

Tales from the Crypt

These are actual examples of professional license disciplinary actions.

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Below are actual scenarios. Just enough facts have been changed to protect the identity of the podiatrists involved.

Please note that while all states have their own regulations as to what is disciplinary, most, if not all the scenarios that are presented in this article would be actionable against a professional license in all fifty states.

1) Obtaining a license fraudulently: That would include anything you put in your application that was untrue or intentionally left out that was of importance. In this actual scenario, the applicant left out the part about being terminated from a residency. The physician's rationale was that she was later picked up by another residency program which she successfully completed.

States tend to take a very dim view of leaving out such events. The intent of excising such a negative occurrence as termination in a residency program is obvious. Additionally, such an event is entered in one's National Practitioner Data Bank file. There is no other way to say it than

versely affect the professional's ability to get on various health insurance panels. Was it worth it? The answer is a resounding no!

2) Practicing the profession with negligence on more than one occasion: Most states interpret this

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this was a very stupid thing for the physician to do.

In the end, the doctor agreed to a one-year actual suspension, a course in professional ethics, and a substantial fine. Remember, the stain of such a discipline could ad-

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scenario as that the negligence had to occur on more than one date. It may consist of a different or same kind of negligence on the different date; it does not have to be on a different patient. The mistake many people

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make is their reliance that the “real” negligence was of one type and occurred on only one patient. Most states also have a provision that only one instance of gross negligence is all you need. Gross negligence is “really bad” negligence. It is not a stretch to paint the one incidence of negligence as gross negligence.

An example of this that comes to mind was a podiatrist’s continuing injections of corticosteroids around the Achilles tendon. The tendon ruptured. The etiology of the complaint was a high payout on the predicate malpractice case. Large settlements were noticed in the National Practitioner Data Bank. Each state’s medical/podiatry board take note of these settlements. On high settlements, they investigate. On civil suits, such as medical malpractice, there is no presumption that the physician did wrong. If you are convicted or plead to a criminal count, you own it!

It was successfully argued that the injections in question were not in fact

ceived a phone call that the friend’s son was in a motor vehicle accident and was being transported to the local hospital emergency room. The friend begged the podiatrist to come with him to make sure his colleagues treated his son carefully.

defense for a podiatrist in this situation was to prove that the podiatrist had no idea of what was occurring after hours. The podiatrist had only found out about it when one of the injections went wrong and knowledge of this got back him. The po-

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The podiatrist also had a history of being nasty with the ER staff. You can almost guess the rest. An ER nurse took the opportunity of reporting the doctor as being in the ER with alcohol on his breath.

After obtaining the on-call schedule and explaining that the podiatrist was present as a mere spectator, the investigation was terminated. This was a tough one. Was the physician not supposed to support his friend in his time of need? The podiatrist was told that in the future, if he is not in the hospital in his capacity of a physician, to clear-

diatrist immediately terminated the employee.

5) Conduct in your practice of podiatry which evidences moral unfitness: Although it does not say so specifically, most boards bar sexual relationships with active patients. Additionally, sexual harassment would come under moral unfitness. A podiatrist was having an affair with a younger female provider. The podiatrist claimed it was totally consensual and mutual.

Before you, the reader, think that this is a he said/she said story, it was not. It turns out that text messaging became a large part of this story. There were over two dozen “selfies” that the complaining provider had texted to the podiatrist with suggestive language. Fortunately, there were no revealing selfies texted by our client to anyone.

Additionally, the podiatrist never used suggestive language in return. On the way to the hearing, the complaining provider sent a rather salacious text wishing our client well. As part of the text, she went into detail what she was going to do with our client after the hearing. This text was reviewed by the prosecuting attorney. Charges were promptly dropped.

6) Guaranteeing a result: A podiatrist may not guarantee a result. Advertisements that use words that imply a guaranteed result are actionable in most states. Consent forms, properly worded, can be helpful in defending “guarantee” allegations. One case involved an advertisement and alleged assertion by the podia-

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given around the Achilles tendon. The podiatrist was not treating Achilles tendonitis. The dosage and frequency, as well as the location, were not outside the standard of care. As the “audience” was not a jury of lay people, a successful defense was made of the podiatrist’s license. Clear documentation as to the reason you are treating the patient, the dosage, and the location of various treatments are crucial in such matters. Additionally, this is good medicine.

3) Practicing the profession while under the influence of alcohol: A podiatrist had a history of alcohol abuse. It was a Saturday night and he was not on call at the local hospital where he worked. He had two glasses of wine. His friend re-

ly state that to the personnel present. Additionally, all healthcare givers should always treat each other with respect! If that had been done, there probably would not have been a complaint in the first place.

4) Permitting, aiding, or abetting an unlicensed person to perform activities requiring a license: If a podiatric assistant does anything that requires a professional license, it is problematic. What a podiatric assistant can and cannot do varies from state to state. Obviously, the unlicensed podiatric assistant cannot give Botox injections in your office to people after hours. If the podiatrist knew or should have known that was occurring, then the podiatrist has a problem. The successful

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trist that the patient's bunions would never come back.

A review of the podiatrist's chart revealed that on several occasions, the podiatrist had told the patient that while the bunion should be bet-

ter in most instances that was not always the case. Occasionally, subsequent surgery might be necessary. Sometimes, the chart said, the bunion might get smaller, but not gone altogether. The advertisement said that the podiatrist used a state-of-the-art facility but had nothing that

promised a 100 percent success rate. The Board terminated the investigation prior to any hearing. Simply put, in this case, the devil was in the details.

7) Failing to respond within whatever time span your state requires to an appropriate document request by a patient, attorney, or governing body: Podiatrists often receive requests for records.

If it has the proper documentation along with the request, it should not be ignored. The podiatrist had in fact sent the records to his patient three times, after the patient's request. He was told that the patient had not received it on two prior occasions and re-sent the records a total of three times. The State Board began their investigation.

Fortunately, the podiatrist had sent the records Certified Return Receipt Requested and therefore had proof of his attempts to mail the patient's records. It turns out that the patient had moved and had neglected to tell the podiatrist of the new address. The investigation was ended once the documentation of the three attempts were provided to the Board. The lesson to be learned here is your need to generate and retain proper documentation.

What do all these scenarios have in common? Documentation and common sense go a long way to prevent and defend against Board allegations against your professional license. **PM**



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ing physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Health Care Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.