



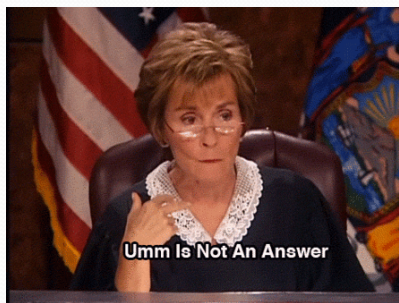
LECOM 2019 Summer CME Conference

Florida Law: What a Doctor Needs to Know

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August 5, 2019

The Laws & the Regulators



Florida Laws and Regulations Governing the Practice of Medicine

1. Florida Constitution (Article X).
2. Florida Statutes:
 - a. Chapter 409: Medicaid;
 - b. Chapter 456: Health Professions, general;
 - c. Chapter 458: Allopathic Medicine;
 - d. Chapter 459: Osteopathic Medicine;
 - e. Chapter 766: Malpractice; and
 - f. Chapter 893: Crimes, Controlled Substances.
3. Florida Administrative Code:
 - ✓ 64B8: Board of Medicine and
 - ✓ 64B15: Board of Osteopathic Medicine.
4. Common Law—judge made law—of key importance in torts and contracts.

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Regulation of the Practice of Medicine in Florida

1. No. 1 purpose: protect the health, safety and welfare of the public (patients) (456.003; 458.301; 459.001).
2. Key Regulatory Authorities:
 - a. The Department of Health (456.004);
 - b. Florida Agency for Health Care Administration;
 - c. The Medicaid Fraud Prevention Unit;
 - d. The Board of Medicine;
 - e. The Board of Osteopathic Medicine; and
 - f. The Office of the Attorney General.

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Regulation of the Practice of Medicine in Florida

3. Key definition: is "Practice":
 - a. Allopathic (458.305 (3)): "...the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition."
 - b. Osteopathic (459.003 (3)):
 - i. The diagnosis, treatment, operation or prescription for
 - ii. Any disease, pain, injury, deformity, or other physical or mental condition
 - iii. Based on educational standards and requirements and which
 - iv. Emphasizes the importance of musculoskeletal structure and manipulative therapy.....

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Civil Laws

Tort Law

Intentional	Unintentional
Assault	Negligence
Battery	Malpractice
Fraud	Negligent Misrepresentation
Infliction of Emotional Distress	
Invasion of Privacy	
False Imprisonment	

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Civil Laws (cont.)

Contracts

1. Elements:
 - a. Offer;
 - b. Acceptance;
 - c. Consideration; and
 - d. Meeting of the minds; intention to be bound.
2. Types:
 - a. Oral;
 - b. Written; or
 - c. Quasi/implied.

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Civil Laws (cont.)

Contracts (cont.)

3. Occasions:
 - a. Outset of the patient relationship;
 - b. Managed care situations;
 - c. Guarantees;
 - d. Employment;
 - e. Property interests (fee simple; lease; licensee); and
 - f. Vendors.
4. Two key rules: Statute of Frauds and the parol evidence rule.

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Licensing



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Physician Licensing in Florida

1. Numerous requirements for an initial full, unrestricted license (458. 311/459.0055).
 - ✓ Age, education, residency, character, record, etc.
 - ✓ Board web sites.
2. Also available via reciprocity.
3. Key duties after initial grant of licensure:
 - a. Renew—2 years;
 - b. Stay legal;
 - c. Pay fees and meet financial obligations;
 - d. Complete CME requirements; and
 - e. Be in active practice.

<http://floridasosteopathicmedicine.gov/licensing/>

<http://flboardofmedicine.gov/licensing/>

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Sidebar: Items to Have to Avoid Renewal Delays

- Completed renewal application.
- Required fees.
- Evidence that you have practiced medicine or have been on the active faculty of an accredited medical school for at least two years of the immediately preceding four years.
- Completion of Financial Responsibility form.
- Completion of Physician Workforce Survey.
- Verification of Physician Profile.
- Verification of your current status relating to prescribing controlled substances for the treatment of chronic non-malignant pain.

<http://flboardofmedicine.gov/pdfs/WinterNewsletter.pdf>

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Physician Licensing in Florida (cont.)

4. Types of licenses:

Allopathic	Osteopathic
Full, unrestricted	Full, unrestricted
Limited, Volunteer	Limited, no comp.
Areas of critical need practice—comp. or vol.	Temp. cert. in areas of critical need
Faculty Certificate	Teaching Certificate
Physician in training/House Physician registration	Physician in training registration
Temporary Certificate for Active Duty Military and Veterans (ACN - Military)	Active Duty Military and Veterans Temporary Certificate to Practice in an Area of Critical Need
Temp. cert. for visiting physicians for specialty instruction	

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Physician Licensing in Florida (cont.)

5. Online renewals:

Medical Quality Assurance (MQA) Services

Welcome to the Division of Medical Quality Assurance Online Services.

ONLINE SERVICES - ACCOUNT LOG IN
Sign-in to your account

1. Select your Profession:

2. Enter your User ID: (User ID is case sensitive)

3. Enter your Password: (Password is case sensitive)

[Sign in using our secure server](#) [Get Login Help?](#)

Existing Licensee:
Your User ID and Password were mailed with your initial physical license. Please look at the center section and refer to the Online Services Instructions, item #5. [Sample Here](#)

Applicant:
If available, User ID and Password are included in a Definition letter and

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Physician Licensing in Florida (cont.)

6. Disqualifications:
- Drug abuse/dependence;
 - Child abuse;
 - Violation of federal drug law;
 - Medicare/Medicaid disqualification or fraud (exceptions for pre-2009 arrests)*; or
 - Immigration issues.

Note: on the MD side, some licenses are granted w/ the requirement of supervision. 64B8-4.025

*http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0456/Sections/0456.0635.html

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Physician Licensing in Florida (cont.)

7. Allopathic CME requirements: 40 hours every 2 years:
 - a. One hour on HIV live upon first renewal;
 - b. Every third renewal, two hours on domestic violence, which can be home study;
 - c. Two hours on medical errors, including five most misdiagnosed conditions: cancer, spine, stroke, infectious disease & pulmonary issues;
 - d. Five hours in risk management (can be secured by attending a day of disciplinary hearings);
 - e. Supervising physicians can obtain six hours for each physician supervised for a year in risk management;
 - f. Five hours can be secured each two years for performing pro bono services;
 - g. **Newer:** course on prescribing controlled substances (456.0301); and,
 - h. **Newest:** one hour course on human trafficking and post sign in office by January 1, 2021. (456.0341)

FAC 64B8-13.005

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Physician Licensing in Florida (cont.)

8. DO CME requirements: 40 hours every two years:
 - a. General Hours—35; 20 must be AOA Category 1-A;
 - b. Medical Errors—2 hours, must be live;
 - c. Laws and Rules—1 hour, must be live;
 - d. Professional & Medical Ethics/Risk—1 hour, must be live;
 - e. Federal & State Laws Related to the Prescribing of Controlled Substances—1 hour, must be live; and
 - f. Domestic Violence—2 hours every third renewal (part of general hours) (456.031).
 - g. Controlled substances: board approved.
 - h. Human Trafficking—1 hour, must post office sign

Note: for First Time Renewal: in addition to the above required hours, licensees must also complete a 1 hour HIV/AIDS course (456.033).

Note 2: Florida Board approved courses can be found at www.cebroker.com

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Physician Licensing in Florida (cont.)

9. Tracking CLE credits:
 - a. DOH is required to establish an electronic continuing education tracking system to monitor licensee compliance with CME requirements.
 - b. The tracking system shall be integrated into the department's licensure and renewal process.
 - c. DOH may not renew a license until the licensee complies with all applicable continuing education requirements.
 - d. Boards are permitted to impose additional penalties on non-complying physicians.
 - e. Medical Marijuana Treatment Center Directors now must take a two credit course, effective 1/3/18.

456.0316

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Physician Licensing in Florida (cont.)

10. Completion of Physician Survey to the Department of Health (458.3191 and 459.081):
 - a. Frequency and geographic location of practice;
 - b. Practice setting;
 - c. Percentage of time spent in direct patient care;
 - d. Any anticipated change in license status;
 - e. Areas of specialty or certification; and
 - f. Availability of critically needed services:
 - i. OB;
 - ii. Radiological services;
 - iii. ER and trauma service; or
 - iv. Other areas identified by the DOH.

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Physician Licensing in Florida (cont.)

11. Board required information of licensees (profile):
 - a. All medical education received;
 - b. Each hospital at which the licensee has privileges;
 - c. An address *of record*;
 - d. Any specialties;
 - e. The date the licensee began practice;
 - f. Any faculty appointments;
 - g. A description of any criminal offenses;
 - h. A description of any discipline in the last 10 years;
 - i. Any qualifications; and
 - j. Facts regarding practice in other jurisdictions.

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Physician Licensing in Florida (cont.)

12. Consents presumed of licensees (458.339 and 459.008):
 - a. To give handwriting samples during any investigation;
 - b. To waive the confidentiality of and authorize the release of their medical records when there is reason to believe a violation of law has occurred; and
 - c. To waive any objection to the admissibility of medical reports in disciplinary proceedings.
13. Expert witness certificates are available to licensed physicians. Fee is \$50 and it is good for two years (458.3175; 459.0066).
 - a. To give expert medical opinions;
 - b. To provide testimony on the prevailing standard of care; or
 - c. To provide testimony in child abuse, neglect or dependency cases.

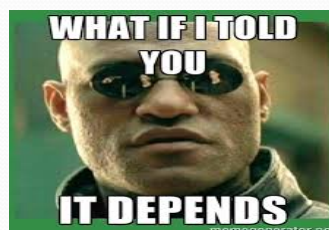
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Physician Licensing in Florida (cont.)

14. Privileges and Obligations of DO licensees (459.011):
- a. Required to follow all regulations relating to the reporting of births and deaths and other public health duties;
 - b. Have equal rights and obligations as all other physicians;
 - c. Have equal rights to hold positions in public institutions;
 - d. Have the right to practice as taught;
 - e. Have equal professional status as medical doctors; and
 - f. Have recognition for any Osteopathic specialties secured and have that specialty be given equal status as any corresponding allopathic specialty.

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Duties of Florida Physicians



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Physician Duties Under Florida Law

1. General Practice Standards:
 - a. Must adhere to the “prevailing professional standard of care”.
 - b. Must act in a way acceptable to reasonably prudent, similarly situated health care providers.
 - c. Must exhibit care prior to making any incision (right patient/right spot).
 - d. Do not be afraid to apologize.
 - e. Supervise subordinates
- FL Statues 90.4026; 766.102; FL Code 64B8-9.007; 458.348.

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Physician Duties (cont.)

2. Honor the Patient’s “Bill of Rights”:
 - a. Respect.
 - b. Privacy.
 - c. Response.
 - d. Information.
 - e. Financial disclosure.
 - f. Who’s in charge.
 - g. Clothes.

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Physician Duties (cont.)

3. Financial Responsibility (458.320 and 459.0085):
 - a. Have an escrow account.
 - b. Liability insurance (100K/300K).
 - ✓ Surgical centers (250K/750K).
 - c. Letter of credit to back insurance.
 - d. Within 30 days of license/renewal.
 - e. Exemptions to Financial Obligations:
 - i. Physicians employed by U.S. or FL;
 - ii. Physicians on inactive status;
 - iii. Physicians not practicing in the state;
 - iv. Physicians with a limited license;
 - v. Physicians who only teach; and
 - vi. Long-term physicians (15 years), with good record who practice part time.

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Physician Duties (cont.)

4. Record Keeping (456.057/459.012 et. seq.)—the most prominent duties include:
 - a. Practitioner/practice/facility owns the records.
 - b. Maintain records in confidence.
 - c. Furnish copies upon request.
 - ✓ Not conditioned upon payment of fees.
 - d. Give treatment report in lieu of records.
 - e. Psychiatrist records direct to next psychiatrist.
 - f. Keep record of disclosure.
 - g. Give notice of termination of practice.

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Physician Duties (cont.)

4. Recording Keeping (cont.):
 - h. Must keep legible (with EMR = understandable) medical records that *justify* the course of treatment of the patient and which support a continuity of care:
 - i. Patient histories;
 - ii. Examination results;
 - iii. Test results;
 - iv. Drugs prescribed;
 - v. Consultations; and
 - vi. Hospitalizations.

5 Ws and 5Cs

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Physician Duties (cont.)

5. Release and reproduction of records (FAC: 64B8-10 and 64B15-15):
 - a. Release cannot be conditioned on payment of a bill.
 - b. Release can be conditioned on payment for cost of reproduction:
 - ✓ \$1.00/page for the first 25 pages and \$.25/page thereafter.
 - c. X-rays, etc. can be actual costs.
 - d. Records should be produced within 30 days.
 - e. When records are released, the original or a copy must be maintained.
 - f. Notation must be made in the records as to whom they were released.

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Physician Duties (cont.)

6. Record Retention Rules:
 - a. Five years from time patient was last seen;
 - b. No less than two years after death of a physician; and
 - c. No less than two years after dissolution of a practice.
7. Written Prescriptions (456.42):
 - a. Must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription.
 - b. Must contain:
 - i. The name of the prescribing practitioner;
 - ii. The name and strength of the drug prescribed;
 - iii. The quantity of the drug prescribed; and
 - iv. The direction for the use of the drug.

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Physician Duties (cont.)

7. Written Prescriptions (con't):
 - c. Must be dated.
 - d. Must be signed by the prescribing practitioner on the day when issued.
 - e. Newer: three day supply of opioids for acute pain; seven under special circumstances. 456.44(3)(d). Must see patients on controls for chronic non-malignant pain every three months. Also, must consult PDMP data bank.
 - f. Effective July 1, 2019, HB 451 requires that before providing anesthesia or proscribing, ordering, dispensing, or administering a schedule II opioid to treat pain, the patient must be informed about non-opioid alternatives. Healthcare Practitioners must provide patient with educational pamphlet developed by Dept. of Health (exempted when providing emergency services).

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Physician Duties (cont.)

8. Electronic Prescriptions allowed but must contain (456.43):
 - a. Name of the prescribing practitioner;
 - b. Name and strength of the drug prescribed;
 - c. Quantity of the drug prescribed in numerical format;
 - d. Directions for use of the drug;
 - e. Must be dated and signed by the prescribing practitioner on the day issued; and
 - f. Software must not influence prescribers or interfere w/ the choice of pharmacy or the selection of a particular drug.

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Physician Duties (cont.)

9. Transparency:
 - a. Must provide itemized billing statements upon request and not conditioned upon payment (458.323 and 459.012).
 - b. Patients with breast cancer or a high risk thereof must be given all treatment options (458.324 and 459.012).
 - c. Must notify patients of adverse events that occur in an office that result in serious harm, within 15 days but such notices are not admissions and are inadmissible as evidence (458.351 and 456.026 and 0575).
 - d. Must report adverse occurrences in non-hospital births. 456.054.
 - e. In *Edwards v. Thomas*, a decision released on Oct. 26, 2017, the Florida Supreme Court held that an analysis of a medical malpractice claim sent by an attorney to an external medical review company, "M.D. Review," in anticipation of a lawsuit was not protected by the attorney work product privilege and, thus, discoverable (citing the FL Constitution).

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Physician Duties (cont.)

10. Profiles must be maintained and updated (456.041):

a. Contents:

- i. All medical education, including graduate education;
- ii. Any hospitals at which the physician has privileges;
- iii. The primary practice address;
- iv. Any certifications;
- v. The year that the physician began practicing medicine;
- vi. Any faculty appointments;
- vii. Any criminal offense for which guilt has been found and any appeals thereof;
- viii. Any final disciplinary action within the previous 10 years;
- ix. Any relevant professional qualifications; and
- x. Any malpractice or negligence claims.

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Physician Duties (cont.)

10. Profiles (cont.):

- b. Update the profile within fifteen days of material changes (456.042).
- c. Notify the Board prior to moving to a new practice.
- d. Notify patients of relocations.
- e. Must report claims of professional liability to the Office of Insurance Regulation (456.049).

FL Statutes 456.035, 456.042

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Physician Duties (cont.)

- ii. “Pain” Clinic Duties (458.3265 and 459.0137, *as amended*):
 - a. Must have special permit if outside a licensed health care facility or meets certain ownership criteria.
 - b. Must register with DOH; separate registration for each clinic.
 - c. Must have board-certified medical director (10 day notice of any change).
 - d. Limits amount of medicates dispensed when paid for in cash.
 - e. Must use counterfeit-proof prescription pads.

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Physician Duties (cont.)

- ii. Pain Clinics (cont.)
 - f. Physicians dispensing controlled substances must register with state DOH.
 - g. Must examine patients prior to prescribing CS and must justify more than a 72 hour dose.
 - h. Physicians working in pain clinics must verify a broad range of regulatory compliance (facility/equipment/infection control/quality, etc.).
 - i. No search warrants needed for a review of clinic records.

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Physician Duties (cont.)

12. Limits placed on certain practices and actions:

- a. There must be a special registration for certain liposuction done in physician offices (over 1k cubic centimeters) (459.005).
- b. Treatment of obesity is limited to certain patients and the physician is prohibited from making certain claims (458.336; 459.135; 64B15-14.004).
- c. Medicare patients cannot be refused service in an emergency (456.056).
- d. Advertising must be factual; never false or misleading; and any ads for free or discounted services must be accompanied by a statement that the patient has a right to cancel payment. (456.062).

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Physician Duties (cont.)

12. Limits on certain practices and actions (cont.).

- e. Must be a treatment plan and informed consent for the treatment of pain w/ CS. See, e.g., 458.326.
- f. Must be registration and the presence of an anesthesiologist for many types of surgery performed in offices. (generally three recognized levels; additional explanation contained in updated regulation: see, e.g., 64B8-9.009, effective 4/16/15.
- g. Dispensing of medications must be in accordance of DOH record keeping and in compliance with the Florida Pharmacy Act and FDA regulations, where applicable.

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Physician Duties (cont.)

12. Limits on certain practices and actions (cont.):
 - h. NEW FL Telemedicine Law (April 29, 2019):
 - Same standard of care is in play as for in-person health care services; there must be a documented patient evaluation prior to writing Rx;
 - No prescribing of CS, except for treatment of psychiatric disorders, inpatients, hospice, nursing home;
 - Out-of-State physicians – without a Florida license – are permitted to use telehealth to deliver health care services to Florida patients if they register with the Dept. of Health, meet certain eligibility requirements, and pay a fee.
 - The bill/law does not actually require health plans to cover services delivered via telehealth.

Physician Prohibitions



Prohibited Acts Under Florida Law

1. A general statement of offenses is contained in 456.072, 458.331, 459.013 and 459.015: generally the same for MDs and DOs.
 - a. 456.072 lists 40 offenses for which discipline may be issued.
 - b. 459.013 contains a number of offenses primarily dealing with practicing without a license or obtaining or helping someone else obtain a license through improper means (usually lying or withholding information).
 - c. Failing to carry out any affirmative duty is a violation.
 - d. Any violation of law or regulations in another jurisdiction and the failure to report same are violations.
 - e. Virtually any felony or misdemeanor is a violation.
 - f. A majority of offenses involve dishonesty.
 - g. Prohibition on asking patients about gun ownership was overturned in Wollschlaeger v. Florida (11 Cir. 2/16/17).

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Prohibited Acts (cont.)

2. Emergency suspensions may be sought for offenses that present immediate threat to public health and safety, e.g.:
 - a. Medicaid fraud;
 - b. Controlled substance violations;
 - c. Repeated malpractice (3X);
 - d. Failed drug test; or
 - e. Default on student loans.

456.074

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Prohibited Acts (cont.)

3. Fraud and Abuse—key examples (federal and FL):
 - a. Submitting a bill you are not sure of or that does not conform to program rules;
 - b. Performing unnecessary services;
 - c. Having unqualified people do work;
 - d. Routinely waiving/advertising forgiveness of co-pays;
 - e. Taking a “friends and family” approach to referrals;
 - f. Paying for referrals to you;
 - g. Charging patients “access”, “administrative” or “fees”; or
 - h. Selling samples.

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Prohibited Acts (cont.)

4. Other specific Florida provisions related to F&A:
 - a. Referrals to investors in one’s practice is forbidden, absent full notice to the patient (456.052).
 - b. Mini-Stark law (456.053) covers referrals involving:
 - i. Clinical lab services;
 - ii. Physical therapy;
 - iii. Rehab services;
 - iv. Diagnostic imaging; and
 - v. Radiation therapy.
 - c. Kickbacks are prohibited (456.054).

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Sidebar: Federal F & A Laws

FCA	PPACA	Stark	Anti-kickback
Exclusion	Wire Fraud	Civil Money Penalties	Criminal Penalties
Anti-Embezz.	False Statements	Obstruction Of Justice	Program Fraud
Rx Marketing	Beneficiary Inducement	MACRA 2015	?

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Prohibited Acts (cont.)

5. Practicing while impaired:
 - a. Defined:
 - i. Being unable to practice osteopathic medicine
 - ii. with reasonable skill and safety to patients
 - iii. by reason of
 - ✓ illness or
 - ✓ use of alcohol, drugs, narcotics, chemicals or
 - ✓ any other type of material or
 - ✓ as a result of any mental or physical condition.
 - b. Treatment provided for (section 456.076) through the Professionals' Resource Network (PRN) <http://www.flprn.org/>

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Prohibited Acts (cont.)

5. Practicing while impaired (cont.):
 - c. Impairment Safe harbor:
 - i. No other complaint is pending;
 - ii. The licensee has acknowledged the impairment problem;
 - iii. The licensee has voluntarily enrolled in an appropriate, approved treatment program;
 - iv. The licensee has voluntarily withdrawn from practice; and
 - v. The licensee has executed releases for his/her own medical records.
 - d. Note, however, if a physician is not compliant with all elements of an assigned program, all records from PRN may be sent to the licensing Board. 456.072.

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Prohibited Acts (cont.)

6. Sexual Misconduct (456.063):
 - a. Strict liability offense (intent does not matter).
 - b. Covers patients/family members and representatives.
 - c. No inducement of others to engage in sexual activity.
 - d. No inducement of others to seek sexual activity.
 - e. A patient cannot **by law** consent to sexual activity.
 - f. Physicians have a duty to report sexual misconduct of colleagues.
 - g. Sexual harassment of staff is forbidden by Title VII and Florida Civil Rights Law (Chapter 760).
 - h. Sexual conduct with patients/families and sexual harassment of colleagues are also violative of ethical rules of the AMA and AOA.

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Prohibited Acts (cont.)

7. Concerted refusal to provide emergency care (458.3295 and 459.0145), which includes:
 - a. Refusing to report;
 - b. Absenting;
 - c. Resigning;
 - d. Giving less than full effort; or
 - e. Instigating other conduct that adversely affects the facility.

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Prohibited Acts (cont.)

8. Financial Exploitation of Patients:
 - a. Exercising influence on the patient in such a manner as to exploit the patient for financial gain;
 - b. Vexatious soliciting;
 - c. Claiming a specialty without completing all requirements ; or
 - d. False advertising.
9. Pre signing blank prescription forms is strictly forbidden.
10. Self prescribing controlled substances (Chapter 893).

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Prohibited Acts (cont.)

11. No passes for friends or family:
 - a. Physician-patient relationship begins with family and friends in the same fashion as w/ strangers:
 - ✓ Test: offer/acceptance.
 - b. Writing a prescription can create the relationship.
 - c. All rules and records' obligations apply with family and friends.
12. Fraudulently altering or destroying records relating to patient care or treatment, including, but not limited to, patient histories, examination results, and test results.
 - ✓ At least, an adverse inference is created.

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Prohibited Acts (cont.)

13. *Anti-retaliation rule*: cannot refuse to provide healthcare based on a patient's participation in pending or past litigation or disciplinary action, unless such litigation or disciplinary action directly involves the osteopathic physician requested to provide services.
14. Failure to report: Failing to report to DOH any licensee under chapter 458 or chapter 459 whom the physician knows has violated the grounds for disciplinary action.
15. Being found by any court in this state to have provided corroborating written medical expert opinion without reasonable investigation.

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Sidebar: MD Position on Disruptive Behavior by Physicians

- Disruptive behavior is defined as: “physical or verbal personal conduct that has a negative effect or potentially has negative effect on patient care.”
- Healthcare facilities could establish a code of conduct that define acceptable behavior as follows:
 - ✓ On the first reported occurrence of disruptive behavior, the healthcare facility’s Chief of Staff, Chief of Service or Chief Medical Officer could speak with the physician engaging in such behavior.
 - ✓ On the next reported occurrence of disruptive behavior, the physician could be asked to appear before the healthcare facility’s wellness committee or other appropriate committee.
 - ✓ If the disruptive behavior continues, the physician could be asked to voluntarily submit to an evaluation by PRN to exclude impairment.

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Florida Constitutional Provisions

1. Limit on abortions of minors (Article X, Section 22):
 - a. “Notwithstanding a minor’s right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor’s pregnancy.”
 - b. Exceptions to notice requirements:
 - i. Medical emergency;
 - ii. Parent waives right to notice;
 - iii. Minor is married;
 - iv. Minor has dependent children; or
 - v. Evidence of abuse by parents.

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Florida Constitutional Provisions (cont.)

2. Patients' right to access of records of adverse medical incidents (Article X, Section 25):
 - a. Patients have a right to have access to any records made or received in the course of business by a healthcare facility or provider relating to any adverse medical incident.
 - b. Adverse medical incidents are:
 - i. Incidents of negligence, misconduct, or neglect
 - ii. That cause or *could have* caused
 - iii. Death or serious injury to a patient, including those
 - iv. That must be reported to government or internally.
 - c. Access means the right to inspect and copy.

Note: one Florida appellate court has found this provision to be preempted by the Patient Safety and Quality Improvement Act:

Baptist Hospital vs. Jean Charles, 1st DCA 10/28/15.

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Florida Constitutional Provisions (cont.)

3. Prohibition of medical licensure after repeated medical malpractice (Article X, Section 26):
 - a. Medical malpractice is defined as the "failure to practice medicine with that level of care, skill, and treatment recognized in general law relating to healthcare providers' licensure..."
 - b. Anyone who commits three or more incidents of malpractice is ineligible for continued licensure.
 - c. Finding of malpractice must be by final judgment of a court, administrative body or an arbitrator.
 - d. It does not matter *where* the malpractice occurs.

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Florida Constitutional Provisions (cont.)

4. ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—
PUBLIC POLICY.

- (1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.
- (2) A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.

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Complaints Against Physicians

1. Complaints DOH will not handle:
 - a. Fee/Billing disputes;
 - b. Personality conflicts; or
 - c. Rudeness.
2. Complaints received and processed by DOH:
 - a. Quality of care;
 - b. Misdiagnosis;
 - c. Substance abuse/impairment;
 - d. Advertising violation;
 - e. Inappropriate prescriptions;

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Complaints Against Physicians (cont.)

2. Complaints received and processed by DOH (cont.):
 - f. Sexual contact;
 - g. Insurance fraud;
 - h. Excessive tests/treatments;
 - i. Failure to release records; and
 - j. Patient neglect/abandonments.
3. Three claims to avoid:
 - a. He/she did not tell me;
 - b. They did not care; and
 - c. I was not treated fairly.

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Florida Statutory Penalties Against Physicians (456.072)

1. Stated Penalty Choices:
 - a. Licensure denial
 - b. License limitation
 - c. Licensure suspension/revocation
 - d. Citation for minor offenses
 - e. Letter of reprimand or “of concern”
 - f. Probation
 - g. Corrective action
 - h. Financial penalty
 - i. Administrative fines (up to \$1,000)
 - j. Costs
 - k. Infraction
 - l. Criminal prosecution

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Florida Statutory Penalties Against Physicians (cont.)

2. Offenses which may be prosecuted as felonies:
 - a. Practicing without the proper license;
 - b. Attempting to obtain a license via a *knowing* misrepresentation;
 - c. Operating a pain clinic without proper registration; or
 - d. Improper dispensing of a C-II or III.
3. Offenses which may be prosecuted as misdemeanors:
 - a. Knowingly concealing information relating to a violation of Chapter 458 or 459;
 - b. Willfully making a false oath or affirmation;
 - c. Dispensing medication in an unregistered pain clinic;
 - d. Violation of the Florida anti-self-referral law; or
 - e. Paying or receiving kickbacks or engaging in fee splitting.

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Conclusion on Physician Conduct: Ten Golden Rules

1. Tell the truth 24/7.
2. Treat patients and their families with respect.
3. Do not divert/misuse drugs.
4. Keep accurate and detailed records.
5. Be scrupulous in dealing with Medicaid and Medicare; check with CMS.
6. Seek help if you become impaired.
7. Be aware of practice rules/limitations.
8. Maintain financial obligations.
9. Only examine those anatomical parts required.
10. Never, ever become sexually involved with a patient.

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