PROTECTING YOUR MEDICAL LICENSE

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Objectives For Today

The physician 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 Date 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
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