

SEMINOLE COUNTY MEDICAL SOCIETY

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HOT LEGAL TOPICS

BY

THE HEALTH LAW FIRM

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1. Medicare Must Have Your Correct Mailing Address

Medicare carriers (such as First Coast Service Options, Inc.) are in the process of mailing out to solo practitioners brochures describing the physicians' obligations to report changes in their enrollment information to Medicare. When the Medicare carriers receive notice that the brochure was sent to an invalid address (such as returned mail from the U.S. Postal Service), Medicare is deactivating that provider's number. All practitioners are cautioned to verify through the Medicare Provider Enrollment Chain Ownership System (PECOS) or by calling their carriers, that all of their Medicare carriers have their current correct enrollment information, now and within 30 days of any address change. See enclosure (1)

2. The Florida "Three Strikes Law" Is Being Constitutionally Challenged

A trial lawyer in Orlando, having filed a medical malpractice lawsuit, is using it as a means to challenge the Florida Constitutional amendment passed by voters in 2004. The plaintiff's attorney argues that the 2005 law (passed by the Florida Legislature) putting the Constitutional amendment

into effect, Section 456.50, Florida Statutes, enclosure (2), raised the standard for what constitutes a "strike." He argues that law passed by the Florida Legislature raised the standard from a lower standard of "preponderance of evidence" (which is the standard in civil cases) to a higher, harder to meet standard of "clear and convincing evidence." He further argues that this higher standard makes it so difficult that it is impossible for a doctor to ever be charged with a violation and lose his/her license. See enclosure (2) for a copy of the current law.

3. Relocating Your Practice? You Must Hold Your Patient Records for Five Years.

When relocating your practice you are responsible to hold your patient records for five (5) years by Board of Medicine Rule. You must notify patients in letters or by sign as to where to pick up their records. Additionally, you must place a notice in newspapers and notify the Board of Medicine 30 days before you move. You are also responsible to complete your hospital charts if leaving the area.

4. You Must Update Your DOH Practitioner Profile Within 15 days

Number 1 on the Board of Medicine's Top 10 Laws and Rules Every Physician Should Know: The following changes must be made to the physician's DOH practitioner Profile within 15 days: address, staff privileges, medical malpractice history, financial responsibility, board certification, education, and disciplinary and criminal history.

5. Expert Witness Testimony--High Priority for Board of Medicine

The Florida Board of Medicine has proposed legislation for 2010 that would add to the definition of the practice of medicine in Florida that is contained in Chapter 458, Florida Statutes, "rendering of an opinion."

6. Physician Assistants/Co-Signatures On Charts

On June 16, 2009, Governor Crist signed Senate Bill 720, which removes the statutory requirement that supervising physicians review and co-sign charts and medical records of a physician assistant (PA) under the physician's supervision. While this legislation eliminates the requirement that supervising physicians review and co-sign a PA's charts within 30 days, it does not change the authority of supervising physicians to require such review and co-signature within their practice protocols with their physician assistants. A copy of this bill is enclosure (3).

7. Telemedicine Prescribing Practice

Physicians and PAs should not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless there is a prior documented patient evaluation (with that physician or PA), including history and physical examination to establish the diagnosis and a discussion with the patient regarding treatment options, and the risks and benefits of treatment. A copy of the Board of Medicine Rule, Rule 64B8-9.014, F.A.C., is attached as enclosure (4).