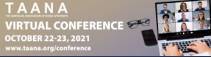


## The Role of Judicial Review in Professional Discipline

Amigo R. Wade, Esq.  
Virginia Division of Legislative Services

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## Introduction

- Commonality among professionals
- Informed by experience and new information
- Constant state of renewal and expansion
- The role of judicial review

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## Cases

1. Holden v. Naccarato, 181 A.D.3d 1076 (2020)
2. Galvan v. Florida Department of Health, 285 So. 3d 975 (2019)
3. Allrich v. Regents Review Committee, 179 A.D.3d 1156 (2020)
4. Hall v. Florida Department of Health,
5. Leach v. Iowa Board of Nursing, 939 N.W.2d 126 (2019)

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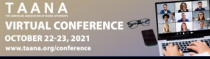
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## Holden v. Naccarato

- Applied for LPN license in Louisiana in 2006
- Denied
  - Lack of good moral character
    - > Volatile temper
    - > Addressed others with gender-based and racially charged statements
    - > Threatened staff
  - Engaging in fraud and deceit
- 2006 application for license denied in Mississippi
- 2008 application for license denied in Indiana



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## Holden v. Naccarato

- Subsequently applied for license as an LPN in New York
- BON denied- failure to meet moral character requirement; administrative
- Appeal to Committee on Professions (COP)
  - Included examination of previous denials by other states
  - Denied or downplayed misconduct and never expressed remorse
- COP Finding: (i) failure to fully accept responsibility for his actions, (ii) lack of proof of rehabilitation, and (iii) still lacking insight to avoid recurrences



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## Holden v. Naccarato

- Holden's position:
  - Inquiry should be limited to his *present* moral character
  - Past actions relevant to determine if he *presently* acknowledged prior mistakes, accepts responsibility, demonstrates remorse, and has changed
  - Other's advised him not to put the information on his application; not being deceitful
  - Denied having a temper; never disrespectful to anyone
- Appealed; decision not supported by substantial evidence



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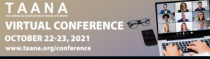
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### Holden v. Naccarato

- Regulator vested with duty to evaluate whether an applicant demonstrates good moral character
- COP reviewed evidence of Holden’s denial of licensure by other states
- BON and COP could reasonably doubt the accuracy or sincerity of Holden’s testimony that he had learned from the experience
- Determination to deny application is supported by substantial evidence

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### Galvan v. Florida Dept. of Health

- Galvan was a licensed registered nurse. Also owned and administered a group home
- Accepted cash from a pharmacy for doing business with the pharmacy
- Pleaded guilty to federal criminal charges for receiving kickbacks in connection with Medicaid claims
- Board initiated a disciplinary case based on the conviction

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### Galvan v. Florida Dept. of Health

- Galvan objected:
  - Did not actually engage in the practice of nursing in her role as the proprietor of the group home
  - Conviction is not related to the practice of nursing
- After an informal hearing, BON denied Galvan’s request for a full formal hearing, and permanently revoked her license
- Galvan appealed

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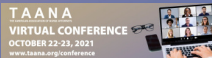
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### Galvan v. Florida Dept. of Health

- Two elements of the violation
  - Licensee convicted, found guilty of or pled guilty
  - Crime that directly related to the practice of nursing
- Statutes authorizing sanctions against a person's professional license are deemed to be penal in nature
- Such statutes must be strictly construed with any ambiguity interpreted in favor of the licensee

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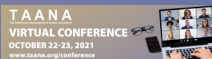
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### Allrich v. Regents Review Comm.

- Allrich convicted- 1 count of scheme to defraud and 6 counts of grand larceny based on her involvement in the operation of an unlicensed nursing school
- Conviction:
  - > Sentenced to 1-7 years on the scheme to defraud charge
  - > Sentenced to 2-7 years for each count of grand larceny
- Office of Professional Discipline initiated disciplinary case
- Hearing before Regents Review Committee

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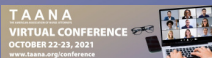
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### Allrich v. Regents Review Comm.

- Committee found misconduct and recommended revocation of license and \$10,000 fine
- Board of Regents adopted the Committee's findings
- Allrich appealed; revocation unconscionable enhancement of sentence

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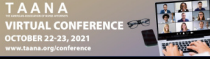
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### Allrich v. Regents Review Comm.

- **Allrich Position:**
  - Revocation unconscionable enhancement of sentence
  - Already served 2 ½ year prison sentence, one year probation, and been terminated from Medicaid because of the convictions
  - Nursing is her only form of employment
  - At the time the underlying crimes committed was not acting in her capacity as a licensed practical nurse
  - The Board did not have a sufficient quorum when it voted to revoke her license

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### Allrich v. Regents Review Comm.

- **Imposition of administrative penalty rests within discretion of the reviewing agency**
- **Will not be disturbed unless so disproportionate to the offense as to “shock one’s sense of fairness”**
- **Imposition of penalty for misconduct need not be directly related to the practice of nursing**
- **Remaining arguments were not raised at administrative hearing**

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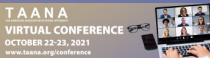
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### Hall v. Florida Department of Health

- **Licensed practical nurse at healthcare facility**
- **Dispute with a patient at approximately 11:30 p.m.; patient threw water in Hall’s face**
- **Hall grabbed patient by the hair and dragged her across the floor; after being separated and restrained, went after the patient a second time**
- **Incident captured on security cameras**

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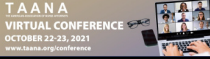
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### Hall v. Florida Department of Health

- Department filed complaint alleging that Hall used force and struck a patient
- Conduct amounted to unprofessional conduct; requested BON permanently revoke or suspend Hall's license
- Informal hearing before the BON;
  - Hall: patient demanded medications and thrown water on her
- BON-facts sufficient to find Hall was a danger to the public and that a deterrent effect was necessary
  - Permanent revocation of license

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### Hall v. Florida Department of Health

- Hall:
  - Revocation improper because relevant section limits the penalty for a single violation
  - BON considered matters outside the complaint when finding she was a danger to the public
    - BON inquired about her training for dealing with difficult patients inquire about
  - No competent and substantial evidence to find she was a danger to the public

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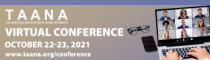
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### Leach v. Iowa Board of Nursing

- Employed as nurse in hospital's intensive care unit
- On eleven separate dates in one month remotely accessed patient census lists while not on duty
- Hospital learned of the access the following month
- Hospital issued disciplinary action and suspended for two 12-hour shifts and required training
- Complaint filed with the BON

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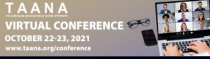
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### Leach v. Iowa Board of Nursing

- Leach asserted access was only to check ICU capacity and whether she would be required to work
- **BON found**
  - Didn't understand her actions violated patient confidentiality
  - Didn't disclose information others
  - Not authorized to access from remote locations
  - Not needed to perform duties
  - Accessed without a legitimate or proper reason
  - Unethical conduct violating confidentiality or privacy rights

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### Leach v. Iowa Board of Nursing

- **Leach's position:**
  - BON did not make a finding that she read or shared any of the protected health information
  - BON's finding irrational, illogical, or wholly unjustifiable
  - No substantial evidence to find she viewed any protected health information

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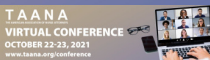
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### Leach v. Iowa Board of Nursing

- **BON allowed to discipline a nurse when guilty of engaging in unethical conduct or practice**
- **Proof of actual injury is not required**
- **Leach admitted to repeatedly accessing lists; did not deny the information was not necessary to complete her duties**
- **Leach knew or should have known was a violation of policy**
- **Court's review very limited; may reverse only if unsupported by substantial evidence or an abuse of discretion**

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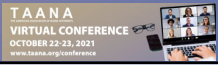
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