

FLORIDA DEPARTMENT OF HEALTH DISCIPLINARY ACTIONS

Presented by:



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Today's Lecturers:

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OBJECTIVES

- Understand the disciplinary process used by the Florida Department of Health when investigating and prosecuting a licensure complaint;
 - Be aware of the discipline the Department of Health may impose against a physician along with the future implications that such discipline may create; and
 - Ultimately, understand how best to defend yourself against a such a licensure complaint.
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WHAT IS THE FLORIDA DEPARTMENT OF HEALTH (DOH)?

- The DOH is the state agency charged with "regulating healthcare practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public."



HOW IS A COMPLAINT FILED?

- Disgruntled patients or family members may write the DOH;
- Coworkers or competitors may make reports;
- Another state agency may make a complaint; or
- The DOH may initiate investigations.



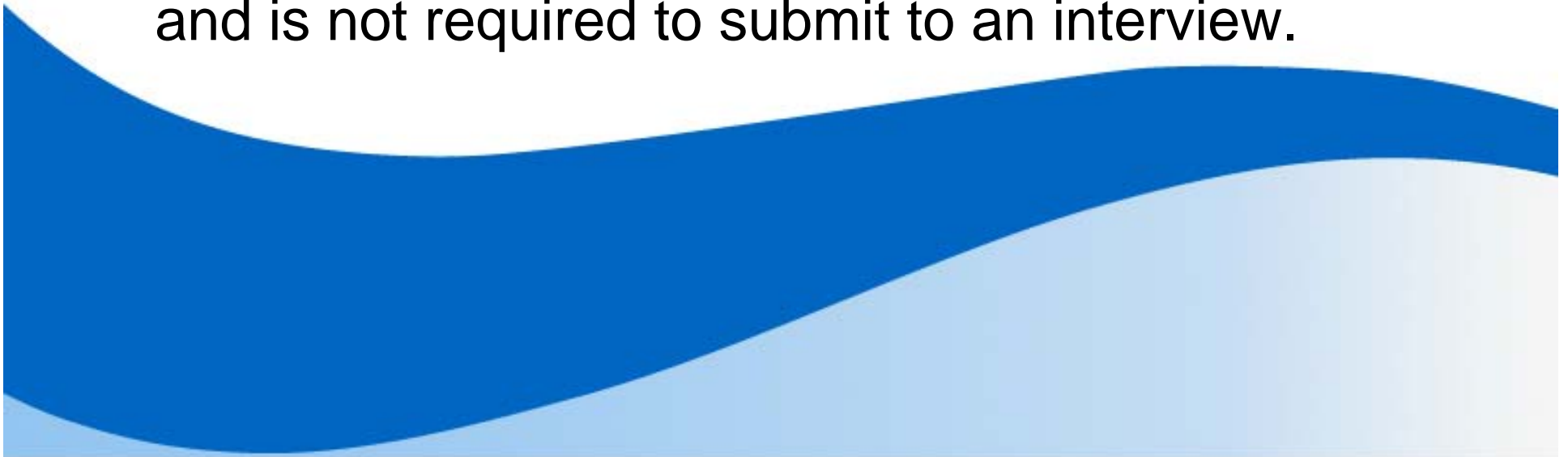
HOW IS A COMPLAINT FILED?

- The DOH is required to investigate any filed complaint if it is in writing and contains facts that show a violation of the laws governing osteopathic physicians.



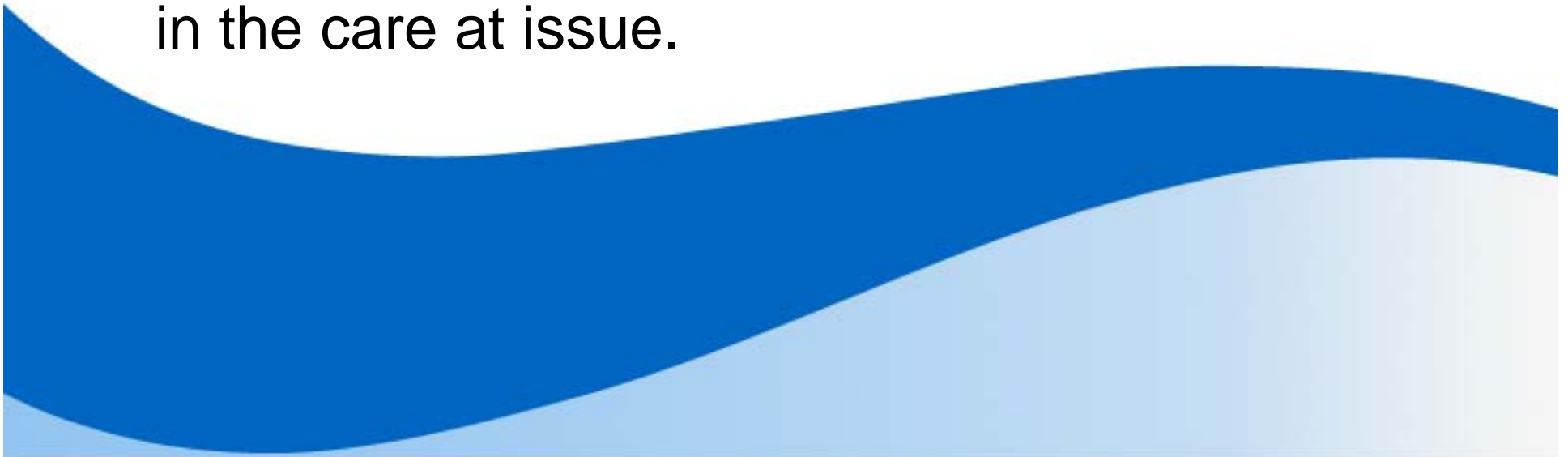
THE INVESTIGATION

- The physician will receive a notification letter from the DOH.
- **DO NOT SUBMIT A RESPONSE OR SPEAK TO THE INVESTIGATOR WITHOUT SEEKING LEGAL ADVICE FIRST!**
- A physician is not required provide a response and is not required to submit to an interview.



THE INVESTIGATION

- The DOH investigator has subpoena authority and may obtain information which might otherwise be confidential.
 - Patient files
 - Personnel files
- The investigator may interview others involved in the care at issue.



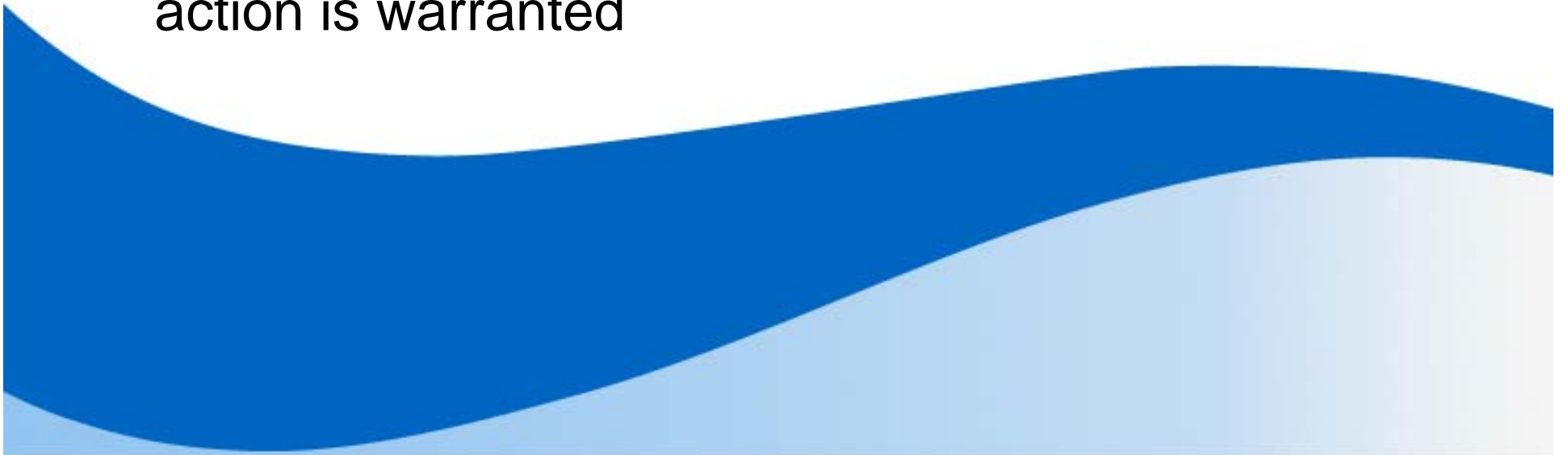
THE INVESTIGATION

- The investigation may last for many months, especially in complex cases.
- When it is complete, the investigator prepares a detailed report, which will be forwarded to a prosecuting attorney.



THE PROBABLE CAUSE PANEL

- Subcommittee of the Board of Osteopathic Medicine
- Reviews the investigation and any additional material that you have submitted
- Determines whether there is probable cause to believe that the physician has violated any Florida statutes or rules and whether or not disciplinary action is warranted



THE PROBABLE CAUSE PANEL

- If there is a finding of no probable cause, the case will be dismissed and the file is sealed.
- The contents of the file cannot be revealed or disclosed and the matter will remain confidential.



THE PROBABLE CAUSE PANEL

- If the PCP finds that there is probable cause, formal legal charges against the physician are prepared.
- This formal charge sheet is called an "Administrative Complaint."



THE ADMINISTRATIVE COMPLAINT

- A DOH Administrative Complaint resembles a lawsuit in a civil case.



THE ADMINISTRATIVE COMPLAINT

- The administrative complaint is usually accompanied by an EOR form which gives the physician three options:
 - Not dispute the material facts or allegations in the administrative complaint and attend an informal hearing;
 - Not dispute the material facts or allegations in the administrative complaint and waive his or her rights to be heard; or
 - Dispute the allegations and request a formal administrative hearing before an Administrative Law Judge.



INFORMAL HEARINGS


- Many health professionals believe that since it is called an "informal" hearing, there will be:
 - less technical procedure,
 - fewer legal technicalities, and
 - they will be able to argue the merits of their case before their peers who will give them a fairer hearing than they could get from a formal hearing.



**NOTHING COULD BE
FURTHER FROM
THE TRUTH.**



INFORMAL HEARINGS

- No issues of material fact to be determined.
 - You are, in effect, pleading guilty.
 - You are not allowed to introduce evidence showing you are innocent of the charges or argue you are not guilty.
 - The only issue at an informal hearing is the amount of discipline you will receive.
- 

FORMAL ADMINISTRATIVE HEARINGS

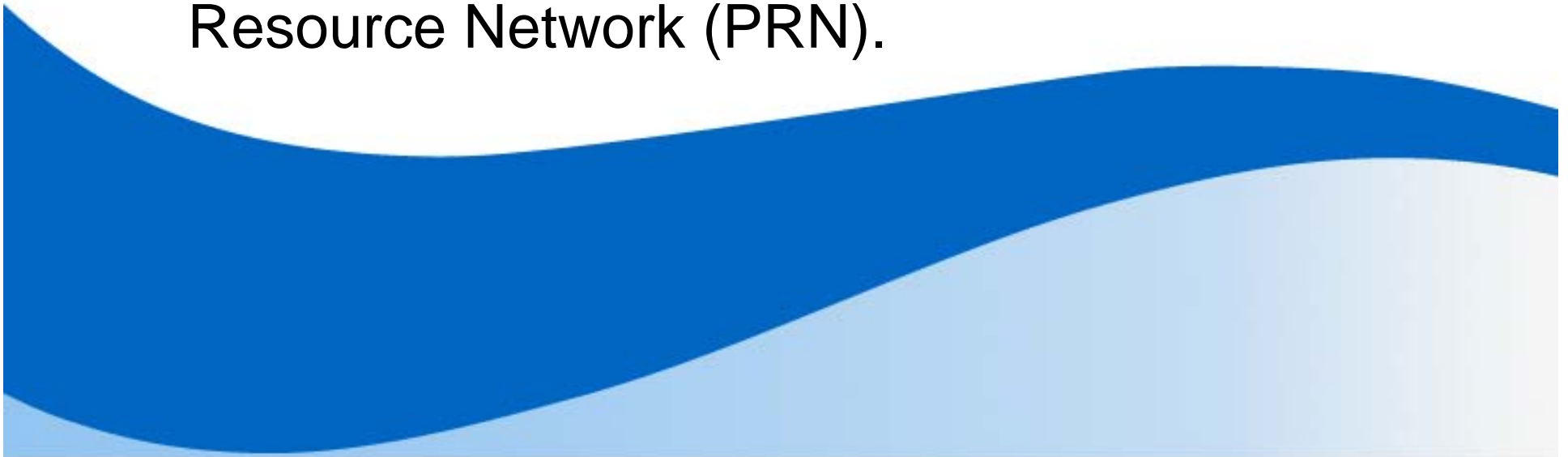
- The case will be forwarded to the DOAH to appoint an ALJ to try the issues.
- The ALJ will listen to the legal arguments and then prepare a recommended order.
- This will be submitted to the Board where a written final order will be entered.
- This final order may be appealed.



COLLATERAL EFFECTS OF DISCIPLINE ON YOUR MEDICAL LICENSE



1. A case involving an arrest or a conviction involving alcohol abuse or drugs will probably result in an emergency suspension order (ESO) until the entire licensure case is complete.
2. The physician may be required to be evaluated and probably enrolled in the Professionals Resource Network (PRN).



3. Action to revoke, suspend or take other action against the physician's clinical privileges and medical staff membership in hospitals, ambulatory surgical centers, skilled nursing facilities, etc.

4. Mandatory report to the National Practitioner Data Base (NPDB) which remains there for 50 years. (Note: Healthcare Integrity and Protection Data Bank or HIPDB recently folded into NPDB)



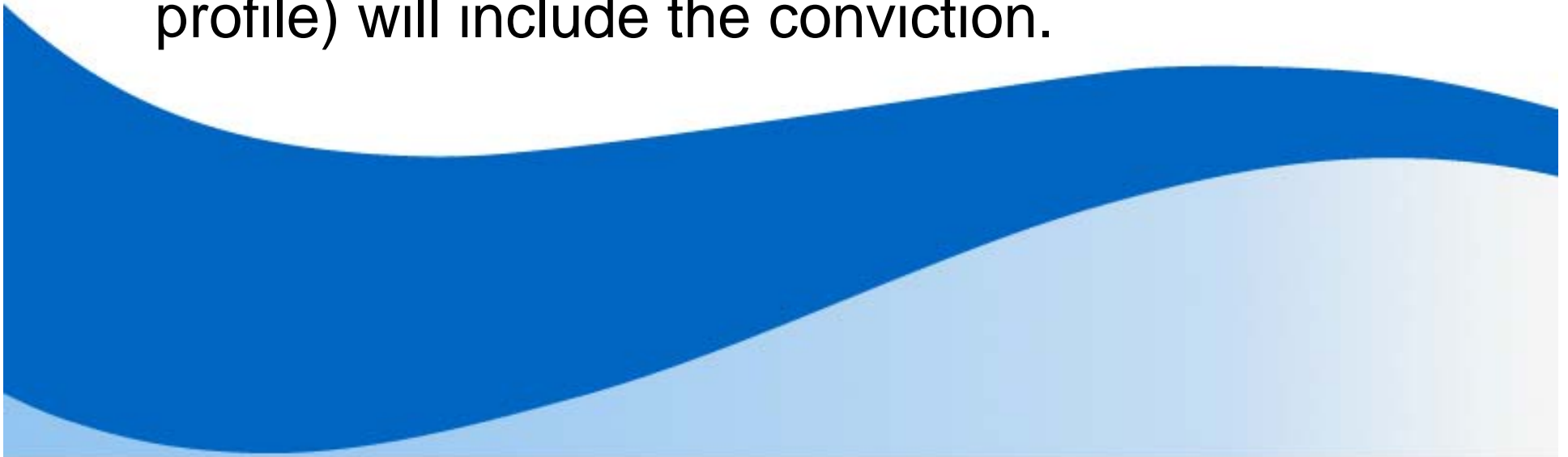
5. Must be included in the physician's DOH profile that is available to the public online, and remains for at least ten years.
6. Any other states in which the physician has a license will also initiate action against him or her in that jurisdiction.



7. The OIG of HHS will take action to exclude the physician from the Medicare Program. If this occurs the physician will be placed on the List of Excluded Individuals and Entities (LEIE).
8. If that occurs, the physician is also automatically "debarred" from participating in any federal contracting and is placed on the U.S. General Services Administration's (GSA's) debarment list.



9. The DEA will act to revoke the physician's DEA registration.
10. Third party payors will terminate the physician's contract or panel membership with that organization.
11. Any profile maintained by a national organization or federation (e.g., AMA physician profile) will include the conviction.



**THE 25 BIGGEST MISTAKES
PHYSICIANS MAKE AFTER
BEING NOTIFIED OF A
DEPARTMENT OF HEALTH
INVESTIGATION**



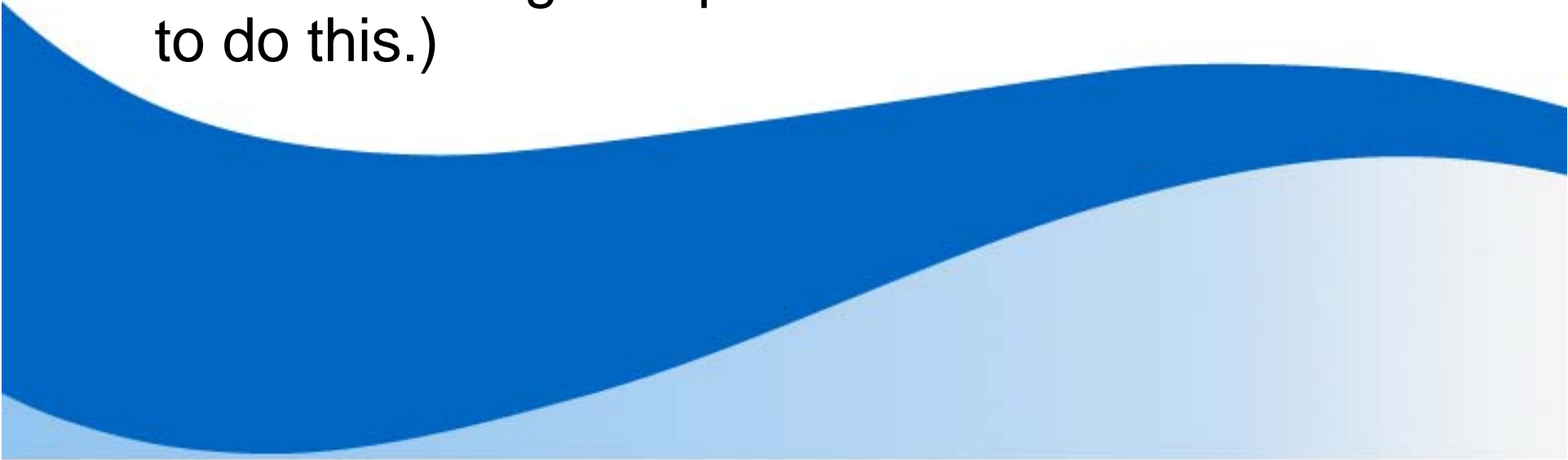
1. Failing to keep a current, valid address on file with the DOH, which may seriously delay the receipt of the Uniform Complaint, letters, and other important correspondence.
2. Contacting the DOH investigator and providing him/her an oral statement or oral interview.
(Note: There is no legal requirement to do this.)



3. Making a written statement in response to the "invitation" extended by the DOH investigator to do so. (Note: There is no legal requirement to do this.)
4. Failing to carefully review the complaint to make sure it has been sent to the correct physician (Note: Check name and license number).



5. Failing to ascertain whether or not the investigation is on the "Fast Track" which may result in an ESO suspending the physician's license until all proceedings are concluded.

 6. Providing a copy of the physician's CV or resume to the investigator because the investigator requested them to do so. (Note: There is no legal requirement to do this.)
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7. Believing that if they "just explain it," the investigation will be closed.

8. Failing to submit a timely objection to a DOH subpoena when there are valid grounds to do so.



9. Failing to forward a complete copy of the patient medical record when subpoenaed by the DOH investigator, when no objection is going to be filed.

10. Delegating the task of providing a complete copy of the patient medical record to office staff, resulting in an incomplete or partial copy being provided.



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

12. Believing that the investigator has knowledge or experience the health care matters or procedures being investigated.



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

14. Failing to check to see if their medical malpractice insurance carrier will pay the legal fees to defend them in this investigation.



15. Talking to DOH investigators, staff or attorneys, in the mistaken belief that they are capable of doing so without providing information that can and will be used against them.

16. Believing that because they haven't heard anything for six months or more the matter has "gone away." The matter does not ever just go away.



17. Failing to submit a written request to the investigator at the beginning of the investigation for a copy of the complete investigation report and then following up with additional requests until it is received.

18. Failing to wisely use the time while the investigation is proceeding to perform tasks that may assist defending the case.



19. Failing to exercise the right of submitting documents, statements, and expert opinions to rebut the findings made in the investigation report before the case is submitted to the PCP for a decision.

20. Taking legal advice from colleagues regarding what they should do (or not do) in defending themselves in the investigation.



21. Retaining "consultants" or other non-lawyer personnel to represent them.

22. Believing that the case is indefensible so there is no reason to even try to have it dismissed by the Probable Cause Panel.



23. Attempting to defend themselves.

24. Believing that because they know someone on the Board, with the DOH or a state legislator, that influence can be exerted to have the case dismissed.



25. Failing to immediately retain the services of a health care attorney, who is experienced in such matters, to represent them, to communicate with the DOH investigator for them, and to prepare and submit materials to the PCP.



QUESTIONS?





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