

How Operation Nightingale Affects Podiatry

Hopefully, something like this will never happen to you.

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Less than a year ago, the Federal Department of Justice indicted various heads of South Florida nursing schools that were closed in October 2016. The Federal government alleged fraud in granting nursing diplomas. Alleged phony LPN and RN degrees were issued, in some cases, just after the closure of the schools. This affected about 7,600 students/nurses who obtained LPN and RN degrees from the schools at issue.

Within days, emails and letters were sent from many states, informing thousands of LPNs and RNs that *they* had committed fraud and were an imminent threat to the health of that state's citizens.

Via email, in New York, many LPNs and RNs were asked to surrender their license or else! Other states followed suit. Many of these nurses were immigrants who were deathly afraid of authorities. Many of the nurses came from countries that instilled a true fear of the proverbial "knock on the door." Many surrendered their licenses immediately. They did so even though they had passed their NCLEX national nursing exam and had clean records in their nursing career. These nurses had risked their lives every day during the COVID pandemic. Nobody was complaining then. Most of the nurses had completed their course work prior to the school being closed. In order to be licensed, a student would have to complete any additional courses at another recognized nursing school.

Additionally, they had to pass either the LPN or RN version of NCLEX, a recognized national examination of nursing knowledge, required in virtually every state. Many had subsequently obtained an advanced nursing degree, including master's degrees, some even studying to become a nurse practitioner from other approved schools of nursing. The first

representative bragging that nobody was injured by the nurses who obtained these "phony" degrees. Somehow, all the licensed nurses magically passed their NCLEX exams. Somehow, after up to seven years in practice, not one patient was injured by any of these "phony" nurses. The various states involved had the audacity to accuse these nurses—who survived

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notice that most of these nurses received that something was amiss was the email or letter from the various state nursing boards. These nurses had attended classes, took the tests, and received no notice that the school was allegedly "phony." How were any of the nursing students expected to know, at the time of their attendance, that there were alleged problems with the schools at issue?

The nurses had textbooks and notes taken—in other words, the various things that you would expect students to have going to a recognized school. It must be emphasized that the state boards on their own websites appeared to be totally unaware of any problem with any of the schools. That is totally at odds with what the DOJ claimed at the press conference. The Southern Florida press conference had the DOJ rep-

COVID and had a clean record for seven years—with causing imminent danger to their patients. Many other nurses obtained attorneys and are going to an administrative state hearing to defend their nursing license.

What Does All of This Have to Do with Podiatry?

The same thing could happen to podiatry. This could happen at any professional school.

What if tomorrow, the government receives a tip that one of our colleges of podiatric medicine was issuing phony degrees? You say that is impossible. They are certified by various bodies and are inspected ever so often. Their students pass various national examinations. The schools are listed as recognized by the various state boards of podiatry.

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You are finishing undergraduate college. You are interested in the field of podiatry. You live in an area not far from a college offering a degree in podiatric medicine. You have taken the MCAT and have a bache-

attended, that should be enough. According to the nursing scenario, it is not enough! It seems you should have been aware that something was wrong, even though the school seemed to have legitimate classes, finals, laboratories, and clinical settings. This is still another situation

your residency, you heard nothing to the contrary. Additionally, during that time and afterwards, you had a clean safe record of practicing podiatric medicine.

This is analogous to what is occurring to the victims of Operation Nightingale. Understand that in every state that is asking for the surrender of the RN and LPN licenses, due to the supposed fraud by the practitioner, and the exposing of the public to unsafe conditions, the Nursing Boards operate under Administrative Law.

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lor's degree from a recognized college or university. You looked up the college and find that it is accredited since 1990 and is listed as recognized in your state podiatry board's website. You are accepted after the school of podiatric medicine checks that all your credentials, including your undergraduate transcript, are legitimate. You have attended that school for four full years. You graduate in 2016 from that school of podiatric medicine, having passed all required examinations. You sit for your state's licensing examination and pass it. You then go on to successfully complete a three-year residency at an approved hospital.

In November of 2022, you receive a letter or email claiming that they want you to immediately surrender your podiatry license as you obtained it from a school that was ordered shut down sometime after you already graduated from it. You are alleged to be a danger to the citizens of the state where you are licensed. You have had a clean record in all that time. You are alleged to have committed a fraud when you renewed your registration stating you graduated from an approved college of podiatric medicine!

While the definition of fraud will vary from state to state, any definition of fraud comes with an intent to mislead as part of the definition. Placing your head in the sand to remain blissfully ignorant is no excuse for not knowing what you should have known. If your college of podiatric medicine was approved by the CPME during the entire time you

where the non-attorney is expected to know more about the law than most attorneys. Perhaps you knew that the answers to exams were being sold. Perhaps you knew that you were being credited for non-existent clinical hours. Perhaps you *should have known*.

The knowledge of the school's alleged fraud becomes public over six years later. The affidavit of someone "in the know" becomes public over six years later. That person admits to some nebulous fraud with the opera-

What Is Administrative Law?

What is administrative law? For sure, it is not criminal or civil law. Criminal law and civil law consist of federal and state statutes, passed by a legislature of some kind, and signed by a governor (if a state law), or the president (if a federal law). Under criminal statutes, if convicted, you may be incarcerated, fined, or both. Under civil law, you may be held liable for doing or not doing something that you were supposed to do or not do. Administrative law is a whole different "breed of cat".

Administrative law is the body of law created by unelected administrative agencies, by rules, regulations, orders, and decisions.

tion of the school. That same someone provides a list of podiatrists that attended the school during the years in question. Nothing in the affidavit states that any one of the listed students was made aware of the fraud at any time prior to the publication of the plea bargainer's affidavit, just as with Operation Nightingale and the nurses.

As a prospective student, you did your "due diligence" and confirmed that the college of podiatry you wanted to attend and graduate from was approved by the CPME, the Council of Podiatric Medical Education. That college was affiliated with various major hospitals and programs. During your four years of attendance and during the three or four years of

Administrative law is the body of law created by unelected administrative agencies, by rules, regulations, orders, and decisions. They are not laws passed by any legislature and signed by a governor or president. Administrative procedure and due process is determined by each individual state. The general, often all-encompassing powers of administrative agencies such as the Department of Health or the Department of Education, cause many unintended consequences. For sure, the powers are based upon law passed by a legislature of some kind.

Administrative law is used to "facilitate" the function of the administrative agency. The various

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medical boards which serve under an administrative department may further abuse various powers they have obtained by means of a regulation or rule written by unelected people. Most, if not all, administrative hearings do *not* follow the rules of evidence. The Administrative Law Judge (ALJ) usually has incredible discretion with limited oversight. Even the bringing of charges against a person, in this case a healthcare practitioner, is done supposedly after an investigation. In the case of the nurses, other than having been included on a list provided by a plea bargain recipient who had a real interest in supplying something of interest, no meaningful investigation was performed on the individuals who were summarily and virtually immediately asked to surrender their licenses to practice. Frankly, this is scary stuff.

Want to feel even worse? In some states like New York, the appropriate board, which includes podiatry and nursing, is under no obligation to turn over any exculpatory evidence! That means if they are in possession of evidence that would help you in your defense, they can—and usually do—keep it to themselves. Such is decidedly not the case in criminal proceedings. The Supreme Court has held that the prosecution *must* turn over any exculpatory evidence to the person being accused. This is another example of an administrative body abusing its power.

What can we, the public, do? We can let our opinions be known to our respective governors and legislators. We can write articles such as this one. We can alert the press. Nothing disinfects better than letting the light shine on something one perceives as perverse. We can also hope that the U.S. Supreme Court continues to rein in the power of administrative

agencies with rulings such as *Axon v FTC* (April 14, 2023). The Court allowed the plaintiff to challenge the constitutionality of an administrative proceeding that ruled against him.

Do not quickly glance at the Operation Nightingale fallout by saying “that does not affect me”—they are nurses. The next time it might be you. **PM**



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