FLORIDA LAWS & RULES

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My Disclosures

- I voluntarily come here
- This does not represent The Board of Osteopathic Medicine
- Do not ask me for legal advice
To educate on the Top Ten Important Rules to maintain a clear and active license
456 Florida Statues-F.S. Relates to general provisions applicable to all health care practitioners.

458 F.S. Medical practice (M.D.)

459 F.S. Osteopathic Medicine (D.O.)
50 yo osteopathic physician sees a patient for mgmt of HIV, chronic right shoulder impingement syndrome. Patient was prescribed an HIV cocktail and a scheduled III px. Patient interested in pursuing intimate relationship with osteopathic physician.

Doctor writes a letter of termination of doctor patient relationship with a thirty day notice to locate another doctor.

Has intimate relationship with patient.

Patient moves out of state.

3 months later patient requests refill of schedule III med for exacerbation of pain - via phone call.
Osteopathic physician calls in the px.
Patient keeps calling doctor for refills of pain medication.
Angry patient files a complaint.
Investigation is done. Pharmacy records and medical records are reviewed. Text messages including photos between osteopathic physician and ex-patient are included.
What violations have occurred?

- 459.0141 Sexual misconduct in the practice of osteopathic medicine
Violation of the osteopathic physician-patient relationship through which the osteopathic physician uses the relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient.
459.015 1(l) Exercising influence within a patient-physician relationship for purposes of engaging in a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.
459.015(1)I F.S.

- First offense from probation to revocation or denial of licensure
  - Administrative fine from $1000-5000
- Second offense from suspension to be followed by a period of probation to revocation
  - Admin. Fine $2500-5000
Good Practices–Rule #1

- Remember a prescription creates a physician/patient relationship.
- When the patient called again the osteopathic physician should have thought twice before writing/calling in a prescription.
- THINK TWICE!
Define physician–patient relationship?

AOA—“Can only be established through at least one face to face meeting.” Then it further clarifies “the legal practice of medicine is left up to each state’s interpretation.”
“The relationship between physician & patient begins when an individual seeks assistance from a physician for a health related matter & the physician agrees to undertake diagnosis and the treatment of the patient.”
"Means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health."
A urologist who is an astute clinician and well respected by his colleagues recently began posting his comments, views and observations on Twitter. The same day that the United States Preventive Services Task Force came out with a recommendation, in October 2011, against routine Prostate Specific Antigen (PSA) screening in healthy men for prostate cancer, he posted a tweet with writing that used some disrespectful language to disagree with the recommendation. The tweet has now gone viral and has been read by many of his patients, colleagues, fellow researchers, family and friends.
A concerned patient reports her physician frequently describes “partying” on his Facebook page which is accompanied by images of himself intoxicated. The patient begins to question whether her physician is in a proper state and prepared to treat her when she has early morning doctor’s appointments.
A psychiatrist in her 30s used Facebook to befriend a former female patient of similar age who she took care of when she was a psychiatry resident in another state. They had “hit it off” because they had similar tastes in music and art and developed a level of trust that the patient said she had not had with anyone else. They now periodically exchange pleasantries on Facebook, but lately the patient’s affect online appears different and the psychiatrist is worried. The psychiatrist is planning to spend the holidays with her family in the same state as her former patient, and is considering ‘catching up’ with her former patient, but is unsure how to properly initiate contact with her former patient. Should the psychiatrist just meet her for coffee? Is it appropriate for them to meet at all? She knows she probably shouldn’t use Facebook because it may not be private, but she also doesn’t want to give the patient her personal email address.
Ms. Smith is an exotic dancer at a nightclub. She had a remote single intimate relationship with osteopathic physician prior to his marriage at a wild wedding 5yrs prior.

She sees osteopathic physician around town. Casual acquaintance. Never had an official office visit.
• She has no insurance.
• She texts osteopathic doc requesting for a consult regarding removal of irritating skin tag.
• He jokes and texted back sure for a lap dance. Come by after hours I’ll see what I can do. He shares text with co workers, jokes around.
• Thinks again and cancels the appointment.
• Angry female goes to local police and files a report.
First, do you think this constitutes a doctor patient relationship?
PSU files an administrative complaint. Their argument was that there was an intent to use the relationship of osteopathic physician to have sex.
Osteopathic physician is also a baseball coach for his son’s team. The father of one of the players texted you regarding new GI symptoms son was having.

What do you do?
A. Ask the father to bring son to the office for appointment ASAP
B. Advise the son to take a laxative
C. Explain to parent that there are boundary issues and violation of code of conduct and refer to a colleague.
1. Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice osteopathic medicine with that level of care, skill and treatment which is recognized by reasonably prudent osteopathic physicians as being acceptable under similar conditions and circumstances, as well prescribing legend drugs other than in the course of an osteopathic physician's professional practice. Such practice shall constitute grounds for disciplinary action. 459.015(1)x and (t) f.s.
Standards for Telemedicine 64B15-14.008

2. Osteopathic Physicians shall not provide treatment recommendations including issuing a px via electronic or other means unless the following elements have been met:
a. A documented patient evaluation, including H&P, adequate to establish the diagnosis for which any drug is prescribed.

b. Sufficient dialogue between the osteopathic physician & the patient regarding treatment options, risks & benefits of tx.

c. Maintenance of contemporaneous medical records meeting the requirements rule 64B15-15.004F.A.C.
Internet Prescribing—Rule #2

- Do not jeopardize your license
- Do not prescribe on the internet
- Prescribing without an H&P is both a standard of care violation and violation of Osteopathic Rules.
Case

- Dad, (attorney), of the neighbor whom your daughter plays with knocks on your door 11:30PM with his crying hysterical 6yo daughter in hand, with a foreign body in foot. Mommy is out of town.
- What do you do?
Case

- What are Dr. Mom’s options?
a. Remove foreign body and maintain progress note of procedure. Refer neighbor back to her doctor in morning for tetanus shot, and possible x-ray to confirm removal of entire foreign body. Explain to dad that it is not proper code of conduct to treat at private home without maintenance of medical record.

b. Send neighbor to emergency room for care.

c. Go back to bed and never answer your door.
Maintain office records as you would for any other patient.

459.015 (o) Failure to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteo physician or extenders, each diagnostic or treatment procedure and that justify the course of treatment of the patient including, but not limited to, patient histories; examination results; test results, records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.
Penalties

- Failures to keep legible written medical records 459.015 (1) (o) F.S.
- 1st offense- letter of concern to a reprimand, or denial of licensure, and an administrative fine range $1000-$5000
- 2nd offense reprimand to suspension followed by probation, and an administrative fine $2500-$5000
Medical Records–Rule #3

- You must keep charts on the family, employee and friends.
- A prescription creates the physician/patient relationship.
- Records are required even for family.
- Spouse & friends may become adverse parties.
- Cannot self prescribe controlled substance.
Patient arrives at ER unstable, diabetic coma, acidotic, missed dialysis treatments for several days. Due to anasarca and instability of patient, code is called. Dr. A responds (anesthesiologist) successfully places a femoral line in thrashing patient.

Due to confusion during code guide wire inadvertently is left in groin.

Collaborative procedure note EMR completed by Dr. A
Case

- Radiologist locates guide wire during another procedure and reports to hospital.
- Hospital and doctor respond by creating a template for Cerner record that would alert any physician doing procedure final accounting of supplies.
Administrative complaint has what two violations?
- 456.072 (1) (cc) (F.S.)
- 459.015 (1)(o) F.S.
In the BOOM discussion during the informal hearing, questions regarding the medical records are brought and the procedure note is present in the chart review (different in format). Dr. A explains that this hospital does a collaborative note during codes. The procedure was documented with good detail.
Case

- 459.072 (1) (cc) F.S. Leaving a foreign body in a patient.
- Poss. Penalties
- 1st offense denial or probation & $5000 fine (min) to max denial or revocation & $10,000 fine
- 2nd offense denial or suspension & $10,000 fine to max
- Denial or revocation & $10,000 fine.
- Final disposition - was dismissal due to excellent MR and mitigating events. Dr A. responding to code in patient thrashing about. Photos accompanied chart. Documentation was very detailed. Dr. A had to pay DOH fee for case file investigation as this cannot be waived.
Mitigating Circumstances

- Aggravating and mitigating circumstances. Based upon consideration of aggravating and mitigating factors present in an individual case, the BOOM may deviate from the penalties recommended.
A. Exposure of patients or public to injury or potential injury, physical or otherwise; none, slight, severe, or death

B. Legal status at the time of the offense; no restraints, or legal constraints.

C. The number of counts or separate offenses established

D. The number of times the same offense or offenses have previously been committed by the licensee
Mitigating Factors

E. Self-gain inuring to the licensee
F. Any other relevant mitigating factors.
Despite “time out” surgery cases still come before the board.

If surgeon has more than one hospital privileged “time out procedure” vary from institution to institution.
Case

- Case overbooked or add on emergencies.
- Waiting area full, holding bay full.
- O.R. has patient booked for right shoulder arthroscopic procedure.
- Another procedure cancelled. Nurse brings in the next patient and she starts to drape the patient for left sided procedure. Anesthesiologist in holding area wishes to move things along and starts the block on left side as nurse has prepped the patient.
What violation?

- 456.072 (1) (z) (bb) Performing or attempting to perform health care services on the wrong patient, wrong site, wrong procedure or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient’s diagnosis or medical conditions. (included the preparation of the patient)
Penalties

- 1st reprimand to suspension and an administrative fine $1000-$2500
- 2nd probation to revocation and admin. fine $2500-5000.
459.026 (3) F.S. Notification to the dept must be submitted in writing by certified mail and postmarked within 15 days after the occurrence of the adverse incident.
(4) Means an event over which the physician or licensee could exercise control and which is associated in whole or in part with a medical intervention, rather than the condition for which such intervention occurred, and which results in the following patient injuries:
459.026 Adverse Incidents

- (a) The death of a patient
- (b) Brain or spinal damage to a patient
- (c) The performance of a surgical procedure on the wrong patient
- (d) 1. The performance of a wrong-site surgical procedure; or 2. the performance of a wrong surgical procedure; or
(d) 3. The surgical repair of damage to a patient resulting from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process if it results in: death; brain or spinal damage; permanent disfigurement not to include the incision scar; fracture or dislocation of bones or joints; a limitation of neurological, physical, or sensory function; or any condition that required the transfer of the patient.
(e) a procedure to remove unplanned foreign objects remaining from a surgical procedure,

(f) any condition that required the transfer of a patient of a hospital licensed under chapter 395 from an ambulatory surgical center licensed under chapter 395 or any facility or any office maintained by a physician for the practice of medicine which is not licensed under chapter 395.
6 (a) The board shall adopt rules establishing a standard informed consent form that sets forth the recognized specific risks related to cataract surgery. The board must propose such rules within 90 days after the effective date of this subsection:
6 (d) An incident resulting from recognized specific risks described in the signed consent form is not considered an adverse incident for purposes of s.395.0197 and this section.

6 (e) A patient’s informed consent executed as a provided on the form adopted by the board is admissible as evidence and creates a rebuttable presumption that properly disclosed the risks.
Pause before you make the incision on the correct site of the correct patient.

The “pause” before the procedure must be in the chart.

If you make the mistake, inform the patient or patient representative and document it in the record.
How long must I keep medical records?

According to Florida law, a physician is responsible for maintaining records for at least five years (64B8-10.002). Because malpractice lawsuits can be brought up to seven years after the date of an incident (eight years for some minors), physicians are encouraged to maintain records for the full seven years.
You are responsible to hold pt records 5 yrs
You are to notify pt in letter or by sign as to where to pick up records
Place a notice in newspaper and notify the BOOM 30 days before you move
Complete your hospital charts if leaving the area
456.057– Rule #5

- Record owners shall notify the BOOM when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.
Custodian may be appointed in the event of a death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner.

Records are to be held at least 2 yrs.
MR of deceased physicians; retention time limitations

1. at least 2 years

2. within 30 days publish in county newspaper notice information of location of MR of deceased D.O.
Timely release of request means < 30 days.
Reasonable cost pg 1-25 cost shall be no more than $1.00/pg. Any pg >25pg no more than a quarter/pg.
Section 455.241 F.S. D.O. shall maintain the written records of a patient for at least 5 yr from the date the patient was last examined.

When the MR are released or transferred to another D.O. the new record owner shall maintain them for at least 5 yrs.
Good Practice Rule#6

- Do not pre-sign prescription pads.
- Do not leave prescription pads in office desk or in examination room. They should be on your personal body in pocket and at end of day collect from training doctors and lock.
Presigning blank prescription forms

1\textsuperscript{st} offense from a letter of concern to a reprimand and an administrative fine $1000 to a letter of concern and an administrative fine of $2500

2\textsuperscript{nd} reprimand to probation, and an administrative fine ranging from $2500 to $5000
Citations

- Is like a traffic ticket “get out of jail card.” Instead of a disciplinary hearing it can be issued.
- Citations for offenses are cases which do not involve direct patient care.
- Examples CME violations, failure to pay NICA (legal obligation), advertising, failure to report to the Board within 30 days been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.
Osteopathic physician was involved in a motor vehicle accident. No injuries. Osteopathic physician left the scene of the accident because he forgot his cell phone at home and wished to call authorities. Osteopathic doc gets a ticket for leaving the scene of the accident.
Failure to report to the BOOM in writing within thirty days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to a crime in any jurisdiction.

- **1st offense AF $1000-$5000**
- **2nd offense AF $5000-$10,000**
Examples failure to keep current address on file with the board $250, excessive charging copying fees $750, failure to update physician profile $50 per day up to $5000.
Within 15 days update:
- Address
- Staff privileges
- Medical practice history
- Financial responsibility
- Board certification
- Education
- Disciplinary/criminal history
After 30 days if the BOOM does not receive a response the citations becomes a final order. Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119 FS.
Despite citations for CME violations are sent out problem escalates?

Why? Office mail delegated to someone else?

AOA renewal requirements different than Florida cycle

Address not update 459.015 (1) (bb) $125 fine.
Florida License–Rule #8

- Considered to be a “property asset”
- Think of it like a property
- Maintain it, CME- 40 hour biennial
- 5 Live hours
- Change of address if you move
- Inactive license is still a license and DOH cannot take away without due process
Following Initial Renewal

Every licensee must complete 40 hours of approved CE within the biennium for which they are claimed.

The requirements are:

Two (2) hour course relating to prevention of medical errors (live/participatory)
One (1) hour of Professional and Medical Ethics (live/participatory)
One (1) hour of Florida Laws and Rules (live/participatory)
One (1) hour of federal and state laws related to the prescribing of controlled substances (live/participatory)
Twenty (20) hours of general, AOA Category 1-A CE related to the practice of osteopathic medicine or under osteopathic auspices
Two (2) hours of Domestic Violence as part of every third biennium renewal (or every six years)
Penalty

- CME violations
- Document compliance within 12 months
- May be subject to CME audit for next two biennial renewal periods
- 1st offense administrative fine $250-$500
- 2nd offense administrative fine $500-$1000
459.015 (1) (c) Failure to document any of the 40 hours of required CME for license renewal $2500 fine
Citations

- Address not on file?
- Failing to perform any statutory or legal obligation placed upon a licensee. 459.072(k)
Before you move to a new practice, notify the BOOM.

What can happen if no current address is on file?

- A. Crisis at renewal
- B. Late renewal may mean practicing on an inactive license
- C. If practicing on an inactive license = criminal offense
Electronic notification shall be allowed by the department; however, it shall be the responsibility of the licensee to ensure that the electronic notification was received by the department. A licensee’s failure to notify the dept of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board.
Failure to renew license- practice on an inactive or delinquent license

456.036 (1)x F.S.

For up to 9 months $100/month

9-12 after date due $150/month
This is your responsibility not your office manager

The licensee must have on file the address of her or his primary place of practice within this state prior to engaging in that practice.

CME requirements

Physician workforce survey 459.0081
64B15–14.001 Advertisings

- 459.015(1)d false, deceptive, or misleading advertising.
- 1st offense from a letter of concern to reprimand, or denial of licensure, and an administrative fine range $1000-2500.
- 2nd from a letter of concern to reprimand, or denial of licensure and an admin fine $1000-2500.
Fails to conspicuously identify the osteopathic physician by name in the advertisement or fails to conspicuously identify the osteopathic physician referred to in the advertising as an osteopathic physician.
Means any statements oral or written, disseminated to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services or inducing members of the public to enter into any obligation relating to such professional services.
Summary Top Ten Rules to Maintain Clear and Active License

1. Think twice before getting intimate with patient. Remember boundaries include social media.
2. No internet prescribing
3. Keep charts on family, employees and friends.
4. Pause before you make an incision/injection on the correct site of the correct patient.
5. If you terminate practice, retire, or relocate, or longer available notify the BOOM specifying who has your records and where they will be located.

6. Do not pre-sign prescriptions. They should be on your personal body space. Do not leave in desk draws.
7. If convicted of a crime or plead nolo contendere to a crime in any jurisdiction you must update your physician profile and notify the BOOM in writing (return receipt) within 30 days.

8. CME live hours keep up with Florida requirements.
9. License renewal, NICA, or other legal obligation (student loans) are your responsibility to keep up with.

10. Advertisement- D.O. or Osteopathic physician or surgeon clear to the patient.