Probable cause reports

Number: INFORMAL

Date: September 24, 2008

Subject:
Probable cause reports

The Honorable Paige V. Kreegel
Representative, District 72
410 Taylor Street
Punta Gorda, Florida 33950

Dear Representative Kreegel:

You have asked this office for an opinion as to whether legislation which you are considering will be redundant to existing legislation. You propose an amendment to section 455.225, Florida Statutes, adding the following language:

"(10) If no probable cause has been found to exist by the probable cause panel or by the department and the investigation is thereby terminated, the complaint and all information obtained pursuant to the investigation may be obtained by the Complainant within 30 days of the date of the department's letter notifying the Complainant of the finding. "

Section 455.225, Florida Statutes, addresses disciplinary proceedings for boards within the Department of Business and Professional Regulation. Subsection (1)(a) of the section recognizes that the department investigates any complaint that is filed before it, if the complaint is in writing, signed by the complainant, and is legally sufficient.[1] Section 455.225(2), Florida Statutes, prescribes the manner which the department investigates complaints and prepares a report to be submitted to the probable cause panel of the appropriate regulatory board. If a case is dismissed prior to a finding of probable cause, the subsection makes the report confidential and exempt from section 119.07(1), Florida Statutes.

Section 455.225(10), Florida Statutes, currently states:

"*The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first*. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. *This subsection does not prohibit the department from*

providing such information to any law enforcement agency or to any other regulatory agency." (e.s.)

The department is directed to "periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal."[2]

When the Legislature has directed how something is to be done, it effectively operates as a prohibition against its being done in another manner.[3] Likewise, when a statute enumerates exceptions, such as in section 455.225(10), Florida Statutes, which currently provides that the department is allowed to provide otherwise confidential information to any law enforcement agency or to any other regulatory agency, no other exceptions may be inferred. While this office is authorized to issue opinions only on the provisions of existing statutes, the language you propose would appear to alter the exception in section 455.225, Florida Statutes, to allow the release of information to the complainant in an investigation by the department which currently would be exempt and confidential.

I trust that these informal observations are of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] A complaint is considered legally sufficient if it contains ultimate facts showing the occurrence of a violation of Chapter 455, Florida Statutes, any practice act relating to professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department.

[2] Section 455.225(9), Fla. Stat.

[3] *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla.1944); *Thayer v. State*, 335 So. 2d 815, 817 (Fla.1976); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla.1952).