AUDITOR GENERAL

WILLIAM O. MONROE, CPA

DEPARTMENT OF HEALTH

HEALTH CARE PRACTITIONER DISCIPLINARY PROCESS

Operational Audit

SUMMARY

Chapter 2003-416, Laws of Florida, addressed Florida's medical malpractice insurance crisis and strived to make quality health care available to Florida's citizens. Provisions of the law required changes in the health care practitioner disciplinary process within the Department of Health and the Division of Administrative Hearings. For example, the law authorized the Department to issue citations that do not constitute discipline, and required the Division of Administrative Hearings to designate at least two Administrative Law Judges (ALJs), with appropriate health care law experience or certification, to specifically preside over Department of Health cases. Further, the law directed the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit of the Department of Health's health care practitioner disciplinary process. The audit primarily covered the period July 2002 through January 2004, and disclosed:

Auditor General Findings

Finding No. 1: The Department often exceeded the six-month statutory timeframe for complaint investigation and determination of the existence of probable cause. In some instances, the timeframe to close cases ranged from 1 to 6 years after the complaint date.

Finding No. 2: Enhanced coordination is needed between the Department and the Agency for Health Care Administration to provide a more efficient process for reviewing and investigating adverse incident reports.

Finding No. 3: Department use of non-disciplinary citations has not decreased the rate at which practitioners contest Department citations or lessened the length of time required to issue citations.

Finding No. 4: The Division of Administrative Hearings had not documented the criteria used to evaluate and select ALJs assigned to Department of Health cases. Additionally, as of March 2004, none of the assigned ALJs had attained certification in health care law.

Finding No. 5: The Department did not properly record practitioner disciplinary fines or costs awarded to the State in its licensing system or in its accounting records.

OPPAGA Findings

Finding No. 6: The Department has a reasonable process for verifying some profile information, but not verifying certain key information limits its usefulness to consumers.

Finding No. 7: Some profile information may be confusing and many profiles are missing required information which may lead to consumer confusion and hinder the ability to make informed choices regarding practitioners.

Finding No. 8: In the absence of a rule specifying which criminal convictions relate to a practitioner's ability to competently practice, the Department has broadly interpreted statutes and established a policy to include all criminal history information in the profiles. Additionally, expunging disciplinary histories at ten years and inconsistent reporting of bankruptcies may limit consumers' ability to make appropriate decisions regarding the selection of a health care practitioner.

BACKGROUND

The seriousness of health care practitioner discipline cases varies from minor infractions, such as failure to include a license number in an advertisement, to the severe, such as failure to meet standard of care causing patient death. Consequently, cases must be handled on a case-by-case basis to help ensure the health and safety of Florida citizens while protecting the rights of practitioners. However, every case has certain common elements including intake of complaints, investigation, and when applicable disciplinary action, prosecution, and hearings before the Division of Administrative Hearings. The Department's practitioner disciplinary process is conducted by three units:

- The Consumer Services Unit (CSU) receives complaints, performs initial complaint reviews, determines legal sufficiency, and issues citations.
- The Investigative Services Unit (ISU) investigates complaints.
- The Prosecution Services Unit (PSU) makes recommendations regarding probable cause to the boards and councils and represents the Department during the prosecution of practitioners.

The Department has 28 boards and councils that consist of members appointed by the Governor from the respective professions and consumer representatives. These professional boards and councils are responsible for reviewing disciplinary cases, determining whether probable cause exists, and if so, deciding on the penalties to be assessed against a practitioner.

The Department received 48,926 complaints during the period July 2002 through January 2004. Of those complaints, 23,223 (48 percent) were closed with no violation found, and 17,188 (35 percent) were closed for various other reasons (e.g., insufficient evidence, duplicate complaint, disciplinary action ordered). For cases that were closed with disciplinary actions ordered, Exhibit 1 provides a Summary of Violations by Type of Discipline.

FINDINGS AND RECOMMENDATIONS

Auditor General Findings

Finding No. 1: Complaint Resolution Timeliness

Florida law[1] requires the Department to complete a report of initial investigative findings and recommendations concerning the existence of probable cause within six months of receipt of a complaint. Our review of 95 complaints disclosed 29 (31 percent) in which a determination regarding whether to recommend probable cause was not completed within the six-month statutory timeframe. Additionally, our tests of 50 closed cases disclosed 41 cases that were not closed within one year from receipt of the complaint. Of these 41 cases, 29 were closed within 2 years, 9 were closed within 3 years, and 3 took 3 to 6 years to close. The majority of cases were delayed within the Department's PSU.

According to Department personnel, the timeliness of disciplinary resolutions is affected by the highly complex nature of the cases, the PSU policy to emphasize quality, and attorney turnover.

Recommendation: The Department should evaluate its investigative and prosecutorial processes, particularly within the PSU, to determine whether efficiencies could be achieved. For example, the Department may consider:

- **Establishing attorney positions that specialize in certain types of cases (e.g., impaired practitioners) across boards.**
- **Establishing a multi-track system for complaints based on the severity of the allegation and complexity of the case.**

Finding No. 2: Adverse Incident Reporting

Various statutes describe specific situations that constitute an adverse incident and require health care facilities (e.g., nursing homes, assisted living, hospitals, etc.) to report such incidents to the Agency for Health Care Administration (AHCA). AHCA is to review all adverse incident reports and determine whether any of the incidents potentially involved conduct by a health

[1] Section 456.073(2), Florida Statutes.

care professional subject to disciplinary action by the Department and applicable boards. Upon receipt from AHCA of the name of a person whose conduct may constitute grounds for disciplinary action, the Department must investigate and determine if action is warranted.

AHCA receives the adverse incident reports in either electronic or hard copy form. AHCA personnel review the reports and enter the report information in the facility regulation database (LicenseEase). To notify the Department of adverse incidents, AHCA provides the Department with hard copies of the reports, as well as access to LicenseEase. Department personnel review all adverse incident reports and, since LicenseEase and the Department's practitioner regulation database (PRAES) do not interface, enter adverse incident information into PRAES. For the period July 2002 through January 2004, the Department's CSU reviewed 23,448 adverse incident reports, of which 20,218 were closed with no violation found by the CSU. In many cases, the incidents described in the reports did not meet the statutory requirements of what constitutes an adverse incident. The applicable Boards found probable cause in only 55 cases (.23 percent).

Department personnel indicated that as of April 2004, the CSU had approximately 1,950 adverse incidents pending review and received approximately 400 additional incident reports each week. The Department has hired 3.5 additional staff to assist with the workload.

Additionally, while performing research for this audit, we noted several statutes related to the health care regulatory function that appeared to not have been appropriately updated when the function was transferred from AHCA to the Department. For example, Sections 400.147(7) and 400.423(7), Florida Statutes, provide AHCA with the authority to investigate reported incidents; however, the statutes do not expressly provide the Department authority to investigate adverse incident reports.

Recommendation: Given the increasing volume of adverse incident reports, and that many adverse incident reports are found not to involve a violation that warrants disciplinary action, the Department should work with AHCA to develop a coordinated review and investigation process that will promote an efficient and effective disciplinary process. Specific actions should include:

- **Determining whether LicenseEase can be modified to identify those incidents that relate to possible practitioner violations. If so, AHCA personnel could flag those incident reports containing possible practitioner violations and the Department could then concentrate its efforts on those incidents.**
- **In developing the replacement system for PRAES, the Department and AHCA should determine whether the functionality of the two systems can be made to interface with each other to eliminate duplicate data entry.**

Additionally, the Department should work with AHCA to ensure facilities only prepare adverse incident reports that meet statutory requirements. For example:

- **Assist in identifying issues to incorporate in facility training curriculum.**
- **Identify facilities that submit egregious numbers of adverse incident reports that do not meet statutory criteria for reporting and consider whether such facilities or their health care professionals (e.g., nursing home administrators) should be disciplined for not adhering to the legal requirements.**

The Department should also identify any laws that do not adequately reflect the current health care regulatory environment and work with the Legislature for appropriate statutory updates.

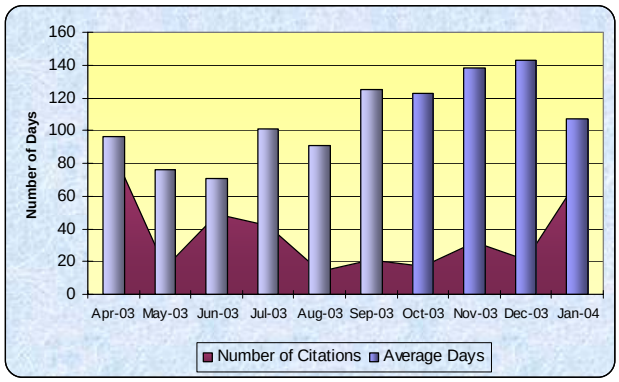
Finding No. 3: Non-Disciplinary Citation Issuance

In an attempt to expedite the disciplinary process, Chapter 2003-416, Laws of Florida, authorized the Department to issue, beginning September 15, 2003, non-disciplinary citations for certain infractions. Florida law[2] provides that if the subject does not contest the matter in the citation within 30 days after the citation is served, the citation becomes a public final order and does not constitute discipline for a first offense, but does constitute discipline for second and subsequent offenses.

The use of non-disciplinary citations had not, as of January 2004, decreased contested citations. During the period July 1, 2002 through September 14, 2003, 37 percent of citations issued were contested.

[2] Section 456.077, Florida Statutes.

From September 15, 2003, through January 31, 2004, 36 percent of non-disciplinary citations issued were contested. Additionally, as depicted in the following chart, the Department's implementation of non-disciplinary citations had not lessened the length of time required to issue citations.



Also, our review of 36 of 140 citations (16 disciplinary and 124 non-disciplinary) issued by the Department between September 15, 2003 and January 31, 2004, disclosed:

- All 16 disciplinary citations were improperly issued to practitioners with no prior offenses.
- One practitioner who received a non-disciplinary citation had a prior violation and was, therefore, not eligible to receive a non-disciplinary citation.

In response to our inquiries, Department personnel indicated that the final orders would be vacated and the appropriate types of citations issued for the specific instances noted. They also indicated that staff received additional training to prevent further occurrences.

Recommendation: The Department should further evaluate its process for issuing non-disciplinary citations, including those that are contested, to identify possible policy or statutory changes to increase the efficiency and effectiveness of the process. For example, as depicted in Exhibit 1, violations related to statute or Board rule, continuing education, and the failure to perform legal obligations constitute the majority of non-disciplinary citations. The Department may consider initiating information or training campaigns that could assist practitioners in preventing such violations from occurring.

Finding No. 4: Administrative Law Judges

The Division of Administrative Hearings (DoAH) provides a uniform and impartial forum for the trial and resolution of disputes between private citizens and organizations and agencies of the State, including complaints processed by the Department against health care practitioners. DoAH employs ALJs that are headquartered in Tallahassee and travel throughout the State to conduct hearings. DoAH held 42 hearings relating to health care practitioners during the 2002-03 fiscal year.

Chapter 2003-416, Section 32, Laws of Florida, required DoAH to designate at least two ALJs to specifically preside over actions involving the Department or boards within the Department. Each designated judge is to have legal, managerial, or clinical experience in issues related to health care or be certified in health care law from The Florida Bar. Subsequent to enactment of Chapter 2003-416, Laws of Florida, DoAH designated seven ALJs to hear cases involving the Department or its boards. However, our review of DoAH's designations disclosed:

- The DoAH did not adequately document the criteria used to evaluate and select the ALJs designated to preside over Department of Health cases. While a listing provided by DoAH indicated that the 7 ALJs had 6 to nearly 16 years of experience hearing health care related cases, during the 2-year period prior to September 15, 2003, each ALJ presided over an average of 1.5 to 7 health care practitioner disciplinary cases per year, with one ALJ not presiding over any cases during that period.
- In November 2003, DoAH informed the designated ALJs that they would be expected to seek Florida Bar certification in health care law. As of March 2004, none of the ALJs had obtained certification. Additionally, one of the requirements of certification is to practice health care law at least 40 percent of the time. Based on the number of designated judges and the number of health care related cases presented to DoAH, it does not appear that any of the designated ALJs will be able to qualify for certification.

The Health Care Practitioner Workgroup was formed pursuant to Chapter 2003-416, Laws of Florida, and as part of its mandate, addressed the designation of specific

ALJs to hear Department of Health cases. In its January 2004 report, the workgroup indicated that ALJs lacked sufficient health care expertise to make standard of care determinations, that ALJ decisions were inconsistent, and that DOAH's dismissal rate of charges relating to standard of care was too high.

Recommendation: DoAH should ensure that designated ALJs have appropriate experience or certification in health care law and that the criteria upon which designations are based are adequately documented. Additionally, DoAH should reevaluate the need for seven ALJs to preside over health care practitioner disciplinary cases. The designation of fewer ALJs could help ensure consistency among cases, as well as, assist judges in meeting work requirements for certification.

Finding No. 5: Recording Fines and Costs

Upon execution of a final order in which fines or costs are awarded to the State, the Department enters the data into PRAES where the ordered restitution and other disciplinary actions are monitored by compliance officers. As of May 2004, outstanding fines and costs totaled $1,064,229. Our review of the recording of fines and costs disclosed the following:

- In 2 of 34 cases reviewed where fines and costs were ordered, we noted that the ordered fines and costs had not been recorded in PRAES. As a result, the practitioners' failure to comply with their discipline had not been timely detected and further pursued.
- Generally accepted accounting principles require that accounts receivable be established at the point when the restitution can be reasonably determined and there is a legal obligation for payment. The Department does not currently have accounts receivable established within their Florida Accounting Information Resource (FLAIR) accounting records for fines and costs. Without properly accounting for these receivables, the Department has limited assurance that subsequent collections are appropriately accounted for or that uncollectible accounts are written-off upon seeking proper approvals.

Recommendation: We recommend that the Department ensure that the FLAIR accounting records properly reflect accounts receivables for outstanding fines and costs and that information in PRAES and FLAIR is periodically reconciled.

OPPAGA Findings

Exhibit 2 provides the findings and recommendations that resulted from work performed by OPPAGA. OPPAGA's portion of this project was conducted in accordance with applicable evaluation standards. The project was conducted by Mary Alice Nye, Ph.D. and supervised by Nancy Dufoe.

Exhibit 1
Summary of Violations by Type of Discipline
Complaints Closed During the Period July 2002 through January 2004

Violation	Citation	Citation - Non Disciplinary	Fine	Fine and Letter of Concern	Letter of Concern	Obligations Imposed	Probation	Reimbursement of Costs	Revocation	Suspension	Suspension - Penalty Stayed	Voluntary Surrender	Probable Cause Found, Case Dismissed Without Prosecution	Dismissed - Other	Total
Violate Statute or rule of Board	189	55	10		2	32	4		8	9	3	23	1	6	342
Continuing education violation	159	83			1	13			1	4	1	1		1	264
Failure to perform legal obligations	144	34	3		1	12			5	6		6		1	212
Impaired from alcohol, drugs, or other mental or physical condition						16	2		4	27		57		1	107
Prescribing or dispensing outside professional practice		1				21	4			14		42		3	85
Practice below prevailing community or peer standards	3	1	1			30	2		2	5		11		4	59
Gross negligence, incompetence, or misconduct	1	1	1			14	3		2	6		22		1	51
Failure to include license number in advertisements	28	5	11									1			45
Violate lawful order of Board		7				6	4	1	7	8	2	6		3	44
Convicted of crime related to practice			3			9	5	1	7	6		11			42
False/misleading advertising	23	10	2											4	39
Make, sign, or file a false report	3		1			14	1		1	4		12			36
Failure to notify Board of address change	17	9	3			2						1			32
License disciplined by Federal or other state authority	1	9	1	1		4	1		1	6		1			25
Obtain license through fraud/error	7	1				6			2	1	1	2		1	21
Failure to notify of discipline by another state	5	7		1	1	1				1					16
Failure to comply with profiling and credentialing	2		3			7				1	2				15
Misfill prescription		1				10								1	12
Failure to keep adequate professional records		1				5	2			1		2			11
Gross or repeated malpractice			1			9						1			11
Sexual misconduct						1			5	1		4			11
Use of professional designation without a license			5					2		1				2	10
Aiding, assisting, procuring, advising, or permitting unauthorized practice						1	3	1	2			2			9
Deceptive or fraudulent representations			1				1		1			6			9
Fraud/deceit in practice of profession							1		1			7			9
Practice with an inactive or delinquent license	4		1			1			1						7
Unlicensed professional establishment			3					1			1	1		1	7
Fail to follow Federal or local regulations	1	1			1	1						2			6
Failure to use disclaimer required by Section 456.062, Florida Statutes	1	5													6
Delegating professional responsibilities to unqualified, unlicensed person						1	2			1		1			5
Failure to make records available to client, patient, or legal representative	2					3									5
Failure to report violation		1				2	1			1					5
Illegal corporate practice														5	5
Influence for financial gain									3			2			5
Practice beyond scope of license						2				1		1		1	5
Sell or dispense prescription drugs without a prescription						1						4			5
First sanitation violation			1			2						1			4
Failure to maintain a proper establishment			1									2			3
Knowingly employed an unlicensed person							1	1				1			3
Disclosure of client information						1								1	2
Failure to display license, registration, or required sign	1						1								2
Failure to respond to insurance audit		2													2
Insurance fraud												2			2
Discipline by other municipal or local regulatory agency					1										1
Failure to disclose required information									1						1
Illegal bonus/kickback/split						1									1
Making a false oath									1						1
Medication errors						1									1
Nursing home violating health standards														1	1
Perform unauthorized services						1									1
Provide false expert opinion		1													1
Self prescribing, dispensing, or administering							1								1
Sell sample packages of prescription drugs							1								1
Standard of care - Patient abandonment	1														1
Total	592	235	52	2	7	230	40	7	55	104	10	235	1	37	1,607

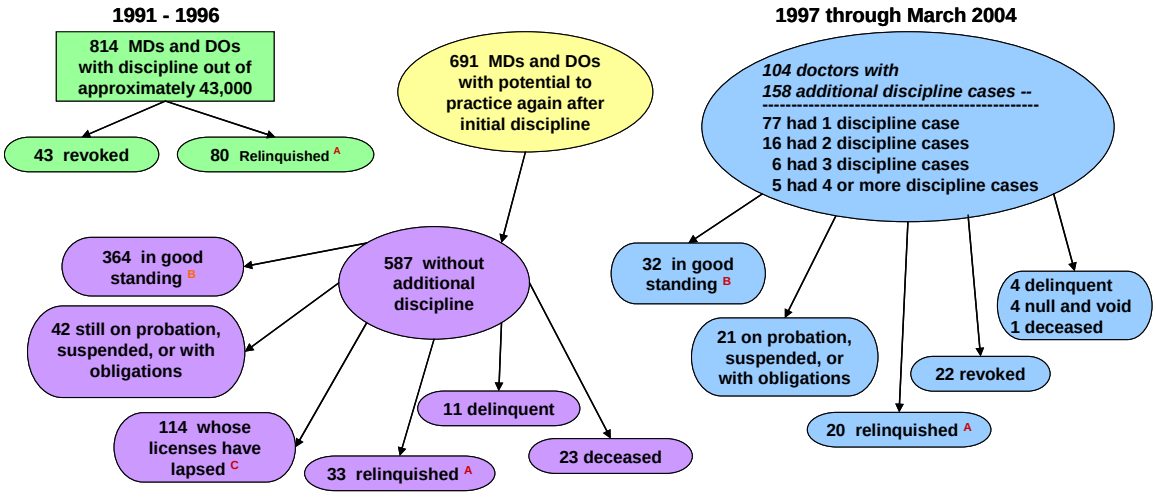
Source: Department PRAES

Exhibit 2

Oppaga
Findings and Recommendations

PRACTITIONER DISCIPLINE DATA ANALYSIS

An important element of the Department's practitioner regulation process is the enforcement of disciplinary action. One of the desired outcomes of the process is for practitioners to learn from their mistakes and make needed changes, thus avoiding future disciplinary action. To obtain information on whether the program's regulatory process achieves this outcome, we analyzed data on practitioner compliance with disciplinary orders.[1] Specifically, we examined whether the 814 medical doctors and doctors of osteopathic medicine that were disciplined between 1991 and 1996 had received additional disciplinary action in subsequent years.[2]



A Licensees that originally relinquished, did so in lieu of prosecution. Those who relinquished without additional discipline may have had additional complaints that persuaded them to relinquish or may have just decided to quit practicing.

B Complied with discipline and able to practice without restriction.

C May or may not have complied with original discipline. Would need to apply for new license.

As shown above, 123 of the 814 doctors had their licenses revoked or voluntarily relinquished their licenses after the disciplinary action published in the Agency for Health Care Administration report. Of the remaining 691 doctors, 85 percent have avoided any additional disciplinary action. However, the board has taken additional disciplinary action against 104 doctors (15 percent) since 1996. Most of the practitioners only had one additional discipline case, but 11 practitioners had three or more discipline cases against them, and 38 percent were disciplined for failing to comply with their original board orders. In some cases, the failure to comply appeared relatively minor, such as failing to pay required fines.[3] However, some cases were more serious, such as 5 practitioners failing to comply with orders requiring them to have a supervising physician monitor their practices. These results are similar to findings from national studies, which indicate that a small number of doctors are responsible for a high proportion of costly medical errors.

[1] This data analysis has limitations because it covers only 2 of the 37 health care professions regulated by the Medical Quality Assurance Program. However, more comprehensive information was not available. The Department's Disciplinary Tracking Unit does not calculate compliance rates for the professions or monitor whether practitioners have avoided additional disciplinary action.

[2] April 1997, Florida Report on Physician Discipline and Malpractice, the Agency for Health Care Administration.

[3] Recent changes have improved practitioner's compliance in paying money owed from fines. In February 2003, the Department of Health contracted with a collection agent to collect unpaid fines. In addition, the Board of Medicine now includes language in final orders that states practitioners must cease to practice if their fines are not paid within given time frame.

PRACTITIONER PROFILING

The 1997 Legislature directed the Department of Health to compile information on certain health care practitioners and make the information available to the public beginning in 1999. The Department has developed a profile system that provides consumers with information to help them choose a health care practitioner or find out more about a current practitioner. The system provides individual profiles on practitioners in five health care professions: physicians, podiatrists, chiropractors, osteopathic physicians, and advanced registered nurse practitioners. Each profile contains the following information about each practitioner:

- education and training, including other health related degrees, professional and post graduate training specialty;
- current practice and mailing addresses;
- staff privileges and faculty appointments;
- reported financial responsibility;
- any legal actions taken against the practitioner;
- any board final disciplinary action taken against the practitioner; and
- any liability claims filed against the practitioner which exceed $100,000.

In addition to consumers, other groups such as attorneys, insurance companies, and pharmacies also use the profile system. For example, a pharmacy might check the profile system before filling a prescription to ensure that a doctor's license is current, and an attorney could review background information before questioning a doctor involved in litigation.

The Department has implemented a number of enhancements to the profile system as directed by the 2003 Legislature. Beginning in September 2003, profiles include narratives that explain to consumers in plain language the events that resulted in a practitioner's discipline. Profiles also include disciplinary action taken by hospitals and other related facilities.[4]

Finding No. 6: The Department has a reasonable process for verifying some profile information, but not verifying certain key information limits its usefulness to consumers.

To be useful to consumers, practitioner profile information needs to be accurate, complete, and easily understandable. Although absolute accuracy may not be possible, consumers need to be able to rely on and understand the information contained in the system in order to make the best decisions for their health care.[5]

The Department takes steps to ensure that key licensure information in the profile system is reasonably accurate. For example, the Department requires practitioners to provide transcripts verifying their education and training, which must be sent directly from medical and other educational institutions. The Department also conducts criminal background checks of licensure applicants by obtaining criminal history information from the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The Department also conducts statewide criminal history checks when practitioners renew their licenses every two years, and the data system automatically updates profiles for practitioners subject to professional discipline. To verify the accuracy of information applicants provide on disciplinary action from other states, the Department uses information from the national practitioner data bank. However, much of the profile information is self-reported, with no Department verification. For example, information about hospital staff privileges and how the practitioner complies with financial responsibilities in case of a malpractice action is not verified for all five profiled professions.[6,7] Also, while practitioners are required by law to report any changes in their profile information, the

[4] Ambulatory centers, nursing homes, HMOs, and walk-in clinics.

[5] Florida's practitioner profile system is only one of many sources of information consumers have available for finding out about practitioners. Along with informal sources such as other health care professionals, there are other on-line sources that provide information, such as the American Medical Association.

[6] Hospital staff privileges, also known as clinical privileges, authorize health care practitioners to provide certain patient care services at specific facilities consistent with their licensure, education, and expertise.

Department does not verify these changes. While practitioners must report changes such as additional education, specialty certifications, or changes in their hospital staff privileges, the Department posts this information and does not check to ensure that the new information is accurate.

Department personnel estimate that verifying all information currently in the profiling system would require an initial cost of $5.55 million, plus an additional $1.85 million annually to keep the information updated for these licensees.[8] Department personnel also indicated that it would be difficult to determine whether practitioners fail to report changes in their profile information, such as modifications in their practice or hospital privileges. Since the Department does not automatically receive notification of changes in privileges or certifications from other sources, ongoing verification would have to be conducted to determine whether profile information should have been modified.

Although Department personnel agreed that the accuracy of self-reported information in the system was unknown, they believe that the consequences to practitioners are sufficient to reduce the likelihood that they will provide false information or fail to update their profiles. Practitioners can be disciplined by their respective boards for providing false or inaccurate profile information. However, consumers attending Department-sponsored focus groups in early 2004 expressed concern about the reliability of self-reported information.

Recommendation: While it would be costly to ensure complete accuracy of all data elements in the profiles, we recommend the Department take additional steps to verify key licensure information. Specifically, we recommend that the Department verify two key pieces of information both at initial licensure and at renewal: financial responsibility and hospital staff privileges. Financial responsibility data is critical as more doctors may choose to practice without malpractice insurance, and knowledge that a doctor may lack malpractice insurance is important to consumers. Information on hospital privileges is also important to consumers, who may wish to take this into account when choosing a doctor. The Department could verify this information in several ways. It could require practitioners to have their insurance carriers and hospitals submit this information to the Department, or the Legislature could require the carriers and hospitals to provide the information directly. As another alternative, the Department could add information to the profiles that would enable consumers to verify information such as hospital privileges, by providing hospital telephone numbers or links to the hospital websites. These changes have minimal cost and would give consumers more confidence in the reliability and usefulness of profile information.

Finding No. 7: Some profile information may be confusing and many profiles are missing required information.

Practitioner profile Web pages contain information on, among other things, a practitioner's license status, license activity, date the practitioner became licensed, criminal history, and bankruptcy information. Our review of practitioners' profiles disclosed instances where the information could be improved to prevent consumer confusion and provide a more complete and accurate profile:

- "License Status" displays whether the practitioner's license to practice is revoked, voluntarily surrendered, or restricted. In contrast, "License Activity" simply identifies whether the license is active or inactive (e.g., practitioners moving out of state might apply for inactive status to maintain their license in case they return to practice in Florida). Currently, the Web page displays license status and license activity side-by-side. Depending on the licensee's status, these two labels can appear contradictory. For example, a practitioner can appear as Suspended/Active or Revoked/Active. Consumers and stakeholders we interviewed at recent focus group meetings expressed confusion about what these terms meant.[9] During our fieldwork, Department personnel began taking steps to resolve the confusion between license status and license activity by eliminating license activity

[7] For example, staff for the Board of Medicine and Board of Osteopathic Medicine verify staff privileges but do not verify financial responsibility. The Board of Podiatric Medicine verifies financial responsibility but not staff privileges.

[8] Based on 74,000 licensees at an initial cost of $75 each and maintenance cost of $25 each. The department adds approximately 3,000 new licensees to the profile system annually, which are not included in the cost estimates.

[9] The Department contracted with a private vendor to conduct focus group meetings during April and May 2004.

for certain practitioners (those that relinquish their licenses, those whose licenses are revoked, those whose licenses have lapsed and are null and void, and those who are deceased).

- Although state law requires practitioners to report the date they first became licensed, many profiles lack this data. As a consequence, consumers who wish to consider the length of practice when selecting health care providers are unable to determine the information without searching the practitioner's education information to estimate when they were first licensed. Analysis of the profile database showed that 16,069 practitioners failed to provide their date of initial licensure; 64 percent of these persons were medical doctors. Although the Department may take disciplinary actions against practitioners who fail to provide such information, approximately 88 percent of the profiles with missing information were practitioners whose license fees are current and who are otherwise in good standing to practice in the state of Florida. Department personnel indicated that they will contact these practitioners to obtain the missing information, and will take disciplinary action against any practitioners who fail to provide the required data.

Recommendation: We recommend Department personnel periodically review information contained in the practitioners' profiles to ensure that the information is complete and presented in a clear, easy-to-understand format. We also recommend that the Department consider modifying the design of profiles to include the date a license was suspended or revoked. A date-specific revocation or suspension would help consumers and other users of this information, such as insurance companies that might need to pay claims submitted after a revocation, better identify the license status of Florida's health care practitioners.

Finding No. 8: Profile information related to criminal convictions, professional discipline, and financial proceedings needs improving.

Practitioner profiles contain critical information about practitioners that have criminal convictions, professional discipline, and bankruptcies. Our review of Department policies for posting information on criminal histories and disciplinary proceedings disclosed:

- Section 456.041, Florida Statutes, requires the Department to report criminal conviction information that directly relates to the practitioner's ability to competently practice his or her profession. However, in the absence of a rule specifying which criminal convictions relate to a practitioner's ability to competently practice, the Department has broadly interpreted this statute and established a policy of including all criminal history information in the profiles which is broader than statutory intent.[10] Department personnel indicated that they report all criminal convictions on practitioner profiles for two reasons. First, it is too difficult to determine which criminal convictions do not relate directly to the practitioner's ability to practice. For example, a drug abuse problem and resulting conviction might clearly affect the quality of care provided. In contrast, opinions might differ as to whether a charge such as reckless driving or domestic abuse relate to a doctor or nurse's ability to practice. Second, classifications of crimes vary from state to state. Therefore, crimes considered minor in other states could be classified as serious in Florida. Representatives for health care practitioner associations asserted that the Department's practice results in posting irrelevant information which is detrimental to practitioners' reputations. They also assert that the Department's actions constitute non-rule policy making.

- The Department expunges discipline histories from profiles after 10 years. As a result, consumers reviewing a profile of a practitioner who had disciplinary actions in 1993 and 1996 would only see the 1996 disciplinary action and could conclude the practitioner had only one action taken against his license rather than two. Department personnel developed the policy to purge discipline information after 10 years because licensing statutes require new applicants to report any disciplinary action taken against their licenses in the last 10 years. However, the policy to purge discipline information is inconsistent with the Department's policy of maintaining information on all criminal convictions for the life of the profile. We also noted that the Federation of State Medical Boards' profile policy does not specify a time limit on discipline information. Also, Texas recently changed its policy and eliminated a 10-year time limit on discipline history.

- Bankruptcy information can be important to consumers because the serious financial pressures that go along with a bankruptcy might affect a practitioner's ability to practice. Serious financial pressures might also cause practitioners to cut corners in the quality of the services they provide or affect whether practitioners are covered by

[10]Department officials said that they lack specific statutory authority to establish a rule specifying which criminal convictions relate to a practitioner's ability to competently practice.

malpractice insurance. The 2003 Legislature required the program to report bankruptcies on practitioner profiles if the department has such information. [11] However, the law does not currently require practitioners to report bankruptcies to the Department. As a result, the Department receives bankruptcy information only on an ad-hoc basis, such as when the practitioner lists the department as a creditor during a bankruptcy proceeding. Otherwise, the department does not have a means to determine whether a bankruptcy had occurred. As a result, the profiles contain incomplete information and consumers might conclude incorrectly that a practitioner had not declared a bankruptcy because no record of the filing was posted on the profile.

Recommendation: We recommend that the Legislature consider amending the profile statute to address the reporting of criminal history information. The Legislature could revise statutes to:

- **require practitioner profiles to include all criminal convictions;**
- **grant specific rule-making authority to the Department to specify which criminal convictions relate to a practitioner's ability to competently practice; or**
- **incorporate the Federation of State Medical Board's recommended policy on criminal history information. The Federation recommends including all felony convictions and all lesser convictions for offenses against a person, offenses of moral turpitude, offenses involving the use of drugs or alcohol, and violations of public health and safety codes.**

We also recommend that the Legislature consider amending the statute to provide consumers with more access to discipline information. The Legislature could consider:

- **requiring profiles to display all discipline information for the life of the profile;**
- **requiring profiles to display all discipline information for practitioners who have a second or subsequent disciplinary action taken within a 10 year period; or**
- **requiring discipline history to be posted if a practitioner had three disciplinary actions for the same or related violation within the same category.[12]**

To ensure that profile bankruptcy information does not confuse or mislead consumers, we recommend the Legislature consider amending the statute to require all practitioners to report bankruptcies to the Department. As an alternative, the Legislature could require practitioners to report only those bankruptcies related to their profession. If a bankruptcy occurred due to business investments unrelated to a medical practice or due to a family-related hardship, the bankruptcy may not need to be reported.

[11] Section 456.051, Florida Statutes, designates that information that the Department of Health has regarding bankruptcy proceedings by practitioners licensed under chapters 458(Medicine), 459 (Osteopathic Medicine), 461 (Podiatric Medicine), and 466 (Dentistry) is public information. Thus two profiled professions, chiropractors and registered nurse practitioners, are not covered by the statute.

[12] For example, three broad categories of offenses would be standard of care violations, continuing education violations, and recordkeeping or other administrative violation.

OBJECTIVES, SCOPE, AND METHODOLOGY

The scope of this audit focused on the Department's health care practitioner disciplinary process and its implementation of the provisions of Chapter 2003-416, Laws of Florida. Specific objectives of the work performed by the Auditor General staff included determining whether:

- Department changes to the practitioner disciplinary process subsequent to Chapter 2003-416, Laws of Florida, improved the efficiency and effectiveness of complaint processing and disciplinary actions.
- The Department adequately communicated statutory and procedural changes to practitioners.
- The Division of Administrative Hearings effectively implemented Chapter 2003-416, Section 32, Laws of Florida.
- Selected management controls promoted and encouraged the achievement of management's objectives of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and affective operation of the Department; the reliability of records and reports; and the safeguarding of assets.

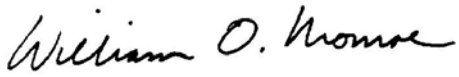
Specific objectives of the work performed by OPPAGA included:

- Evaluating the Department's practitioner profiling process to identify best practices and opportunities for improvement.
- Evaluating whether practitioners complied with disciplinary action and remained free of additional violations and discipline.

In conducting the audit, Auditor General and OPPAGA staff interviewed auditee personnel, observed processes and procedures, and completed various analyses and other procedures as determined necessary. The audit included examinations of various transactions (as well as events and conditions) occurring during the period July 2002 through January 2004.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of the operational audit.



William O. Monroe, CPA
Auditor General

AUDITEE RESPONSE

As required by law, the preliminary and tentative audit findings were provided to the agency heads for response. The agency heads provided responses that generally concurred with the audit findings and recommendations. For the complete responses to the findings and recommendations contained in this report, please see the Auditor General's Web site where the responses may be viewed in their entirety.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. Portions of this operational audit that were performed by the Auditor General were conducted in accordance with applicable ***Government Auditing Standards*** issued by the Comptroller General of the United States. This audit was coordinated by Lisa Norman, CPA. Please address inquiries regarding this report to Marcia Maheu, CPA, Audit Manager, via E-mail at marciamaheu@aud.state.fl.us or by telephone at (850) 487-9038.

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (http://www.state.fl.us/audgen); by telephone (850) 487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

John O. Agwunobi, M.D., M.B.A.
Secretary

September 22, 2004

Mr. William O. Monroe, C.P.A.
Auditor General
Room G74, Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Dear Mr. Monroe:

This letter is in response to your August 23 correspondence regarding the preliminary and tentative findings of your report entitled, "Department of Health - Health Care Practitioner Disciplinary Process." The agency's response and corrective action plans to your findings and recommendations may be found in the enclosed document.

We appreciate the work of your staff and will diligently pursue appropriate resolution to the findings.

If I may be of further assistance, please let me know.

Sincerely,

John O. Agwunobi, M.D., M.B.A., M.P.H.
Secretary, Department of Health

JOA/mhb
Enclosure

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
1	The Department often exceeded the six-month statutory timeframe for complaint investigation and determination of the existence of probable cause. In some instances, the timeframe to close cases ranged from 1 to 6 years after the complaint date.	The Department should evaluate its investigative and prosecutorial processes, particularly within the PSU, to determine whether efficiencies could be achieved. For example, the Department may consider: 1) Establishing attorney positions that specialize in certain types of cases (e.g., impaired practitioners) across boards. 2) Establishing a multi-track system for complaints based on the severity of the allegation and complexity of the case.	The Department concurs in the recommendations. 1) The Department has completed process improvement reviews of all three sections of its enforcement function and completed changes in CSU and ISU. Analysis of PSU was completed in December 2003 but implementation is on-going. These improvements should enhance its efficiencies. 2) PSU has established attorney positions that specialize in certain types of cases across boards. For example, attorneys in the Emergency Action Section specialize in giving immediate attention to Priority One cases. Priority One cases are cases in categories deemed possible emergencies. Dangerous office surgeries, sexual misconduct, and over-prescribing are examples of types of cases in Priority One. Medicaid fraud now has a team of attorneys specializing in this area. Minor violations across the board are handled by an attorney who concentrates in that area. Litigation attorneys now tend to concentrate in certain areas across the board. For example, one attorney handles all the clinic inspection cases; a team of attorneys handles all the pharmacy litigation (not just the internet pharmacy cases); and, one attorney specializes in complex standard of care litigation. Concentrations in practice, or specialization, will continue to occur. A multi-track system for complaints based on the severity of the allegation and complexity of the case already exists before the investigated case arrives at PSU. At PSU, the severity of the allegation and complexity of the case are considered in establishing the track for the case. Notwithstanding the existence of these systems, such systems can always be improved. PSU's corrective action plan will seek improvement in these areas.	1) Finalize implementation plans for process improvement analysis of PSU. Implement the plan; 2) Identify possible additional areas of specialization.

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
2	Enhanced coordination is needed between the Department and the Agency for Health Care Administration to provide a more efficient process for reviewing and investigating adverse incident reports.	Given the increasing volume of adverse incident reports, and that many adverse incident reports are found not to involve a violation that warrants disciplinary action, the Department should work with AHCA to develop a coordinated review and investigation process that will promote an efficient and effective disciplinary process. Specific actions should include: 1) Determining whether LicenseEase can be modified to identify those incidents that relate to possible practitioner violations. If so, AHCA personnel could flag those incident reports containing possible practitioner violations and the Department could then concentrate its efforts on those incidents. 2) In developing the replacement system for PRAES, the Department and AHCA should determine whether the functionality of the two systems can be made to interface with each other to eliminate duplicate data entry. Additionally, the Department should work with AHCA to ensure facilities only prepare adverse incident reports that meet statutory requirements. For example: 1) Assist in identifying issues to incorporate in facility training curriculum. 2) Identify facilities that submit egregious numbers of adverse incident reports that do not meet statutory criteria for reporting and consider whether such facilities or their health care professionals (e.g., nursing home administrators) should be disciplined for not adhering to the legal requirements. The Department should also identify any laws that do not adequately reflect the current health care regulatory environment and work with the Legislature for appropriate statutory updates.	1) The Department reviews adverse incident reports not only to identify possible practitioner issues from the single reported incident but also to track and trend practitioners for possible repeated incidents, e.g. a Nursing Home Administrator or Director of Nursing may not be involved in a single incident but may have numerous incidents occurring at the facility(ies) for which the administrator is responsible. From the Department's assessment of the reports received, often a facility will report an incident on a 1-day report and then determine that the incident does not meet the reporting criteria. The facility then does not follow-up with a 15-day report. The Department requested AHCA to only refer 15-day reports with the exception of 1-day reports that meet specific criteria indicating an immediate danger to the health, safety and welfare of the residents. This process has decreased the number of reports received. 2) During our conversion to our new database, COMPAS, the Department plans to discuss with AHCA the possibility of interfacing with their database to import common existing data fields from FRAES into COMPAS. 3) Department personnel are participating in several statewide meetings with AHCA and the Nursing Home Association to provide training and information on incident reports. These training sessions are currently scheduled for 9/24/04 in Tallahassee, 9/28/04 in Ft. Lauderdale, 9/29/04 in Orlando and 9/30/04 in Tampa. 4) The Department has proposed the required statutory updates to reflect the current health care regulatory environment but the bills did not pass in 2003 or 2004. They are proposed again for 2005.	1) Formalize through a written procedure, AHCA's referral process for adverse incidents; 2) Develop a plan for exploring and implementing communication between FRAES and COMPAS once the conversion to COMPAS is complete; 3) Complete; 4) Monitor the proposed legislation through the legislative process.

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
3	Department use of non-disciplinary citations has not decreased the rate at which practitioners contest Department citations or lessened the length of time required to issue citations.	The Department should further evaluate its process for issuing non-disciplinary citations, including those that are contested, to identify possible policy or statutory changes to increase the efficiency and effectiveness of the process. For example, as depicted in Exhibit 1, violations related to statute or Board rule, continuing education, and the failure to perform legal obligations constitute the majority of nondisciplinary citations. The Department may consider initiating information or training campaigns that could assist practitioners in preventing such violations from occurring.	Statutory provisions for non-disciplinary citations became effective September 15, 2003. Department records indicate that during fiscal year 2002-2003, 58.1% of complaints in which a citation was offered were resolved by citation. Department records reflect 69.3% of the complaints in which a non-disciplinary citation was offered during the period of September 15, 2003 – January 31, 2004 were resolved by citation. Complaints in which a non-disciplinary citation was issued during the period of September 15, 2003 through January 31, 2004 were resolved in an average of 80 days from issuance of the citation. Florida Statutes require a citation to be served by personal service or by certified mail, restricted delivery. Often, the time to resolve a complaint through citation is contingent upon the time required to effect legal service of a citation, e.g. the licensee refuses to accept the certified mail or cannot be located. The citation program, including issuance of non-disciplinary citations, was intended to improve the efficiency of the entire disciplinary process. Resolving minor complaints through this alternative method allows investigators, prosecutors and boards to focus on the more serious cases. Education on the disciplinary process is important for licensees. The Department will continue to work with professional associations and boards/councils on education.	Develop an education campaign for licensed professionals on discipline.
5	The Department did not properly record practitioner disciplinary fines or costs awarded to the State in its licensing system or in its accounting records.	We recommend that the Department ensure that the FLAIR accounting records properly reflect accounts receivables for outstanding fines and costs and that information in PRAES and FLAIR is periodically reconciled.	The Department concurs in the recommendation and is developing a procedure to update FLAIR through a reconciliation process with PRAES/COMPAS annually. The update was completed on June 30, 2004.	Develop a procedure to update FLAIR annually from PRAES/COMPAS.

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
6	The Department has a reasonable process for verifying some profile information, but not verifying certain key information limits its usefulness to consumers.	While it would be costly to ensure complete accuracy of all data elements in the profiles, we recommend the Department take additional steps to verify key licensure information. Specifically, we recommend that the Department verify two key pieces of information both at initial licensure and at renewal: financial responsibility and hospital staff privileges. Financial responsibility data is critical as more doctors may choose to practice without malpractice insurance, and knowledge that a doctor may lack malpractice insurance is important to consumers. Information on hospital privileges is also important to consumers, who may wish to take this into account when choosing a doctor. The Department could verify this information in several ways. It could require practitioners to have their insurance carriers and hospitals submit this information to the Department, or the Legislature could require the carriers and hospitals to provide the information directly. As another alternative, the Department could add information to the profiles that would enable consumers to verify information such as hospital privileges, by providing hospital telephone numbers or links to the hospital websites. These changes have minimal cost and would give consumers more confidence in the reliability and usefulness of profile information.	The Department agrees with the findings; however, unless the statute is amended to require profiled practitioners to submit proof of financial responsibility and hospital privileges as a condition of initial licensure and license renewal, it will be difficult for the Department to enforce collecting documentation supporting these two data elements as recommended.	1) Prepare a legislative proposal that would require profiled practitioners to submit proof of financial responsibility and hospital privileges to the Department as a condition of licensure and with each renewal; 2) Research the possibility of adding a link to a website (e.g., hospitallink.com) that will provide consumers with hospital contact information.

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
7	Some profile information may be confusing and many profiles are missing required information which may lead to consumer confusion and hinder the ability to make informed choices regarding practitioners.	We recommend Department personnel periodically review information contained in the practitioners' profiles to ensure that the information is complete and presented in a clear, easy-to-understand format. We also recommend that the Department consider modifying the design of profiles to include the date a license was suspended or revoked. A date-specific revocation or suspension would help consumers and other users of this information, such as insurance companies that might need to pay claims submitted after a revocation, better identify the license status of Florida's health care practitioners.	The department concurs with the finding and recommendations. A periodic review of the mandatory reporting requirements for the practitioner profile is appropriate to ensure compliance.	1) Conduct an internal review of the database to ensure practitioners have provided the Department with the mandatory data required for publication on the profile; 2) Research the possibility of adding the date a license was suspended or revoked below the status indicator published in the profile.

	Finding	*Recommendation*	*Management's Response*	*Corrective Action Plan*
8	In the absence of a rule specifying which criminal convictions relate to a practitioner's ability to competently practice, the department has broadly interpreted statutes and established a policy to include all criminal history information in the profiles. Additionally, expunging disciplinary histories at ten years and inconsistent reporting of bankruptcies may limit consumers' ability to make appropriate decisions regarding the selection of a health care practitioner.	We recommend that the Legislature consider amending the profile statute to address the reporting of criminal history information. The Legislature could revise statutes to: 1) require practitioner profiles to include all criminal convictions; 2) grant specific rule-making authority to the Department to specify which criminal convictions relate to a practitioner's ability to competently practice; or 3) incorporate the Federation of State Medical Board's recommended policy on criminal history information. The Federation recommends including all felony convictions and all lesser convictions for offenses against a person, offenses of moral turpitude, offenses involving the use of drugs or alcohol, and violations of public health and safety codes.We also recommend that the Legislature consider amending the statute to provide consumers with more access to discipline information. The Legislature could consider: 1) requiring profiles to display all discipline information for the life of the profile; 2) requiring profiles to display all discipline information for practitioners who have a second or subsequent disciplinary action taken within a 10 yuear period; or, 3) requiring discipline history to be posted if a practitioner had three disciplinary actions for the same or related violation within the same category.To ensure that profile bankruptcy information does not confuse or mislead consumers, we recommend the Legislature consider amending the statute to require all practitioners to report bankruptcies to the Department. As an alternative, the Legislature could require practitioners to report only those bankruptcies related to their profession. If a bankruptcy occurred due to business investments unrelated to a medical practice or due to a family-related hardship, the bankruptcy may not need to be reported.	The Department concurs in the recommendations.	None required.

AHCA
FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

JEB BUSH, GOVERNOR

ALAN LEVINE, SECRETARY

September 22, 2004

Mr. William O. Monroe, CPA
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

RE: Auditor General Draft Report

Dear Mr. Monroe:

Thank you for the opportunity to respond to the preliminary and tentative findings and recommendations of your audit *Department of Health – Health Care Practitioner Disciplinary Process* dated August 23, 2004.

Enclosed is the Agency for Health Care Administration's response to the one issue addressed to AHCA in the draft report. We appreciate the review completed by your staff and the opinions expressed in your report as AHCA continuously looks for opportunities to improve operations.

If you have any questions regarding our response, please contact Michael Bennett, Internal Audit Director, at 922-8449.

Sincerely,

Alan Levine
Secretary

AL/mb
Enclosure: Agency response to Auditor General Draft Report

2727 Mahan Drive • Mail Stop #1
Tallahassee, FL 32308

Visit AHCA online at
www.fdhc.state.fl.us

Response to Auditor General Draft Report
Department of Health – Health Care Practitioner Disciplinary Process
July 2002 through January 2004

Finding No. 2 – Adverse Incident Reporting

Enhanced coordination is needed between the Department and the Agency for Health Care Administration to provide a more efficient process for reviewing and investigating adverse incident reports.

Recommendation:

Given the increasing volume of adverse incident reports, and that many adverse incident reports are found not to involve a violation that warrants disciplinary action, the Department should work with AHCA to develop a coordinated review and investigation process that will promote an efficient and effective disciplinary process. Specific actions should include:

- Determining whether LicenseEase can be modified to identify those incidents that relate to possible practitioner violations. If so, AHCA personnel could flag those incident reports containing possible practitioner violations and the Department could then concentrate its efforts on those incidents.
- In developing the replacement system for PRAES, the Department and AHCA should determine whether the functionality of the two systems can be made to interface with each other to eliminate duplicate data entry.

Additionally, the Department should work with AHCA to ensure facilities only prepare adverse incident reports that meet statutory requirements. For example:

- Assist in identifying issues to incorporate in facility training curriculum.
- Identify facilities that submit egregious numbers of adverse incident reports that do not meet statutory criteria for reporting and consider whether such facilities or their health care professionals (e.g., nursing home administrators) should be disciplined for not adhering to the legal requirements.

The Department should also identify any laws that do not adequately reflect the current health care regulatory environment and work with the Legislature for appropriate statutory updates

AHCA Response:

A. Referring Adverse Incidents to the Department of Health

Department and AHCA staff met on August 6, 2004, and formulated the process outlined in steps 1 through 3 below for nursing home and assisted living facility incident reports received by AHCA. Effective immediately:

1) The Department will only receive hard copies of 1-day adverse incident reports that meet the following criteria:
   - Sexual abuse/misconduct by an employee on a resident

- Medication errors resulting in death, severe injury (e.g., coma, blindness), or requiring treatment (e.g., blood transfusions)
- Physical abuse resulting in death or severe injury to the patient
- Treatment by a person who is not licensed or authorized to perform the treatment
- An impaired practitioner
- Fraud by an employee against a resident
- Inappropriate or excessive prescribing
- Any incident that results in media attention

2) For 15-day reports received in hard copy, AHCA will forward all to the Department. For all 15-day reports received electronically, a report is provided to the Department each working day.

3) When AHCA receives a 1-day report meeting the above criteria or a 15-day report that contains possible practitioner violations, AHCA will also e-mail the report number to designated Department staff.

Additionally, on August 31, 2004, AHCA staff began entering "POSSIBLE PV" in the private comments section within LicenseEase for those incidents containing possible practitioner violations. This occurs for all 1-day reports meeting the above criteria under #1 and all 15-day reports with a possible practitioner violation. This will allow the Department's Medical Quality Assurance staff to generate reports from LicenseEase using the reporting tool of their choice so they may concentrate efforts only on those incidents.

The Code 15 reports received by the Hospital and Outpatient Services Unit in every case involve issues with health care practitioners. Thus, currently all reports are forwarded to the Department for review. The Investigation Specialist with the Department supports this procedure, indicating that very rarely is there a Code 15 Report that does not need review for possible disciplinary action and/or professional practice issues.

The Hospital and Outpatient Services Unit has not had an issue with hospitals and ambulatory surgical centers over reporting adverse incidents. Hospitals and ambulatory surgical centers are required to have a licensed healthcare risk manager who is responsible for the implementation and oversight of the facility's internal risk management program. As part of the internal risk management program, licensed healthcare risk managers are responsible for the statutory reporting requirements.

In developing the PRAES upgrade, AHCA is open to discussion with Department staff to research the possibilities of the two systems, PRAES and LicenseEase, interfacing to eliminate duplicative data entry.

B. Facility Preparation

In addition to written correspondence, the Agency interfaces with nursing home (NH) and assisted living facility (ALF) providers through inspections conducted by field office staff and through monitoring visits as required by regulation. NHs are visited by quality

of care nurse monitors who focus on risk management, as well as other required areas. The Agency has measures in place to review adverse incidents and trends and will continue its training initiatives as outlined below:

1) a) Quarterly conference calls with field office supervisors and NH quality of care monitors. Discussions include, but are not limited to:
   i) Incident outcomes trended in various ways to enable field office staff and monitors to know the types and number of events occurring in NHs and ALFs.
   ii) NHs and ALFs identified as needing education relative to adverse incident reporting.
   b) Assistance to both NHs and ALFs relative to adverse incident reporting through the production and dissemination of:
   i) Guidelines for completing forms
   ii) Determining when an incident is adverse
   iii) Frequently asked questions
   c) Participation in joint training events.

2) Quarterly reports could also be shared with Department staff to show facilities with egregious numbers of adverse incident reports that do not meet statutory criteria for reporting. It has been the philosophy of the Agency to encourage facilities to report incidents when in doubt. As a public protection measure, it is more important to have too much than too little reporting as it affords AHCA the opportunity to review a variety of incidents and monitor appropriate facility response. However, efforts described in Section A(1) above will reduce the volume of reports the Department must review.

State of Florida
Division of Administrative Hearings

September 21, 2004

William O. Monroe
Auditor General
Room G74, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Monroe:

In connection with your audit of the Department of Health, Health Care Practitioner Disciplinary Process for the period July 2002 through January 2004, your review disclosed the following:

> DOAH did not adequately document the criteria used to evaluate and select the ALJs designated to preside over the Department of Health cases. While a listing provided by DOAH indicated that the seven ALJs had a 6 to nearly 16 years of experience hearing healthcare related cases, during the 2-year period prior to September 15, 2003, each ALJ presided over an average of 1.5 to 7 health care practitioner disciplinary cases per year, with one ALJ not presiding over any cases during that period.

DOAH utilized the documented criteria set forth in Chapter 120.651, Florida Statutes to select the ALJs designated to preside over the Department of Health cases:

> The Division of Administrative Hearings shall designate at least two administrative law judges who shall specifically preside over actions involving the Department of Health or boards within the Department of Health. Each designated administrative law judge must be a member of the Florida Bar in good standing

and must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from the Florida Bar.

Each of the seven judges designated to hear Department of Health matters provided me with sufficient documentation to demonstrate his or her experience in the handling of health care matters either in private law practice or as long-term judges with DOAH. In November 2003, DOAH informed the designated ALJs that they would be expected to seek Florida Bar certification in health care law if practicable. As of March 2004, none of the ALJs had obtained certification. One of the requirements for certification is to practice health care law at least 40 percent of the time. Based on the number of designated judges (which is kept at a high level in order that no DOH matters not be considered within the required statutory timeframes) and the number of health care related cases presented to DOAH, which has declined over the period in question, it does not appear that any of the designated ALJs would be able to qualify for certification.

I trust that this will serve as a full response to your findings with respect to DOAH. Should you need any further information, please feel free to contact me directly.

Sincerely,

ROBERT S. COHEN
Director and Chief Judge

RSC/cdl