Protecting Your Practice: Essential Information for Professional License Holders

A criminal accusation is never a trivial matter, but for professional licensees, there are additional consequences to consider and steps that must be taken. Most of these considerations arise at the conclusion of the case, but for some, prompt action is necessary. It is therefore essential that professional license holders (PLH) retain an experienced attorney who can handle the criminal charge as well as any administrative follow up. You have spent years acquiring your license and building your practice, and we want to make sure an arrest doesn’t ruin your career.

As a professional courtesy, we have enclosed a complementary overview of applicable law in effect at the time of this writing regarding the consequences of a criminal conviction for doctors, nurses, real estate brokers, and pilots. Additionally, we enclosed forms which may be of use in this process. PLHs are presumed to know this information, and ignorance of the law is not a defense in the eyes of the governing administrative bodies. Each agency (DOH, BOM, BON, DBPR, FREC, FAA, etc.) has promulgated special rules creating responsibilities, reporting requirements, and giving an outline of disciplinary procedures.

Disclaimer: This is a general overview of the applicable state and decisional law and administrative rules in effect at the time of this writing. It is not based on the specific facts of your case, and is solely for educational purposes, not meant as legal advice. This overview is by no means a substitute for a consultation with an experienced legal professional. If you determine that you need legal assistance, please contact our firm for more information on how we can help you. Because many administrative hearings are required to occur in Leon County (Tallahassee), we may suggest a co-counsel arrangement if budget is an issue. This is not legal advice and does not create an attorney client relationship, or obligate the firm in any way.
Consequences for Doctors

Introduction

The state-run Department of Health (DOH) governs all healthcare practitioners broadly, and the Florida Board of Medicine (BOM) is the administrative agency assigned by the Department of Health to govern the practice of doctors specifically. Title XXXII of the Florida Statutes governs the regulation of professions and occupations. The practice of doctors is controlled by Chapter 456 (Health Professions and Occupations: General Provisions) and Chapter 458 (Medical Practice). Both chapters contain provisions regarding possible disciplinary action faced by doctors, as well as conduct that can warrant such actions.

Consequences of a Conviction

There are certain broad categories of offenses, a conviction for which constitutes grounds for disciplinary action. A doctor is subject to disciplinary action if he or she is convicted for or found guilty of, or enters a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine. There are additional categories of offenses which can be grounds for discipline only if the doctor serves as the designated physician of a pain-management clinic. Furthermore, regardless of whether the conviction could in itself be basis for disciplinary action, a doctor can be disciplined for failing to follow his or her reporting obligations with regard to the conviction.

It should be noted that although there is no direct consequence of a conviction for an offense not falling within these categories (direct in the sense that, once the offense occurs, the consequence requisite follows as a matter of law), the Department of Health has broad discretion regarding disciplinary action. There are also very broad grounds for discipline, such as being convicted of a crime which “directly relates to the practice of medicine or the ability to practice medicine,” and “being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.” Thus, although it is not required that a licensee face disciplinary action as a result of certain convictions, there are plenty of mechanisms in place to allow the DOH or BOM to mandate disciplinary action.
Crimes Directly Relating to The Practice of Medicine or the Ability to Practice Medicine

As vague as this category is, an examination of several cases is necessary to understand its breadth. Some offenses which have been found to fall under this category are those that one would generally expect. Unlawfully dispensing pain medicine has been punished under this provision. Conspiracy to commit health care fraud has also been found to meet this description.

Some decisions, however, have stretched this definition much more broadly. Solicitation to murder has been held to be relating to the practice or ability to practice medicine. The court reasoned that such a crime evidenced “warped judgment and disregard for human life—the antithesis of that which is required and expected of physicians.” Similarly, driving while intoxicated has been held to “exhibit[] a reckless disregard for the lives of those who may cross one’s path” such that it falls within this category of offenses. Any offense demonstrating a lack of honesty, warped judgment, or emotional instability could conceivably fall within this category. This provision can be used to broadly cover a plethora of offenses, such as DUI, at the discretion of the DOH and BOM.

Designated Physicians of Pain-Management Clinics

There are certain grounds for disciplinary action that are applicable only to a licensee who serves as the designated physician of a pain-management clinic. A pain-management clinic is defined as any publicly or privately owned facility that advertises for any type of pain-management services, or where in any month a majority of the patients treated at the facility are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain. All pain management clinics must designate a physician who is responsible for complying with all requirements related to registration and operation of the clinic in accordance with the statutory requirements. It is this designated physician to whom the following provisions apply.

The designated physician will be subject to disciplinary action if convicted for or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit, in any jurisdiction within the United States. Another ground for discipline is being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction within the United States which relates to health care fraud.
Offenses involving “moral turpitude” can vary greatly and an examination of cases involving the term can be illustrative. Moral turpitude has generally been described as involving, “inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals . . . .” Extortion, embezzlement, indecent exposure, and possession of counterfeit money with intent to cheat and defraud persons to whom it is uttered, have all been held to be crimes involving moral turpitude. This is another provision which confers broad disciplinary discretion upon the DOH and BOM.

**Reporting Obligations**

There are two separate reporting obligations which require a doctor to report a criminal conviction. A doctor must report to the Board of Medicine “in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.” A doctor convicted of any criminal offense thus has thirty (30) days to report the conviction to the Board of Medicine. There is no required form for this report, the licensee must simply submit a written explanation of the event in their own words, including information such as where and when it occurred and the date of conviction. Additionally, the licensee should send all supporting court documents related to the incident.

A doctor also has an obligation to submit updated information required by their practitioner’s profile to the Department of Health within fifteen (15) days “after the final activity that renders such information a fact.” Included in such required information is “[a] description of any criminal offense of which the [licensee] has been found guilty, regardless of whether adjudication of guilty was withheld, or to which the applicant has pled guilty or nolo contendere.” A doctor convicted of any criminal offense thus has 15 days to report the conviction to the Department of Health to update his or her practitioner’s profile (instructions for updating practitioner profile attached).

**Possible Disciplinary Actions**

Both the BOM and DOH have discretion to impose one or more of various penalties when there is found to be grounds for disciplinary action. These penalties range from suspension or permanent revocation of a license, to restriction of practice or license, to imposition of an administrative fine, to issuance of a reprimand or letter of concern, to “corrective action.” In determining what action is appropriate, the first consideration is what sanctions are necessary to protect the public or compensate the patient. The rehabilitation of the practitioner is secondary to these concerns. It is also worth noting
that anything which constitutes grounds for disciplinary action towards a licensee can also constitute grounds for the denial of a potential licensee’s application.

**Consequences for Nurses**

**Introduction**

The state-run Department of Health (DOH) governs all healthcare practitioners broadly, and the Florida Board of Nursing (BON) is the administrative agency assigned by the DOH to govern the practice of nurses specifically. Title XXXII of the Florida Statutes governs the regulation of professions and occupations. The practice of nurses is controlled by Chapter 456 (Health Professions and Occupations: General Provisions) and Chapter 464 (Nursing). Both chapters contain provisions regarding possible disciplinary action faced by nurses, as well as conduct that can warrant such actions.

**Consequences of a Conviction**

There are certain enumerated offenses, a conviction for which is in itself grounds for disciplinary action. It should be noted that although there is no direct consequence of a conviction for an offense not enumerated (direct in the sense that, once the offense occurs, the consequence requisitely follows as a matter of law), the Department of Health has broad discretion with regards to disciplinary action. There are also very broad prohibitions, such as those against “unprofessional conduct,” being convicted of a crime which “directly relates to the practice of nursing or the ability to practice nursing,” and “being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.” Thus, although there is no requirement that a licensee face disciplinary action as a result of, for example, a DUI conviction, there are plenty of mechanisms in place to allow the DOH or BON to mandate disciplinary action.

As mentioned, however, there are some enumerated offenses which in themselves constitute grounds for disciplinary action. These include: a forcible felony as defined in chapter 776; a violation of chapter 812, relating to theft, robbery, and related crimes; a violation of chapter 817, relating to fraudulent practice; a violation of chapter 800, relating to lewdness and indecent exposure; a violation of chapter 784, relating to assault, battery, and culpable negligence; a violation of chapter 827, relating to child abuse; a violation of chapter 415, relating to protection from abuse, neglect, and exploitation; and
a violation of chapter 39, relating to child abuse, abandonment, and neglect. Disciplinary action can also
be grounded in a conviction for any crime which “directly relates to the practice of nursing or to the ability
to practice nursing,” being found guilty of any offense prohibited under § 435.04 (relating to level 2
screening standards), or committing an act which constitutes domestic violence as defined in § 741.28. A
nurse is also prohibited from engaging or attempting to engage in the possession, sale, or distribution of
controlled substances as set forth in chapter 893, for any purpose other than those legitimate purposes
authorized by this chapter.

**Reporting Obligations**

There are two separate reporting obligations which require a nurse to report a criminal conviction.
A nurse must report to the Board of Nursing “in writing within 30 days after the licensee has been
convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime
in any jurisdiction.” A nurse convicted of any criminal offense thus has thirty (30) days to report the
conviction to the Board of Nursing. There is no required form for this report, the licensee must simply
submit a written explanation of the event in their own words, including information such as where and
when it occurred and the date of conviction. Additionally, the licensee should send all supporting court
documents related to the incident.

A nurse also has an obligation to submit updated information required by their practitioner’s
profile to the Department of Health within fifteen (15) days “after the final activity that renders such
information a fact.” Included in such required information is “[a] description of any criminal offense of
which the [licensee] has been found guilty, regardless of whether adjudication of guilty was withheld, or
to which the applicant has pled guilty or nolo contendere.” A nurse convicted of any criminal offense thus
has fifteen (15) days to report the conviction to the Department of Health to update his or her
practitioner’s profile (instructions for updating practitioner profile attached). Failure to do so can provide
additional grounds for disciplinary action.

**Possible Disciplinary Actions**

Both the BON and DOH have broad discretion to impose one or more of various penalties when
there is found to be grounds for disciplinary action. These penalties range from suspension or permanent
revocation of a license, to restriction of practice or license, to imposition of an administrative fine, to
issuance of a reprimand or letter of concern, to “corrective action.” In determining what action is
appropriate, the first consideration is what sanctions are necessary to protect the public or compensate
the patient. The rehabilitation of the practitioner is secondary to these concerns. It is also worth noting that anything which constitutes grounds for disciplinary action towards a licensee can also constitute grounds for the denial of a potential licensee's application.

Consequences for Real Estate Brokers

Introduction

The Department of Business and Professional Regulation (Department) governs all business professionals broadly, and the Florida Real Estate Commission (FREC) is the administrative agency assigned by the Department to govern the practice of real estate brokers specifically. Additionally, working with and funded by the FREC is the Division of Real Estate. Title XXXII of the Florida Statutes governs the regulation of professions and occupations. The practice of real estate brokers is controlled by Chapter 455 (Business and Professional Regulation: General Provisions) and Chapter 475 (Real Estate Brokers, Sales Associates, Schools, and Appraisers). Both chapters contain provisions regarding possible disciplinary action faced by real estate brokers, as well as conduct that can warrant such actions.

Consequences of a Conviction

A conviction is only in itself grounds for disciplinary action by the FREC or Department if it falls within certain categories of offenses. A broker is subject to discipline if convicted of a crime which “directly relates to the activities of a licenses broker or sales associate,” or one that “involves moral turpitude or fraudulent or dishonest dealing.” These very broad classes of offenses give the FREC and the Department great discretion to make disciplinary determinations. The Florida Supreme Court has defined “moral turpitude” as, “involv[ing] the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated.”

Incarceration, regardless of the underlying offense, can also be grounds for disciplinary action. A licensee who is confined in county jail post adjudication, or is confined in any state or federal prison or mental institution, or is under home confinement ordered in lieu of institutional confinement, is subject to discipline by the FREC or Department.
Reporting Obligations

In addition to certain offenses, a conviction for which is in itself grounds for discipline, failing to meet certain reporting obligations can subject a licensee to discipline. A licensee is required to inform the Department in writing (via “Criminal Self-Reporting Document”) within thirty (30) days after pleading guilty or nolo contendere to, or being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction.

Possible Disciplinary Actions

Both the FREC and the Department have broad discretion to impose one or more of various penalties when there is found to be grounds for disciplinary action. These penalties range from suspension or permanent revocation of a license, to restriction of practice or license, to imposition of an administrative fine, to issuance of a reprimand, to “corrective action.” It is also worth noting that anything which constitutes grounds for disciplinary action towards a licensee can also be grounds for the denial of a potential licensee’s application. Lastly, the FREC may impose costs upon the licensee related to the investigation or prosecution.

Consequences for Pilots

Introduction

In the United States, the certification of pilots is regulated by the Federal Aviation Administration (FAA), a branch of the Department of Transportation (DOT). Part 61 of Title 14 of the Code of Federal Regulations governs pilot certification. Part 67 of the same Title controls the process through which pilots obtain medical certification. Various parts throughout the Title contain provisions regarding possible disciplinary action faced by pilots, as well as conduct that can warrant such actions.

Reporting Obligations

In addition to any consequence stemming directly from a conviction, each conviction also carries with it certain reporting obligations. A pilot is required to provide a written report (via “Notification Letter”) to the FAA within sixty days of any “motor vehicle action.” A “motor vehicle action” means: a conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while under the influence of alcohol or a drug; the cancellation, suspension,
or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle under the influence of alcohol or a drug; or the denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while under the influence of alcohol or a drug. It should be noted that a separate report is required for each motor vehicle action. This means that if an individual’s license is suspended as the result of refusing to take a breathalyzer, and that person is subsequently convicted for a charge relating to the event, two separate notification letters are required.

The second reporting obligation concerns the application process for medical certification. Item 18v of FAA form 8500-8 requires information regarding an applicant’s criminal history. Any arrests, convictions, or administrative actions involving driving while under the influence of alcohol or drugs must be reported. An applicant must also report any arrests, convictions, or administrative actions that resulted in the denial, suspension, cancellation, or revocation of driving privileges, or which resulted in attendance at an educational or rehabilitation program. Item 18w of form 8500-8 requires disclosure of any other nontraffic criminal convictions, both misdemeanors and felonies. Any conviction occurring after already obtaining a medical certificate must be disclosed at the next examination for a new medical certificate upon expiration of the old one. If all the required information has been documented at a previous examination, and there have been no changes, the applicant is not required to re-report old information.

**Consequences of a Conviction**

There is only one class of offenses a conviction for which is in itself grounds for discipline by the FAA. A conviction for violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for disciplinary action. Such action could be the denial of an application for a pilot’s certificate, as well as suspension or revocation of any certificate currently issued to a pilot.

Committing certain acts prohibited by this chapter can also be grounds for disciplinary action. No person may act or attempt to act as a crewmember (pilots are considered crewmembers) of a civil aircraft: within eight hours after the consumption of any alcoholic beverage; while under the influence of alcohol; while using any drug that affects the person’s faculties in any way contrary to safety; or while having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Additionally, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, or
depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft. Violation of either of these two sections is grounds for denial of an application for a certificate, as well as the suspension or revocation of any certificate currently issued to a pilot.

A motor vehicle action, as defined above, occurring within three years of a previous motor vehicle action, is also grounds for discipline. Such discipline could take the form of the denial of an application for a pilot’s certificate, as well as suspension or revocation of any certificate currently issued to a pilot.

**Eligibility Requirements**

There are certain requirements to be eligible for a pilot certification which could be jeopardized by a criminal conviction. Not only could ineligibility prevent an applicant from acquiring certification, but the FAA can at any time re-examine any civil airman (such as pilots). After re-examination, if found to be ineligible, or if the FAA deems it necessary for public interest and safety, a certificate may be revoked or suspended. Even if a conviction does not fit within a proscribed category, the FAA could use this discretion to revoke certification.

One reason for such ineligibility could be security disqualification. No person is eligible to hold a certificate issued under Part 61 when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat. The TSA deems an individual a security threat if he or she is suspected of posing, or is known to pose: a threat to transportation or national security; a threat of air piracy or terrorism; a threat to airline or passenger security; or a threat to civil aviation security.

Another broad and vague requirement which can render an individual ineligible is the requirement of “good moral character.” This requirement only applies to airline transport pilots, the highest level of certification. If an individual in possession of this type of certificate is convicted of a crime, the FAA could re-examine him/her and determine that he/she is no longer of good moral character, and thus ineligible for certification.
Appendix

For your convenience, we have attached some forms that may be helpful to a professional license holder facing criminal accusations or charges. The attachments include:

“Criminal Self-Reporting Document” – The form that the Florida Department of Business and Professional Regulation uses for self-reporting criminal convictions. Real Estate Brokers should use this form to report criminal convictions.

“Notification Letter” – The form used by the Federal Aviation Administration for self-reporting “motor vehicle actions.” Pilots should use this form to report any “motor vehicle actions” as defined in the above informational packet.

“Updating Your Profile” – A document from the Florida Department of Health detailing how medical practitioners can update their practitioner profiles. Doctors and nurses should follow these instructions to update their practitioner profile as part of their reporting obligations following a conviction.
Note: Effective October 1, 2009, Section 455.227(1)(t), Florida Statutes, requires that a licensee must report to the board or, if there is no board, to the department within 30 days after a licensee is convicted or found guilty of, or entered a plea of nolo contendere (no contest) or guilty to, regardless of adjudication, a crime in any jurisdiction. If you previously reported a criminal conviction or plea to DBPR, you do not need to report it again.

1. Last Name (Surname), First Name, Middle Name

2. Date of Birth

3. Address

4. City

5. State

6. Zip

7. Telephone (Home)

8. Telephone (Cell)

9. E-mail

10. Profession(s) – list all DBPR licenses:

11. Professional license number(s) – list all DBPR license numbers:

   a.

   b.

   c.

12. Have you pled guilty or nolo contendere (no contest) to any crime in any jurisdiction? Please check one: □ Yes □ No

13. Have you been convicted or found guilty in any jurisdiction, regardless of adjudication, of any crime in any jurisdiction? Please check one: □ Yes □ No

14. For each crime to which you pled guilty or nolo contendere (no contest), or for which you were convicted or found guilty in any jurisdiction, regardless of adjudication, please state the following:

   a. Name of court:

   b. Address of court:

   c. Case number:

   d. Date of plea or conviction:

   e. Name of crime:

   a. Name of court:

   b. Address of court:

   c. Case number:

   d. Date of plea or conviction:

   e. Name of crime:

   a. Name of court:

   b. Address of court:

   c. Case number:

   d. Date of plea or conviction:

   e. Name of crime:

Note: If you have more than three convictions to report, please attach an additional sheet including the above information.

Date: ____________________________________________  Signature of Licensee: ________________________________

Mailing Address: CPA
Division of Certified Public Accounting
240 NW 76th Dr, Suite A
Gainesville, FL 32607

Mailing Address: Real Estate
Division of Real Estate
400 W. Robinson St., N801
Orlando, FL 32801

Mailing Address: All Others
Division of Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-0782
**Notification Letter**

*Use this document to report driver’s license actions and convictions only.*

*Arrests are only required to be detailed on your Application for Medical Certificate, FAA Form 8500-8.*

Date: ______________________

1. NAME: __________________________
   (Last Name, First Name, Middle Name or Initial)

2. DATE OF BIRTH: ______________________

3. CERTIFICATE #: ______________________

4. ADDRESS: __________________________
   (Street Number/Name, Post Office Box, RFD…etc.)
   __________________________
   (City, State, Zip Code)

5. TELEPHONE NUMBER: ______________________

6. Have you received an Alcohol and/or Drug Related Suspension/Revocation against your driver’s license?  
   □ Yes  □ No (Chemical Test Results, Refusal to Test)
   DATE OF SUSPENSION/REVOCATION: ______________________
   STATE HOLDING RECORD: ______________________
   DRIVER’S LICENSE NUMBER or ASSIGNED ID NUMBER IF NOT LICENSED IN THE STATE WHERE THE VIOLATION OCCURRED: __________________________

7. Have you been convicted of an alcohol and/or Drug related offense?  
   □ Yes  □ No (DUI, DWI, OUI, OWI, DWAI, etc.)
   DATE OF CONVICTION: __________________________
   STATE HOLDING RECORD: ______________________
   COURT LOCATION: __________________________

8. STATEMENT: (Is this action related to a previously reported action or is this a result of a separate “new” incident?)
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________

   (Signature)

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You may print this document and submit via:

**mail:** FEDERAL AVIATION ADMINISTRATION
SECURITY & INVESTIGATIONS DIVISION (AMC-700)
P. O. BOX 25810
OKLAHOMA CITY, OK 73125

**OR** fax: (405) 954-4989

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1. A Motor Vehicle Action is ANY alcohol and/or drug related administrative action taken against a person’s state driver’s license—(including suspensions, cancellations, revocations, or denials of a license to operate a motor vehicle), and/or conviction for an alcohol and/or drug related motor vehicle offense.
UPDATING YOUR PROFILE

Changes (excluding medical malpractice) can be made to your profile electronically, using your Account/User ID and Password at www.FLHealthSource.com. Any Medical Malpractice changes should be faxed to (850) 245-4791. If you have any questions regarding your Account/User ID and Password or about updating your profile, you can contact a Profiling Specialist at (850) 488-0595, extension 3 for assistance, Monday through Friday, from 8:00 a.m. until 5:00 p.m., excluding state holidays.

• Go to www.FLHealthSource.com
• Click on Licensee/Provider
• Click on Update Profile
• Login by entering your profession, Account/User ID, and Password
• Select “Update Personal Profile” on the left side of the page and review each section of the profile
• Once you have completed your review and made any necessary corrections, click on Confirm Changes
• The Practitioner Confirmation Page will display the information that will be published online, at which time you must confirm the profile again before the changes will be implemented

CONTACT INFORMATION

Web site: www.FLHealthSource.com
E-mail: Licensure_Services@doh.state.fl.us
Telephone: (850) 488-0595
Fax: (850) 245-4791
Mailing Address:
Department of Health
Division of Medical Quality Assurance
Bureau of Operations – Licensure Support Services Unit
4052 Bald Cypress Way, Bin #C-10
Tallahassee, Florida 32399-3260