10 Ways to Avoid Losing Your Medical License: Part III

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To go back and view part 1 or part 2 of this series, click the following links: How to Avoid Losing your Medical License: Part I and How to Avoid Losing your Medical License: Part II.

While many of the statutes referenced below are specific to Tennessee, the general principles are applicable across state lines.

7. Maintain proper medical records.

A physician should ensure that he or she has appropriate records documenting each patient encounter, particularly if the encounter includes a prescription for a controlled substance. If a physician's office has not done so already, it should strongly consider transitioning to an electronic health records system. Electronic records are more secure and have less of a chance of being lost or misplaced the way that paper records may be misplaced or misfiled. Additionally, electronic records are time stamped with the exact day and time the information about a patient was entered into the record, which prevents discrepancies in record keeping or confusion over when a visit or prescription was recorded.

When using electronic medical records, however, health care providers should be mindful to include details and descriptions specific to each patient encounter, and not simply rely on the "autofill" option from prior visits. Years of patient visits with precisely the same documentation of the patient's symptoms and reactions to prescriptions, despite a change in prescription dosage, type, or duration can raise red flags if these patient charts are reviewed by the Department of Health for potential overprescribing or misprescribing. Additionally, any auxiliary paper documentation that is maintained in conjunction with electronic health records should be properly filed and stored in the event of an investigation by the Department of Health. Pain management contracts, urine drug screen results, and referrals to specialists are all highly relevant and significant parts of a patient medical record, and should be

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securely maintained at your facility along with all electronic health records in accordance with your state medical record retention laws.

8. Complete your Continuing Medical Education (CME) requirements in a timely manner.

Under the Rules of the Tennessee Board of Medical Examiners, all licensees must complete 40 hours of CME courses during the two calendar years that precede the licensure renewal year, including at least two hours specifically about prescribing controlled substances. (Tenn. Rules and Regs. 0880-02-.19(1) If a physician fails to complete his or her CME hours, he or she may be subject to disciplinary action. Failure to complete CMEs is generally resolved with an agreed citation, which generally entails a non-disciplinary fine, and may include the requirement that a provider obtain additional hours on top of the required CME hours.

In rare situations, actual disciplinary action for a physician's failure to complete CMEs may be imposed. Although such an action is rare, disciplinary action is reported to the National Practitioner Data Bank , maintained as a part of the public record in the provider's state of licensure, and may lead to collateral repercussions.

9. Maintain Appropriate Surgery Centers.

The Tennessee Board of Medical Examiners, like most state medical boards, has specific rules on what resources and protocols are required in an office-based surgery center. (Tenn. Rules and Regs. 0880-02-.21. These rules dictate what type of procedures can be performed in Level I, Level II and Level III office-based surgery, what equipment and personnel are required, and what sort of relationship must be in place with a licensed hospital within a "reasonable proximity" of the surgery center.

If office-based surgery does not meet the specifically enumerated standards for a provider's state and appropriate level of surgery, the Board of Medical Examiners has the authority to discipline the office-based surgical suite's certification, as well as the licensed

provider who is performing procedures at the site. Such discipline can include a range of penalties, including, but not limited to, civil fines issued per day the surgery center is out of compliance, probation, or in particularly severe circumstances, the suspension of a provider's license to practice. If you work in or manage an office-based surgery center, be cognizant of your state's requirements for your level of office-based surgery.

10. Think Like a Patient.

Most physicians or other health care providers who make medical mistakes, or simply suffer from a lapse in professional judgment, are often going through other difficult life events. Providers should ask themselves, "Would I want a health care provider in my current physical, mental or emotional condition treating me?" If the answer is no, the provider should take action to address the underlying issues in his or her life or practice. While it may seem impossible for a provider to step away from his or her practice, taking several days (or longer, as the situation may warrant) may make the difference between harming a patient or exercising poor professional judgment. After years of school and residency, a few days or months is an insignificant amount of time over the course of what will hopefully be a long and productive career spanning many decades.

Additionally, a provider who has transitioned to a new field, a new clinic or facility, or a new aspect of practice should be cognizant of the limitations of his or her own abilities and skills. Asking for help, pursing mentorship, and actively seeking continuing education and clinic skills opportunities are not limited to those in the first few years of their practice.

Finally, if you or someone you work with is struggling with significant mental or emotional distress, consider reaching out to your state's professional health program (PHP) for confidential assistance. In Tennessee, the Tennessee Medical Foundation is an excellent resource for physicians struggling with a myriad of concerns, ranging from addition to mental or emotion illness.

Conclusion

Health care providers do not set out to make mistakes or lapses in judgment when practicing each day. However, sometimes situations occur which are outside the control of a provider—an upset patient or ex-spouse files a complaint with the Board of Medical Examiners, for example, triggering an investigation into the provider's license. By following the tips outlined in the last three articles—renewing your license on time and completing all CMEs, behaving professionally, cultivating awareness about your physical and mental health, being cautious about prescribing controlled substances, and maintaining proper medical records—health care providers can circumvent many potential problems before they occur. Then—if and when—an investigation into a provider's license is triggered, that provider can confidently proceed in the investigative process (hopefully with the assistance of counsel) with the knowledge that he or she has been practicing ethically, lawfully and competently for years. If a mistake or lapse in judgement did occur, such a mistake will be viewed as an outlier, rather than the norm for that provider.

As always, please do not hesitate to reach out to the Frost Brown Todd Health Care Industry Team with any questions or concerns related to health care provider compliance, regulations, investigations, or discipline in your state. Alex Fisher can be contacted directly at afisher@fbtlaw.com or (615) 251-5594.

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