Contemporary Issues in Medical Ethics and Law

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Participatory discussion of the application of medical care standards to challenging situations, including review of the relevant legal mandates, will be utilized using a CASE based methodology.
At times, there may NOT be a definitive answer to the complex problem.

Some may find this frustrating. Welcome to Law and Ethics.
HIPAA Privacy Regulations

General Rule:
A Covered Entity (health care provider) shall not use or disclose Protected Health Information without the authorization of the individual or the individual’s legal representative.
HIPAA Privacy Laws

Telephone Communications
HIPAA Privacy Regulations
45 CFR 164

• General Rule

• Authorization for use or disclosure
  – written
  – verbal

• Be certain to document on your medical records
Social Media and Medical Education
Is the Context Relevant?
Is this:

• Personal private matter?

• Unprofessional conduct?

• Constitutional right of expression?

• A Title IX violation?
Unconventional Compensation

Modalities
Is there anything

a. Illegal
b. Immoral/Unethical

about Bartering with a Patient for the payment for medical services?
Off-Label Uses of Medications
Off-Label Use of Medications

- Liability?
- Obligations?
- Informed Consent?
Third Party Involvement in Medical Care
Federal Anti-Kickback Statute

• Prohibits providers from offering, paying, soliciting or receiving any remuneration in return for:
  – Referral of patients; or
  – Inducing purchases, leases or orders

• Remuneration includes kickbacks, bribes and rebates, in cash or in kind, direct or indirect
Medicare Anti-Kickback Statute
42 USC 1320a-7b(b)(1)(A)

• A **felony** to knowingly and willfully solicit or receive/offer or pay:
  – Any remuneration (kickbacks, bribes or rebates)
  – Directly or indirectly, in cash or in kind
  – In return for/or to induce
  – Purchasing, leasing, ordering, or arranging for any service or item payable by any federal health care program

• Specific intent to engage in the conduct prohibited

• “One purpose rule”

• Criminal burden of proof

• Sanctions: 5 years in prison, $25,000 fine
  – $50,000 civil money penalty plus 3 times damages plus discretionary exclusion from Medicare
Unethical or Illegal Conduct?

• Anti-Kickback Law Implicated?

• Anti-Fraud law implicated?

• Any requirement to notify patient?

• Any recourse if payment per agreement not forthcoming?
Verbal – Herbal Contract?
Stark Amendments
42 USC 1395nn(a)(1)(A)

• Prohibits referral to any person or entity for **Designated Health Service** in which **referring provider has a financial interest** when provider knows or should know of the interest

• **Preponderance of the evidence** proof standard

• For Medicare and Medicaid patients

• Sanctions:
  – Return all money collected and billed
  – $15,000 civil money penalty
  – $100,000 civil money penalty for circumvention schemes
Stark Anti-Referral Statute

Applies when:

- Immediate Family Members
- Designated Health Service
The Stark Laws
Immediate Family Members

- Spouse
- Parent
- Step-Parent
- Parent-in-Law
- Child
- Step-Child
- Child-in-Law
- Sibling
- Step-Sibling
- Sibling-in-Law
- Grandparent/Grandchild
- Spouse of grandparent or grandchild
The Stark Laws
Designated Health Services

- Clinical laboratory services
- Physical therapy services
- Occupational therapy services
- Radiology
- Home health services and supplies
- Durable medical equipment and supplies
- Radiation therapy services
- Parenteral and enteral equip and supplies
- Prosthetics and orthotics
- Outpatient prescription drugs
- Inpatient and outpatient hospital services
Confidentiality and Minors

What must be disclosed to parents?
“Assertive” Pharmaceutical Representative
Urine or You’re Out!
Duty to Report a Threat?
Grounds for Discipline
NRS 633.511

1. Unprofessional conduct
   j. Willful disclosure of a privileged communication
   k. Willful disobedience of regulations of NSBOH, NSBOP, or NSBOM
   l. Violating any prohibition in NRS 633
   m. Failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient
“Lost” Pain Medication
6. Prescribing a controlled substance in a manner or an amount that the Board determines is excessive
7. Failing to comply with terms in a diversion program agreement
8. Failing to comply with an order of the Board
9. Engaging in any other conduct that the Board determines constitutes unfitness to practice osteopathic medicine
Grounds for Discipline
NRS 633.511

1. Unprofessional conduct
   f. Engaging in any conduct intended to deceive or which has been determined as unethical or medical practice harmful to public health, safety or morals
   g. Abuse of controlled substances
   h. Habitual drunkenness or habitual addiction to the use of a controlled substance
   i. Injection of any liquid silicone substance, except for retinal detachment repair
Physician Personality Change
Grounds for Discipline
NRS 633.511

1. Unprofessional conduct
   n. Making alterations to medical records the licensee knows to be false
   o. Making or filing a false report
   p. Failure to file a record or report as required by law
   q. Failure to make medical records of a patient available for inspection and copying as provided in NRS 629.061
Talkative Patient
Non-Compliant Patient
Angry Patient
“Assertive” Patient
Grounds for Discipline – **Unethical** Conduct

**NAC 633.350**

1. **Engaging in sexual misconduct with a patient**
2. Abandoning a patient
3. Willfully making or filing false reports, records or claims in the licensee’s practice (fraudulent billing)
4. Willfully failing to file or record a medical report required by law
5. Failing to generate or create medical records relating to diagnosis, treatment, or care of a patient
Medical Record Completeness v. Respecting Patient’s Wishes