nursing](#)



[Board of Nursing Home Administrators](#)



[Board of Occupational Therapy](#)



[Board of Opticianry](#)



[Board of Optometry](#)



[Board of Orthotists and Prosthetists](#)



[Board of Osteopathic Medicine](#)



[Board of Pharmacy](#)



[Board of Physical Therapy](#)



[Board of Podiatric Medicine](#)



[Board of Psychology](#)



[Board of Respiratory Care](#)



[Board of Speech-Language Pathology and Audiology](#)

## Councils



[Dietetics and Nutrition](#)



[Electrolysis](#)



[Midwifery](#)



[Physician Assistants](#)



## Dear New Board Member

Congratulations on your appointment and welcome! Your service on the board is critical to our key business processes: licensing health care practitioners who meet minimum standards established by law; enforcing regulations of the practice; and keeping the public informed. We know that your service will come with personal sacrifice and for that we are most grateful.

To help you perform your duties, we have developed a board member handbook that should answer many questions you have and, even more importantly, will help you fulfill your duties responsibly and within the parameters of Florida's Sunshine Law. You have remarkable staff who are dedicated to making your experience rewarding. You also have board counsel who will provide legal guidance as you enter into deliberations that, at times, can be complex. Finally, you have an entire management team at your disposal if you find you need additional assistance. We are thrilled to have you help us fulfill our mission to protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.

**Thank you for your service.**



# Contents

## 1 Board Members Overview

1.1	<a href="#">Department of Health</a>	4
1.2	<a href="#">Department of Health Organizational Chart</a>	5
1.3	<a href="#">Division of Medical Quality Assurance</a>	5
1.4	<a href="#">Funding</a>	5

## 2 Health Care Practitioner Boards

2.1	<a href="#">Board Roles</a>	6
2.2	<a href="#">The Board</a>	7
2.3	<a href="#">Decorum</a>	7
2.4	<a href="#">Meeting Procedure</a>	8
2.4.1	<a href="#">ImageAPI User Guide</a>	8

## 3 Legal Overview

3.1	<a href="#">Accountability and liability</a>	9
3.2	<a href="#">Standards of conduct</a>	9
3.3	<a href="#">The Sunshine Law and public records</a>	10
3.4	<a href="#">The Administrative Procedure Act</a>	10
3.5	<a href="#">Department of Health, Special provisions</a>	11
3.6	<a href="#">Legal advisors</a>	12
3.7	<a href="#">Assumption of the office</a>	12
3.8	<a href="#">Social Media</a>	12

## 4 Enforcement

4.1	<a href="#">Investigation Process</a>	13
4.2	<a href="#">Disciplinary Process</a>	16
4.3	<a href="#">Unlicensed Activity</a>	18
4.4	<a href="#">Enforcement Process</a>	18

## 5 Impaired Practitioner Programs

5.1	<a href="#">Impairment Programs</a>	19
5.2	<a href="#">Intervention Project for Nurses</a>	19
5.3	<a href="#">Professionals Resource Network</a>	19

## 6 Commonly Used Acronyms

6.1	<a href="#">Departments/Agencies/Organizations</a>	20
6.2	<a href="#">Discipline</a>	20

## 7 Travel Reimbursements

7.1	<a href="#">Traveler/Board Member Responsibility</a>	21
7.2	<a href="#">Additional Reimbursement Information</a>	23
7.3	<a href="#">Travel Reimbursement Summary Form</a>	24
7.4	<a href="#">Travel Guide</a>	24

# 1. Board Members Overview

- 1.1 Department of Health
- 1.2 Division of Medical Quality Assurance
- 1.3 Funding
- 1.4 Department of Health Organizational Chart

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## 1.1 Department of Health

The Department of Health was established by the Florida Legislature in 1996 and traces its roots to the creation of the Florida State Board of Health in 1889. The Department of Health is an executive branch agency, established in section 20.43, Florida Statutes. Led by a State Surgeon General who serves as the State Health Officer and is directly appointed by Florida's Governor and confirmed by Florida's Senate, the Department also has three Deputy Secretaries who oversee the administration, statewide services and Children's Medical Services.

The Department is comprised of a state health office (central office) in Tallahassee, with statewide responsibilities; Florida's 67 county health departments (CHD); 8 Children's Medical Services (CMS) area offices; 11 Medical Quality Assurance (MQA) regional offices; 9 Disability Determinations regional offices; and 3 public health laboratories. Facilities for the 67 CHDs are provided through partnerships with local county governments and provide a variety of services.

### **Mission**

To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

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### **Vision**

To be the Healthiest State in the Nation.

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### **Values**

#### **Innovation**

We search for creative solutions and manage resources wisely.

#### **Collaboration**

We use teamwork to achieve common goals & solve problems.

#### **Accountability**

We perform with integrity and respect.

#### **Responsiveness**

We achieve our mission by serving our customers and engaging our partners.

#### **Excellence**

We promote quality outcomes through learning and continuous performance improvement.

## 1.2 Department of Health Organizational Chart

[Division of Medical Quality Assurance Organizational Chart](#)  
[Department of Health Organizational Chart](#)

## 1.3 Division of Medical Quality Assurance

The Department of Health's Division of Medical Quality Assurance (MQA) plans, develops and coordinates regulatory programs and services for health care professions and facilities under its purview. MQA is divided into three bureaus:

- The **Bureau of Health Care Practitioner Regulation** is responsible for the licensure of health care practitioners and consists of eight board offices that work with 22 regulatory boards and four councils, implementing laws and rules into policy and procedure and advising on budget matters. Applications for licensure are reviewed, disciplinary hearings are conducted, and rules are promulgated in partnerships with the boards and councils. The bureau is also home to the Office of Veteran Licensure Services which provides licensure support services to military members, veterans and their families.
- The **Bureau of Operations** is responsible for supporting the boards through contracts for testing services and impaired practitioner programs, maintenance of the licensure and enforcement data system, management of website and electronic communications, support of the ELI virtual agent, and support of the customer contact center for all health care practitioners and facilities. The procurement of meeting locations and spaces and processing of travel reimbursements for board members is another large responsibility of this bureau. This bureau also houses the licensure services teams, who handle the majority of renewals for all professions and license verification requests, as well as the clerk team that manages filing of final orders and reporting of disciplinary records to national databases and compact associations.
- The **Bureau of Enforcement** provides for the initial intake of complaints; conducts an analysis of complaints to determine legal sufficiency; investigates legally sufficient complaints; conducts inspections of facilities; monitors probation, payment of fines and costs, completion of continuing education and other discipline.

## 1.4 Funding

The Division of Medical Quality Assurance (MQA) is responsible for management of the MQA Trust Fund. The legislature authorizes MQA, through the General Appropriations Act, to expend funds from the MQA Trust Fund to perform regulatory activities as authorized under Chapter 456 Florida Statutes. Funds credited to the MQA Trust Fund consist of fees, fines and costs assessed and collected from licensees and licensure applicants. Licensure renewal fees are the greatest source of funding and include a \$5 fee to regulate unlicensed activity. MQA also receives pass-through Federal Funds for the maintenance of the Certified Nursing Assistant Registry. MQA receives no General Revenues to support regulatory activities.

MQA is required to maintain a separate account for each regulated profession. Unlicensed activity funds (revenues and expenditures) are accounted for separately from licensed activity funds within each profession account. MQA is required to provide each board a report of revenues and expenditures, for both licensed and unlicensed activities, related to the operation of the profession and a condensed financial report quarterly and assess adequacy of fees.

## 2. Health Care Practitioner Boards

- 2.1 Board Roles
  - 2.2 The Board
  - 2.3 Decorum
  - 2.4 Meeting Procedure
  - 2.4.1 ImageAPI User Guide
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### 2.1 Board Roles

#### Chair

The Chair's role is to work closely with the Executive Director and staff to set meeting agendas. The Chair also works with the Executive Director during the legislative session to review bills as well as to grant or deny requests for continuance from Respondents required to appear at hearings. In addition, the Chair attends meetings, including the Annual Chair's Meeting, association meetings and regularly scheduled Board/Committee meetings. At the beginning of each year, the Chair will appoint members to the various committees.

#### Vice-Chair

The Vice-Chair's role is to substitute for the Chair when the Chair is not in attendance or is recused from a disciplinary hearing due to participation on the probable cause panel. The duties of the Vice-Chair include anything that may be of assistance to the Chair in fulfilling his/her responsibilities.

#### Board Members

Members are required to vote on all issues, unless recused because of a possible conflict of interest. A board member who sits on the probable cause panel may have already heard some evidence in disciplinary cases, and therefore, that member is automatically recused from voting on the case when it appears before the full board. Board members review hundreds (sometimes thousands) of pages of records prior to a typical board meeting.

Since the Board serves as a "quasi-judicial" entity on licensure issues, contact with members may cause the members to be recused from administrative proceedings. Staff will direct inquiries to the full board for review when appropriate.

#### Executive Director

The role of the Executive Director is to act as liaison between the Department and the board. Duties of an Executive Director are to execute and carry out decisions made at board meetings, implement rules into policy and procedure, advise the board on budget matters and analyze legislation. The Executive Director serves as the official custodian of records and may be required to certify documents and testify in hearings.

The Executive Director is responsible for the overall functioning of the board office. The office staff prepares the agenda in concert with board counsel and prosecuting attorneys, organize and schedule the meetings, publish notices, provide public copies of documents and maintain records of the proceedings. The staff also processes applications for licensure, monitors statistics for annual reports and prepares various reports as requested. Other board administrative or support staff may be present during a meeting.



## Board Counsel

An Assistant Attorney General serves as legal counsel to the board. Counsel responds to requests from the Chair to clarify requirements in Florida laws and rules which may affect board decisions. Counsel prepares draft documents for board review, including proposed rules. Counsel informs board members of possible legal issues or implications of various courses of action being contemplated. Counsel prepares final orders and other documents to be filed and sent to respondents.

## Committees, Liaisons and Coordinators

The boards may have certain members who serve on board committees or advise the boards and/or Department on specific issues.

## 2.2 The Board

- Is a governmental regulatory body responsible for protecting the health, safety, and welfare of the public.
- Enforces the laws regarding professional practice.
- Cannot independently change Florida Statutes. Only the Legislature can make changes to statute.
- Adopts rules and policies that establish minimum regulatory standards for safe practice and clarify parts of the Practice Act.
- Regulates the scope of the profession as defined in the Practice Act.
- Takes disciplinary action against a license in response to violations of the Practice Act and associated rules.
- Does not regulate conditions of employment.
- Does not take any disciplinary action without an investigation of all facts involved. Licensees disciplined by the boards are entitled to due process, including a hearing. Licensees may hire an attorney to represent them.
- Is not a membership organization for professionals. Such organizations are responsible for protecting the profession.
- Does not make or change regulations in secret. It is a public process that includes public meetings and testimony by the public.
- Since the board serves as a “quasi-judicial” entity on licensure issues, contact with the members may cause the members to be recused from administrative proceedings. Staff will direct inquiries, when appropriate, to the full board for review.

## 2.3 Decorum

A board meeting is a quasi-judicial proceeding in which the board members hear and make decisions on cases relating to the profession of that board. These decisions result in legally binding orders drafted by the board’s counsel. The decorum of meetings is held to the same standard and the Chair, Executive Director, or Board Counsel will include remarks at the meeting introduction for the audience to conduct themselves accordingly.

The board represents the Department and serves their role to protect the people of Florida. Presentation by board members will set a precedent for the audience and public to follow. Members are asked to dress accordingly.

## 2.4 Meeting Procedure

Members should arrive to the meeting location 15 minutes prior to the start of the meeting. This allows time for setup and to become familiar with the meeting room.

At the start of the meeting, the Chair will discuss key points and make introductions.

- Call to order
- Roll call
- Pledge to the allegiance of the flag (optional)
- Introduction of any special guests
- Instructions to those appearing
- Reminders to those in attendance
- Announcement for breaks or lunch

Following this, the board will begin to hear agenda items and following discussion, make necessary motions. Application types will vary per board and/or profession but disciplinary motions are consistent across the professions.

The Chair will decide when and if breaks or lunch are needed. Once all items on the agenda are heard, the Chair will call for a motion to adjourn.

### 2.4.1 ImageAPI User Guide

#### Web-iViewer User Guide

Board members and staff utilize a secure web-based application to review board meeting materials. This application allows the efficient and portable review of high volume confidential documents.

[ImageAPI User Guide \(pdf\)](#)

# 3. Legal Overview

## 3.1 Accountability and liability

## 3.2 Standards of conduct

## 3.3 The Sunshine Law and public records

## 3.4 The Administrative Procedure Act

## 3.5 Department of Health, Special provisions

## 3.6 Legal advisors

## 3.7 Assumption of the office

## 3.8 Social Media

## 3.9 Legal and Ethical Guide

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### 3.1 Accountability and Liability of Board Members

All members of boards and councils within the Department of Health, referred to generically in this document as “boards,” need to constantly remind themselves that their duty as board members is to serve and protect the public.

Boards must interpret and apply the laws related to their professions in a manner consistent with the intent expressed by the Legislature.

When a board acts on applications, it must grant licenses to persons who meet the statutory requirements; and conversely must deny licenses when the applicants do not meet the statutory requirements. When it acts in disciplinary matters, must first consider what action is necessary to protect the public and then consider what action, if any, will serve to rehabilitate the licensee.

Each board member is accountable to the Governor for the proper performance of his or her duties as a member of a regulatory board. The Governor is authorized to investigate, and suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his or her official duties, or commission of a felony.

A board member, and a former board member who serves on a probable cause panel, is exempt from civil liability for any act or omission when acting in his or her official capacity. The Department or the Attorney General’s Office is authorized to defend a board member or the board in any lawsuit arising from any such act or omission.

A board member may be removed from the board for three consecutive unexcused absences or absences from 50 percent or more of the meetings of the board during a 12-month period.

### 3.2 Standards of Conduct

The Florida Commission on Ethics requires every appointed member of each board of council to file a financial disclosure statement, unless the board or council only has advisory powers. The financial [disclosure form](#) must be filed within 30 days of appointment or prior to Senate confirmation, and by July 1 of each year.

Duties and Powers of the Commission on Ethics: It is the duty of the Commission on Ethics to investigate sworn complaints of violations of the Code of Ethics by public officers and employees.

Legislative Intent and Declaration of Policy: It is essential that public officials be independent and impartial in the conduct and operation of government. It is the policy of the State of Florida that no public officer shall have any interest, financial or otherwise, direct or indirect, nor shall he or she engage in any business transaction or professional activity or incur any obligations of any nature which are in substantial conflict with the proper discharge of his or her duties in the public interest.

Standards of Conduct for Public Officers and Employees of Agencies: No board or council member shall accept, directly or indirectly, any expenditure from any executive branch lobbyist or the lobbyist's principal. No member of a licensing board may also be an officer, director, or administrator of a Florida state, county or regional professional or occupational association. A board member cannot serve as or receive remuneration from a continuing education provider if the board has authority over the continuing education programs or process.

### **3.3 The Sunshine Law and Public Records**

The Sunshine Law, sections 286.011 and 286.012, Florida Statutes: All meetings of any board of any state agency at which official acts are to be taken are declared to be public meetings open to the public at all times. Attendance at meetings held in violation of the Sunshine Law can be subject to fines and/or criminal charges.

Voting: All members of a board present at a meeting must vote on each decision made at that meeting. There are only three exceptions to this requirement: (1) there is or appears to be a conflict of interest; (2) when that member is "recused" for bias, prejudice, or interest; or (3) members of a probable cause panel who reviewed the investigative materials shall not participate when the disciplinary matter comes before the board for final action.

Scope of Sunshine Law: The Sunshine Law is applicable to any gathering where two or more members discuss any matter which could foreseeably come before the board for action unless there is an explicit exemption under the law.

Proceedings of the probable cause panel are exempt from the Sunshine Law until 10 days after probable cause is found, or the subject of an investigation waives confidentiality. In addition, the subject of meetings and records of meetings with regard to examination discussions are exempt only with regard to the examination questions.

The public records law, Chapter 119, Florida Statutes, provides that all state, county and municipal records are open at all times for inspection by any person unless made confidential by law. Consequently, any materials that come into a board member's hands by reason of their position as a public official are probably public records and should be treated as such. All information required by the department of any applicant is a public record except financial information; medical information; school transcripts; examination questions, answers, papers, grades, and grading keys.

### **3.4 The Administrative Procedure Act**

The Administrative Procedure Act, Chapter 120, Florida Statutes:

Meetings, Hearings and Workshops: Except for emergency meetings, notice of all public meetings must be published no less than seven days in advance in the Florida Administrative Register and the agenda shall be prepared in time to ensure that a copy may be received at least seven days before the event.

Rulemaking: Most agencies are empowered to promulgate rules necessary to implement or interpret the powers and duties set forth in their enabling statute. Rules must be promulgated in a specified manner so that persons whose substantial interests might be affected have notice of a proposed rule before its adoption.

Emergency Rules: Agencies may take emergency action by adopting an emergency rule which temporarily bypasses the notice and hearing requirements of routine rulemaking proceedings. In doing so, the agency must find that the emergency action is necessary to forestall an immediate danger to the public health, safety and welfare. Such actions must be supported by specific facts and reasons for the finding of immediate danger which must be published in writing prior to or at the time of the action. The agency's action may be appealed to the appellate court.

### **Declaratory Statements**

A statement of the applicability of a specified statutory provision or of any rule or order of the agency as it applies to a person in his or her particular set of circumstances may be requested through a petition for declaratory statement. A board's declaratory statement interpreting the statute, rule or order is issued in a final order and is thereafter binding upon the board.

### **Hearings Determining Substantial Interests**

Persons whose substantial interests are to be determined by an agency have recourse to either evidentiary hearings before an Administrative Law Judge (ALJ) from the Division of Administrative Hearings (D.O.A.H.) or proceedings before the board.

### **Licensing**

Within 30 days after receipt of an application for license, the agency must notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. Generally, every application for a license must be approved or denied within 90 days after receipt of the original application, or receipt of the timely requested additions or corrections, unless the applicant waived the 90-day requirement. Failure to abide by these timelines may result in the license being issued by default.

### **Variations and Waivers**

A board is permitted to grant variances or waivers from the board's rule requirements. The reason for this is that sometimes the strict application of a rule can lead to unreasonable and unintended results.

### **Ex Parte Communications**

A board member is prohibited from having unilateral communications concerning the merits of an issue before the board or involving threats or offers of reward to the decision maker (board member) by a party or by one who is substantially interested in the proposed agency action.

### **Judicial Review**

Any party who is adversely affected by a final agency action is entitled to a review by a District Court of Appeal.

## **3.5 Department of Health Provisions**

Complaint, Investigative, and Disciplinary Procedures: The Department receives all complaints and is required to investigate any legally sufficient complaint. The determination of whether probable cause exists to be a violation of the statutes or rules governing a license has occurred is made by a majority vote of a probable cause panel of the appropriate board or, if specified by board rule, by the Department. If the probable cause panel finds probable cause exists, it shall direct the Department to file a formal complaint against the licensee and prosecute the complaint.

Rights of Complainants: During the pendency of the disciplinary proceedings, the Department must periodically inform the person who filed the complaint the status of the complaint in the disciplinary process and whether probable cause was found. If probable cause has been found, the complainant receives a copy of the administrative complaint, an explanation of the administrative process, and of how and when the complainant may participate in the disciplinary process.

Notices of Noncompliance; Citations: For an initial offense of a minor violation, the Department may issue a notice of noncompliance and give the licensee 15 days to correct the violation. If the licensee does so, the matter is over and the records are not public. Another option is a citation. This is similar to a traffic ticket. For specified violations that do not pose a substantial threat to the public health, safety, or welfare, the board establishes set penalties, such as a fine in a specific amount.

### **3.6 Legal Advisors**

Attorneys from the Department serve as prosecutors in disciplinary cases. However, attorneys from the Department of Legal Affairs (called Assistant Attorneys General), or the Department's Office of the General Counsel, serve as legal advisors to each board and council within the department. The primary responsibility of the board attorneys is to represent the interests of the citizens of the state.

### **3.7 Assumption of the Office**

The process of appointment to membership on a licensing board begins when the Governor notifies an individual that he or she has been selected for the appointment. For those appointed by the State Surgeon General, the appointment to membership on a council begins when the State Surgeon General notifies an individual that he or she has been selected for the appointment.

### **3.8 Social Media**

Social media platforms are readily available to anyone with Internet access via computer or smart phone, and their use as a means of information gathering and communication has fast become ingrained in our culture. With a single "tweet" or "status update" or "mobile upload," a social networker can distribute information to thousands, if not millions, of users on a global scale with a simple stroke of the keyboard or text pad.

The line between work-related and personal communication has blurred as we utilize social media and related electronic communications for networking and communicating. There are a variety of reasons why board members should care about electronic communications, ranging from concerns about discrimination, to loss of confidential information, to the appearance of solicitation. It is important to remember that as a board member, you are a public official, who is charged with conducting important regulatory functions. One key issue in a board member using social media involves impropriety or the appearance of impropriety related to the quasi-judicial actions of the board. Examples include a board member who texts or uses social media during a board meeting, and a board member who posts or elicits posts about matters that could come before the board for action.

The board has an interest in ensuring that board members do not electronically communicate confidential information to third parties. The board should also be concerned about the impact of board member communications on the board's culture by using electronic media to voice their gripes about board decisions or applicants/respondents conduct, which is something that can undermine the board's authority. Simply put, social media is not the appropriate vehicle for complaints. We encourage board members to appropriately express their concerns during board meeting discussion, directly to board counsel, or to the board's Executive Director, thus allowing address of that concern expeditiously and effectively.

# 4. Enforcement

- 4.1 Investigation Process
  - 4.2 Disciplinary Process
  - 4.3 Unlicensed Activity
  - 4.4 Enforcement Process
- 

## 4.1 The Investigative Process

### Investigative Authority

Section 456.073, Florida Statutes, defines the enforcement process for health care practitioner regulation.

- Practice Acts
- Title 64B, Florida Administrative Code

Complaints and reports involving health care practitioners regulated by the department defined in Chapter 456, Florida Statutes are investigated. MQA investigators are trained and familiar with applicable Florida Statutes and Florida Administrative Codes.

### Consumer Services Unit

The Consumer Services Unit (CSU) analyzes all complaints to determine legal sufficiency and may request additional information and documentation. A complaint is legally sufficient if it alleges facts that would constitute a violation of Chapter 456 Florida Statutes, any of the professional practice acts, or any Department or board rule. The Department may require supporting information or documentation to determine legal sufficiency.

CSU - Central intake unit for all complaints for the state, including unlicensed activity.

CSU determines the initial priority of a case based on the immediacy of the practitioner being a danger to the public. CSU refers licensees to one of the impairment programs if the only allegation is impairment. CSU collects documents, issues subpoenas and prepares investigative reports for the Prosecution Services Unit (PSU) for all desk investigations. CSU also uses expert practitioners to review medical records as a way of determining if the standard of care may have been violated.

### Investigative Services Unit

The Investigative Services Unit (ISU) conducts interviews, collects documents and evidence, prepares investigative reports for the Prosecution Services Unit (PSU) and serves subpoenas and official orders of the Department.

- Cases are assigned to ISU field investigators throughout the state.
- All cases are continuously monitored to determine if there is risk of immediate serious danger to the public, if so, a request is made to upgrade to a priority investigation.

### Prosecution Services Unit

Once the investigation is complete, the investigative report is sent to the Prosecution Services Unit (PSU).

- An attorney (and sometimes a consultant) reviews the report and a recommendation is drafted for the probable cause panel (PCP).
- The case is presented to the PCP who decides if probable cause exists to believe a violation has occurred.

## Where do complaints come from?

### People

- Consumers
- Licensees
- Consultants, Experts, and Attorneys
- Other Agency investigators (Department of Children and Families, Medical Fraud Control Unit, Agency for Health Care Administration)
- Hospital Staff, Ambulatory Surgical Centers, Long Term Care Facilities
- Inspections and other internal sources
- Good Samaritans, researchers, and activists
- Media Analysts

### Reports

- Closed Medical Malpractice Claims
- Adverse Incident Reports (Nursing Home, Assisted Living Facilities)
- Hospital Discipline Reports (Peer Review)
- Other Agency mandates (State and Federal)
- Fingerprint Hits
- Special Emergency Actions
- Internal Error Audits
- Insurance Agencies

## How are complaints assigned?

- Complaints go through an intake process where they are triaged for priority, assigned to an investigator or analyst based upon board assignment and rotation, and entered through the MQA online complaint portal.

## Deciding Complaint Priority

### Priority 1:

- Over-prescribing
- Practice related arrests
- Sexual assault/sexual misconduct
- Assault/battery on a patient
- Impairment in a practice setting
- Substandard care leading to serious patient injury or death
- High media attention
- Practicing on a suspended license

### Priority 2:

- Malpractice involving multiple patients
- Impairment, including IPN/PRN referrals
- Fraud
- Convictions with underlying facts relating to practice or ability to practice

### Priority 3:

- Pre-employment and for-cause positive drug screens
- Statutorily defined felony convictions



## Complaint Priorities

- Priority 1, 2 or 3: CSU must analyze complaint and initiate investigation, closure, or request additional information within 24 hours.
- Priority 4 or 5: CSU must analyze complaint and initiate investigation, closure or request of additional information within 8 days

## Priority Investigation Timeframe

Used to seek Emergency Suspension Orders through our Emergency Action Unit (EAU).

- Priority 1 Investigations: CSU/ISU must complete analysis and investigation within 7 days.
- Priority 2 or 3 Investigations: CSU/ISU must complete analysis and investigation within 14 days.
- Priority 4 or 5 Investigations: CSU/ISU must complete investigation within 90 days.

## Legal requirements of a complaint

- In writing and signed by the complainant whether entered in the online portal or on the paper form.
- Legally sufficient (The complaint alleges facts that are a possible violation of Chapter 456 Florida Statutes, the professional practice act, or any department or board rule.) CSU may require supporting information or documentation to determine legal sufficiency

## What can happen to a Complaint?

Open for investigation.

- Alternative Dispute Resolution
  - Resolve minor complaints with no patient harm as efficiently as possible and without public discipline on a license.
  - Mediation, Notice of Non-Compliance, or Citation as authorized by rule in Florida Administrative Code.
- Desk Investigation - Handled in Tallahassee (convictions, advertising, profiling, out of state discipline).
- Field Investigation - sent to one of 11 Field Offices for more thorough Investigation.

Ask for additional information.

Closed as not legally sufficient.

## Examples of complaints investigated

- Practicing below minimum standards or negligence; malpractice
  - Examples: Wrong site surgery, diagnosis or treatment not meeting minimum standard of care
- Impairment from drugs, alcohol, physical or mental medical condition, etc.
  - Examples: Termination from IPN/PRN, exhibiting impaired behavior on the job, positive drug screen
- Diversion of drugs
  - Examples: Taking drugs meant for patients, falsifying drug records
- Unlicensed activity
- Advertising violation
  - Examples: Failure to use disclaimer when advertising free or discounted services
- Sexual misconduct with a patient
- Misfiled/mislabeled prescription
- Failure to release patient records
- Failed inspections
- Crimes related to the practice

## Examples of complaints not investigated

- Fee disputes (broken or missed appointments)
  - Examples: Fees charged for no-show appointments, charging for services not covered by insurance, charging amounts patient thinks are too much
- Billing disputes
  - Examples: Not billing insurance, charging amounts patient thinks are too much
- Personality conflicts, bedside manner or rudeness of practitioner
  - Examples: Discharging a patient from the practice, using offensive terms or language, not complying with patient demands, failure to return telephone calls to patient or patient's family

## Compliance monitoring

The Compliance Management Unit (CMU) is responsible for ensuring that licensees comply with the terms and penalties imposed in final orders issued by the boards, councils and Department. Compliance officers analyze all final orders, enter terms and update license status in Licensing & Enforcement Information Database System (LEIDS). Compliance officers:

- Monitor compliance with all Final Orders of the Boards (all disciplinary orders, disciplinary and non- disciplinary citations).
- Issue Disciplinary Enforcement Requests to ISU for probationers.
- Refer past-due accounts for collections. Refer violations of Final Orders to CSU to initiate a new complaint.
- Prepare agenda materials for board meetings.
- Enter all final order requirements into MQA database.
- Send compliance packet outlining terms of the final order to each licensee.

## 4.2 The Disciplinary Process

### Emergency Suspension/Restriction

Preliminary materials in Priority 1 and 2 cases are transmitted to Emergency Action Unit (EAU) at the same time they are transmitted to the field for investigation. They are assigned to an attorney for immediate evaluation to determine whether there is enough evidence to warrant an Order Compelling Examination (OCE) or Emergency Suspension Order/ Emergency Restriction Order (ESO/ERO) prior to the official completion of the investigation. An OCE is an order that requires the licensee to submit to an evaluation to determine whether the licensee is safe to practice. ESOs/EROs are issued to either suspend or restrict the licensees practice because the licensee is unsafe to practice. OCE's, ESO's and ERO's are drafted by the assigned attorney and signed by the State Surgeon General. The Probable Cause Panel is not involved in the process. The complaint must be heard by the probable cause panel within 20 days after the emergency action is filed. After considering the complaint and the Department's investigation, the panel may direct the Department to file a formal administrative complaint charging this health care practitioner with a violation of the Florida Statutes, or the panel may dismiss the case.

Priority 1 and 2 cases involve arrests with underlying allegations that are related to overprescribing, inappropriate prescribing, or inappropriate dispensing/compounding; sexual assault or sexual battery on a patient; assault or battery on a patient; allegation of gross substandard care leading to serious injury or death to a patient; and impairment in practice setting.

Emergency action based upon immediate serious danger occurs due to the underlying conduct establishing that someone poses a danger; a conviction is a function of the criminal system and is not necessarily an indicator that someone is dangerous to the public.

## **Probable Cause Panel Process**

Complaints that have been determined to be legally sufficient are forwarded to PSU for prosecution; typically, this occurs once an investigation is completed. A case is assigned to a prosecutor, who reviews the file and determines what, if any, violations of a particular practice act may be brought and then prepares the appropriate pleadings for submission to the PCP. A prosecutor may recommend dismissal of a case due to insufficient evidence. A prosecutor may also recommend dismissal with a letter of guidance where there is evidence to support a violation but the panel may issue a letter of guidance in lieu of an Administrative Complaint (AC). An Administrative Complaint is recommended when there is probable cause that the Respondent committed a violation. Once probable cause is found, the AC is filed with the Agency Clerk and served on the Respondent. Once Respondent is served with the AC, the Respondent has 21 days to return the Election of Rights form requesting either a formal or informal hearing, or returning an executed settlement agreement.

## **Types of cases presented to the board**

### **Informal**

The Respondent may request a hearing not involving disputed issues of material fact in the (AC). At the informal proceeding, the Subject would be permitted to present both written and oral evidence in mitigation of any disciplinary action.

### **Formal Hearing/Recommended Order**

The Respondent may request a hearing involving disputed issues of material fact alleged in the AC by submitting a petition for referral to the Division of Administrative Hearings (DOAH). A formal hearing is conducted before an Administrative Law Judge (ALJ) at DOAH. After the hearing the ALJ issues a Recommended Order (RO) regarding the findings of fact and conclusions of law. The RO is presented to the board for adoption. If the board wishes to change any findings of fact or conclusions of law, it must find competent substantial evidence in the case record to support the change.

### **Settlement Agreement**

The Respondent may submit a signed settlement agreement that is negotiated by the Prosecutor and the Respondent (or attorney). The Settlement Agreement must be adopted/approved by board before it is effective.

### **Waiver/Default**

If the Respondent does not respond to the allegations in the AC within 21 days of service, the case will proceed without their participation in the outcome of the case.

### **Voluntary Relinquishment**

The Respondent may also elect to voluntarily relinquish the license. The voluntary relinquishment, if accepted by the board, would constitute disciplinary action if there is an open complaint.

## **Key timelines**

- 180 days to investigate a complaint and recommend findings to probable cause panel
- 20 days for Subject to respond to complete investigative file following request for file
- 21 days to respond or file election of rights
- 45 days to refer case to DOAH following election of formal hearing
- 30-70 days from the referral to DOAH in which ALJ sets hearing date
- 6-year statute of limitation (SOL); There are exceptions to this that either eliminate an SOL or expand it to 12 years
- 30 days to appeal final order

## 4.3 Unlicensed Activity

MQA is charged with stopping unlicensed activity – commonly called ULA. Those individuals who perform regulated health care activities without the proper licensing in Florida are usually committing a felony-level crime. Treatment by an unlicensed provider is dangerous and could result in further injury, disease or even death. When practitioners pay their licensing fees, \$5 is designated specifically to combat unlicensed activity. The ULA program has used these funds to develop an integrated marketing campaign that includes digital, social and traditional media placements to educate and engage target audiences statewide.

Complaint review and investigation occurs in the central MQA Tallahassee offices of the Department of Health and at 11 regional offices around the state. MQA can issue cease-and-desist notices and fines against unlicensed providers, but the Division relies on partnerships with local law enforcement for criminal prosecution.

In fiscal year 2023-2024, MQA:

- Received 1,489 complaints
- Issued 505 cease and desist orders

### ULA Investigation

ULA investigators perform the “legwork” to establish probable cause. Investigators go undercover, do surveillance, research business records, conduct interviews, and ultimately serve notices.

Many investigations are conducted jointly with law enforcement. Often ULA investigators serve on special task forces. Law enforcement uses evidence gathered by MQA investigators for arrest and prosecution of unlicensed providers.

MQA depends on its partnerships with other state and federal agencies and local authorities to stop unlicensed activity. But in the end, it’s the people in the neighborhoods who are victimized and who see the activity.

If you see unlicensed activity, please report it by calling **1-877-HALT-ULA**, emailing [HALTULA@flhealth.gov](mailto:HALTULA@flhealth.gov) or visiting the MQA website. [www.FLHealthSource.gov](http://www.FLHealthSource.gov)

## 4.4 Enforcement Process Map

[https://www.floridahealth.gov/licensing-and-regulation/enforcement/\\_documents/enforcement-process-chart.pdf](https://www.floridahealth.gov/licensing-and-regulation/enforcement/_documents/enforcement-process-chart.pdf)

<https://mqacomplaintportal.azurewebsites.net/home>

# 5. Impaired Practitioner Program

- 5.1 Impairment Programs
  - 5.2 Intervention Project for Nurses
  - 5.3 Professionals Resource Network
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## 5.1 Impairment Programs

Section 456.076, Florida Statutes, Treatment programs for impaired practitioners, sets forth the requirement for the Department of Health to designate an impaired practitioner program that will:

- Work with the Department in intervention.
- Set requirements for evaluating and treating a professional.
- Establish requirements for continued care of impaired practitioners by approved treatment providers.
- Require continued monitoring by approved treatment providers regarding the professional under their care.
- Uphold requirements related to the program's expulsion of professionals from the program.
- The Department has contracted with the Intervention Project for Nurses (IPN) for nurses and the Professionals Resource Network (PRN) for all other health care practitioners to perform these statutory functions.

## 5.2 Intervention Project for Nurses

<https://www.ipnfl.org>

IPN was established in 1983 through state legislation and functions under a service contract with the Department of Health. IPN provides monitoring for advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistants whose practice may be impaired due to substance abuse and/or medical or psychiatric illness. IPN assures public safety and safety to practice by requiring all nurse participants to complete formal evaluations by DOH/IPN approved physicians, successfully complete recommended treatment, provide random negative toxicology screens and have their practice monitored at the workplace by a work site monitor. In addition, IPN provides expert consultation to the Florida Board of Nursing on an on-going basis.

**Shannon O. Opie, DNP, APRN, ANP-BC, CARN-AP**  
IPN Chief Executive Officer

**John C. Tanner, D.O. DipABAM, FASAM, CCFC, MRO**  
IPN Medical Director, 1-800-840-2720

## 5.3 Professionals Resource Network

<https://flprn.org/>

The Professionals Resource Network is a nonprofit organization that provides referral services for evaluation and treatment of impaired practitioners and applicants. Under the provisions of s. 456.076, Florida Statutes, the Department contracts with PRN to coordinate the evaluation, treatment and monitoring of impaired practitioners whose ability to practice safely is questioned. The Boards rely heavily on PRN for guidance and recommendations regarding practitioners who come before the Board in disciplinary matters.

**Michael J. Sorna, M.D., MSA, FASAM**  
Director, 1-800-888-8776

# 6. Commonly Used Acronyms

## 6.1 Departments / Agencies / Organizations

## 6.2 Discipline

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### 6.1 Departments/Agencies/Organizations

AHCA	Agency for Health Care Administration
DBPR	Department of Business Professional Regulation
DOH	Department of Health
HIPDB	Healthcare Integrity Protection Data Base
HIPAA	Health Insurance Portability and Accountability Act
IPN	Intervention Project for Nurses
JCAHO	Joint Commission on Accreditation of Healthcare Organizations
JAPC	Joint Administrative Procedural Commission
MQA	Medical Quality Assurance
NPDB	National Practitioner Data Bank
PRN	Professionals Resource Network

### 6.2 Discipline

AC	Administrative Complaint
AG	Attorney General's Office
AGC	Assistant General Counsel
ALJ	Administrative Law Judge
CA	Consent Agreement
DOAH	Division of Administrative Hearings
EAU	Emergency Action Unit
ERO	Emergency Restriction Order
ESO	Emergency Suspension Order
FH	Formal Hearing
FO	Final Order
IH	Informal Hearing
OCE	Order Compelling Examination
PCP	Probable Cause Panel
PDMP	Prescription Drug Monitoring Program
PSU	Prosecution Services Unit
RCS	Reasonable Cause Subpoena
RO	Recommended Order
SA	Settlement Agreement
VR	Voluntary Relinquishment

# 7. Travel Reimbursements

- 7.1 Traveler/Board Member Responsibility
- 7.2 Additional Reimbursement Information
- 7.3 Travel Reimbursement Summary Form
- 7.4 Travel Guide

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## 7.1 Traveler/Board Member Responsibility

Traveler has 10 days from the conclusion of travel to provide the required reimbursement documentation to the Operational Support Services (OSS) unit. The OSS unit then has 3 days after receiving the reimbursement documentation to process and forward to Finance and Accounting to insure a timely reimbursement warrant is issued to the traveler. All documents are required at the time the reimbursement package is submitted to avoid delays.

Upon completion of the Travel Reimbursement Voucher Packet by an OSS staff member, the board member will receive an email through DocuSign to review and sign travel documents.

### 1. MQA - Authorized Travel Reimbursement Summary Form

MQA – Authorized Travel Reimbursement Summary Form (Attachment 1): Board members must complete and sign this form indicating all reimbursable expenses:

#### 1. Section 1

- a. Name
- b. People First ID
- c. Address to receive correspondence
- d. Phone Number (if any problems arise processing your reimbursement)
- e. Location of Meeting (City)
- f. Dates of Meeting
- g. Departure Date
- h. Departure Time (Time you left your office or home)
- i. Return Date
- j. Return Time (Time you arrived at your office or home)
- k. Use of privately owned vehicle? (POV)

## 2. Section 2

**Reimbursable Travel Expenses being claimed:** Board members must provide receipts.

Meeting space and sleep rooms for regular board meetings are secured by OSS through a purchase order. Conference/Conventions will be paid via personal payment by the traveler. Three quotes for hotel stay is required. The quotes must be within the same location and star rating. Screenshots of sleep room pricing is acceptable. Note: OSS is currently doing this; however, it is after the travel, so the board member may not be reimbursed full price paid if the above criteria cannot be met.

- a. Hotel – cost of hotel (if not covered under DOH contract)
  - i. All receipts with the exception of the Zero Balance Hotel Receipt need to be signed and dated by the traveler.  
**Note: There is the exception of a few incidental expense receipts that are less than \$25.00; however, in an effort to avoid processing delays it is best to have all receipts signed and dated.**
- b. Airfare of commercial carrier
  - i. Submit signed receipt. E-tickets are NOT an acceptable form of receipt. If a change was made to your original reservation, you must submit the original and the changed reservation receipts.
  - ii. Itemized airfare receipt includes traveler name, date, time, city location, breakdown of taxes and courier fees and seat assignments are required. If seat assignment is not noted on receipt, obtain a boarding pass with seat assignment details or a new receipt.
  - iii. The State prefers using air transportation for travel over 300 miles one-way. You must obtain permission from the Executive Director of the board office which you are traveling for for travel less than 300 miles one-way.
  - iv. Commercial air travel must be made by the most economical class, i.e., economy/coach.
  - v. If utilizing a commercial carrier, purchase the lowest available airfare. There is not a state term contract for commercial airlines.
  - vi. Airfare should **not** be purchased through third party booking agencies. Nor should travel agency booking be used, as a complete full itinerary can not be provided.  
**DO NOT use search engines like KAYAK, Expedia, etc.**
  - vii. Submit actual receipt showing cost of checked baggage.
  - viii. Purchase a refundable ticket. Trip insurance will not be reimbursed.
- c. Rental Car
  - i. The State prefers the use of the contracted vendor: AVIS. Justification is required when renting vehicles other than from the contracted rental agency. (Ex: Vehicle not available from contract vendor. Distance to the state contractor’s rental location is not cost effective or practical.)
  - ii. Avis Florida Department of Health Discount Code: A113400. See attached Avis Car Rental Form. The reimbursable rate of \$26.52 per day.
  - iii. The State will reimburse the cost of a compact (Type 2) vehicle rental. Valid justification is required for rental of a larger class vehicle.
  - iv. Submit signed and dated receipt for car rental showing actual cost and pickup and return dates and time.
  - v. The contracted rental agency provides primary insurance and damage coverage. Travelers should refuse extra personal accident insurance (PAI), daily collision damage waiver (CDW) or loss damage waiver (LDW). If traveler approves these charges the cost will not be reimbursed.  
Exception: If the traveler rents from a non-contracted agency, the traveler must confirm primary coverage and purchase collision damage insurance. This coverage is reimbursable.
- d. Expense — Mileage Privately Owned Vehicle
  - i. Mileage is calculated via FDOT Map (City to City location) or odometer reading when using your POV at the rate of 0.445 per mile. If using odometer reading of address to address, then the traveler must complete required mileage log. See attachment.



- e. Fuel – Cost of Fuel (only reimbursed when using rental car)
  - i. Submit signed and dated fuel receipts.
  - ii. Fuel should be purchased prior to returning the vehicle. Fuel purchased through rental car agency is not reimbursable.
- f. Parking (Self)
  - i. The State only reimburses for self-parking unless valid justification is provided for utilizing valet parking (i.e. physical disability, only method of parking available, etc.). If claiming physical disability, you must supply a doctor’s note in order for Finance and Accounting to process this for payment.
- g. Tolls Paid
  - i. Submit actual tolls receipt or SUNPASS ledger from SUNPASS account showing tolls paid for dates of travel.
- h. Portage – Tips (Number of bags must be included)
  - i. Luggage handling at hotel, airport, etc. – limited to \$1.00 per piece. No receipt required. (Justification: 3 bags at 1.00 each = \$3.00)
- i. Cab Fare
  - i. Uber, Lyft or Taxi service is allowable. Limousine or other car services should not be used unless it can be shown as the most economical mode of travel. If not it will be at the expense of the traveler.
  - ii. Submit dated and signed receipts with explanation (airport to hotel, hotel to airport) for what mode of travel was used for.
- j. Board business calls or faxes made.
- k. Allowable tip calculation is 15% of subtotal charges. If traveler tips more than that amount it becomes non-reimbursable.
- l. Other: Specify any other expenses being claimed

## 7.2 Additional Reimbursement Information

Prior to travel, board offices process an “Authorization to Incur Travel” for all board meetings to obtain approval for all travel expenses. Upon receipt of all required documentation, the OSS staff will validate requested reimbursement amounts against the approved “Authorization to Incur Travel.” If there are inconsistencies, without valid justification between the amount being claimed for reimbursement by traveler and the approved expenses, the authorized amount will govern. Board member and board staff shall be notified in those instances by OSS staff.

If you are traveling prior to or beyond the board meeting, please obtain prior approval, provide justification and keep a complete itinerary of on-duty and off-duty dates and times. The itinerary is to be submitted along with other travel documents.

### Meals

The traveler will receive reimbursement for meals, on a set rate, during travel based on the departure and return time of a travel event. It is not necessary for travelers to submit meal receipts to claim reimbursement for meals. Time criteria and meal allowances are defined as follows:

#### Reimbursable amounts:

- Breakfast: \$6.00 (Travel begins before 6 a.m. – extending beyond 8 a.m.)
- Lunch: \$11.00 (Travel begins before 12 p.m. – extending beyond 2 p.m.)
- Dinner: \$19.00 (Travel begins before 6 p.m. – extending beyond 8 p.m.)

## Per Diem

Per-diem is applied on the LAST day of travel and shall be calculated using four six-hour quarters beginning at midnight for travelers traveling overnight.

The traveler will receive PER DIEM, at a set rate of \$20.00 for each quarter, during travel based on the traveler's return time home.

- Quarter 1: Travel ends between 12:00 am and 6:00 am = \$20.00
- Quarter 2: Travel ends between 6:01 am and 12:00 pm = \$20.00
- Quarter 3: Travel ends between 12:01 pm and 6:00 pm = \$20.00
- Quarter 4: Travel ends between 6:01 pm and 11:59 pm = \$20.00

Ex. If you depart on 11/1 at 11:55 am and return 11/2 at 5:55 pm, you will receive:

Meals: \$30.00 for lunch and dinner

Per Diem: \$60.00 per diem

## 50 Mile Exemption

A traveler shall not claim per diem or lodging reimbursement for overnight travel within 50 miles (one-way) of his or her headquarters or residence city unless the circumstance necessitating the overnight stay are fully explained by the traveler approved, by the agency head and attached to the travel voucher. The board office must obtain prior approval for overnight lodging for any board member who resides within a 50 miles radius of the board meeting location. Please contact your board office if you need to obtain approval.

Travel reimbursement documentation should be emailed to [Boardtravelreimb@flhealth.gov](mailto:Boardtravelreimb@flhealth.gov)

## Attachments

The attached [MQA – Authorized Travel Reimbursement Summary Form](#) must be completed, signed and submitted with your receipts in order for OSS staff to process your reimbursement.

Your reimbursement will not be processed without the submission of this form and will delay payment.

## 7.3 Travel Reimbursement Summary Form

[Travel Reimbursement Summary Form](#) (spreadsheet)

## 7.4 Travel Guide

[Travel Guide \(pdf\)](#)

