# Department of Health: Friend or Foe?

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The average person has a keen appreciation for the fact we live in a litigious society. Similarly, most would agree healthcare providers are cognizant of the perception the number of healthcare-related negligence claims has increased over the past fifteen years. The increased cost of medical care to patients, staggering escalation of health insurance premiums and continually rising professional liability insurance premiums are further collateral results of litigation. These are the visible and readily appreciated casualties of litigation. However, there are more insidious and equally dramatic ramifications of professional liability litigation.

Despite the current state of affairs, licensed healthcare practitioners, at the very least, should be able to rely upon the licensing boards and administrative agencies that govern and oversee their day-to-day practices to maintain a sense of equilibrium. However, increasingly large numbers of licensed healthcare practitioners are finding it more difficult to rely upon such administrative agencies. To the contrary, increasing numbers of licensed healthcare providers find themselves not only defending civil actions seeking monetary damages, but also defending actions initiated by the Department of Health ("DOH"), the relevant governing board (*i.e.*, Board of Medicine, Board of Podiatry, Board of Dentistry, *etc.*), or similar licensing agencies.[i] The claims/actions initiated by these governmental bodies are equally as complex and concerning. In fact, a formal complaint filed by the DOH can actually have far more reaching implications than a "run-of-the-mill" medical malpractice claim filed by a plaintiff in the civil arena.

Accordingly, this article will explore the role of the DOH, governing boards, or similar licensing agencies/bodies in investigating, initiating, and prosecuting such claims. This article will also briefly discuss the various potential resolutions of such administrative actions, as well as the potential discipline of healthcare related professionals.

Additionally, the relationship between an administrative claim and a civil claim, the options available to healthcare professionals in responding to such claims, and the overall process of defending against an administrative action will be explored. The article concludes with a synopsis and/or analysis of self-reporting obligations and the question of whether "favorable" findings really bring an end to the stress and anxiety produced by such administrative proceedings. In the end, a well-informed practitioner will rightfully question whether the DOH is a friend or a foe.

## Roles of the DOH and Board of Medicine

For the fortunate practitioner who has never received a Notice of Informal Investigation, the DOH and a governing board (such as the Board of Medicine) are likely viewed as governing bodies that issue, monitor and maintain the status of medical licensees practicing under the purview of their respective statutorily granted authority. The DOH is a broad-based governmental department responsible for overseeing a multitude of issues related to the health and well being of the citizens of the State of Florida.[ii] The Board of Medicine is a legislatively created governmental body that operates in conjunction with the DOH.[iii] However, the Board of Medicine is charged with the more finite responsibility of overseeing the provision of medical services provided by practitioners holding medical licenses within the State of Florida.[iv]

While it is true the Department of Health and various

governing boards, such as the Board of Medicine, handle a multitude of responsibilities managing the provision of healthcare services throughout the state, these two bodies take on separate and distinct responsibilities with respect to the scope of their duties. In the context of investigating and disciplining medical licensees, the DOH takes on a role similar to the State Attorney's Office in a criminal case, while the Board of Medicine can oftentimes be viewed as the judge/jury in such a setting. The DOH (or an agency of the same) is the governmental body that actually initiates the informal investigation, which can precipitate the initiation of a formal administrative complaint.[v]

The Agency for Health Care Administration ("AHCA") is the legislatively created agency that works hand in hand with the DOH in licensing and regulating healthcare facilities and health maintenance organizations (HMOs) in Florida. AHCA is the chief health policy and planning group for the state.[vi] AHCA fields complaints from patients/consumers regarding the provision of medical care. After receiving such a complaint, AHCA and/or the DOH is charged with investing the same.[vii]

There are typically three general avenues by which an AHCA or DOH investigation may be initiated against a practitioner's license. First, a disgruntled patient, another physician, or anyone else for that matter, may at any time file a complaint with the DOH or AHCA. Such complaints will more often than not trigger an investigation. Second, copies of the operative complaint in medical negligence actions must be provided to the DOH.[viii] The DOH will then determine whether to investigate the merits of the claim from an administrative standpoint. Third, any administrative/disciplinary action initiated in another state against a Florida licensed physician must be self-reported to the DOH.[ix] The DOH will then determine what action, if any, it wishes to take against the practitioner's Florida license relative to the out-of-state matter. Regardless of the manner in which a complaint is initiated, any resulting investigation is initiated by the licensed healthcare practitioner's receipt of a Notice of Investigation issued by a local AHCA and/or DOH investigator. It is also important to note that the DOH has the authority to continue with an investigation (and take the appropriate final action) even if the original complainant withdraws his/her complaint.[x] (See attached sample Notice of Investigation.)

### *The Investigative Process*

Ultimately, the Notice of Investigation (sometimes referred to as an informal complaint) will be forwarded to a medical practitioner's office via certified mail. The Notice, which is more often than not relatively brief, includes:

1. A brief summary of the grounds giving rise to the investigation;
2. A citation to the statutory authority relative to the alleged violation;
3. A request for medical records, a copy of the practitioner's *curriculum vitae* and/or other documentation maintained by the medical provider concerning the care provided to the subject patient/complainant; and
4. A request for the practitioner to contact the investigator and schedule an appointment for an interview or to submit a written response to the allegations contained in the Notice.

Technically, the practitioner is provided twenty (20) days to respond.[xi] However, the practitioner is afforded forty-five (45) days to forward a written response directly to the DOH legal department. Further, if counsel is retained by the practitioner an extension of time within which to respond can usually be obtained.

We strongly recommend a copy of any Notice received from the DOH or AHCA be immediately forwarded to your medical malpractice insurance carrier. Many professional liability policies do not technically provide "coverage" for such administrative investigations. However, many professional liability insurance policies do provide limited funds for the retention of counsel to defend against an administrative investigation/complaint.

Service of a Notice of Investigation, as well as the ensuing investigative process, is confidential in nature.[xii] The recipient of the Notice should, therefore, be careful to limit discussions to those essential to preparing the response/defense to the Notice. The practitioner is also cautioned to be mindful of any potential HIPAA or other privacy issues.

Healthcare practitioners are required to participate in good faith and otherwise cooperate with DOH or AHCA investigations. Consequently, receipt of a Notice of Investigation may not be ignored. A practitioner's options in responding to a Notice of Investigation are generally limited to responding on his/her own behalf or responding through counsel. This, of course, includes providing complete copies of the medical records requested in the informal complaint by the local DOH or AHCA investigator. The initial response to a Notice of Investigation is very important and may well establish the investigator's mindset for the remainder of the investigation.

Additionally, the practitioner is afforded several options with respect to the manner in which he/she can respond to the Notice (beyond the provision of the requested

materials/records). The Notice will inform the practitioner that he/she may schedule and attend an informal interview or meeting with the local DOH or AHCA investigator to discuss the facts and circumstances surrounding the allegations giving rise to the informal investigation. Alternatively, the practitioner may elect to provide a written response to the informal complaint. Importantly, the practitioner need only respond to the Notice in one of the two manners provided. In the event counsel is retained for the medical provider, it would almost certainly be recommended a written response be provided rather than attending an informal interview/meeting.

Ultimately, providing a written response is preferred simply because it allows the practitioner (or counsel on behalf of the practitioner) to set out the facts, frame the issues and argue his/her position in a persuasive, written manner. A written response can, therefore, serve as the practitioner's opening statement, presentation of evidence and closing argument relative to the informal investigative process. A persuasively written response is the initial step toward posturing the investigation for a finding of "No Probable Cause." In the event a practitioner can achieve a finding of "No Probable Cause" the investigation will be closed/dismissed and, of equal importance, remain confidential.

Attending and participating in an interview/meeting with the local investigator is less attractive for obvious reasons. An interview, in theory, allows for an open dialogue between two or more individuals. This investigative informal interview process, however, is driven by the local DOH or AHCA investigator and is oftentimes one-sided. In an interview, the issues to be addressed, the order in which they are addressed and the manner in which they are addressed are framed by the local investigator conducting the interview. The practitioner is forced to address the issues as framed by the investigator. These issues many times have been framed based upon the limited information provided to the investigator, which at this stage of the investigation, primarily consists of the medical records and the issues framed by the person initiating the complaint. The practitioner is placed in a defensive posture, has relinquished control over how the issues will be framed, and will be restricted with respect to how the responsive information is provided to the investigator.

It is recommended that any written response be accompanied by an affidavit of a defense expert retained on behalf of the medical practitioner. An initial and critical step in responding to any Notice of Investigation should include the retention of an expert on behalf of the defending practitioner. The relevant medical records and Notice of Investigation should immediately be forwarded to a duly qualified medical provider who specializes in the same field as the defending practitioner. The retained expert, in turn, is then asked to execute an affidavit supporting the care provided by the defending practitioner. This affidavit is forwarded along with the written response to the local investigator. The provision of an affidavit from a duly qualified medical specialist will certainly assist the defending practitioner in his/her efforts to achieve a finding of "No Probable Cause."

The goal of the defending practitioner, during the investigative process, is to make the investigator's job less burdensome. The defending practitioner should be cooperative and take every opportunity to provide information and documentation favorable to the defense. In essence, the defending practitioner should fill the investigator's file with favorable information. This should include the provision of a persuasively written response, full and complete medical records, pertinent medical literature to support the care and treatment of the practitioner, and an expert affidavit supporting the care provided and/or challenging any adverse position asserted in the Notice. The written response will, of course, prominently highlight the pertinent portions of the medical records and persuasively explain the practitioner's decision-making process with respect to any potentially problematic issues. Certainly, the expert affidavit should also address and explain any potentially problematic issues. Any written response should address each and every issue raised in the Notice of Investigation.

Upon the provision of the written response and supporting documentation, the investigator should be contacted on a periodic basis with an offer to provide any additional information desired. There are instances where the investigator may request additional information on various issues. The practitioner, or counsel on behalf of the practitioner, should immediately provide the requested information. This additional information may be provided with any necessary, persuasively written explanation of the same. In the event the investigator obtains the information on his/her own, the format in which the information is received is less likely to contain a clear and concise explanation, which might favorably impact the investigator's interpretation of an otherwise potentially problematic piece of information. Additionally, there may be circumstances under which the practitioner, the practitioner's expert or other witnesses can provide information to supplement the written response.

It is equally important to understand what is going on behind the scenes during the informal investigative process. Ultimately, the local investigator is in the

process of gathering any and all relevant evidence, as he/she awaits either the written response from the medical practitioner or works to coordinate an interview/meeting with the same.[xiii] The gathering of such relevant evidence may include any or all of the following:

1. The request for medical records from the defending medical practitioner.
2. A request for records from other healthcare providers who may have been involved in the subject care.
3. Interviews from the person(s) initiating the complaint.
4. Interviews of other healthcare providers involved in the chain of care and/or treatment.
5. Review, analysis and consideration of previous or contemporaneous discipline or settlements of investigative procedures.

Again, the informal investigative process should culminate within forty-five (45) days of the medical practitioner's receipt of the informal complaint pursuant to statute. This deadline, however, can be extended on an informal basis through a stipulation and/or agreement with counsel for the defending medical practitioner and the local investigator. In our experience it is not uncommon for the initial investigation to go beyond this forty-five (45) day period.

Upon receipt of the defending medical provider's written response to the informal complaint, or conclusion of the interview, or both, the local investigator forwards the evidence he/she has gathered, including the written response, *etc*., to an attorney employed by the DOH in Tallahassee. After review of the relevant materials the DOH attorney forwards the materials, along with his/her analysis of the same, to the Probable Cause Panel ("PCP"). Importantly, the DOH attorney is also charged with the responsibility of retaining an expert witness on behalf of the DOH and/or consulting with a DOH-affiliated physician. The DOH expert or affiliated physician will be asked to review the pertinent materials and render an opinion as to whether the defending practitioner committed any of the violations identified in the Notice/Informal complaint. The opinion of the expert retained on behalf of the DOH, and/or that of the DOH affiliated physician, is also forwarded to the PCP. It may not come as a surprise that the opinion of the DOH expert/affiliated physician may well contradict that of the expert for the defending practitioner.

Sometime thereafter, the PCP convenes and reviews multiple informal complaints for the sole purpose of determining whether there is probable cause (hence the name Probable Cause Panel) to move forward with initiating a formal complaint.[xiv] Quite simply, the PCP meeting will result in one of two potential conclusions. The PCP can decide there is insufficient evidence to support a finding of probable cause to move forward with a formal complaint and the Notice will be dismissed and remain confidential. Alternatively, the PCP may make a finding of probable cause, thereby authorizing the initiation of a formal complaint. Finally, the DOH and/or PCP can issue a letter of guidance/concern in lieu of finding probable cause. This option, however, is not available if the practitioner has already been issued a letter of guidance/concern for a related offense.[xv]

Pursuant to statutory authority, the DOH and/or PCP is charged with concluding the investigation of such informal complaints within six months after receipt of the informal complaint.[xvi] However, often a practitioner defending a Notice of Investigation from the DOH or AHCA, will wait longer than six months before he/she is made aware of the PCP's findings.

It is also important to note that in the event the PCP finds probable cause prompting the initiation of a formal complaint, the practitioner has the right to obtain a copy of the complete DOH investigative file. However, in order to obtain a copy of the investigative file, the medical practitioner must execute an acknowledgment/agreement to maintain patient confidentiality.[xvii]

### *The Formal Complaint*

Upon receipt of a formal complaint, the medical practitioner has twenty-one (21) days to file a response thereto. The response is formally effectuated by the completion and execution of an "Election of Rights Form." This form enumerates three options from which the medical provider can choose in responding to the formal complaint.

First, a medical practitioner can decline disputing the material facts/allegations of the formal complaint, but elect to attend an informal hearing wherein written and oral evidence can be presented directly to the Board of Medicine for mitigation purposes. Unfortunately, this option affords little to no opportunity for the medical practitioner to frame an argument in defense of the care provided. Instead, the Board of Medicine opens the matter up for discussion and ultimately a proposed disciplinary plan of action is handed down. Stated differently, under this scenario the medical practitioner is subjecting himself/herself to the mercy of the Board of Medicine at an informal hearing strictly on the issue of mitigating the consequences of the provider's actions.

Therefore, this option primarily best serves practitioners who find themselves in the precarious position of an otherwise indefensible case. Ultimately, unless rare but well-founded mitigating factors are present, the practitioner should carefully consider all potential ramifications before selecting this option.

Second, the medical provider can choose to "not dispute the allegations of fact" in the formal complaint and waive his/her right to be heard. Under this option the practitioner also would request the Board of Medicine to enter a final order with respect to the case. The potential ramifications of this option should be obvious.

Finally, in responding to a formal complaint through the completion of the "Election of Rights Form," the medical practitioner can choose to dispute the allegations of the formal complaint and demand a formal hearing on the matter. This option is generally the most cumbersome of the three insofar as the medical practitioner is essentially electing to defend his/her actions before an administrative law judge. In this scenario, the medical practitioner takes on a role similar to that of a defendant in a civil matter in which a patient has filed a medical malpractice claim against the medical practitioner. Obviously, the key difference is that with respect to the formal complaint, the case will be heard before an administrative law judge as opposed to a circuit judge and jury. Further, there are additional implications that a medical practitioner must take into consideration in deciding whether to proceed with this option. These issues include various evidentiary and procedural matters, which are addressed below.[xviii]

As it relates to all three of the options outlined above, the Election of Rights Form also requires the practitioner to either accept the terms of the "Settlement Agreement" served in conjunction with the Formal Complaint, assert that he/she is interested in settling the case, or to advise the DOH that he/she no longer wishes to practice medicine in the state by voluntarily relinquishing the subject license. Therefore, regardless of a practitioner's selection on the "Election of Rights Form," he/she is generally free to continue with settlement discussions with the DOH attorney up to the date of an informal/formal hearing.

In essence, the proposed "Settlement Agreement" is a separate administrative pleading that summarizes the allegations of the formal complaint and outlines a proposed disciplinary action. A practitioner's execution of the "Settlement Agreement" signifies that the medical practitioner neither admits nor denies the allegations of the formal complaint and that he/she accepts the proposed disciplinary action that is outlined therein. Proposed disciplinary actions (as outlined in a "Settlement Agreement") can range in style and severity from a simple letter of concern handed down by the Board of Medicine (or other governing board) to a suspension and/or revocation of the practitioner's license. Generally, the scope of the proposed disciplinary action is directly related to the severity of the alleged conduct of the practitioner. The scope of the proposed disciplinary action may also, at least indirectly, be influenced by the practitioner's disciplinary history. It is not uncommon for a typical settlement proposal to include a monetary fine, community service hours, completion of CME hours, and/or completion of an approved probationary period. Approved probationary periods may include appointment of a similar healthcare provider to act as a mentor and conduct periodic audits of the practitioner's patient files.[xix]

It is also important for the practitioner to understand that whether he/she chooses to accept the proposed Settlement Agreement, waive his/her right to be heard or chooses to attend an informal hearing, the ultimate form of discipline will be handed down and/or confirmed by the governing board. Stated differently, even in the context where the practitioner simply agrees to accept the proposed Settlement Agreement and declines a formal/informal hearing, the disciplinary action outlined in the Settlement Agreement is subject to change until it has been approved by the governing board (*i.e.*, the Board of Medicine).[xx]

In fact, it is not uncommon for the Board of Medicine or similar governing boards, upon review of a proposed Settlement Agreement, to enter a more severe form of disciplinary action than originally recommended by the DOH in the proposed Settlement Agreement. As such, it will be necessary for the practitioner to attend a meeting or hearing before the relevant governing board – even if it is to simply seek the board's approval of a Settlement Agreement that he/she has already accepted and signed.

### *Ancillary Factors and Other Important Considerations*

As alluded to above, a practitioner's decision to dispute the allegations of a formal complaint and attend a formal hearing requires serious consideration given the potential ramifications of this option. Not unlike the decision to try a case in a civil arena, proceeding to a formal hearing before an administrative law judge requires careful analysis of the factual circumstances and law pertaining to the issues in the subject investigation/case. Certainly, if the overwhelming evidence appears to favor the practitioner, one should give serious consideration to proceeding under this option.

However, an important ancillary consideration of proceeding under this option concerns the recently enacted amendment to the Florida Constitution pertaining to incidents of repeated medical malpractice on the part of a medical doctor.[xxi] As most, if not all, practitioners within the state of Florida are well aware, the citizens of the state voted to approve Amendment Eight (often identified as "The Three Strikes Amendment") to the Florida Constitution in 2004. Thereafter, the Legislature enacted a statutory provision for the purposes of implementing the "three strikes amendment." In short, § 456.50, *Florida Statutes*, provides that the Board of Medicine shall not license or continue to license a medical doctor found to have committed repeated medical malpractice. Further, this statutory provision defines "repeated medical malpractice" to mean three or more incidents of medical malpractice found to have been committed by a medical doctor.

This enabling legislation also provides that a qualifying "finding" for purposes of "repeated medical malpractice" can be rendered by a final judgment in a court of law, a final administrative agency decision, or a decision of binding arbitration. Therefore, in the event the practitioner elects to attend a formal hearing and dispute the allegations of a formal complaint, he/she could be subjecting themselves to a potential strike against their license under this controversial constitutional amendment.

Importantly, the enabling legislation outlined above further provides that a qualifying "finding" against a medical doctor must be based upon "clear and convincing evidence."[xxii] This provision has proved to be problematic with respect to the execution of the enabling legislation in that medical malpractice claims prosecuted in the civil arena require a less stringent standard of proof – one by "the preponderance of the evidence."

The uncertainty of the implications precipitated by The Three Strikes Amendment is compounded by additional language contained within the enabling legislation. Specifically, § 456.50(2), *Florida Statutes*, empowers - and even mandates - the Board of Medicine to review the records of a case in which an incident of medical malpractice has been determined on a standard less than clear and convincing. Accordingly, it is feasible and well within the purview of the Board of Medicine to arbitrarily determine that a strike should be applied to a medical doctor's license – even though the ruling of the court or proceeding in which medical negligence was formally decided would not have otherwise classified the same as a "strike."

It is equally important for the practitioner to understand that even if he/she prevails at a formal hearing in which the allegations of a formal complaint have been disputed, the DOH has the ability to file an exception to the findings of the administrative law judge which favored the practitioner at the formal hearing.[xxiii] Upon the filing of the DOH's exception to the ALJ's findings, the Board of Medicine has the authority and power to review the same evidence that was presented to the administrative law judge at the formal hearing. The Board can then reject the findings of the administrative law judge if it determines that such findings were not based upon competent substantial evidence.[xxiv] Certainly, the practitioner has the right and ability to appeal the Board of Medicine's rejection (as well as any ruling and/or finding handed down by the Board of Medicine with respect to a hearing on the formal complaint). [xxv]

Practitioners should rest assured that the Board of Medicine's power is not without limitations. Ultimately, the practicality of the scenarios alluded to above should be tempered against the fact that there is a plethora of case law in the State of Florida that reflects the District Courts of Appeal throughout the state have, in fact, found the Board of Medicine abused its power in rejecting such findings of an administrative law judge when such findings were, in fact, based on competent substantial evidence. Nevertheless, this procedural process underscores how the power of the Board of Medicine could potentially alter an initial favorable ruling for the practitioner and/or could prolong an administrative case well beyond what initially appeared to be a dispositive ruling in favor of the practitioner.

In light of the foregoing, the procedural posture of proceeding to a formal hearing on such a matter can oftentimes appear to afford a practitioner less due process rights than he or she would typically be afforded in the civil arena. Again, while the case law ultimately reflects that the Board of Medicine's powers are not without limitation, it can very well prove to be a taxing and expensive road for a practitioner to follow.

### *The Lack of a Formal/Definitive Conclusion*

The resolution and/or disposition of a formal complaint does not necessarily mean that the issues giving rise to the investigation and ensuing formal complaint will no longer be a source of frustration for the practitioner. This is especially true when the practitioner currently maintains an active medical license in another state or if the practitioner previously maintained a license to practice medicine in another state. In general, a medical practitioner is obligated to report any final disciplinary action rendered against that practitioner's license, whether in the state of Florida or any other jurisdiction.[xxvi]

Therefore, when a Florida-based practitioner finds himself/herself to be the recipient of a formal complaint, he/she should report the ultimate disposition and/or resolution of the matter (whether it was disputed at a formal hearing and the practitioner prevailed or whether the practitioner chose to enter into a settlement agreement) to the governing bodies and/or agencies that oversee that practitioner's professional in/out-of-state licenses. More specifically, if a Florida-based practitioner is aware of any disciplinary action taken against any out-of-state medical licenses that he/she maintains or previously maintained, it is strongly recommended that the practitioner report the same to the Florida Department of Health. This is true even if the practitioner relinquished, resigned and/or declined to renew the out-of-state license.[xxvii]

Overall, proceeding in this manner will allow a practitioner the opportunity to posture the allegations giving rise to the out-of-state investigation. Further, it gives the perception that the practitioner is simply being proactive in reporting obligatory information which is preferred over the alternative scenario where the DOH and/or the governing board learn of an out-of-state disciplinary action on their own. In fact, it would not be uncommon for the Florida DOH and/or Board of Medicine to initiate or file a Florida-based disciplinary action premised upon the allegations giving rise to the out-of-state disciplinary action and the practitioner's failure to report the same. In essence, a practitioner's failure to report such a matter leaves the DOH and/or the Board of Medicine to question whether the practitioner was "hiding" the disciplinary action for some reason.

Additionally, resolution of a pending administrative matter can have implications on any future administrative investigations and complaints initiated against the same practitioner – particularly if the facts and circumstances of the prior matters are similar to those forming the basis of the instant matter. Not unlike the characterization of "a repeat offender" in the criminal setting, the DOH and Board of Medicine will certainly highlight and give strong consideration to a practitioner's disciplinary history, as well as his/her willingness and ability to successfully overcome and/or rehabilitate from prior issues related to patient care.[xxviii] Therefore, it is paramount in the eyes of the DOH and Board of Medicine that previously disciplined licensees learn from their mistakes, as the practitioner cannot hide behind evidentiary protections regarding prior bad acts or mistakes in the administrative setting that would otherwise be available or applicable in the civil arena.

In conclusion, the DOH, Board of Medicine and similar governing boards prefer pro-activity on the part of the practitioners and/or licensees for which they oversee. This is true with respect to reporting requirements, as well as outlining and/or explaining how the circumstances giving rise to an investigation have changed the way the practitioner practices medicine for the better. That being said, the medical practitioner should proceed through the investigation process as outlined herein with a certain degree of skepticism and should avoid throwing caution to the wind – as the DOH wears two hats under such circumstances: 1) the hat of a friend, and 2) the hat of a foe.

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i. In 2006-2007, the Florida Department of Health, Division of Medical Quality Assurance, reported a dramatic increase in the total number of statutory reports and complaints received, with 41,675 reports/complaints – representing more than a 37% increase over the total number received between 2004-2005. 2006-2007 Annual Report of the Florida Department of Health Division of Medical Quality Assurance. Likewise, the combined total of revocations, voluntary surrenders, suspensions and probations imposed against Florida licensed healthcare practitioners increased over 57% in 2007-2008 compared to 2005-2006. 2007-2008 Annual Report of the Florida Department of Health Division of Medical Quality Assurance.

ii. *Fla. Stat.* § 20.43 (2008), defines the Department of Health generally and Section 456.005, Florida Statutes, defines the parameters of the Florida Department of Health, Division of Medical Quality Assurance, i.e., to develop and implement a strategic plan geared to improve the health status of citizens of the state, assure access to quality care, and monitor and enforce healthcare standards through timely discipline, education and remediation of healthcare professionals found in violation of the law.

iii. The Board of Medicine is a statutory entity established by Section 458.307, Florida Statutes, as the primary regulatory authority for the practice of medicine in the State of Florida.

iv. *Fla. Stat.* § 458.309 (2008), confers upon the Board of Medicine rulemaking authority to implement the provisions of Chapter 458, F.S., pertaining to the practice of medicine generally. Additional statutory provisions confer similar authority upon other boards charged with overseeing the practice of different specialties within the medical and/or mental health related fields. Sections 456.001, 456.011, *Florida Statutes*.

v. Section 456.073, *Florida Statutes*, requires the Department of Health to investigate any and all complaints filed before it that are deemed to be legally sufficient.

vi. Section 20.42, *Florida Statutes*, establishes and defines purpose and responsibilities of AHCA.

vii. Section 456.073, *Florida Statutes*.

viii. *Fla. Stat.* § 766.106(2)(b) (2008).

ix. *Fla. Stat.* § 456.039(8),(9)(b)(3) (2008).

x. *Fla. Stat.* § 456.073(1) (2008).

xi. *Id*.

xii. *Fla. Stat.* § 456.073(2) (2008).

xiii. Pursuant to *Fla. Stat.* § 456.071 (2008), the DOH is authorized to administer oaths, take depositions and issue subpoenas for purposes of completing an investigation.

xiv. *Fla. Stat.* § 456.073(4) (2008).

xv. *Fla. Stat.* § 456.073(2) (2008).

*xvi.* *Id.*

xvii. *Fla. Stat.* § 456.057 (2008).

xviii. *Fla. Stat.* § 120.57 (2008).

xix. *Fla. Stat.* § 456.079 (2008), mandates the establishment of disciplinary guidelines for use by governing boards.

xx. *Fla. Stat.* § 456.073(6) (2008).

xxi. For purposes of The Three Strikes Amendment, *Fla. Stat.* § 456.50(1) limits the applicability of the Amendment to physicians licensed under Chapters 458, 459, *Florida Statutes*.

xxii. *Fla. Stat.* § 456.50(2) (2008).

xxiii. *Fla. Stat.* § 120.57(1)(k)(l) (2008).

xxiv. Pursuant to *Fla. Stat.* § 120.57(k)(l) (2008), when the Board or similar governing body rejects or modifies an administrative law judge's conclusions of law, it must do so by stating with particularity the basis for the same. The Board cannot reject or modify findings of fact unless it determines (and specifies in a final order) such findings were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

xxv. *Fla. Stat.* § 120.68 (2008), entitles a practitioner who is adversely affected by a final agency decision to judicial review in the appellate district where the agency maintains its headquarters or where a party resides.

xxvi. *Fla. Stat.* § 456.039(8)(9)(b)(3) (2008).

*xxvii.* *Id.*

xxviii. *Fla. Stat.* § 456.079(2) (2008).