

# PROTECTING YOUR MEDICAL LICENSE

Presented by:



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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
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# 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
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# 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
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# 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
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# 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
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# 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*.
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# 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
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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
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# 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).
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# 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.
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# 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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