

## 50 Ways to Lose Your License

Your license is a valuable possession which deserves protection.

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How much is your license worth? Recent graduates have paid in excess of \$200,000 to earn their degrees. The median net income for DPM's, according to PM's latest survey, was over \$110,000 per year. Multiply that by 30+ years in practice and you'll realize that little piece of paper hanging on your wall is actually worth millions of dollars.

Knowing this, it is shocking to learn that each week, on average, several DPM's will be disciplined by their state boards. These sanctions range from a censure and reprimand or a small fine to permanent revocation of the license. Even lesser sanctions can prevent you from obtaining hospital privileges, joining an HMO, and may even limit your ability to purchase reasonably price malpractice insurance. Add expensive legal costs and the immeasurable damage to your reputation.

This article features real cases taken from the public record (often available on the Internet). We have decided, however, not to publish the names of these practitioners, who after all, are your colleagues. They have already paid a heavy price for their professional misconduct.

### Inadequate Recordkeeping

By now every DPM is aware of the need to keep complete and accurate records. In the 80's the primary reason was the emergence of the malpractice crisis. DPM's, who previously had often kept records on index cards soon found that such records were indefensible in court. In the 90's the advent of E & M codes further accentuated the need for complete records. Poor records meant no payment or (after audit) repayment.

In this millennium, poor records constitute professional misconduct. For example:

Cal. No. 14762

Action: Censure and Reprimand, \$500 fine.

Summary: Licensee admitted to charges of failure to record in a patient record the reason for performing a Doppler test.

Cal. No. 16811

Action: \$1,000 fine, within 6 months after the effective date of the service of the Order successfully complete a course as set forth in consent order application.

Summary: Licensee did not contest charge of failing to chart a prescription

Cal. No. 19993

Action: 1 year suspension, execution of suspension stayed, \$500 fine.

Summary: Licensee did not contest charge of failing to diagnose the chief complaint of a patient and failing to maintain a patient record which accurately reflected the evaluation and treatment of said patient.

Cal. No. 19448

Action: Application to surrender license granted.

Summary: Licensee admitted to charge of failure to exercise reasonable care to two patients in diagnosis, treatment and recordkeeping, including failure to use biomechanical evaluation and to record detailed signs, symptoms and treatment progress.

#### Sexual Misconduct

In a profession in which over 80% of the practitioners are males and nearly 80% of the patients are female, the issue of sexual misconduct is problematic. The late William Rossi, DPM has written extensively on the erotic nature of the foot in his classic text, *The Sex Life of the Shoe and Foot* and this author has devoted an entire chapter titled "the erotic foot" in *Foot Talk*.

Recently, we successfully defended a respected DPM charged with inappropriately touching a patient while measuring for a limb length discrepancy. The root of the problem was that the DPM had sent an unpaid bill to a collection agency, triggering the complaint. If the podiatrist 1) Had a staff member present during the examination and/or 2) not used a collection agency, this mess could have been averted.

Even the mere accusation of sexual impropriety creates significant legal defense problems. While it is certainly good practice management to be friendly with patients, professional ethics require that a line be drawn, which should never be crossed. For example:

Cal. No. 11777

Action: Indefinite suspension of no less than six months - upon termination of suspension, probation 2 years.

Summary: Licensee did not contest charges of engaging in physical contact of a sexual nature with a female patient.

Cal. No. 15888

Action: 2 year suspension, execution of last 23 months of suspension stayed at which time probation 23 months, \$5,000 fine.

Summary: Licensee did not contest charges of engaging in sexual intercourse with a patient following treatment of the patient.

#### Performing Unnecessary Procedures

One way to increase your income is to increase the amount of tests or procedures you perform. This is fine as long as these are "medically necessary" and thoroughly documented. In past years the major concern of practitioners was having claims rejected for over-utilization. In recent years, however, insurance carriers have increasingly forwarded such cases to state licensing agencies. Here are some examples:

Cal. No. 16354

Action: \$2,500 fine and probation 1 year.

Summary: Licensee did not contest charges of rendering treatment to a patient for bilateral heel pain by administering approximately one hundred eighty injections of a steroid.

Cal. No. 16745

Action: 2 years suspension stayed, 2 years probation.

Summary: Professional Service Corporation admits charges of submitting false claims to Medicaid for radiological services which it knew were not medically necessary.

Cal. No. 14642

Action: Application to surrender certificate of incorporation granted.

Summary: Licensee admitted to charges of ordering and performing excessive treatment on a patient.

Cal. No. 15187

Action: Application to surrender license granted.

Summary: Licensee did not contest charge of ordering excessive tests and treatments and deviating from the standard of care in podiatry on numerous occasions.

#### Failure To Take Necessary Tests or Render Appropriate Care

The converse of taking too many tests is also problematic. These cases can result from complaints of disgruntled patients or employees. Increasingly though, they are the result of licensing agencies reviewing malpractice suits. The following are some typical cases in this category:

Cal. No. 15400

Action: 2 year suspension, execution of suspension stayed, probation 2 year, \$1,500 fine.

Summary: Licensee admitted to charges of prescribing orthopedic shoes to numerous patients before conducting appropriate tests.

Cal. No. 14132

Action: 2 year suspension, execution of suspension stayed, probation 2 years, \$3,000 fine.

Summary: Licensee admitted to charges involving treatment of a diabetic patient in failing to perform proper pre-operative testing, performing sterile and non-sterile procedures at the same time, and failing to render proper post-operative care, and using a consent form which failed to indicate specific procedures to be performed.

Cal. No. 19448

Regents Action Date: October 5, 2001

Action: Application to surrender license granted.

Summary: Licensee admitted to charge of failure to exercise reasonable care to two patients in diagnosis, treatment and recordkeeping, including failure to use biomechanical evaluation and to record detailed signs, symptoms and treatment progress.

#### Practicing Out-of-Scope

Over the last 40 years the advancement of podiatric medicine and surgery has been nothing short of phenomenal. Unfortunately, legislative action to reflect these changes has been slow and uneven. There is, for example, a striking difference between the restrictive law of New York (malleolus level) and the unrestricted law of Florida (hip level).

It is incumbent on DPM's to know the scope of practice of the state they are practicing in and abide by it.

Cal. No. 11479

Action: 24 month suspension, execution of last 18 months of suspension stayed, probation for last 18 months.

Summary: Licensee was found guilty of offering to treat a patient's hip pain, despite the fact he knew that the hip pain was unrelated to any podiatric condition.

#### Inappropriate Billing

One of the most frequent reasons for professional discipline is billing irregularities. Medicare, Medicaid, and increasingly common third-party

insurances are passing on this information to licensing agencies. It's all part of the "domino effect" that unfortunately, means that you can get punished many times for a single offense. Some examples:

Cal. No. 14436

Action: \$3,000 fine, probation 2 years.

Summary: Licensee did not contest charges of submitting fraudulent and/or incorrect insurance claims, failing to keep accurate patient records, relying on inadequate x-rays to make a diagnosis, violating a term of probation imposed by the Board of Regents, and circulating a misleading advertisement.

Cal. No. 18116

Action: Found guilty of professional misconduct; Penalty: Revocation.

Summary: Licensee was found guilty of Knowingly and Intentionally Devising a Scheme to and Artifice to Defraud an Insurance Company and to Obtain Money and Property from the Insurance Company by Means of False and Fraudulent Pretenses, Representations and Promises, by submitting and causing to be submitted claims for medical services that he well knew and believed had not been performed.

#### Medicare Kickbacks

One day a detail person arrives at your office with an intermittent compression pump (or other device). He explains to you how beneficial it is and tells you that this device will even be delivered to your patients at no cost to them. This sounds fair enough so far. In addition, each time you prescribe one of these devices, you will receive a \$50 American Express gift check. Sounds even better, right?

Not so fast. This is a classic kickback scheme, and as enticing as it sounds, it is a sure way to be removed from the Medicare system. You will also face professional discipline as this example illustrates.

Cal. No. 17929

Action: Found guilty of professional misconduct; Penalty: \$10,000 fine, 3 year suspension, after service of suspension, probation 2 years.

Summary: Licensee was convicted of Receipt of Medicare Kickbacks, a Felony.

#### Problems with Controlled Substances

As podiatrists we have the right to dispense and prescribe controlled substances. This presents two temptations 1) to sell these drugs, which often have a street value of many times their cost 2) or to use them personally, which often leads to addiction. Additionally, state and federal laws require that a bi-annual log be kept of the dispensing of such drugs, that these substances be stored in a locked space, and that they be mailed back to the DEA after they become expired.

Violating any of these rules can lead to severe consequences. For example:

Cal. No. 19175

Action: Found guilty of professional misconduct; Penalty: 2 year suspension, execution of suspension stayed.

Summary: Licensee was found guilty of having been convicted of Distribution of Percocet and Valium.

Cal. No. 19157

Action: Application for consent order granted; Penalty agreed upon: 1 year suspension, execution of suspension stayed, probation 1 year, \$500 fine.

Summary: Licensee admitted to charge of having been found by the Commissioner of Health to be in violation of Article thirty-three of the Public Health Law for failing to document the administration of controlled substances.

Cal. No. 17932

Action: Application for consent order granted; Penalty agreed upon: 1 year suspension, execution of suspension stayed, probation 1 year, \$750 fine.

Summary: Licensee did not contest charge of prescribing controlled and non-controlled substances for former patients, friends, and family members for non-podiatric conditions when he was not licensed to practice any profession authorized to prescribe for non-podiatric conditions.

DWI

You're at a party and they're serving alcoholic beverages. You join everyone else in having a few. No problem, you figure as you drive home. You're a good driver and you're not drunk. Unfortunately for you, the police have set up a random check-point and they ask you take a breathalyzer test. Your blood alcohol is just slightly over the legal maximum and the cop issues you a summons.

At this point, you're upset, but not overly concerned. After all, what can happen? You think to yourself. "I'll pay a fine and maybe they'll even suspend my driver's license." You don't even consider your podiatry license. There's no apparent connection between driving while intoxicated and your profession is there? Yes, there is, as these and other cases will illustrate. Being licensed is a privilege, not a right. The state can (and will) sanction you or revoke your license for a number of non-practice related issues. Consider these:

Cal. No. 17802

Action: Application for consent order granted; Penalty agreed upon: 2 year suspension, execution of suspension stayed, probation 2 years, \$500 fine.

Summary: Licensee admitted to having been convicted of Driving While Intoxicated

Cal. No. 19482

Action: Application to surrender license granted.

Summary: Licensee admitted to charge of having been convicted of Driving While Intoxicated and Assault.

Non Practice Related Fraud

Failure to File an Income Tax Return

Another non practice-related area for professional discipline is non-filing of taxes. This seems to be a "no-brainer" because each time practitioners fill out an insurance form, they provide a tax id (often a social security number). The government, in turn, gets a copy of all monies dispensed by the carrier. The IRS compares this figure to that of you or your professional corporation's tax return.

If you fail to report any or all of your income, you will face significant interest and late penalties. Then to add salt to the wound, the IRS will notify your state income tax agency, and ultimately your state licensing authority. For example:

Cal. No. 19889

Action: Application for consent order granted; Penalty agreed upon: 1 year suspension, probation 2 years to commence upon return to practice, \$1,000 fine.

Summary: Licensee admitted to charge of having been convicted of failure to file income tax returns

Cal. No. 16119

Action: 2 year suspension, execution of suspension stayed, probation 2 years, \$5,000 fine.

Summary: Licensee was found to have a conviction of Failure to File a Tax Return, a Class A Misdemeanor.

#### Failure to Complete Sufficient CME

Providing optimal patient care requires that you keep current on podiatric medicine and surgery. To that end, most states require that you take a minimum number of continuing education credits within each registration period. In recent years, the Council on Podiatric Medical Education (CPME) has approved providers of CME, so that DPM's can take courses virtually anywhere to meet the necessary requirements. This includes live courses and (depending on state) courses in magazines, such as Podiatry Management, and over the Internet. Some APMA state components include CME courses as part of their dues structure.

Despite these opportunities, some DPM's simply neglect to take the requisite courses. Unfortunately for them, states have started auditing for CME. If caught, the consequences can be severe. Example:

Cal. No. 19752

Action: Application for consent order granted; Penalty agreed upon: 5 year suspension, complete certain courses and submit proof of completion as set forth in consent order application - upon service of suspension, probation 2 years.

Summary: Licensee did not contest charge of failing to take the requisite amount of continuing education credits.

#### Misrepresentation of Credentials or History

Board certification has become an important part of the qualifications to obtaining hospital privileges and or HMO membership. Most hospitals and HMO's are required to verify such items as your board certification, malpractice history and coverage, and license status. If you misrepresent any of these, you will damage your prospects of acceptance and face the possibility that your misrepresentation will be referred for professional discipline.

Similarly, if you misrepresent or omit material facts on your license renewal application, you can be additionally sanctioned as the cases below illustrate.

Cal. No. 16423

Action: Application for consent order granted; Penalty agreed upon: \$5,000 fine, probation 1 year.

Summary: Licensee did not contest charge of allowing an application to a health maintenance organization to be submitted by his office wherein his board status was not accurately represented.

Cal. No. 18892

Action: Application for consent order granted; Penalty agreed upon: 1 year suspension, execution of suspension stayed, probation 1 year, \$500 fine.

Summary: Licensee admitted to charge of having been convicted of Criminal Mischief in the Fourth Degree and admitted to charge of denying the conviction on his re-registration application.

#### Preventing Disciplinary Actions

##### The 80/20 Rule (The importance of APMA membership)

Now that we've discussed some of the common causes of professional discipline, we shift our discussion to why practitioners get into trouble, and

how to minimize the chances that you will ever have to endure this traumatic event.

In researching this series, we discovered a striking statistical relationship- The ratio of APMA to Non-APMA members is approximately (80% to 20%). The ratio of disciplined DPM's is 80% Non-APMA members to 20% APMA members. Is this a mere coincidence? We think not!

APMA members are "in the loop." They receive regular APMA Alerts, coding materials, and other topical information not distributed to others. Note: PM and News do not distribute this proprietary material. APMA members also attend local, state, and national meetings, where these topics are discussed both formally and informally. Many state associations have legal counsel to answer questions or assist in your defense. Non-APMA members tend to be "loners" who don't see the often intangible benefits of belonging.

When a case is referred to a licensing agency, it is often reviewed by DPM's on the State Board of Podiatrists. If a DPM is active in the state association, there is an increased chance that he or she may at least benefit by receiving "the benefit of the doubt." Membership often factors in the severity of any penalty assessed. Conversely, non-membership elicits no sympathy.

#### Preventive Measures

Hopefully, you won't ever be disciplined. The following steps should reduce that chance significantly.

1- Know the Rules. Many of the DPM's we have defended over the years have voiced the sentiment, "I didn't know what I did was illegal." Unfortunately, ignorance of the law is not a defense. When you receive your license, you are charged with the responsibility of knowing the rules.

All law students are mandated to take a course called professional responsibility and then pass a national test on this topic. Podiatric students, however, neither take such a course or test. It is somehow assumed that students will pick up this knowledge by osmosis. Apparently, the profession feels that it more important to learn how to perform a triple arthrodesis than it is learn about how to preserve a license!

Thus, the burden of finding out the correct and professional way to conduct your practice is squarely on your shoulders. The logical first step in determining the right course of action is to ask plenty of questions. Fortunately, there are a great many sources to provide answers, including organizations such as, The Young Members Section of the APMA, The Academy of Podiatric Practice Management, and your state component association. Additional Internet resources include Codingline.com and PM News.

#### Achieve and Maintain Compliance

One of the best ways to avoid being disciplined is to make sure your office is in compliance with Medicare, OSHA, CLIA, and HIPAA. Being in compliance means more than just purchasing some manuals and putting them up on a shelf. Compliance means assigning an individual to periodically audit the operation of your practice. This internal audit can protect you from an unwelcome external audit from a third party.

You can also utilize a healthcare lawyer to oversee the operation of your practice. Even if you don't use a lawyer in this manner, it's a prudent idea to have any contracts you need to sign looked over by an attorney before you sign them.

The "Bible" of your practice should be your office manual. This is your own set of rules, regulations and policies and should include everything from billing codes to job descriptions. Ideally, this a large 3-hole binder, which can be divided into various sections, such as telephone etiquette, employee evaluation standards, sterilization techniques, etc.

### Exercise Sound Judgment

Although we have listed some of the more common recent cases against DPM's, these are even more grounds for which a practitioner can be disciplined, including: permitting or aiding an unlicensed person to perform activities requiring a license; refusing a client or patient service because of race, creed, color, or national origin; releasing confidential information without authorization; failing to return or provide copies of records on request; being physically abusive; abandoning or neglecting a patient in need of immediate care; practicing under the influence of alcohol or other drugs; etc.

While we can alert you to the existence of these circumstances, no one can teach you how to exercise good judgment. Because we are professionals who serve the public, we are held to a high standard of conduct. Considering that your license is worth millions of dollars and your reputation priceless, it's up to you to uphold your own personal integrity, as well as that of this profession.