

Florida Laws,
Rules and
Medical Ethics

- ▶ Jason D. Winn, Esq.
- ▶ WINN LAW
- ▶ 850/222-7199 and
850/519-5876
- ▶ jwinn@jwinnlaw.com

Disclosure Statement

I have no financial relationship in regard to the content of this presentation - JDW

Educational Objectives Florida Laws, Rules and Medical Ethics

Understanding of applicable Laws & Rules for licensed Osteopathic Physicians.

Knowledge of the disciplinary process.

Learning of rights afforded to physicians in licensure disciplinary cases.

Ability to locate applicable statutes and rules through online resources.

What constitutes medical ethics?

Why should I be concerned about medical ethics?

Why Laws, Rules and Medical Ethics?

Recently the Board of Osteopathic Medicine amended their rules for osteopathic physicians in Florida - changing the required CE hours for renewal to NOW include 2 hours of Prescribing Controlled Substances as a mandatory course and **MUST** be completed by January 31, 2019 if you are licensed in Florida and hold are authorized by the DEA to prescribe CS.

Also, the Board combined the one hour for laws and rules with the one hour for medical ethics.

There are still **5 mandatory hours** for each biennium - this course, Medical Errors 2 hours, and Prescribing Controlled Substances 2 hours

TRUE OR FALSE?

When prescribing controlled substances to a patient 16 years of age or older (not non-opioid V) I DO **NOT** HAVE TO CONSULT E-FORCSE.

TRUE OR FALSE?

When I close or re-locate my office, I do not need to provide notice to my patients - they can find me if they need me.

What Florida Statute is the Osteopathic
Medicine Practice Act?

A. Florida Statute Chapter 459

B. Florida Statute Chapter 456

C. Florida Statute Chapter 458

D. Florida Statute Chapter 25

What Fla Rule applies to DO's?

A. Florida Rule 64B18

B. Florida Rule 64B15

C. Florida Rule 64B8

D. Florida Rule 64B6

TRUE OR FALSE?

Laws/statutes are compulsory compliance.

Rules by the Board are not mandatory but rather suggestions on how the patient can be treated, and if I disagree, I can do whatever I want.

LICENSE RENEWAL Osteopathic Physician

Current licenses expire at midnight, Eastern Time, on March 31, 2022.

To ensure you receive your renewal notification from the department, your current mailing address must be on file. Failure to renew an active or inactive license by the expiration date will result in the license being placed in delinquent status. Failure by a delinquent licensee to renew before the expiration of the current licensure cycle renders the license null and void without any further action by the board or the department.

A licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements.

If you are reactivating your license, please refer to the Laws & Rules governing your practice for additional requirements.

The department will renew your license upon receipt of:

- Completed renewal application
- Required fees
- Updated Practitioner Profile
- Completed Physician Workforce Survey
- Completed Financial Responsibility Form

NOTE- Domestic Violence is required every third biennium

LICENSE RENEWAL Osteopathic Physician

Notice of Development of Rulemaking

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: RULE TITLE:

64B15-13.001 Continuing Education for Biennial Renewal

PURPOSE AND EFFECT: The Board proposed the development of a rule amendment to address the format for continuing medical education for the 2020-2022 biennial renewal period.

64B15-13.001 Continuing Education for Biennial Renewal.

Every person licensed pursuant to Chapter 459, F.S., except those licensed as physician assistants pursuant to Section 459.022, F.S., shall be required to complete forty (40) hours of continuing medical education courses approved by the Board in the twenty-four (24) months preceding each biennial renewal period as established by the Department. Continuing medical education (CME) requirements for biennial renewal of licensure are set forth in this rule. **For the 2020-2022 biennial renewal period, all of the CME required by this rule may be obtained by completion of courses offered in a distance learning format.**

2020-2022 Requirements Osteopathic Physician

REQUIRED SUBJECT AREA	REQUIRED NUMBER OF HOURS	IMPORTANT INFORMATION
General Hours*	20	20 must be AOA 1-A
General Hours* or AMA	15	These hours can be AOA
Medical Errors	2	Must be live
Florida Laws, Rules and Medical Ethics	1	Must be live
Prescribing of Controlled Substances	2	Does not have to be live
TOTAL HOURS	40**	

* Licensees must obtain 2 hours of domestic violence every third renewal period

Changes in Laws Reproductive Health

Effective Date: July 1, 2021

SB 716 (Full Text)

Summary:

The bill amends section 456.51, Florida Statutes, relating to informed consent for pelvic examinations. The bill excludes visual assessment, imaging, and diagnostic medical or surgical procedures from the definition of pelvic examination, requires informed verbal consent of conscious patients in addition to written consent, prescribes those circumstances when consent is not required, and limits the need for informed consent to the initial pelvic examination of a pregnant woman under certain circumstances.

(DISCLAIMER - *I AM NOT YOUR ATTORNEY* - just an attorney giving a presentation. You should consult your own attorney or risk management office prior to conducting any examination(s) or procedure(s).

Changes in Laws PARENTAL CONSENT

Effective Date: July 1, 2021

HB 241 (Full Text)

Summary: The bill creates the “Parents’ Bill of Rights,” which states that licensed health care providers and facilities cannot provide services, prescribe medicine, or perform any procedure without first obtaining written parental consent unless otherwise authorized by law.

The bill requires a health care practitioner, or his or her employees, to obtain parental consent before performing health care services on a minor child and subjects health care practitioners and health care facilities to disciplinary action for violation of these parental consent requirements in certain instances. The bill includes criminal penalties as well as providing grounds for disciplinary action.

(DISCLAIMER - *I AM NOT YOUR ATTORNEY* - just an attorney giving a presentation. You should consult your own attorney or risk management office prior to conducting any examination(s) or procedure(s).

Changes in Laws Human Trafficking

Florida passed Human Trafficking, Chapter 2019-152, Laws of Florida, which establishes new profession requirements including newly required signs, CE/CME, and more for the following professions: Acupuncture, Medicine, Osteopathic Medicine, Chiropractic Medicine, Podiatric Medicine, Optometry, Pharmacy, Dentistry, Nursing Home Administration, Occupational Therapy, Dietetics and Nutrition, Respiratory Care, Massage Therapy, and Physical Therapy.

The Department has launched an informational website that includes a breakdown of the new law and addresses areas of: (1) signs; (2) CE/CME; (3) FAQs; (4) Specific Board of Massage requirements; and (5) Human Trafficking Reporting.

For more information please visit:

<http://www.flhealthsource.gov/humantrafficking/>

Changes in Laws - OFFICE SIGNS Human Trafficking

For more information please visit:

<http://www.flhealthsource.gov/humantrafficking/>

SIGNS -

<http://www.flhealthsource.gov/humantrafficking/#signs>

Each healthcare provider licensed by one of the named Boards must post a sign regarding human trafficking in a conspicuous place accessible to employees by January 1, 2021. The sign must be at least **11 x 15 inches** and in at least 32-point type. The sign must contain statutorily required language and be posted in English and Spanish. The Department has also provided Mandarin translations of these signs for use in offices where those languages are spoken. The links below contain signs that meet the statutory requirements when printed at the listed size.

[Human Trafficking \(English/Spanish\)](#)

[Human Trafficking \(English/Spanish/Mandarin\)](#)

Changes in Laws - Non-Opioid Alternative 2019-2021

House Bill 451, Nonopioid Alternatives, was approved by Governor DeSantis and is effective July 1, 2019. The bill requires that **before providing anesthesia or prescribing, ordering, dispensing, or administering an opioid listed as a Schedule II controlled substance to treat pain**, the patient must be informed about available nonopioid alternatives. A healthcare practitioner will discuss the advantages and disadvantages of using nonopioid alternatives. Under the new law, the department is required to develop an educational pamphlet about using nonopioid alternatives and post the pamphlet on the department's website. Healthcare practitioners must provide the patient with this educational pamphlet. Those healthcare practitioners providing emergency services and care are exempt from these requirements.

2021 Bill - CAN BE GIVEN IN ELECTRONIC FORMAT

Effective Date: July 1, 2021 SB 530

Summary:

The bill allows prescribing health care practitioners, who are required to provide information about nonopioid alternatives, to provide health care patients (or their representatives under certain circumstances) the required educational pamphlet electronically in lieu of providing a printed copy.

Pamphlet found at: <http://www.floridahealth.gov/PROGRAMS-AND-SERVICES/non-opioid-pain-management/index.html>

http://www.floridahealth.gov/PROGRAMS-AND-SERVICES/non-opioid-pain-management/_documents/alternatives-facts-8.5x11-eng.pdf

http://www.floridahealth.gov/PROGRAMS-AND-SERVICES/non-opioid-pain-management/_documents/alternatives-checklist.pdf

Changes in Laws - Electronic Prescribing Requirements

House Bill 831 (2019), Electronic Prescribing, was signed into law by Governor DeSantis. The effective date is January 1, 2020. The bill provides important new requirements for prescribers to generate and transmit all prescriptions electronically upon licensure renewal or by July 1, 2021, whichever is earlier.

- ▶ The law requires prescribers to generate and transmit all prescription electronically, who maintains a system of electronic health records, unless:
 - The practitioner and the dispenser are the same entity; (Dispensing Physician)
 - The prescription cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;
 - The practitioner has been issued a waiver by the department, not to exceed 1 year, due to demonstrated economic hardship, technology limitations that are not reasonably within the control of the practitioner, or another exceptional circumstance demonstrated by the practitioners;
 - The practitioner reasonably determines that it would be impractical for the patient in question to obtain a medicinal drug prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
 - The practitioner is prescribing a drug under a research protocol;
 - The prescription is for a drug for which the federal Food and Drug Administration requires the prescription to contain elements that may not be included in electronic prescribing;
 - The prescription is issued to an individual receiving hospice care or who is a resident of a nursing home facility; or
 - **The practitioner determines that it is in the best interest of the patient, or the patient determines that it is in his or her own best interest to compare prescription drug prices among area pharmacies. The practitioner must document such determination in the patient's medical record.**

Changes in Laws - Telehealth

Florida passed Telehealth, Chapter 2019-137, Laws of Florida, which establishes standards of practice for telehealth services, including patient evaluations, record-keeping, and controlled substances prescribing. The law also authorizes out-of-state health care practitioners to perform telehealth services for patients in Florida upon meeting certain eligibility requirements and registering with the department of health.

During the global health pandemic there was the ability to prescribe controlled substances for patients; However, that has NOW ended. You cannot prescribe CS for patients **UNLESS** it is for the treatment of psychiatric disorders.

Also, you **MUST** see patients for the renewal of any order for medical marijuana.

Florida Changes in Laws

456.44 Controlled substance prescribing.

(1) DEFINITIONS. AS used in this section, the term: (a) "Acute pain" means the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The term does not include pain related to:

1. Cancer.
2. A terminal condition. For purposes of this subparagraph, the term "terminal condition" means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.
3. Palliative care to provide relief of symptoms related to an incurable, progressive illness or injury.
4. A traumatic injury with an Injury Severity Score of 9 or greater.

Florida Changes in Laws

(4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.*The applicable boards shall adopt rules establishing guidelines for prescribing controlled substances for acute pain, including evaluation of the patient, creation and maintenance of a treatment plan, obtaining informed consent and agreement for treatment, periodic review of the treatment plan, consultation, medical record review, and compliance with controlled substance laws and regulations. Failure of a prescriber to follow such guidelines constitutes grounds for disciplinary action pursuant to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

Florida Changes in Laws

(5) PRESCRIPTION SUPPLY.' (a) For the treatment of acute pain, a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 may not exceed a 3-day supply, except that up to a 7-day supply may be prescribed if:

1. The prescriber, in his or her professional judgment, believes that more than a 3-day supply of such an opioid is medically necessary to treat the patient's pain as an acute medical condition;

2. The prescriber indicates "ACUTE PAIN EXCEPTION" on the prescription; and 3. The prescriber adequately documents in the patient's medical records the acute medical condition and lack of alternative treatment options that justify deviation from the 3-day supply limit established in this subsection. (b) For the treatment of pain other than acute pain, a prescriber must indicate "NONACUTE PAIN" on a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

(6) EMERGENCY OPIOID ANTAGONIST. For the treatment of pain related to a traumatic injury with an Injury Severity Score of 9 or greater, a prescriber who prescribes a Schedule II controlled substance listed in s. 893.03 or 21 U.S.C. s. 812 must concurrently prescribe an emergency opioid antagonist, as defined in s. 381.887(1).

Report to CE BROKER

REPORT THE HOURS YOU RECEIVE HERE
TODAY TO CE BROKER! CE BROKER IS THE
STATEWIDE CLEARING HOUSE FOR ALL
CONTINUING EDUCATION HOURS FOR
HEALTH CARE PROFESSIONALS.

WHO is WHO?

Dept. of Health (DOH) - licenses ALL health care practitioners

Board of Osteopathic Medicine/Board of Medicine (Board) - rulemaking, and disciplinary hearings

Attorney Generals Office (AG) - provide an Attorney for the Board as Gen Counsel

Also, provide Attorney(s) from Prosecution Services Unit to represent DOH during prosecution of discipline before Board

District Court of Appeal (DCA) - court hears appeals from Board and DOAH

Div. of Admin. Hearings (DOAH)- court hears Formal hearings for disciplinary cases

I. Laws and Rules for Osteopathic Physicians

Florida Statutes (F.S.): Laws

Chapter 459: Osteopathic Medicine

Chapter 456: Health Professions and Occupations: General Provisions

Chapter 120: Administrative Procedure Act

Florida Administrative Code (F.A.C.): Rules

Rules: Chapter 64B15: Board of Osteopathic Medicine, F.A.C.

Rules: Chapter 64B: Division of Medical Quality Assurance, F.A.C.

FS 456 GENERAL PROVISIONS

HEALTH PROFESSIONS AND OCCUPATIONS:

456.001 Definitions

THROUGH

456.50 Repeated Medical Malpractice

GENERAL HEALTH CARE PROVISION FOR ALL
LICENSED HEALTH CARE PROVIDERS

456.44 Florida Statute (not complete statute)

(1) DEFINITIONS.—

(a) “Acute pain” means the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The term does not include pain related to:

1. Cancer.
2. A terminal condition. For purposes of this subparagraph, the term “terminal condition” means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.
3. Palliative care to provide relief of symptoms related to an incurable, progressive illness or injury.
4. A traumatic injury with an Injury Severity Score of 9 or greater.

(e) “Chronic nonmalignant pain” means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

(2) REGISTRATION.—Effective January 1, 2012, a physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

- (a) Designate himself or herself as a controlled substance prescribing practitioner on the physician’s practitioner profile.
- (b) Comply with the requirements of this section and applicable board rules.

456.44 Florida Statute (not complete statute)

(4) **STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.**—The applicable boards shall adopt rules establishing guidelines for prescribing controlled substances for acute pain, including evaluation of the patient, creation and maintenance of a treatment plan, obtaining informed consent and agreement for treatment, periodic review of the treatment plan, consultation, medical record review, and compliance with controlled substance laws and regulations. Failure of a prescriber to follow such guidelines constitutes grounds for disciplinary action pursuant to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

(5) **PRESCRIPTION SUPPLY.**—

(a) For the treatment of acute pain, a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 may not exceed a 3-day supply, except that up to a 7-day supply may be prescribed if:

1. The prescriber, in his or her professional judgment, believes that more than a 3-day supply of such an opioid is medically necessary to treat the patient’s pain as an acute medical condition;

2. The prescriber indicates “ACUTE PAIN EXCEPTION” on the prescription; and

3. The prescriber adequately documents in the patient’s medical records the acute medical condition and lack of alternative treatment options that justify deviation from the 3-day supply limit established in this subsection.

(b) For the treatment of pain other than acute pain, a prescriber must indicate “**NONACUTE PAIN**” on a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

(6) **EMERGENCY OPIOID ANTAGONIST.**—For the treatment of pain related to a traumatic injury with an Injury Severity Score of 9 or greater, a prescriber who prescribes a Schedule II controlled substance listed in s. 893.03 or 21 U.S.C. s. 812 must concurrently prescribe an emergency opioid antagonist, as defined in s. 381.887(1).

459.018(F.S.) Search warrants for certain violations

When the department has reason to believe that violations of s. 459.015(1)(t) or (u) have occurred or are occurring, its agents or other duly authorized persons may search an osteopathic physician's place of practice for purposes of securing such evidence as may be needed for prosecution. Such evidence shall not include any medical records of patients unless pursuant to the patient's written consent. Notwithstanding the consent of the patient, such records maintained by the department are confidential and exempt from s. 119.07(1). This section shall not limit the psychotherapist-patient privileges of s. 90.503. Prior to a search, the department shall secure a search warrant from any judge authorized by law to issue search warrants. The search warrant shall be issued upon probable cause, supported by oath or affirmation particularly describing the things to be seized. The application for the warrant shall be sworn to and subscribed, and the judge may require further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The application and supporting information, if required, must set forth the facts tending to establish the grounds of the application or probable cause that they exist. If the judge is satisfied that probable cause exists, he or she shall issue a search warrant signed by him or her with the judge's name of office to any agent or other person duly authorized by the department to execute process, commanding the agent or person to search the place described in the warrant for the property specified. The search warrant shall be served only by the agent or person mentioned in it and by no other person except an aide of the agent or person when such agent or person is present and acting in its execution.

History.—ss. 1, 6, ch. 79-230; ss. 2, 3, ch. 81-318; ss. 20, 27, 29, ch. 86-290; s. 15, ch. 91-140; s. 4, ch. 91-429; s. 316, ch. 96-406; s. 1100, ch. 97-103; s. 118, ch. 2000-153.

FS 459 Osteopathic Medicine

OSTEOPATHIC MEDICINE

459.001 Purpose.

THROUGH

459.026 Reports of adverse incidents in office practice settings.

STATUTE APPLIES TO ALL DO's and Physician assistants & Anesthesiologist Assistants.

459.0141 (F.S.)
Sexual
Misconduct in
the
practice of
medicine (also
456.063,
F.S.^)

- ▶ The osteopathic physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of osteopathic medicine means 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. Sexual misconduct in the practice of osteopathic medicine is prohibited.
(^disqualification for licensure)
- ▶ History.—ss. 13, 17, ch. 89-374; s. 4, ch. 91-429.
(***Professional Ethics***)

459.025, FS

Formal supervisory relationships, standing orders, and established protocols; notice; standards.

1) NOTICE.—(a) When a physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. [401.27](#), which relationship or orders contemplate the performance of medical acts, or when a physician enters into an established protocol with an advanced registered nurse practitioner, which protocol contemplates the performance of medical acts set forth in s. [464.012](#)(3) and (4), the physician shall submit notice to the board. The notice shall contain a statement in substantially the following form:

I, (name and professional license number of physician), of (address of physician) have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with (number of persons) emergency medical technician(s), (number of persons) paramedic(s), or (number of persons) advanced registered nurse practitioner(s).

459.015, FS Grounds for disciplinary action; action by the board and department

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(s) Performing professional services which have not been duly authorized by the patient or client or his or her legal representative except as provided in s. 743.064, s. 766.103, or s. 768.13.

(hh) Failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced practice registered nurses, anesthesiologist assistants, or other persons acting under the supervision of the osteopathic physician.

(ee) Presigning blank prescription forms.

Rule 64B15 Osteopathic Medicine

- ▶ 64B15-6 PHYSICIAN ASSISTANT(19)
- ▶ 64B15-7 ANESTHESIOLOGIST ASSISTANTS (14)
- ▶ 64B15-9 PROCEDURE (6)
- ▶ 64B15-10 FEES (12)
- ▶ 64B15-12 EXAMINATIONS AND LICENSURE (10)
- ▶ 64B15-13 CONTINUING EDUCATION (6)
- ▶ 64B15-14 PRACTICE REQUIREMENTS (16)
- ▶ 64B15-15 MEDICAL RECORDS (5)
- ▶ 64B15-16 RESIDENT INTERNSHIP (2)
- ▶ 64B15-18 PRESCRIPTIONS OF CERTAIN MEDICINAL DRUGS BY PHARMACISTS (4)
- ▶ 64B15-19 DISCIPLINARY GUIDELINES (10)
- ▶ 64B15-20 FINANCIAL RESPONSIBILITY (3)
- ▶ 64B15-22 REGISTRATION OF HOSPITAL RESIDENTS AND INTERNS (4)

64B15-19.007

Citations

(1) As used in this rule, “citation” means an instrument which meets the requirements set forth in Section 456.077, F.S., and which is served upon a licensee or certificate holder for the purpose of assessing a penalty in an amount established by this rule.

(2) In lieu of the disciplinary procedures contained in Section 456.073, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject for a complaint that is the basis for the citation.

(3) The following violations with accompanying fines may be disposed of by citation.

If it is not listed as a citation, then it is handled through a **FORMAL COMPLAINT**

II. Investigations Florida Department of Health (DOH)

How can an investigation begin?

- 1) Upon written complaint signed by complaining individual;
- 2) Anonymous Complaint; 3) Confidential Informant complaint; and 4) DOH.

Does the Department tell me if I am being investigated?

Notice of Investigation - letter of investigation.

Exceptions = Criminal charge or DOH believes notice will be detrimental to investigation

Due Process Rights

Constitutional right to remain silent


5th Amendment Due Process
right to remain silent as applied
to the Federal Government

14th Amendment Due Process
right to remain silent as applied
to the States

You DO NOT have to respond to
any questions by DOH
investigator

ALL communications - through
your attorney

WHAT RIGHTS?

Question: What exactly does it mean when an officer says, "You have the right to remain silent?" 

Right to Remain Silent Contact by DOH

You need to fully understand your rights.

After you receive written notification about investigation, you will receive a phone call from a Department Investigator

He/She will try to convince you he/she is your friend

Often DOH Investigators will try to convince you there is nothing to this Complaint - talk to us and we will close it out! (not always a true statement)

Why should I invoke my right to remain silent?

Physician receives letter of investigation for improper advertising, the physician failed to conspicuously identify the osteopathic physician by name in the advertisement or failed to conspicuously identify the osteopathic physician referred to in the advertising as an osteopathic physician. 64B15-14.001(2)(k), FAC

*Violation is considered a Citation 64B15-19.007(2)(f) FAC

Physician decided not to remain silent but to write the DOH on his own behalf....result?



Why should I invoke my right to remain silent?

Response?

Physician writes letter to DOH on letterhead without correctly identifying himself as DO., only - Dr. John Doe

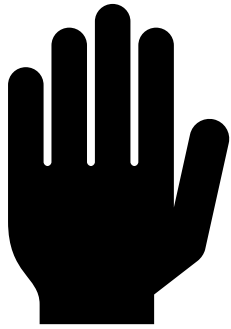
Physician received initial letter for failing to identify Dr. as DO and in letter to DOH he again failed to identify himself on letterhead as DO. - so, Dr receives a second complaint!!!!

If letter written by Attorney No Second Violation, letter by Dr. and because second complaint it is NO LONGER a Minor Violation



OH NO,
MAYBE I
WAIVED!

TO WAIVE OR NOT WAIVE?



Republican lawmakers on Friday passed a resolution declaring that an Internal Revenue Service official **waived her Fifth Amendment** right last month when she proclaimed her innocence at a congressional hearing, but legal experts said the vote is all but meaningless.

The House Oversight Committee called Lois Lerner to testify May 14 about the agency's inappropriate scrutiny of groups seeking tax-exempt status.

Before invoking her Fifth Amendment right against self-incrimination, Lerner told the committee: "I have not done anything wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee."

Lerner's attorney has said she is part of a Justice Department criminal investigation. The IRS has placed her on administrative leave.

“With the advice of counsel sitting right behind her, she testified to nine different factual assertions,” Rep. Trey Gowdy (R-S.C.) said Friday. “The case law is clear. That is not the way the Fifth Amendment works.”

Legal experts questioned the oversight committee’s resolution.

Alan M. Dershowitz, a Harvard law professor and Fifth Amendment rights specialist who has said Lerner’s comments were a mistake, still criticized Friday’s vote as political. “It has no legal impact at all,” he said.

Andrew D. Leipold, a criminal law and procedure professor with the University of Illinois, agreed with Dershowitz.

“Just because Congress says that her Fifth Amendment right is waived doesn’t mean it’s actually waived,” Leipold said.

Nonetheless, Friday’s resolution paves the way for committee chairman Darrell Issa (R-Calif.) to recall Lerner for questioning. The Republican-led panel could vote to hold Lerner in contempt if she pleads the Fifth again, and that could lead to a legal battle.

Ranking Democrat Elijah E. Cummings (Md.) said the panel should hear from legal experts before voting, but the idea was rejected.

“This is not a responsible record to put forward, because it undermines the credibility of this committee and the legitimacy of the resolution itself,” Cummings said.

Rep. Gerald E. Connolly (D-Va.) called the proceedings, which ended in a 22 to 17 party-line vote, an “egregious abuse of power that tramples the Constitution.”

Lerner’s attorney, William W. Taylor III, said the resolution would have no legal impact. “Her rights under the constitution are no different now than they were when she asserted them,” he said in a statement.

Ali Ahmad, Issa’s spokesman, said the panel hasn’t decided whether to call Lerner again, but he added that the chairman recessed the May hearing instead of adjourning, creating the option.

Dershowitz said lawmakers could force her to testify by focusing on her brief remarks.

“Once you have put forward affirmative statements, you have to answer questions about those affirmative statements,” he said. “They would have to glove-fit the questions to what she said, and then she can’t take the Fifth.”

Other Due Process Rights

Right to counsel - make sure when you hire counsel, they are well versed in administrative law. Also, it doesn't hurt to have one that is able to effectively communicate the position of the client - maybe not as a "cat lawyer"

**The
Guardian**

Letter from DOH



At this point, you **SHOULD HAVE** an attorney - sound legal advice



DOH - **MUST** promptly furnish a copy of complaint or document



Within 45 days - you **MUST** submit a written response - it **MUST** be considered by probable cause panel for the Board of Osteopathic Medicine



An attorney is able to extend the response timeframe through properly filed motions

DOH Resources

Investigative Subpoena's

Supported by Affidavit

Departments initiative or request by probable cause

The validity may be challenged - Was it unlawfully issued?

It is unreasonably broad in scope or Requires production of unreasonable materials

Investigative Depositions - Be aware - using deposition at subsequent formal hearing against you DOH may take depositions - own initiative or request probable cause panel; DOH gives you NO NOTICE

Investigation Conclusion

Entire investigative report with all exhibits is forwarded to Department's legal section in Tallahassee -

**If a Citation or Minor Violation, then case does NOT go to PCP - licensee receives notice of Citation or Notice of Noncompliance. Physician then either accepts and complies; or, does not accept and then regular disciplinary process resumes.*

Case then presented to PCP to determine whether probable cause exists and an administrative complaint issued. If no finding of probable cause - case dismissed.

PCP = Probable Cause Panel

III. CITATIONS

64B15- 19.007

(a) - Falsely certifying compliance with required continuing medical education hours for the purpose of renewing a license or certificate. The fine shall be \$2,000.

(b) - Failure to keep current mailing or practice address on file with the Board. The fine shall be \$250.


(c) - Failure to register as a dispensing practitioner. The fine shall be \$500.

(i) Failure to timely provide medical records, upon request to a patient or a patient's legal representative. The fine shall be \$500.00.


(j) Charging copying fees for patient records in violation of Rule 64B15-15.003, F.A.C. The fine shall be \$750.00.

Affect of Citations

If the subject does not dispute the matter in the citation in writing within 30 days after the citation is served by personal service or within 30 days after receipt by certified mail, the citation shall become a final order of the Board..



Failure to pay the fine and costs within the prescribed time period constitutes a violation of F.S., which will result in further disciplinary action. All fines and costs are to be made payable to “Department of Health - Citation.”



(5) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions of Chapter 119, F.S. The citation and complaint may be considered as aggravating circumstances in future disciplinary actions.

64B15-19.008 Mediation

(1) The provisions set forth in subsection (2), below, shall qualify for mediation only when the violation can be remedied by the licensee and there is no intentional misconduct.

(2) The Board finds that the following offenses may be mediated if the offense meets the criteria of Section 456.078, F.S.:

- (a) False, deceptive or misleading advertising not involving intentional misconduct;
- (b) Failure to comply with the requirements of Sections 381.026 and 381.0261, F.S., to provide patients with information about their patient rights and how to file a patient complaint;
- (c) Failure to provide, upon request, patient records to a patient or a patient's legal representative;
- (d) Negligently failing to file a report or record required by state or federal law;
- (e) Falsely certifying compliance with required continuing medical education hours for the purpose of renewing a license or certification;
- (f) Failure to verify profile information or failure to comply with the requirements for profiling and credentialing;
- (g) Failure to notify the Department of change of practice or mailing address;
- (h) Charging copying fees for patient records in violation of Rule 64B15-15.003, F.A.C.; and,
- (i) Failure to pay the fines or costs imposed by Board order.

(3) If a licensee is no longer eligible for mediation or if mediation fails, the above-referenced violations shall be eligible for the issuance of a citation pursuant to Rule 64B15-19.007, F.A.C.

Rulemaking Authority 456.078 FS. Law Implemented 456.078 FS. History-New 11-30-94, Formerly 59W-19.008, Amended 5-3-05, 7-29-08, 10-8-12.

IV. Probable Cause Panel (PCP)

456.073, FS (4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board by rule establishes members of PCP.

64B15-9.006 (1) The probable cause panel shall be composed of at least two (2) members and not more than three (3) members. *1 BOOM Board Member, 2 may be professional or former consumer board member, and no more than 1 lay member.*

(4) The determination as to whether probable cause exists that a violation of the provisions of Chapters 456 and 459, F.S., and/or the rules promulgated pursuant thereto, has occurred shall be made by a majority vote of the probable cause panel of the Board.

Recordings of PCP

Electronically record all proceedings;
Recorded by a certified court reporter

Transcripts may be obtained from the
court reporter, Request copy of transcript
of the probable cause panel proceeding -
must meet test of being “meaningful” -
Discussion of evidence by PC members

Must be some evidence to reasonably
indicate finding of PC

The Department must justify actions but
board may Not just “rubber stamp”
recommendation

Transcript - the best place to start

Findings of PCP

NO Probable Cause = Case dismissed or receipt of Letter of Guidance

- ▶ Violation exists - formal charges not being filed - Letter of Guidance
- ▶ Issued without an opportunity for hearing or to refute or dispute allegations

YES Probable Cause = Formal charges - Administrative Complaint

V. Administrative Complaint and Election of Rights

Administrative complaints are sent to a licensee after conclusion of the investigation, presentation to the probable cause panel, and sent with a form titled - Election of Rights.

The sending of the Administrative Complaint by DOH is deemed served upon the licensee after mailing, and **should never be ignored.**

Election of Rights

Once received, you must file within 21 days and Failure to file - licensee in default and license may be suspended by the DOH

Extension of time from department through legal counsel or request

Three ways to proceed (must choose only one way to proceed):

- Formal hearing

- Informal hearing

- Settlement agreement

Election of Rights

Formal Hearing before a hearing officer
DOA Hearings

Full evidentiary hearing - DOH must meet
its burden of proving up the material

Quite similar to a criminal or civil case

Absolutely foolish - to go this route
WITHOUT legal assistance

Election of Rights

Informal Hearing - before the Board of Medicine/Osteopathic Medicine.

Physician **MUST NOT** dispute the facts of the alleged complaint.

Physician goes before Board and presents testimony/evidence requesting for leniency in their penalties for the violation.

Board can reduce penalties, keep the penalties as offered by the Prosecutor, increase the penalties, or go as far as reduce the charges or dismiss the complaint.

Physician should go with counsel, or at the least, after consultation with counsel.

Election of Rights

Settlement Agreement - presented by the Prosecutor to resolve the matter.

Physician will have to appear before the Board for the Board to accept.

Physician's appearance will be after agreeing to the Prosecutor's negotiated penalties for the alleged violations in the complaint.

Board may accept the Agreement, or reject the Agreement. If Board rejects, they will make a counter-offer to resolve the matter. The physician can either accept the counter-offer immediately, or up to 7-14 days later; or reject the counter-offer and go to either a Formal or Informal Hearing (likely to have same result at Informal Hearing as the counter-offer).

Prosecution of Administrative Complaint

Licensee has due process PROPERTY rights, including, but not limited to:

Right to Remain Silent

Proper and adequate notice and adequate time to respond

See agency's investigative file, called discovery including subpoena's issues, depositions

Right to Counsel with Right to Examine and cross examine witnesses

Prosecution of Administrative Complaint

Attorney's from the Attorney General's office presents the case to the Full Board of Osteopathic Medicine for Informal Hearings or Settlement Agreements & to the Administrative Law Judge for Formal Hearings

After completion of the case, and a finding of guilt by either the Board or ALJ, an Order is entered with penalties:

Penalties can include a reprimand, probation, practice restrictions, or revocation of licensure.

Prosecution Penalties

64B15-19.002(4) False, deceptive or misleading advertising. (459.015(1)(d)FS) 1st offense letter of concern to reprimand and \$1k fine, 2nd offense probation and up to \$5k fine, 3rd offense up to 1 yr suspension followed by probation up to \$5k fine

(11) Kickbacks and unauthorized fee arrangements. (459.015(1)(j)FS) 1st offense probation or suspension and up to \$5k fine or denial, 2nd offense denial, revocation, or suspension followed by probation up to \$10k fine.

(35) Presigning blank prescription forms. (459.015(1)(ee), FS) 1st offense reprimand or suspension and \$5k fine, 2nd offense probation/revocation up to \$10k fine

Judicial Review and Stays of Final Order

Upon Order, one party wins - one party loses. If you lose, you can file a Motion to Stay the Order while you Appeal! The burden of proof is on the agency to prove probable danger to the community.

You will be the unhappy party; **Rarity**
- Department feels need to appeal the decision!

Seek judicial review - District Court of Appeal.

Five District Court of Appeals

Each has jurisdiction to hear appeals from licensing boards final orders



MEDICAL MARIJUANA

MEDICAL MARIJUANA RULES

To access the medical marijuana **consent form** visit:

- ▶ <https://floridasosteopathicmedicine.gov/forms/medical-marijuana-consent-form.pdf>

To access the medical marijuana **statutorily required documentation** form visit:

- ▶ <https://floridasosteopathicmedicine.gov/forms/statutorily-required-documentation-smm.pdf>

New Practice Standards Related to Smoking Marijuana for Medical Use

<https://flboardofmedicine.gov/forms/medical-marijuana-consent-form.pdf>

Under the authority of § 381.986, Florida Statutes (F.S.), new practice standards for the certification of smoking marijuana as a route of administration became effective on July 13, 2021. All osteopathic physicians who are authorized to issue a certification for the medical use of marijuana in a form for smoking as defined in § 381.986(1), F.S., must now comply with the new practice standards set forth in Rule 64B15-14.0131, Florida Administrative Code (F.A.C.). The new practice standards address a number of issues including patient evaluation, establishment of treatment plans, informed consent, periodic patient review and consultation, and the maintenance of medical records. Qualified osteopathic physicians must at all times remain in compliance with Rule 64B15-14.0131, F.A.C., and all state laws and regulations addressing the issuance of certifications for the medical use of marijuana in a form for smoking. In addition to the new practice standards, qualified osteopathic physicians must have patients who will use smoking marijuana as a route of administration sign an updated “Medical Marijuana Consent Form,” which is incorporated by reference in Rule 64B15-14.013, F.A.C.

Medical Marijuana and Tele-Health

381.986 Medical use of marijuana.

- ▶ The Governor's executive order has expired and there is no longer the ability for physicians to treat medical marijuana patients through telemedicine.
- ▶ 1(l) “Qualified patient” means a resident of this state who has been added to the medical marijuana use registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card.
- ▶ 1(m) “Qualified physician” means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements of subsection (3).
- ▶ (4) PHYSICIAN CERTIFICATION
- ▶ (a) A qualified physician may issue a physician certification only if the qualified physician:
 - ▶ 1. Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.

Medical Ethics

- Why should I be concerned?

AOA Code of Ethics

The American Osteopathic Association has formulated this Code to guide its member physicians in their professional lives. The standards presented are designed to address the osteopathic physician's ethical and professional responsibilities to patients, to society, to the AOA, to others involved in health care and to self.

Further, the American Osteopathic Association has adopted the position that physicians should play a major role in the development and instruction of medical ethics.

I have ethics, yes I do, I have ethics, how about you?

THE BEE

Sacramento Superior Court Department ...

Scott Green

018596, A. Monroe

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

Powered by Zoom

What is Medical Ethics?



Medical ethics involves examining a specific problem, usually a clinical case, and using values, facts, and logic to decide what the best course of action should be.



Some ethical problems are fairly straightforward, such as determining right from wrong. But others can also be more perplexing, such as deciding between two "rights"—two values that are in conflict with each other—or deciding between two **different value systems, such as the patient's (or their guardian) versus the doctor's.**

What are the Basic Principles of Medical Ethics?

Autonomy

Requires that the patient have autonomy of thought, intention, and action when making decisions regarding health care procedures. Therefore, the decision-making process must be free of coercion or coaxing. In order for a patient to make a fully informed decision, she/he must understand all risks and benefits of the procedure and the likelihood of success. Because ARTs are highly technical and may involve high emotions, it is difficult to expect patients to be operating under fully-informed consent.

Justice

The idea that the burdens and benefits of new or experimental treatments must be distributed equally among all groups in society. Requires that procedures uphold the spirit of existing laws and are fair to all players involved. The health care provider must consider four main areas when evaluating justice: fair distribution of scarce resources, competing needs, rights and obligations, and potential conflicts with established legislation. Reproductive technologies create ethical dilemmas because treatment is not equally available to all people.

Beneficence

Requires that the procedure be provided with the intent of doing good for the patient involved. Demands that health care providers develop and maintain skills and knowledge, continually update training, consider individual circumstances of all patients, and strive for net benefit.

Non-maleficence

Requires that a procedure does not harm the patient involved or others in society. Infertility specialists operate under the assumption that they are doing no harm or at least minimizing harm by pursuing the greater good. However, because

assistive reproductive technologies have limited success rates uncertain overall outcomes, the emotional state of the patient may be impacted negatively. In some cases, it is difficult for doctors to successfully apply the do no harm principle.

Examples of medical ethics scenarios

- ▶ Withholding treatment to meet an organization's budget, or because of insurance policies;
- ▶ Accepting money from pharmaceutical or device manufacturers;
- ▶ Upcoding to get treatment covered;
- ▶ Getting romantically involved with a patient or family member;
- ▶ Covering up a mistake;
- ▶ Reporting an impaired colleague;
- ▶ Cherry-picking patients;
- ▶ Prescribing a placebo;
- ▶ Practicing defensive medicine to avoid malpractice lawsuits;
- ▶ Dropping insurers; and
- ▶ Breaching patient confidentiality owing to a health risk.

Medical ethics issues?

The Medical Practice Act defines unprofessional conduct in each state. Although laws vary from state to state, some examples of unprofessional conduct include the following:

Physician abuse of a patient

Inadequate record keeping

Failing to meet the standard of care

Prescribing drugs in excess or without legitimate reason

Failing to meet continuing medical education requirements

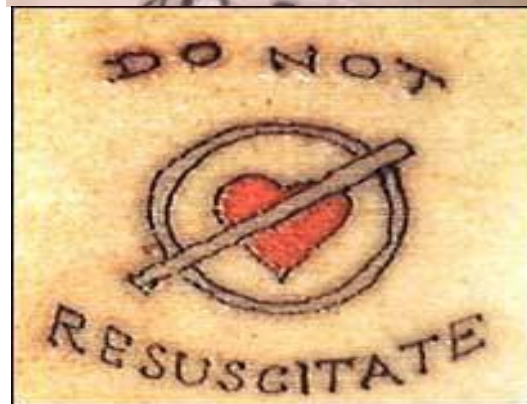
Dishonesty

Conviction of a felony

Delegating the practice of medicine to an unlicensed individual

Minor fee disagreements and poor customer service are not considered unprofessional conduct.

TATOOS, WHAT ARE THEY GOOD FOR?



DNR TATTOOS



Paramedics brought to the emergency department an unconscious 70-year-old man with “Do Not Resuscitate” tattooed on his chest. The ICU team decided to honor the preference expressed in the tattoo. Subsequently, a copy of his written DNR request was obtained.

But in the new case, the man's doctors were conflicted about the decision not to honor the tattoo, because of "the patient's extraordinary effort to make his presumed advance directive known."

So they consulted a medical ethics expert, who advised the doctors to honor the patient's tattoo. The expert "suggested that it was most reasonable to infer that the tattoo expressed an authentic preference," the report said.

Later, the hospital found that the man actually did have an official DNR order with the Florida Department of Health. The man's doctors were "relieved" to find that their decision matched this official request.

The man's condition soon deteriorated, and he died without undergoing CPR or invasive life-support methods.

The doctors conclude that "this patient's tattooed DNR request produced more confusion than clarity," and that the case "neither supports nor opposes the use of tattoos to express end-of-life wishes."

The report was published Nov. 30 in the New England Journal of Medicine.



State of Florida DO NOT RESUSCITATE ORDER

(please use ink)

Patient's Full Legal Name: _____ Date: _____
(Print or Type Name)

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.
(If not signed by patient, check applicable box):

- Surrogate
- Proxy (both as defined in Chapter 765, F.S.)
- Court appointed guardian
- Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature) (Print or Type Name)

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(Signature of Physician) (Date) (Telephone Number (Emergency))

(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(Signature of Physician) (Date) (Telephone Number (Emergency))

(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004



State of Florida DO NOT RESUSCITATE ORDER

Patient's Full Legal Name (Print or Type) _____ (Date) _____

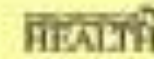
PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.

(If not signed by patient, check applicable box):

- Surrogate
- Proxy (both as defined in Chapter 765, F.S.)
- Court appointed guardian
- Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature) (Print or Type Name)



State of Florida DO NOT RESUSCITATE ORDER

(please use ink)

Patient's Full Legal Name: _____ Date: _____

EXAMPLE

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.
(If not signed by patient, check applicable box):

- Surrogate
- Proxy (both as defined in Chapter 765, F.S.)
- Court appointed guardian
- Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature) (Print or Type Name)

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(Signature of Physician) (Date) (Telephone Number (Emergency))

(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(Signature of Physician) (Date) (Telephone Number (Emergency))

(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004



State of Florida DO NOT RESUSCITATE ORDER

Patient's Full Legal Name (Print or Type) _____ (Date) _____

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.

- Surrogate
- Proxy (both as defined in Chapter 765, F.S.)
- Court appointed guardian
- Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature) (Print or Type Name)

DH Form 1896, Revised December 2004

456.063 Sexual misconduct; disqualification for license, certificate, or registration

(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant has:

(a) Had any license, certificate, or registration to practice any profession or occupation revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States and has not had that license, certificate, or registration reinstated by the licensing authority of the jurisdiction that revoked the license, certificate, or registration; or

(b) Committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct.

For purposes of this subsection, a licensing authority's acceptance of a candidate's relinquishment of a license which is offered in response to or in anticipation of the filing of administrative charges against the candidate's license constitutes the surrender of the license.

(3) Licensed health care practitioners shall report allegations of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred.

459.0141, F.S. Sexual misconduct in the practice of osteopathic medicine

The osteopathic physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of osteopathic medicine means 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. Sexual misconduct in the practice of osteopathic medicine is prohibited.

History.—ss. 13, 17, ch. 89-374; s. 4, ch. 91-429.

Patient Boundaries Case Study



Physician saw patient in inappropriate things to his office as a patient.

Then he started calling her, multiple times, to offer a job.

Later he called back and was “breathing heavily and his tone of voice had changed”.

He proceed to stated

the patient regarding her body and how he wanted to touch her.

Action taken:

Revocation

Its only my ethics, Right?

456.072(1)(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

456.072(1) other ethical violations

Exercising	Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.
Failing	Failing to comply with the requirements of ss. 381.026 and 381.0261 to provide patients with information about their patient rights and how to file a patient complaint.
Engaging or attempting	Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).

AOA Code of Ethics

Section 1. The physician shall keep in confidence whatever she/he may learn about a patient in the discharge of professional duties. Information shall be divulged by the physician when required by law or when authorized by the patient.

Section 2. The physician shall give a candid account of the patient's condition to the patient or to those responsible for the patient's care.

Section 3. A physician-patient relationship must be founded on mutual trust, cooperation, and respect. The patient, therefore, must have complete freedom to choose her/his physician. The physician must have complete freedom to choose patients whom she/he will serve. However, the physician should not refuse to accept patients for reasons of discrimination, including, but not limited to, the patient's race, creed, color, sex, national origin, sexual orientation, gender identity

or handicap. In emergencies, a physician should make her/his services available.

Section 4. A physician is never justified in abandoning a patient. The physician shall give due notice to a patient or to those responsible for the patient's care when she/he withdraws from the case so that another physician may be engaged.

Section 5. A physician shall practice in accordance with the body of systematized and scientific knowledge related to the healing arts. A physician shall maintain competence in such systematized and scientific knowledge through study and clinical applications.

Section 6. The osteopathic medical profession has an obligation to society to maintain its high standards and, therefore, to continuously regulate itself. A substantial part of such regulation is due to the efforts and influence of the recognized local, state and national associations representing the osteopathic medical profession. A physician should maintain membership in and actively support such associations and abide by their rules and regulations.

Section 7. Under the law a physician may advertise, but no physician shall advertise or solicit patients directly or indirectly through the use of matters or activities which are false or misleading.

Section 8. A physician shall not hold forth or indicate possession of any degree recognized as the basis for licensure to practice the healing arts unless he is actually licensed on the basis of that degree in the state in which she/he practices. A physician shall designate her/his osteopathic school of practice in all professional uses of her/his name. Indications of specialty practice, membership in professional societies, and related matters shall be governed by rules promulgated by the American Osteopathic Association.

Section 9. A physician should not hesitate to seek consultation whenever she/he believes it advisable for the care of the patient.

Section 10. In any dispute between or among physicians involving ethical or organizational matters, the matter in controversy should first be referred to the appropriate arbitrating bodies of the profession.

Section 11. In any dispute between or among physicians regarding the diagnosis and treatment of a patient, the attending physician has the responsibility for final decisions, consistent with any applicable hospital rules or regulations.

Section 12. Any fee charged by a physician shall compensate the physician for services actually rendered. There shall be no division of professional fees for referrals of patients.

Section 13. A physician shall respect the law. When necessary a physician shall attempt to help to formulate the law by all proper means in order to improve patient care and public health.

Section 14. In addition to adhering to the foregoing ethical standards, a physician shall recognize a responsibility to participate in community activities and services.

Section 15. It is considered sexual misconduct for a physician to have sexual contact with any current patient whom the physician has interviewed and/or upon whom a medical or surgical procedure has been performed.

Section 16. Sexual harassment by a physician is considered unethical. Sexual harassment is defined as physical or verbal intimidation of a sexual nature involving a colleague or subordinate in the workplace or academic setting, when such conduct creates an unreasonable, intimidating, hostile or offensive workplace or academic setting.

Section 17. From time to time, industry may provide some AOA members with gifts as an inducement to use their products or services. Members who use these products and services as a result of these gifts, rather than simply for the betterment of their patients and the improvement of the care rendered in their practices, shall be considered to have acted in an unethical manner.

SECTION 18. A physician shall not intentionally misrepresent himself/herself or his/her research work in any way.

SECTION 19. When participating in research, a physician shall follow the current laws,

regulations and standards of the United States or, if the research is conducted outside the United States, the laws, regulations and standards applicable to research in the nation where the research is conducted. This standard shall apply for physician involvement in research at any level and degree of responsibility, including, but not limited to, research, design, funding, participation either as examining and/or treating provider, supervision of other staff in their research, analysis of data and publication of results in any form for any purpose.

of

VII. What if I don't like...



A Rule as promulgated by the Board of Osteopathic Medicine?

FAC Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. Hearing before the



A Law in statute?

Requires the Florida Osteopathic Medicine Practice Act to be opened up and subject to change in all sections of the Practice Act of 459, FS. Through legislative process.

Resources

www.floridahealth.gov Florida Department of Health Home Page - Verify a License

www.floridasosteopathicmedicine.gov/ Board of Osteopathic Medicine Homepage

www.flboardofmedicine.gov/ Board of Medicine Homepage

www.leg.state.fl.us/Statutes/index.cfm All Florida Statutes

www.flrules.org/default.asp All Florida Rules of Board, and All Boards

Thank you for your time!

Jason D. Winn, Esq.

WINN LAW

2709 Killarney Way, Suite 4, Tall., FL 32301

jwinn@jwinnlaw.com 850/222-7199(o) 850/519-5876(c)



<https://media.giphy.com/media/tYOA3u3Xqg0TK/giphy.mp4>