

THE BUSINESS OF BEING A DOCTOR

Presented by:



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Topics

- Licensure Application Process
 - Credentialing
 - Employment Agreement Regulations
 - Compensation
 - Physician Liability Insurance
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Licensure Application Tips

- Fully disclose all background information, even if it's negative.
 - It's always better to be completely honest. They will always find out if you attempt to cover anything up.
 - Have someone other than yourself review your application.
 - Submit your application at least 90 days prior to employment. Better safe than sorry!
 - If you are called for a board appearance regarding your application, retain an attorney to represent you in this matter.
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Credentialing

- Get credentialed at least 90 days before employment begins.
 - Find out credentialing timeline from employer/facility.
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Employment Agreement Regulations


- Health Care Clinic Act
 - Stark Law
 - Anti-Kickback Statute
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Health Care Clinic Act


- Purpose: To require non-healthcare provider owners of health care entities to have the clinic licensed through the Agency for Health Care Administration (AHCA)
 - Applies: If **ANY** portion of the business is owned by a non-exempt person
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Exemptions


A Practice Owned By:

- Acupuncture Physicians
 - Allopathic Physicians
 - Osteopathic Physicians
 - Chiropractic Physicians
 - Podiatric Physicians
 - Naturopaths
 - Optometrists
 - Dentists
 - Massage Therapists
 - Nurse Practitioners
 - Other Providers Licensed Under Chapter 464, Florida Statutes
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Requirements for a Health Care Clinic License from AHCA

- Providing proof of financial ability to operate
 - Background screenings, including screening of the director and chief financial officer
 - Disclosures of certain additional information
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Requirements for a Health Care Clinic License from AHCA

- Clinic must have a medical director
 - Medical director duties:
 - Ensure medical professionals are properly licensed and certified
 - Ensure record keeping compliance
 - Report noncompliance
 - To review clinic billings for fraud
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Traps for the Unwary

- If a non-exempt person owns the clinic, practice, or facility.
 - If a non-physician controls all major decision making for the clinic, practice or facility.
 - If all financial matters are controlled by a non-physician.
 - If a corporation or LLC owns the clinic, practice or facility.
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Real-Life Scenarios

Scenario 1:


A physician practices medicine through a limited liability company which the physician owns with his non-licensed wife. The physician dies and his wife remains sole owner of the practice, hiring a locum tenens physician to come in and treat patients.



Real-Life Scenarios

Result 1:


As of the date of death of the physician, the practice is operating illegally, in violation of Florida law. Each day of operations is a separate felony offense.



Real-Life Scenarios

Scenario 2:


A physician licensed in Florida operates a medical practice as a sole proprietorship. The physician desires to reward her practice manager, a non-licensed business person, by making him a partner in her practice. The practice continues to operate as before without a health care clinic license.



Real-Life Scenarios

Result 2:


The practice is operating illegally as of the day the practice manager is made a partner.



Real-Life Scenarios

Scenario 3:


A physician licensed in Florida decides to sell her practice and retire. Three non-licensed business people decide to form a corporation to purchase and operate the practice. The corporation purchases the medical practice's assets, including patient records. The corporation has not applied for or received a Health Care Clinic License.




Real-Life Scenarios

Result 3:


On the day of closing or the day the practice is transferred to the new corporation, the corporation is operating illegally, in violation of Florida law. Each day of operation is a separate felony.




HCCA Consequences

- Third-degree felony with each day of operation
 - If an individual has an interest in more than one clinic, AHCA may revoke the license for all of the clinics
 - Administrative fines of up to \$5,000 per day
 - Potential recoupment of claims made to third-party payors
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Keep in Mind

- Some health professions prohibit ownership by anyone outside of that specialty
 - Examples include:
 - Dentistry
 - Optometry
 - Chiropractic medicine
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Do Not Work at an Illegal Health Care Clinic

- Checking the Secretary of State's website to identify the business entity actually owning the practice
 - Identify the office's directors, managers or members of the business entity and check to see if they are all exempt providers
 - If they are not, inquire with AHCA as to the existence of a valid health care clinic license or exemption
 - Inquire with the managers, officers or owners as to the identity of all owners
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Stark Law

- Physician Self-Referral Prohibition
 - Physician prohibited from referring to an entity in which he/she has non-exempt financial interest
 - Two-Way Street
 - Provider receiving the referral is prohibited from accepting it
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Stark Law

- Stark Law prohibits referral to entities for the provision of designated health services such as:
 - Clinical laboratory services
 - Physician, occupational, & speech-language pathology services
 - Radiology & other imaging services
 - Radiation therapy services & supplies
 - Durable medical equipment & supplies
 - Parenteral & enteral nutrition supplies
 - Prosthetics, orthotics & prosthetic devices
 - Home health services
 - Outpatient prescription drugs
 - Inpatient & outpatient hospital services


Real-Life Example:

- A physician practice owns a Durable medical equipment (DME) provider and refers its patients to the DME company for supplies and equipment.
 - Result: This is a Stark violation as the physician has a financial interest in the DME company and is in a position to influence referrals.
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Stark Law Consequences

- Denial of Medicare/Medicaid/third-party payors payment
 - Civil penalty of up to \$100,000 for the DHS entity, referring physician or both
 - If the violation is knowing it can subject a provider to criminal and civil liability under the False Claims Act
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Anti-Kickback Statute (AKS)

- Under the Anti-Kickback Statute, it is illegal to knowingly or willfully:
 - Offer, pay, solicit, or receive remuneration directly or indirectly, in cash or in kind, in exchange for referring and individual, or furnishing or arranging for a good or service for which payment may be made by a federal healthcare program
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AKS Problem Areas

- Free supplies or equipment – manufacturers may offer free supplies or equipment
 - Waiving co-pays
 - Offering transportation to appointments
 - Offering free or reduced priced medications
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Real-Life Example:


- USA Health Alliance and Sacred Heart Hospital were accused of illegally paying physicians in exchange for referring cardiac patients to Sacred Heart Hospital, a former member hospital of the USA Health Alliance.
 - A qui tam lawsuit was brought forth alleging Sacred Heart Hospital limited the opportunity to work at the Heart Station, a center where patients receive non-invasive procedures such as stress tests, to those cardiologists who referred cardiac business to Sacred Heart Hospital .
 - The suit also alleged that cardiologists were rewarded with a percentage of time at the Heart Station based on their contributions to the hospital's yearly gross revenues, and these physicians earned additional income for treating patients at the facility.
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Real-Life Example:


- Result: The government claimed Sacred Heart Hospital's use of Heart Station panel time to induce lucrative cardiac referrals violated the federal Anti-Kickback Statute
 - Claims submitted to Medicare/Medicaid violated the False Claims Act.
 - The two hospitals agreed to pay \$108 million to settle claims they violated the Anti-Kickback Statute and the False Claims Act
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Anti-Kickback Statute (AKS)


Consequences

- Considered a felony for anyone who receives a form of payment in return for referring a patient for Medicare/Medicaid/Etc. covered services
 - Imprisonment up to five years
 - Exclusion from Medicare/Medicaid/Etc.
 - Possible fine of up to \$25K for ea. violation
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Anti-Kickback Safe Harbors

- Safe Harbors Include:
 - Investment interests in certain entities
 - Space and equipment rental agreements
 - Personal Services and Management Contracts
 - Sales of practices
 - Employment relationships
 - Group Purchasing Arrangements
 - Health Plans and Managed Care Plans
 - Warranties
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Safe Harbors-Personal Services/Management Contracts

- Payment made to agents as compensation, so long as the agency agreement:
 - Covers all services the agent will provide
 - Cannot reflect the volume or value of referrals
 - Set out in writing
 - Not less than one year
 - Fair market value
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Safe Harbors - Recruitment

- Safe harbor for payments made to induce a practitioner to join with an entity, with litany of conditions including:
 - Recruit is leaving an established practice
 - Recruit can only bring 25% of patients with him or her from old practice


Compensation

- Compensation Packages – must be reasonable
 - Compensation Structure – must be in compliance with applicable federal and state regulations (taxes)
 - Compensation Paid – must meet fair market value
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Fair Market Value (FMV)

- FMV is the price point for compensation to which a employer and employee can agree based on the current job market and career trends
 - FMV is determined by comparing the entire compensation package
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FMV: Commercial Reasonableness

- Stark II Phase II regulations at 69 Fed. Reg. 16093 (2004)
 - An arrangement that would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable physician of similar scope and specialty, even if there were no potential business referrals between the parties.
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FMV: What To Keep Your Eye On

- Compensation packages that include remuneration in the form of free, or less than fair market value, space and staff
 - Kickbacks
 - Compensation rates for meetings (advisory, training, planning, conferences)
 - Compensation rates for speaking fees
 - Physician investment/joint venture relationships (medical device industry)
 - Remuneration for clinical studies which may have no legitimate “value” to prompt physicians to prescribe specific drugs – Clinical Trial Fraud
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Seek FMV Analysis

- Internally prepared analysis/documentation
 - Independent FMV consultant
 - Use of independent credentialed appraiser
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Physician Insurance Coverage




The Most Important Type of Coverage

- Every licensed health care professional should have legal defense coverage.
 - This is the most used type of coverage and the most beneficial.
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Malpractice Insurance

- Most employers provide professional liability insurance when physician works for employer
 - Claims made or occurrence based
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Malpractice Insurance: Claims Made Policy

- Covers the physician only if the claim is brought within the policy period
 - Additional tail coverage is required to cover claims made after the policy expires or when the physician leaves
 - Agreement should outline who pays for “tail” coverage
 - Most employers provide this type
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Malpractice Insurance: Occurrence Based Policy

- Covers the physician for an alleged act that occurred while the policy was in effect, even if the claim is brought well after the policy expires.
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Supplemental Coverage

- Healthcare Providers Service Organization (HPSO) now provides up to \$25,000 in coverage.
 - In additions, HPSO has increased optional coverage in areas sorely needed by health care professionals.
 - Supplemental coverage is optional insurance for incidents not necessarily related to malpractice or professional liability.
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HPSO Supplemental Coverage


- Representation During a Deposition (e.g. representation in a subpoena for testimony)
 - Information Privacy Coverage (HIPAA fines)
 - Sexual Misconduct
 - Reimbursement for Rendering First Aid
 - Accidental Injury to Others
 - Workplace Violence Counseling
 - Coverage If You are Assaulted
 - Reimbursement for Defendant Expenses
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Insurance Coverage Scenario


- Dr. Strange receives a complaint and notice of investigation from the Department of Health. It appears the complaint was filed by a disgruntled former patient.
 - Dr. Strange contacts his insurance carrier about the complaint. He is informed that although he carries medical malpractice insurance, he does not have coverage for licensure defense.
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Insurance Coverage Scenario

Outcome:

- Dr. Strange hires legal counsel to defend him against the complaint. The matter ends up going to a formal hearing, which costs tens of thousands of dollars in legal fees.
 - Dr. Strange must pay for his legal fees out-of-pocket. Because of this, his home goes into foreclosure and his vehicles are repossessed.
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Take This Tip Away With You

- Have an attorney on retainer who knows you and your business.
 - What is an attorney on retainer?
 - A client pays an attorney a reduced fees on a regular basis. In return, the lawyer performs some legal services whenever the client needs them.
 - Can be a tax write off as a business operation expense.
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