

# 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



# Grounds for Discipline – Unethical Conduct

## NAC 633.350

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

