

ABOUT REFERRALS, REPORTS, NOTIFICATIONS and COMPLAINTS...

What are these things called NOTIFICATIONS and REFERRALS?

Whenever a nursing facility has a survey and receives a substandard quality of care F tag, the OSDH is required to "NOTIFY" this Board (attached to the administrator's name) of those survey results. They used to (prior to August 1, 2014) automatically "refer" the administrator to us, triggered by this same level of survey result. Does this mean this administrator is in trouble of some kind? Should they panic? **Definitely don't panic.** The administrator is notified by the OSDH in their letter to them with the 2567 that they have notified this Board of the survey results (so it should be no surprise that we have the 2567), and upon receipt, we give it a quick review to see if it appears to be something attributable to the administrator. IF the Board feels we need more information for any reason, we then notify the administrator that we have received that notification and ask for more information which puts this information on the path of a "referral." The letter we send "tries" to explain what's about to happen but we know that just "getting a letter from the Board" causes all kinds of panic...yet it's a necessary evil. If we don't notify the administrator, then they could be blind-sided by a legal complaint and possibly a hearing before the Board itself... When we send this letter, we're letting the administrator know that our Probable Cause Committee (PCC) will be looking at the survey results to determine if it's "probable" that they violated one or more of our rules (you can refer to that list of rules in [OAC 490:10-5-3\(a\)](#) for a list of things the Board may impose penalties for). If the PCC looks at the survey results alone, it is only one side of the story. **We have found that the administrators usually shed additional light on the issues by responding with their own explanation of the same event(s).** We are hoping the administrator will take advantage of the opportunity to communicate with this committee. We also need to know if they intend to IDR the survey results (we will hold our determination, pending the results of that first), as well as any CMS appeals they may intend to make. If they're doing any of those things, we need to know so we can let those processes play out first to see if or how they may or may not affect the survey results.

When the PCC finds that there is no probable cause, the case then goes to the Board at the next Board meeting with that recommendation (no probable cause) and the case would then be closed by a vote of the Board to accept that recommendation (and you would get a letter from us stating that it had been dismissed). It is possible, however, that the Board could reject the recommendation if one of the PCC members disagreed with the recommendation and made such a case at the Board meeting.

It is not uncommon for a nurse (or nurses) to have also been referred to the Board of Nursing for the same issues.

When the Board is only notified of the survey results and can tell from their review that it's *clearly* something the administrator would not be held culpable for, it simply is filed away that we were notified. It is assigned a case number but nothing becomes of it. The administrator will

be able to see that this Board was notified when they log into the system, but the public does not see that. It will only become publicly viewable if and when the Board takes action against that administrator's license.

If the PCC finds that it is probable that the administrator violated one of more of our rules, the "referral" is given to our prosecuting attorney who drafts a **"complaint," which is a legal term for the "charges" that the Board wishes to bring against the administrator.** Most of the time, these complaints are "settled" without the administrator going in front of the Board in a formal hearing setting. An "agreed order" would be drafted with the particulars of a penalty, worked out with either the Executive Director or the attorney (or both) that the administrator would be willing to accept (usually some sort of documentation of the event, a fine and additional CEUs being assigned). The Board must also vote and agree to this, so the Executive Director and Attorney will be doing their best to find something that they believe will be acceptable to the Board. Short of an agreed order or "settlement," a hearing would be scheduled for the Board to determine whether the administrator violated any rule(s) or not. In the case of a hearing, it would likely take considerably longer to transpire and in that case would likely include additional investigations for additional evidence to be presented to the Board at the hearing (and you can have an attorney represent you, at your own expense).

How about a REPORT?

A "report" is what people commonly call a "complaint," though we do not. A report is just what it sounds like...a citizen has reported an administrator by some means (could be our online system or by mail). We treat them quite like we treat "referrals" above (you still need to read all of that up there...), and notify the administrator of receipt of this "report" and start the probable cause determination process. The big difference here is that administrator probably isn't expecting it, unlike the 2567 which they probably had already received and had been notified that we were being notified... There's no IDR or CMS appeal but we are still hoping the administrator might shed some light on the issue for us by responding. ADMINISTRATORS - PLEASE NOTE...if the "report" comes from an employee or a resident, we have the obligation to protect their identity; don't even ask or try to figure it out; it's probably not relevant. Stick to the issues and you'll do much better than going on some sort of "witch hunt." But please also know that we do NOT accept anonymous reports. We do know the source of the complaints even if we cannot share it. It will not have been anonymous.

What are the most common issues? (primarily addressing administrators here...)

Based on my experience with the Board and what I've seen coming across my desk in the form of notifications, referrals and reports that result in complaints and hearings, what are the biggest things I've seen that will get an administrator in trouble? And what can they do to avoid these traps?

There are several "simple" items that come to mind and, as well, a few "more complicated" items. Let me start simple and work toward the complicated.

One of the simplest items that get people in trouble – and perhaps more frequently for the administrator holding a license but not working in the field – is CEUs. Plain and simple, if you have a license, you have to get your required CEUs because odds are that eventually, and you don't know when, you're going to be audited (and since it's random, it could happen on consecutive years – we do NOT profile anyone, as has been suggested, but we do have a random process established that works). You are responsible for keeping track of your own CEUs and when you have a file with your accomplished CEUS in it, when that notice comes, it's as simple as copying them and mailing them to our office OR faxing them and putting them back in the folder. If you're not already registered for the NAB CE Registry, you need to do that - NAB approved (NCERS) courses will automatically be tracked for you in this system. You would be required to upload locally approved CE programs, but NAB approved courses will be documented in this new (FREE) system. Mission accomplished. If you fail to accomplish the required number of CEUs, it will result in a mark on your record and it will be available for the public to see, too, in both our state's registry and the National Practitioners Data Base (NPDB). It's also costly...first offense, you can expect a \$50 fine per CEU short and to be required to do 2 CEUs per each one short. Double that on a second offense and expect to appear in front of the Board for any subsequent CEU problems because clearly, you have a problem.

And while I have your attention concerning CEUs, let me thump that soap box for just a moment. These are VERY important and you should NOT merely attend the locally held “free” or inexpensive CEUs. You should be out there searching for something that interests you and/or will improve you (you should know what you need brushing up on) as a professional. If you find yourself sitting through a CEU session napping, reading the newspaper, working a crossword puzzle, surfing the net on your iPad/tablet or phone, knitting or having sidebar conversations with others...this may be an indication that this program was not for you. Clearly it does not interest you enough to have you engaged in it and likely will not make you a better administrator. Not only are you wasting your time on this by not getting something that will interest and improve you, *you're likely distracting someone else nearby who might otherwise benefit from the training* without having to tune out your conversation with an old friend (or some other activity). And it just doesn't seem all that “professional” when you really stop and think about it, does it? *Would you tolerate your own CNA's acting like that during an in-service?* So, **be picky and search for the CEUs that you will benefit from...**online, at other places (with the caveat that if not approved by this Board, OSBELTCA, they need to be approved by NAB and have an NCERS number...another state Board's approval does NOT suffice). Most ACHCA and national programs are actually NAB approved but be careful if you wish for them to “count” in your CEU totals for any given year. And just because they don't count does not mean they might not benefit you...you are the judge of that.

One of the next most common “faults” is a failure to report *allegations of abuse*. What we see is that the administrator was aware of the allegation but did not report it because his/her investigation (IF they bothered to do one!) revealed that the allegation was unsubstantiated. *Recently, there has been a rash of administrators "deferring" this judgment to the DON...whether to report something or not.* **That's YOUR responsibility as the administrator;** know what's reportable and don't allow your license to have something on it because you trusted your DON to know...it's YOUR job to know what is supposed to be reported! Regardless, the requirement is to report **ALL ALLEGATIONS**...see 310:675-7-5.1(b) which states, “*The*

facility shall report to the Department allegations and incidents of resident abuse, neglect or misappropriation of resident's property..." and which is enforced by OAC 490:10-5-3(a)(6). Trust me when I tell you to report ALL allegations and incidents. Failure to do so TOO frequently results in penalties and sanctions against administrators licenses.

I'm aware of the mentality of trying to take care of things internally (what goes on in my facility stays in my facility), but the law says otherwise. Report it and then report the results of your investigation. No problem. Fail to report it and you're asking for trouble. Of course, there are the "horror stories" of administrators who did the right thing and because they reported something were the recipients of a survey and ultimately the survey validated that there was a problem (slapped with the dreaded "IJ")...but in those instances, it was clear to the probable cause committee that the administrator HAD done the proper things (had reported it, investigated it and perhaps had taken actions to suspend or terminate employee(s) if they were at fault) and that leads to a "no probable cause" finding by this Board (and the case is ultimately dismissed). That's a lot better result than trying to sweep it under the carpet, the survey team finds it, reports the same IJ along with the information that the incident or allegation had never been reported. That almost always ends up as a violation and a sanction of some sort against the administrator's license.

Now, let me back up just a little bit because I said the administrator was aware of the allegation and did not report it... That is clearly a problem but it does not give you license or excuse to stick your head in the sand like an ostrich or close your eyes and stick your fingers in your ears and refuse to see or hear something... That's simply not responsible leadership to not want to know what's going in your facility, is it? The Board may also find you guilty of not reporting it even if you claim to not have been aware when they believe you reasonably should have been aware. If you're looking for incentive to get out from behind your desk and walk around the facility, daily, to see and know what's really going on, what more do you need? Do you want to be surprised during a survey that something occurred that you were totally oblivious to? Do you want to employ the "unaware" defense as your normal *modus operandi* or would you prefer to really know what's going on and perhaps be taking steps to remedy these issues perhaps even before they become issues... before they bite you in the rear? It appears frequently that some administrators do not know what's going on in their facilities but the weight of the evidence is so clear that it demonstrates a lack of actual supervisory skills or leadership skills...it demonstrates absenteeism either from the facility or the floor. Neither is probably the image a true professional would likely reflect. Is it the image you would want people to have of you as an administrator of a facility where their parents or grandparents are residing?

You may notice that I've, so far, not referred to F-tags directly as the kinds of things that will get an administrator into trouble. There are none associated with the CEU issue, though the old F225 and F226 (now F609 and F610) were/are associated with the failure to report quite frequently...but more to the point, the things this Board can take "disciplinary action" for are listed in 490:10-5-3(a)...and I already cited paragraph #6 as it relates to the failure to report allegations (as required by law). By the way, CEUs are cited in paragraph #13.

Paragraph #5 is probably the **next most common violation** for which the Board takes sanctions (fines, reprimands...) against licenses for. This is for "*Gross negligence, or negligence that*

constitutes a danger to the health, welfare or safety of the residents or public.” That's pretty broad, and as such, encompasses several tags... Usually the old F309, F314, F323 and F325 to name some of the most common old F-tags (see the crosswalk for the current ones... the actions and issues actually have not changed - just a different number assigned now). Since there are so many tags that are possible to be cited against this violation, you can understand how it's not easy to actually cite those tags in a discussion like this, but it might behoove you to become aware of what some of those “quality of care” type tags do entail and make certain you have things in place to follow up on things such as weight loss, pressure sores, the use of restraints and assistive devices, just to name a few of the kinds of things you really need to stay on top of. That you didn't know that nursing had run out of a medication for wound care...that you didn't know that someone had fallen X number of times from the use of a merry walker... that you didn't know that people were losing weight...that your people don't know what to do for a full code or how to tell if someone has a DNR...those kinds of things probably won't reflect well on you as the professional you want to be.

Crack open the books...learn more (did someone mention anything about CEUs?)...learn what those tags mean and require (and others...master the “biggies” then take on some more) and ask questions of your peers...get involved with a professional network (there is a small group of Oklahoma Administrators on Facebook, free...join the ACHCA and participate in the “peer2peer” mailing list...ask questions...what do they do to prevent issues with those things? An ounce of prevention is worth a pound of cure! Be proactive and find the problems (even the trends toward problems) and figure out how to fix them before a survey team finds those issues. They won't jump out at you – you will have to put in the effort to find these things by observation and asking questions...and then not ignoring them once you're aware. That is a good start toward keeping your license out of trouble with this Board.

As a way to look at the tags, you might look through the lenses of what an Administrator should do PRIOR to an incident that could be cited with one of those tags, DURING such an incident, and AFTERWARD. What you will likely determine is that for each one, for the PRIOR items, you will see training requirements, certification or even licensure requirements, policies/procedures will need to be established and other things such as providing the right equipment. DURING, you will likely determine that the Administrator is not typically involved but in issues such as abuse, neglect, or misappropriation, the Administrator (if the perpetrator or alleged perpetrator), you would be held to the same standards as everyone else. For the AFTER items, you would likely see that you would be called upon to initiate an investigation, to update your policies/procedures, to report people appropriately and so on. That's just a sort of "general" idea of the kinds of things you would come up with (in very general terms) as they relate to EACH tag. Doing that with a tag or two, particularly if the tag keeps coming up in your facility (?) might be a real eye-opener for you to realize what parts you are actually culpable for...and we recommend you look at the tags like that. It's worth the effort! **For Preceptors, we have also learned that it's an EXCELLENT tool to have the AITs dismantle and analyze some tags in this manner. It's invaluable insight for the AIT and the Preceptor can also benefit from the analysis.**