

# THE BUSINESS OF BEING A DOCTOR

Presented by:



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**George F. Indest III, J.D., M.P.A., LL.M.**

**Board Certified by the Florida Bar in the Legal  
Specialty of Health Law**

**Website: [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)**



**Main Office:**


1101 Douglas Avenue  
Altamonte Springs, Florida 32714

**Phone:** (407) 331-6620


**Fax:** (407) 331-3030

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)


# Topics

- Licensure Application Process
  - Credentialing
  - Employment Agreement Regulations
  - Compensation
  - Physician Liability Insurance
- 


# Licensure Application Tips

- Fully disclose all background information, even if it's negative.
    - It's always better to be completely honest. They will always find out if you attempt to cover anything up.
  - Have someone other than yourself review your application.
  - Submit your application at least 90 days prior to employment. Better safe than sorry!
  - If you are called for a board appearance regarding your application, retain an attorney to represent you in this matter.
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# Credentialing

- Get credentialed at least 90 days before employment begins.
  - Find out credentialing timeline from employer/facility.
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# Employment Agreement Regulations

- Health Care Clinic Act
  - Stark Law
  - Anti-Kickback Statute
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# Health Care Clinic Act

- Purpose: To require non-healthcare provider owners of health care entities to have the clinic licensed through the Agency for Health Care Administration (AHCA)
  - Applies: If **ANY** portion of the business is owned by a non-exempt person
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# Exemptions


## A Practice Owned By:

- Acupuncture Physicians
  - Allopathic Physicians
  - Osteopathic Physicians
  - Chiropractic Physicians
  - Podiatric Physicians
  - Naturopaths
  - Optometrists
  - Dentists
  - Massage Therapists
  - Nurse Practitioners
  - Other Providers Licensed Under Chapter 464, Florida Statutes
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# Requirements for a Health Care Clinic License from AHCA

- Providing proof of financial ability to operate
  - Background screenings, including screening of the director and chief financial officer
  - Disclosures of certain additional information
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# Requirements for a Health Care Clinic License from AHCA

- Clinic must have a medical director
    - Medical director duties:
      - Ensure medical professionals are properly licensed and certified
      - Ensure record keeping compliance
      - Report noncompliance
      - To review clinic billings for fraud
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# Traps for the Unwary

- If a non-exempt person owns the clinic, practice, or facility.
  - If a non-physician controls all major decision making for the clinic, practice or facility.
  - If all financial matters are controlled by a non-physician.
  - If a corporation or LLC owns the clinic, practice or facility.
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# Real-Life Scenarios

## Scenario 1:


A physician practices medicine through a limited liability company which the physician owns with his non-licensed wife. The physician dies and his wife remains sole owner of the practice, hiring a locum tenens physician to come in and treat patients.



# Real-Life Scenarios

## Result 1:


As of the date of death of the physician, the practice is operating illegally, in violation of Florida law. Each day of operations is a separate felony offense.



# Real-Life Scenarios

## Scenario 2:


A physician licensed in Florida operates a medical practice as a sole proprietorship. The physician desires to reward her practice manager, a non-licensed business person, by making him a partner in her practice. The practice continues to operate as before without a health care clinic license.



# Real-Life Scenarios

## Result 2:

The practice is operating illegally as of the day the practice manager is made a partner.






# Real-Life Scenarios

## Scenario 3:


A physician licensed in Florida decides to sell her practice and retire. Three non-licensed business people decide to form a corporation to purchase and operate the practice. The corporation purchases the medical practice's assets, including patient records. The corporation has not applied for or received a Health Care Clinic License.




# Real-Life Scenarios

## Result 3:


On the day of closing or the day the practice is transferred to the new corporation, the corporation is operating illegally, in violation of Florida law. Each day of operation is a separate felony.




# HCCA Consequences

- Third-degree felony with each day of operation
  - If an individual has an interest in more than one clinic, AHCA may revoke the license for all of the clinics
  - Administrative fines of up to \$5,000 per day
  - Potential recoupment of claims made to third-party payors
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# Keep in Mind

- Some health professions prohibit ownership by anyone outside of that specialty
  - Examples include:
    - Dentistry
    - Optometry
    - Chiropractic medicine
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# Do Not Work at an Illegal Health Care Clinic

- Checking the Secretary of State's website to identify the business entity actually owning the practice
  - Identify the office's directors, managers or members of the business entity and check to see if they are all exempt providers
  - If they are not, inquire with AHCA as to the existence of a valid health care clinic license or exemption
  - Inquire with the managers, officers or owners as to the identity of all owners
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# Stark Law

- Physician Self-Referral Prohibition
  - Physician prohibited from referring to an entity in which he/she has non-exempt financial interest
  - Two-Way Street
    - Provider receiving the referral is prohibited from accepting it
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# Stark Law


- Stark Law prohibits referral to entities for the provision of designated health services such as:
    - Clinical laboratory services
    - Physician, occupational, & speech-language pathology services
    - Radiology & other imaging services
    - Radiation therapy services & supplies
    - Durable medical equipment & supplies
    - Parenteral & enteral nutrition supplies
    - Prosthetics, orthotics & prosthetic devices
    - Home health services
    - Outpatient prescription drugs
    - Inpatient & outpatient hospital services
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# Real-Life Example:


- A physician practice owns a Durable medical equipment (DME) provider and refers its patients to the DME company for supplies and equipment.
  - Result: This is a Stark violation as the physician has a financial interest in the DME company and is in a position to influence referrals.
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# Stark Law Consequences

- Denial of Medicare/Medicaid/third-party payors payment
  - Civil penalty of up to \$100,000 for the DHS entity, referring physician or both
  - If the violation is knowing it can subject a provider to criminal and civil liability under the False Claims Act
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# Anti-Kickback Statute (AKS)

- Under the Anti-Kickback Statute, it is illegal to knowingly or willfully:
    - Offer, pay, solicit, or receive remuneration directly or indirectly, in cash or in kind, in exchange for referring and individual, or furnishing or arranging for a good or service for which payment may be made by a federal healthcare program
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# AKS Problem Areas

- Free supplies or equipment – manufacturers may offer free supplies or equipment
  - Waiving co-pays
  - Offering transportation to appointments
  - Offering free or reduced priced medications
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# Real-Life Example:


- USA Health Alliance and Sacred Heart Hospital were accused of illegally paying physicians in exchange for referring cardiac patients to Sacred Heart Hospital, a former member hospital of the USA Health Alliance.
  - A qui tam lawsuit was brought forth alleging Sacred Heart Hospital limited the opportunity to work at the Heart Station, a center where patients receive non-invasive procedures such as stress tests, to those cardiologists who referred cardiac business to Sacred Heart Hospital .
  - The suit also alleged that cardiologists were rewarded with a percentage of time at the Heart Station based on their contributions to the hospital's yearly gross revenues, and these physicians earned additional income for treating patients at the facility.
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# Real-Life Example:


- Result: The government claimed Sacred Heart Hospital's use of Heart Station panel time to induce lucrative cardiac referrals violated the federal Anti-Kickback Statute
  - Claims submitted to Medicare/Medicaid violated the False Claims Act.
  - The two hospitals agreed to pay \$108 million to settle claims they violated the Anti-Kickback Statute and the False Claims Act
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# Anti-Kickback Statute (AKS)


## Consequences

- Considered a felony for anyone who receives a form of payment in return for referring a patient for Medicare/Medicaid/Etc. covered services
  - Imprisonment up to five years
  - Exclusion from Medicare/Medicaid/Etc.
  - Possible fine of up to \$25K for ea. violation
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# Anti-Kickback Safe Harbors

- Safe Harbors Include:
    - Investment interests in certain entities
    - Space and equipment rental agreements
    - Personal Services and Management Contracts
    - Sales of practices
    - Employment relationships
    - Group Purchasing Arrangements
    - Health Plans and Managed Care Plans
    - Warranties
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# Safe Harbors-Personal Services/Management Contracts


- Payment made to agents as compensation, so long as the agency agreement:
    - Covers all services the agent will provide
    - Cannot reflect the volume or value of referrals
    - Set out in writing
    - Not less than one year
    - Fair market value
- 




# Safe Harbors - Recruitment

- Safe harbor for payments made to induce a practitioner to join with an entity, with litany of conditions including:
  - Recruit is leaving an established practice
  - Recruit can only bring 25% of patients with him or her from old practice


# Compensation

- Compensation Packages – must be reasonable
  - Compensation Structure – must be in compliance with applicable federal and state regulations (taxes)
  - Compensation Paid – must meet fair market value
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# Fair Market Value (FMV)

- FMV is the price point for compensation to which a employer and employee can agree based on the current job market and career trends
  - FMV is determined by comparing the entire compensation package
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# FMV: Commercial Reasonableness

- Stark II Phase II regulations at 69 Fed. Reg. 16093 (2004)
    - An arrangement that would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable physician of similar scope and specialty, even if there were no potential business referrals between the parties.
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# FMV: What To Keep Your Eye On

- Compensation packages that include remuneration in the form of free, or less than fair market value, space and staff
  - Kickbacks
  - Compensation rates for meetings (advisory, training, planning, conferences)
  - Compensation rates for speaking fees
  - Physician investment/joint venture relationships (medical device industry)
  - Remuneration for clinical studies which may have no legitimate “value” to prompt physicians to prescribe specific drugs – Clinical Trial Fraud
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# Seek FMV Analysis

- Internally prepared analysis/documentation
  - Independent FMV consultant
  - Use of independent credentialed appraiser
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# Physician Insurance Coverage




# The Most Important Type of Coverage


- Every licensed health care professional should have legal defense coverage.
  - This is the most used type of coverage and the most beneficial.
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# Malpractice Insurance

- Most employers provide professional liability insurance when physician works for employer
  - Claims made or occurrence based
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# Malpractice Insurance: Claims Made Policy

- Covers the physician only if the claim is brought within the policy period
  - Additional tail coverage is required to cover claims made after the policy expires or when the physician leaves
    - Agreement should outline who pays for “tail” coverage
  - Most employers provide this type
- 


# Malpractice Insurance: Occurrence Based Policy

- Covers the physician for an alleged act that occurred while the policy was in effect, even if the claim is brought well after the policy expires.
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# Supplemental Coverage

- Healthcare Providers Service Organization (HPSO) now provides up to \$25,000 in coverage.
  - In additions, HPSO has increased optional coverage in areas sorely needed by health care professionals.
  - Supplemental coverage is optional insurance for incidents not necessarily related to malpractice or professional liability.
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# HPSO Supplemental Coverage


- Representation During a Deposition (e.g. representation in a subpoena for testimony)
  - Information Privacy Coverage (HIPAA fines)
  - Sexual Misconduct
  - Reimbursement for Rendering First Aid
  - Accidental Injury to Others
  - Workplace Violence Counseling
  - Coverage If You are Assaulted
  - Reimbursement for Defendant Expenses
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# Insurance Coverage Scenario


- Dr. Strange receives a complaint and notice of investigation from the Department of Health. It appears the complaint was filed by a disgruntled former patient.
  - Dr. Strange contacts his insurance carrier about the complaint. He is informed that although he carries medical malpractice insurance, he does not have coverage for licensure defense.
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# Insurance Coverage Scenario

Outcome:

- Dr. Strange hires legal counsel to defend him against the complaint. The matter ends up going to a formal hearing, which costs tens of thousands of dollars in legal fees.
  - Dr. Strange must pay for his legal fees out-of-pocket. Because of this, his home goes into foreclosure and his vehicles are repossessed.
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# Take This Tip Away With You

- Have an attorney on retainer who knows you and your business.
  - What is an attorney on retainer?
    - A client pays an attorney a reduced fees on a regular basis. In return, the lawyer performs some legal services whenever the client needs them.
    - Can be a tax write off as a business operation expense.
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**Main Office:**

1101 Douglas Avenue  
Altamonte Springs, FL 32714

**Phone:** (407) 331-6620  
**Fax:** (407) 331-3030

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)



**Orlando Office (By Appointment):**

37 North Orange Avenue, Suite 500  
Orlando, Florida 32801

**Phone:** (407) 331-6620

**Fax:** (407) 331-3030

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)



**Pensacola Office (By Appointment):**

201 East Government Street  
Pensacola, Florida 32502

**Phone:** (850) 439-1001

**Fax:** (407) 331-3030

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)



**Denver, Colorado Office (By Appointment):**

155 East Boardwalk Drive, Suite 424  
Fort Collins, Colorado 80525

**Phone:** (970) 416-7454

**Fax:** (866) 203-1464

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)



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