THE BUSINESS OF BEING A DOCTOR

Presented by:

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Topics

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

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

• Health Care Clinic Act

• Stark Law

• Anti-Kickback Statute
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
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
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
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
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.
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.
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
Keep in Mind

• Some health professions prohibit ownership by anyone outside of that specialty

• Examples include:
  – Dentistry
  – Optometry
  – Chiropractic medicine
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
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
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.
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
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
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
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.
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.
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
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
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
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
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
FMV:
Commercial Reasonableness

  – 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.
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
Seek FMV Analysis

• Internally prepared analysis/documentation

• Independent FMV consultant

• Use of independent credentialed appraiser
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.
Malpractice Insurance

• Most employers provide professional liability insurance when physician works for employer

• Claims made or occurrence based
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
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.
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.
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
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.
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.
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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