

LEGAL ISSUES FOR MEDICAL RESIDENTS

Presented by:



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George F. Indest III, J.D., M.P.A., LL.M.

**Board Certified by the Florida Bar in the Legal
Specialty of Health Law**

Website: www.TheHealthLawFirm.com



Main Office:


1101 Douglas Avenue
Altamonte Springs, Florida 32714

Phone: (407) 331-6620


Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com


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.
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Licensure Application Tips, cont.

- Get documents from residency programs now
 - These tend to disappear or be difficult to locate in the future
 - Obtain and keep forever copies of:
 - Certificates of completion
 - Evaluations
 - Recommendations
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WARNING: Hiring Application Services

- Do not to let the service fill out your application completely on its own
 - Review application before it is sent
 - Get copies of everything
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Credentialing

- Find out credentialing timeline from employer/facility
 - Try to get credentialed at least 90 days before employment begins
 - Be aware of contracts that are contingent upon credentialing
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Physician Employment Agreements




Duty to Read

- Parties have the duty to actually read the contract
 - Courts will assume that both parties have read and understood the contract
 - Get a clarification in writing if you are unsure of a particular provision's meaning
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Compensation

- Nearly all compensation is subject to tax, fraud and abuse, and anti-self-referral laws
 - Must be fair market value
 - Fair market value determined by comparing entire compensation package
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Methods of Compensation

- Flat salary
 - Guaranteed salary
 - Modified flat salary with productivity basis
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Partnership / Buy-ins

- Option to buy into group:
 - “Buy-in” clause or “partnership” arrangement
 - Draft these options separately, if possible
 - Often not reached or offered
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Benefits

- Bonuses
 - Sign-on bonus
 - Put bonus into bank (may need it if contract is terminated early)
 - May have to repay entire bonus or prorated amount if contract is terminated early
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Benefits

- Additional Perks
 - Paid time off
 - Are CME and vacation days together?
 - Are holidays included?
 - Are you realistically going to get to use all of it?
 - Health/Dental/Disability/Retirement plans
 - Spouse or family coverage
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Non-Compete

- Prevents departing physician from competing with employer in specific geographic area for specific period of time
 - Enforceable in many, but not all states
 - Agreement may contain an option to “buy out” of restrictive covenant
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Other Restrictive Covenants

- Non-solicitation
 - Patients
 - Employees
 - Referral Sources
 - Liquidated Damages Clauses
 - Non-Disparagement
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Outside Employment


- Can be prohibited by some employers
 - May require the income be turned over to the employer
 - Physician should negotiate to minimize the employer's control over outside employment and income
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Research and Writing Activities


- Generally, the results and the written materials belong to the employer
- A written agreement can give the physician the ownership rights to these materials



Termination

- Without cause termination
 - No formal reason
 - Notice period usually between 30 to 180 days
 - This means your contract is only as long as the notice period
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Termination

- Termination with cause
 - Common reasons to terminate the contract:
 - Loss of hospital privileges
 - Exclusion from the Medicare/Medicaid program
 - Conviction of a crime
 - Suspension of a medical license
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ALWAYS request a signed copy of the contract!



Professional Liability Insurance




Malpractice Insurance

- Most employers provide professional liability insurance when physician works for employer
 - Should indicate “claims made” or “occurrence based”




Claims Made

- Covers the physician only if claim is brought within policy period
 - Most employers provide claims made
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Occurrence based

- Covers the physician for any alleged acts that occurred while the policy was in effect, even if the claim is brought well after the policy expires

Tail Coverage

- Additional tail coverage is needed to cover claims made after policy expires
 - Agreement should outline who pays for tail coverage and how long it needs to be maintained
 - Proof of tail
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Basic Asset Protection




!!!!WARNING!!!!

- **DO NOT OPERATE A PRACTICE AS AN UNINCORPORATED SOLE PROPRIETORSHIP**


Insurance Coverage

- Insurance coverage through a reputable carrier with appropriate limits is the best asset protection you can get
 - Malpractice insurance
 - Premises liability insurance
 - Umbrella coverage
 - Excess/Secondary coverage
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Business Entities

- Why form a company?
 - Offers protection for your personal assets
 - Caveat:
 - Must observe the “corporate form”
 - i.e. treat it like a business and not your piggy bank
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Layers of Protection

- Using multiple business entities can add additional layers of protection
 - Place all significant assets in separate business entities
 - Expensive equipment
 - Building and/or property
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Spouse or no Spouse

- Depending on the law in your jurisdiction it may be advantageous to own your practice with a spouse or even children
 - However, there is considerable disagreement among asset protection planners on the subject
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Other Methods of Asset Protection

- Have your spouse sign for a child's driver's license
 - Carry sufficient auto insurance
 - Disability insurance
 - Avoid excess liability in other business endeavors
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Common Regulatory Pitfalls




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
- 


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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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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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


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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Altamonte Springs, FL 32714

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Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Orlando Office (By Appointment):

37 North Orange Avenue, Suite 500
Orlando, Florida 32801

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Pensacola Office (By Appointment):

201 East Government Street
Pensacola, Florida 32502

Phone: (850) 439-1001

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Denver, Colorado Office (By Appointment):

155 East Boardwalk Drive, Suite 424
Fort Collins, Colorado 80525

Phone: (970) 416-7454

Fax: (866) 203-1464

Website: www.TheHealthLawFirm.com



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