

Protecting Your Medical License

Presented by:



www.TheHealthLawFirm.com



Main Office:

1101 Douglas Avenue
Altamonte Springs, Florida 32714

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Today's Lecturers:

Chris Brown, J.D.

Lance Leider, J.D.


Objectives For Today

The resident will be able to:

Describe the structure and purpose of the Florida Board of Osteopathic Medicine;

Identify and describe the significant steps in the Florida physician disciplinary process; and

List specific sources of medical practice that have high potential for putting a medical license at risk of discipline.




Stupid Question?


Why Do You Need To Worry About Your Medical License?




Your Medical License

- A Privilege vs. a Right
 - The state regulates and disciplines Florida physicians
- 


The Florida Board of Osteopathic Medicine

- The regulatory body charged with ensuring the minimum requirements for safe physician medical practice
 - Organized under the Department of Health
 - Members appointed by the governor
 - Duty is to protect the public, not to advocate for the physician
 - D.O.s
- 


The Florida Board of Medicine

- The regulatory body charged with ensuring the minimum requirements for safe physician medical practice
 - Organized under the Department of Health
 - Members appointed by the governor
 - Duty is to protect the public, not to advocate for the physician
 - Regulates M.D.s and P.A.s
- 


The Physician Disciplinary Process

- **Complaint**
 - **Investigation**
 - **Probable Cause Panel**
 - **Administrative Complaint**
 - **Hearing**
 - **Discipline**
- 

The Initial Complaint Sources

- Disgruntled employee/employer, colleague/coworker, patient/family member
 - Code 15 or adverse incident report
 - Agency for Health Care Administration (AHCA) surveys
 - Law Enforcement
 - Self Report or Adjudication
 - Malpractice Allegation
 - National Practitioner Data Bank (NPDB)
 - Other
- 

The Initial Complaint: Common Allegations

- Unprofessional conduct (e.g. disruptive physician)
 - Failure to practice with reasonable skill and safety
 - Criminal conduct
 - Engaging or attempting to engage in the possession, sale or distribution of controlled substances
 - Filing a false report
 - Malpractice settlements
- 

The Investigation: Notice Letter & Case Summary


What it really means

What it can tell you


What you should and should not do upon receipt




The Investigation: The Investigator

- The investigator's role
 - The investigator: your best friend or worst enemy?
- 


The Prosecution Stage

- The role of the Department of Health (DOH) attorney
 - Review and rebuttal of the DOH investigative findings
 - Presenting mitigating factors
- 

Probable Cause


- Who is the probable cause panel? Members?
 - The Panel reviews the case file and determines whether probable cause exists to proceed with a formal administrative complaint
 - The Panel's determination options:
 - Dismissal
 - Dismissal with a letter of guidance
 - Finding of probable cause
- 

Prosecution


- The Administrative Complaint
 - The Election of Rights
 - Informal Hearing
 - Formal Hearing
 - Voluntary Relinquishment
- 

Discipline


Potential Penalties:

- Revocation or suspension of license
 - Restriction of practice
 - Probation – direct or indirect
 - Imposition of a fine
 - Mandatory continuing education
 - Issuance of a reprimand
 - Issuance of a citation
- 


Settlement Agreements

- Negotiated with Department of Health attorney
 - Needs to be presented and voted on by Board
 - Counter offers and rejections
- 

Discipline: Collateral Consequences

- Discipline remains on the medical license forever
 - Will usually precipitate an investigation and/or discipline by other states where the physician holds a license
 - When discipline is imposed, the physician generally has an affirmative duty to report to other states where a license is held
 - Could serve as a basis for exclusion from Medicare/Medicaid programs
 - Will generate a NPDB report
- 

The Professionals Resource Network (PRN)

- May be an alternative to discipline
or
 - Can be a condition imposed upon a physician's license by the Board of Medicine
- 

License at Risk

- What are some actions you think will put your medical license at risk?



Sure-Fire Ways To Put Your License At Risk

Lie on your application for license

or

License renewal



Sure-Fire Ways To Put Your License At Risk

Drink and drive

or

Commit any type of crime



Sure-Fire Ways To Put Your License At Risk


Take a controlled substance that has not been legitimately prescribed for you

or


Exchange prescriptions with a colleague



California Proposition 46

- On the November 4, 2014, ballot.
 - Doctors and insurance companies have amassed \$57 million to fight Proposition 46, making this the most expensive campaign of the fall election.
 - Would make it mandatory for doctors to consult a database that contains how many times a patient has been prescribed serious narcotics, prior to prescribing the patient; *CURES – Controlled Substance Utilization Review and Execution System*.
- 

Arguments For Proposition 46

- Prevents substance abuse by doctors and patients
 - Holds negligent doctors accountable
 - An estimated 18% of health professionals have an abuse problem in their lifetimes
- 

How does California's Proposition 46 apply
to you?



Sure-Fire Ways To Put Your License At Risk

Falsify a medical record



Sure-Fire Ways To Put Your License AT Risk

Failure to document performance of procedures and orders given



Sure-Fire Ways To Put Your License At Risk

Improperly alter or attempt to correct a record




Sure-Fire Ways To Put Your Licensure At Risk


Fail to report a plea or adjudication



Ways To Protect Your License


- When in doubt, look it up or consult an attorney
 - Be familiar with facility policies and procedures
 - Document accurately and timely
 - Be aware of your employer's business practices
 - Be prepared to quit your job
- 

Ways To Protect Your License


- Be familiar with Florida's Medical Practice Acts and the act of any other state where you hold a license
 - Never plead to a crime without knowing the implications to your medical license
 - Cooperate with internal investigation, but always maintain caution
- 

Case Study: PRN


Professional Resource Network

- John Doe, resident physician at Orlando Health
 - It's his birthday! Happy Birthday John.
 - John's a lucky guy and has the next three days off.
 - John and his friends go out for drinks to celebrate.
 - John's friend videotapes the final shot of the night.
 - John walks home after his night out. SMART idea, kudos to you John.
 - Fast forward to two weeks later...
- 


Case Study: PRN

- Trudy James, nurse at John's hospital, see's the video of John's birthday night on Facebook.
 - Judy, offended by the video and drinking, reports John to the Professional Resource Network (PRN).
 - John receives a letter from PRN notifying him that it believes he may be an impaired physician and to contact the program immediately. Bummer.
 - Knowing that he doesn't have a drinking problem, John ignores the letter.
 - Outcome?
- 


Case Study: Drug Screenings

- Dr. Palmer, emergency room physician at Cori Morgan Hospital
 - Ten year tenure at Cori Morgan Hospital
 - It was discovered that Dilaudid (narcotic pain reliever) went missing during her shift.
 - The hospital decides to drug screen all doctors and nurses working that day.
 - Dr. Palmer is insulted the hospital would ever suspect her.
- 


Case Study: Drug Screenings

- Dr. Palmer calls the president of the hospital medical staff, demanding she be exempt from the screening.
 - She cites her long tenure, and six negative drug tests taken in the past, the most recent just four weeks ago.
 - The president denies her request.
 - Believing she is no longer trusted, Dr. Palmer gives notice and quits.
 - The result?
- 


Case Study: Sexual Misconduct

- Dr. Smith, OB/GYN
 - He treated Sally, a female patient, for many years.
 - Dr. Smith stops treating Sally due to a change in insurance.
 - Fast forward 1 year later...
- 


Case Study: Sexual Misconduct

- Dr. Smith and former patient, Sally, begin a sexual relationship.
 - Dr. Smith writes prescriptions for non-controlled substances sporadically over the next 1-2 years.
 - After a falling out, Sally files a complaint against Dr. Smith with the DOH.
 - The outcome?
- 


Difficulty in Sexual Misconduct Cases

- Treated as boundaries violations.
 - Depending on the nature of the case, it may be considered an ongoing issue and require monitoring and re-education.
 - Often referred to PRN for evaluation/treatment.
 - Handled with extreme caution and often results in severe restrictions being placed on physicians (e.g. no contact with female patient).
- 


Additional Issues In Sexual Misconduct Cases

- When does the physician/patient relationship begin and when does it end?
 - When is a case an isolated incident and when is it evidence of a likely pattern of activity?
 - Who will determine whether it is isolated or a pattern?
 - Instantly becomes high a profile case often with media attention including cameras at Board meetings.
- 


Case Study: External Legal Obligations

- Dr. Johnson, a teleradiologist
 - Dr. Johnson was contracted to read diagnostic imaging studies for XYZ Diagnostics, an independent diagnostic testing facility.
 - Over the years, the doctor becomes close friends with the facility owners.
 - The owners ask Dr. Johnson to assist with certification efforts and financing an equipment purchase.
- 


Case Study: External Legal Obligations

- The facility owners tell Dr. Johnson they will make him an officer of the company.
 - Unknown to Dr. Johnson, the facility fails its mammography certification.
 - The facility also fails to abide by the consent order entered by the FDA.
 - The facility tries to reorganize under a different name, using the physician's credentials to reapply for certification under a new name.
- 


Case Study: External Legal Obligations

- All the while, the facility has been providing mammograms to patients without being certified.
 - The owners list Dr. Johnson as the incorporator and president of the company.
 - The owners, on all FDA documents, label the doctor as the owner and responsible physician.
 - The FDA and DOH discover the operation and take action against Dr. Johnson.
 - Outcome?
- 


Case Study: External Legal Obligations

- Dr. Johnson could potentially receive:
 - Disciplinary actions against his license
 - Federal civil monetary penalties of \$1.5 million
 - State fines and penalties
- 

Discipline Doesn't Always Come From The Practice of Medicine

- Florida Statutes have provisions to catch many types of acts that are not the active practice of medicine:
 - Section 456.072(1)(k), Florida Statutes, “Failing to perform any statutory or legal obligation placed on a licensee.”
 - Section 458.331(1)(g), Florida Statutes, applying to allopathic physicians.
 - Section 459.015(1)(g), Florida Statutes, applying to osteopathic physicians.
- 

Types Of External Legal Obligations To Be Aware Of:

- Medical Director duties
 - Regulatory compliance for any clinics you own or in which you have ownership interest
 - Payment of student loans
 - Income/payroll taxes
 - Workers' compensation insurance premiums
- 

Next Topic?

- We want to hear from you!





Main Office:

1101 Douglas Avenue
Altamonte Springs, FL 32714

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com