17 Advertising

Commandments

A handbook for Florida physicians.

A Webinar by:

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| http://gassmanlawassociates.com/wpimages/wp581326cf_05.jpg | http://www.broadandcassel.com/images/atty/lperling.jpg |
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Monday, December 19, 2011

5:00 p.m.

**The 17 Advertising Commandments**

**1st Commandment** Thou shall not violate the Florida patient brokering act or the Florida Medicare anti-kickback statute by paying or receiving any direct or indirect remuneration for the referral of patients for medical services, not even a dollar, except where the payment is to a legitimate employee of the practice under appropriate guidelines.

It is essential that any medical group that has "designated health services" comply with the group practice rules, which require that no physician in the group can be directly rewarded for the referral of designated health services.

**2nd Commandment** Thou shalt not advertise in a manner that is false, deceptive or misleading.

**3rd Commandment** Thou shalt not create an advertisement that: Contains a misrepresentation of facts; or makes a partial disclosure of facts; or creates false or unjustified expectations of beneficial assistance; contains any representations or claims that the physician does not expect to perform; or contains any other representation, statement or claim which misleads or deceives.

**4th Commandment** Thou shalt not state or imply that you have received formal recognition as a specialist unless you have in fact received such recognition and the recognizing agency has been approved by the Board of Medicine or Board of Osteopathic Medicine.

**5th Commandment** Thou shalt not refer to a specialty certification in an advertisement unless you include the name of the specialty board that awarded the specialty certification.

**6th Commandment** Thou shalt not state that you have received formal recognition as a specialist from a recognizing agency that has not been approved by the Board of Medicine unless the following disclaimer is included on the advertisement: "The specialty recognition identified herein has been received from a private organization not affiliated with or recognized by the Florida Board of Medicine."

The Board of Medicine approves the specialty boards recognized by the American Board of Medical Specialties (ABMS) as recognizing agencies.

**7th Commandment** Thou shalt not convey the impression that you possess qualifications, skills, or other attributes which are superior to other physicians, other than listing post-doctoral or professional achievements recognized by the Board.

**8th Commandment** Thou shalt always include your name in the advertisement.

**9th Commandment** Thou shalt keep exact copies of audio tapes and/or video tapes of advertisements disseminated through the electronic media for at least 6 months (M.D.s) or 90 days (D.O.s) after the advertisement is aired or shown through electronic media.

**10th Commandment** Thou shalt include the following information in the advertisement in legible print if you use a referral service: Advertisements must state that it is for a medical referral service and is on the behalf of the physician members of the referral service; advertisements must state that the referral service only refers to physicians who have paid or otherwise been selected for membership in the referral service; advertisements must state that membership in the referral service is limited by the referral agency; advertisements must state that physicians who use the referral service charge no more than their usual and customary fees.

**11th Commandment** Thou shalt clearly identify yourself as either a Medical Doctor (M.D.), Physician Assistant (P.A.), Anesthesiologist Assistant (A.A.), or Osteopathic Doctor (D.O.).

**12th Commandment** Thou shalt disclose all the variables affecting a stated fee if you advertise a specific fee for a service.

**13th Commandment** Thou shalt include the following disclaimer in all capital letters if you offer free or discounted services:

"THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT."

**14th Commandment** Thou must publish a schedule of charges if you are an urgent care center. The posting must include the price of services for uninsured persons, must include the 50 most frequently provided services, and must be posted in a conspicuous place in reception area, and be at least 15 square feet in size.

Thou may publish a schedule of charges if you are a primary care provider. The posting must include the price of services for uninsured persons, must include the 50 most frequently provided services, and must be posted in a conspicuous place in reception area, and be at least 15 square feet in size.

**15th Commandment** Thou shall disclose your licensure status in any of the following manners: Wearing a name tag identifying the licensee as a M.D., P.A. or A.A.; wearing an article of clothing on the upper body that identifies the licensee as a M.D., P.A. or A.A.; Orally notifying a patient in person; providing a patient a business card in-person that properly identifies the status; placing notification in the physician's lobby, which contains a photo of the licensee and the licensee's status.

**16th Commandment** Thou shalt not advertise pain management services unless you register as a pain management clinic.

**17th Commandment** Thou shalt not advertise that you are HIV negative or free from AIDS. You can advertise negative test results but it must be accompanied by the following disclaimer, "THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT I AM CURRENTLY FREE OF HIV."

**1st Commandment**

**Thou shall not violate the Florida patient brokering act or the Florida Medicare anti-kickback statute by paying or receiving any direct or indirect remuneration for the referral of patients for medical services, not even a dollar, except where the payment is to a legitimate employee of the practice under appropriate guidelines.**

 **Payments to marketing companies, employees, or sham relationships will not qualify under these rules.**

**It is essential that any medical group that has "designated
health services" comply with the group practice rules, which require
that no physician in the group can be directly rewarded for the referral
of designated health services.**

**Florida Statutes Sections 456.054 and 817.505 make it a third-degree felony to participate in patient brokering or aid another in patient brokering.**

**Fla. Stat. 456.04 Kickbacks Prohibited**

(1) As used in this section, the term “kickback” means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

(3) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

**Fla. Stat. 817.505 Patient brokering prohibited; exceptions; penalties**

(1) It is unlawful for any person, including any health care provider or health care facility, to:

(a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;

(b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;

(c) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility; or

(d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

. . .

(4) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Notwithstanding the existence or pursuit of any other remedy, the Attorney General or the state attorney of the judicial circuit in which any part of the offense occurred may maintain an action for injunctive or other process to enforce the provisions of this section.

(6) The party bringing an action under this section may recover reasonable expenses in obtaining injunctive relief, including, but not limited to, investigative costs, court costs, reasonable attorney's fees, witness costs, and deposition expenses.

**Florida Statutes Section 817.505 provides the following exceptions to criminal liability:**

(3) This section shall not apply to:

(a) Any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. s. 1320a-7b(b) or regulations promulgated thereunder.

(b) Any payment, compensation, or financial arrangement within a group practice as defined in s. 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice.

(c) Payments to a health care provider or health care facility for professional consultation services.

(d) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under the insurance code.

(e) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(f) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan. However, nothing in this section affects whether a health care provider network entity is an insurer required to be licensed under the Florida Insurance Code.

(g) Insurance advertising gifts lawfully permitted under s. 626.9541(1)(m).

(h) Commissions or fees paid to a nurse registry licensed under s. 400.506 for referring persons providing health care services to clients of the nurse registry.

(i) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that such information service:

1. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;

2. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

3. Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and

4. Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

**Federal law makes it a felony subject to a $25,000 fine and imprisonment for up to 5 years to give or receive a kickback for referring a patient whose item or service will be paid by a Federal health care program.**

**42 U.S.C. § 1320a-7b**

(b) Illegal remunerations

(1) whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind--

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

**Federal law contains the following exceptions to criminal liability:**

**42 U.S.C. § 1320a-7b**

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if--

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C.A. § 201 et seq.];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w-104(e)(6) of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses (i) through (iii) of section 1320a-7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w-114(a)(3) of this title), section 1320a-7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section);

(H) any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w-23(a)(4) of this title;

(I) any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(l)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity; and

(J) a discount in the price of an applicable drug (as defined in paragraph (2) of section 1395w-114a(g) of this title) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1395w-114a of this title.

**Federal law also provides for civil monetary penalties for patient brokering which also include the possibility of exclusion from the federal health care program and exclusion from any state health care program.**

**42 U.S.C. § 1320a-7a**

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a-7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII of this chapter, or a State health care program (as so defined);

(7) commits an act described in paragraph (1) or (2) of section 1320a-7b(b) of this title; [prohibiting patient brokering under criminal penalty]

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $10,000 for each item or service (or, in cases under paragraph . . . (7) $50,000 for each such act.) . . . In addition , such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a-7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

**What happens when you disobey the 1st Commandment.**

**Criminal –**

 One of the most well-known criminal cases in the U.S. was that of William Demaria Jr. who ran a very elaborate patient brokering scheme across the United States. He was the leader of an enterprise involved in $32-million in illegal kickback and referral payments for referrals of patients covered by Medicare or other government insurance. For other multiple fraud charges as well, he was sentenced to 32 months in prison, ordered to pay a fine of $250,000 and $1.5 million in restitution settling the government’s civil claim.[[1]](#footnote-1)

**Civil -**

02-16-2010[[2]](#footnote-2)

A doctor agreed to pay $650,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that the doctor solicited and received remuneration in the form of consulting payments from two medical device manufactures in exchange for using their orthopedic hip and knee products.

07-08-2010

United Shockwave Services, United Urology Centers, and United Prostate Centers (collectively, United), Illinois, agreed to pay $7,359,500 and entered into a five year CIA for allegedly violating the Civil Monetary Penalties Law provisions applicable to physician self-referrals and kickbacks. The OIG alleged that United and certain physician-investors used their ability to control patient referrals to obtain contract business from various hospitals. Specifically, United threatened hospitals that it would refer patients to competing hospitals if the respective hospital did not agree to a contract with United, or promised hospitals that did contract with United additional referrals. The relationships between United's physician-investors and the hospitals raised Stark concerns regarding the financial relationships between United's physician-investors and the hospitals to which they made referrals. Also, United sold more shares to physicians who produced more referrals or other business for the company. United had processes for having physicians divest if they did not use United's services sufficiently and offered huge returns on investment with virtually no business risk.

06-17-2010

After it self-disclosed conduct to the OIG, St. John's Regional Medical Center (SJRMC), Missouri, agreed to pay $274,815 for allegedly violating the Civil Monetary Penalties Law provisions applicable to physician self-referrals and kickbacks. The OIG alleged that SJRMC entered into an improper financial relationship with a physician. SJRMC allowed the physician to be regularly delinquent in rent under a written lease agreement and paid the physician for services without a written contract in place.

06-07-2010

After it self-disclosed conduct to the OIG, Christus Spohn Hospital Corpus Christi- Memorial (Memorial), Texas, agreed to pay $4,130,536 for allegedly violating the Civil Monetary Penalties Law provisions applicable to physician self-referrals and kickbacks. The OIG alleged that: (1) Memorial paid indirect remuneration to family medicine and emergency medicine faculty physicians in the form of (a) salary and benefit reimbursements to the faculty physicians' employer that were more than fair market value for the time the physicians spent fulfilling their contractual duties to Memorial and (b) billing and collections services associated with the faculty physicians' practices to an educational foundation and successor entity; (2) Memorial paid remuneration to certain family medicine faculty physicians in the form of charging rent below fair market value for office space on the fifth and sixth floors of Memorial's hospital; and (3) Memorial paid remuneration to two entities providing services proscribed by the Ethical and Religious Directives for Catholic Health Care Services in the form of the entities' staffing, equipment, and billing for the facility fees associated with the proscribed services and paying those fees to the involved entities.

06-03-2010

Cochlear Americas, Colorado, agreed to pay $880,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that Cochlear Americas paid various forms of illegal remuneration to physicians who prescribed the use of their manufactured implant system for Medicare and Medicaid patients.

05-11-2010

After it self-disclosed conduct to the OIG, Surgical Specialty Center of Baton Rouge, LLC (provider), Louisiana, agreed to pay $51,300 for allegedly violating the Civil Monetary Penalties Law provisions applicable to the Stark Law. The OIG alleged that the provider entered into several types of financial arrangements with referring physicians without the requisite written agreements in place as required by the Stark Law.

05-03-2010

After it self-disclosed conduct to the OIG, Colorado West HealthCare System d/b/a Community Hospital and its subsidiary, Doctor's Clinic Building, Inc. (Colorado West), Colorado, agreed to pay $420,175 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks and physician self-referrals. The OIG alleged that Colorado West entered into six categories of contractual arrangements (i.e., medical director arrangements, emergency room services, office leases, on-call physician arrangements, continuing medical education services, and diagnostic test interpretations) that violated the Stark Law and, in some instances, implicated the Anti-Kickback Statute in connection with physicians' referrals of Medicare beneficiaries to Colorado West.

04-20-2010

After it self-disclosed conduct to the OIG, St. Elizabeth Hospital and Mercy Medical Center of Oshkosh, Inc. (hospitals), Wisconsin, both part of the Affinity Health System, agreed to pay $54,124 for allegedly violating the Civil Monetary Penalties Law provisions applicable to the Stark Law. The OIG alleged that the hospitals disclosed payments to three independent psychiatrists who provided behavioral health services at the hospitals' emergency rooms. Specifically, the on-call coverage arrangements between the psychiatrists and hospitals failed to comply with Stark Law requirements.

03-31-2010

After it self-disclosed conduct to the OIG, St. James Healthcare (SJH), Montana, agreed to pay $275,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to the Stark Law. The OIG alleged that SJH entered into a space lease, an employee lease, and a medical services arrangement with an entity partly owned by SJH that failed to meet Stark Law requirements because they were not set forth in writing and signed.

03-01-2010

After it self-disclosed conduct to the OIG, Liberty HealthCare Systems, Inc. (Liberty), New Jersey, agreed to pay $225,000 to resolve its liability for allegedly violating the Civil Monetary Penalties Law provisions applicable to the Stark Law. The OIG alleged that Liberty made an improper bonus payment to an employee physician based, in part, on the volume and value of referrals made by the physician.

**2nd Commandment**

**Thou shalt not advertise in a manner that is false, deceptive, or misleading.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

 (1) The Board permits the dissemination to the public of legitimate information, in accordance with the Boards rules, regarding the practice of medicine and where and from whom medical services may be obtained, so long as such information is in no way false, deceptive, or misleading.

**Board of Osteopathic Medicine, Rule 64B15-14.001**

(1) The Board permits the dissemination to the public of legitimate information in

accordance with the Board’s rules, regarding the practice of osteopathic medicine and where and from whom osteopathic medical services may be obtained, so long as such information is in no way false, deceptive, or misleading.

**False, deceptive, or misleading advertising is grounds for disciplinary action for Medical Doctors (M.D.) and Osteopathic Doctors (D.O.).**

Florida Statutes Sections 458.331 (M.D.) and 459.015 (D.O.) provides:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(d) False, deceptive, or misleading advertising.

**Florida Statues Section 456.072 provides that the following disciplinary actions may be taken for false, deceptive or misleading advertising:**

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.

(d) Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of $10,000 per count or offense.

(e) Issuance of a reprimand or letter of concern.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(h) Imposition of an administrative fine in accordance with [s. 381.0261](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS381.0261&originatingDoc=N39C60C10A60611E0B4D095010C3882FC&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) for violations regarding patient rights.

(i) Refund of fees billed and collected from the patient or a third party on behalf of the patient.

(j) Requirement that the practitioner undergo remedial education.

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

**What happens when you disobey the 2nd Commandment.**

Ina 2007 case, a Doctor was held to be in violation of Fla. Admin. Code 460.413(1)(d)[[3]](#footnote-3) for false, deceptive, or misleading advertising. The Doctor was a licensed chiropractic physician but displayed a sign in front of his office building indicating he was a medical doctor. He was fined $500 and sent a letter of concern.

**The 3rd Commandment**

**Thou shalt not create an advertisement that:**

* + **Contains a misrepresentation of facts; or**
	+ **Makes a partial disclosure of facts; or**
	+ **Creates false or unjustified expectations of beneficial assistance; or**
	+ **Contains any representations or claims that the physician does not expect to perform; or**
	+ **Contains any other representation, statement, or claim which misleads or deceives.**

**Board of Medicine, Rule 64B8-11.001 and Board of Osteopathic Medicine Rule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(a) Contains a misrepresentation of facts; or

(b) Makes only a partial disclosure of relevant facts; or

(c) Creates false or unjustified expectations of beneficial assistance; or

(d) Appeals primarily to a layperson’s fears, ignorance, or anxieties regarding his state of well-being; or

(e) Contains any representation or claims as to which the osteopathic physician referred to in the advertising does not expect to perform;

**4th Commandment**

**Thou shalt not state or imply that you have received formal recognition as a specialist unless you have in fact received such recognition and the recognizing agency has been approved by the Board of Medicine or Board of Osteopathic Medicine.**

**Board of Medicine, Rule 64B8-11.001**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(f) States or implies that the physician has received formal recognition as a specialist in any aspect of the practice of medicine unless the physician has in fact received such recognition and such recognizing agency is approved by the Board.

. . . .

 (k) Implies specialty or sub-specialty for which the physician has not received specialty recognition.

**The recognizing agencies currently approved by the Board of Medicine include:**

(a) American Board of Facial Plastic & Reconstructive Surgery, Inc. (Approved February 1997).

(b) American Board of Pain Medicine (Approved August 1999).

(c) American Association of Physician Specialists, Inc. (Approved February 2002).

(d) American Board of Interventional Pain Physicians (Approved June 2010).

**Board of Osteopathic MedicineRule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(g) States or implies that the osteopathic physician is a specialist in any aspect of the practice of osteopathic medicine unless he has in fact completed post-doctoral training in the recognized specialty field including internship, residency, fellowship, or alternate training requirements, accredited by either the AOA or the ACGME for the number of years contemplated for completion of the specialty program. However, a physician may indicate the services offered and may state that the practice is limited to one or more types of services when this is, in fact, the case; or

(h) States or implies that an osteopathic physician has been certified as a specialist in any aspect of the practice of osteopathic medicine unless he or she has in fact received such certification, meets the training requirements of paragraph 64B15-14.001(2)(g), F.A.C., includes the name of the certifying agency in any statement or advertisement claiming certification. For purposes of this rule, the Board approves the specialty boards of the American Board of Medical Specialties (ABMS), the American Osteopathic Association (AOA), and such other recognizing agencies as may request and receive future approval by the Board based upon the following criteria:

1. The organization has been granted Section 501(c) status under the Internal Revenue Code.

2. The organization shall have full time administrative staff, housed in dedicated office space which is appropriate for the organization’s program.

3. The organization shall have bylaws, a code of ethics to guide the practice of its members, and an internal review and control process, including budgetary practices, to ensure effective utilization of resources.

4. The organization shall be national in scope, one of whose central purposes is credentialing of Physicians. An umbrella organization composed of more than one academy and board shall also have formal procedures for recognition and discipline of academies and boards.

5. With regards to certification, the organization shall be able to demonstrate the existence of appropriate procedures to ensure, with regard to any examination given after the effective date of this rule, that:

a. Such examination is of sufficient breadth and scope as to cover the specialty field;

b. The exams and answers thereto are adequately secured;

c. A standard grading system with pass/fail standards has been established in advance of testing;

d. The proctoring of all examinations shall be done by independent proctors, i.e., at a minimum, members of the certification board not related to, in practice or association with, or having a financial interest in the applicant being tested;

e. The grant or denial of certification is based on objective performance, skill, knowledge, and merit of the candidate;

 6. The organization has an interest in the continuing proficiency of its members, by requiring periodic recertification and/or documentation of continuing medical education hours as well as continued practice in the field of certification.

**The recognizing agencies currently approved by the Board of Osteopathic Medicine include:**

(a) American Association of Physician Specialists, Inc. (Approved June, 2002).

(b) American Board of Inventional Pain Physicians (Approved August, 2010).

**What happens when you disobey the 4th Commandment**

Ina 1999 case, the Board found that a doctor’s business stationery violated Fla. Admin. Code 64B8-11.001(2). The doctor’s stationery indicated he was board certified in neurological and orthopedic surgery, pain management, and neurothermography but he was not in fact certified in neurological and orthopedic surgery and the American Board of Medical Specialties does not recognize a board for either pain management or neurothermography. The Board found that there were other violations in addition to these and issued a $20,000 fine, reprimand and placed the doctor on probation for three years for several statutory violations.[[4]](#footnote-4)

In a 1993 case, one doctor correctly identified himself as a diplomate of the American Academy of Neurological and Orthopedic Surgeons on his letterhead.[[5]](#footnote-5) However, this was held to be in violation of Fla. Admin. Code 61F-24.001(2) (now Fla. Admin. Code 64B8-11.001) because the American Academy of Neurological and Orthopedic Surgeons is not a specialty board recognized by the American Board of Medical Specialties. The doctor was issued an official reprimand and fined $2,000.

**5th Commandment**

**Thou shalt not refer to a specialty certification in an advertisement unless you include the name of the specialty board that awarded the specialty certification.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(j) Includes reference to specialty certification without identifying the name of the specialty board that has awarded specialty certification;

**Board of Osteopathic Medicine, Rule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(h) States or implies that an osteopathic physician has been certified as a specialist in any aspect of the practice of osteopathic medicine unless he or she has in fact received such certification, meets the training requirements of paragraph 64B15-14.001(2)(g), F.A.C., includes the name of the certifying agency in any statement or advertisement claiming certification.

**6th Commandment**

**Thou shalt not state that you have received formal recognition as a specialist from a recognizing agency that has not been approved by the Board of Medicine unless the following disclaimer is included on the advertisement: "The specialty recognition identified herein has been received from a private organization not affiliated with or recognized by the Florida Board of Medicine."**

**The Board of Medicine approves the specialty boards recognized by the American Board of Medical Specialties (ABMS) as recognizing agencies.**

**Board of Medicine, 64B8-11.001 Advertising.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(f) States or implies that the physician has received formal recognition as a specialist in any aspect of the practice of medicine unless the physician has in fact received such recognition and such recognizing agency is approved by the Board. However, a physician may use on letterhead or in advertising a reference to the physician’s specialty recognition received from a recognizing agency that has not been approved by the Board only if the letterhead or advertising also contains in the same print size or volume the statement that “The specialty recognition identified herein has been received from a private organization not affiliated with or recognized by the Florida Board of Medicine.” For purposes of this rule, the Board approves the specialty boards of the American Board of Medical Specialties (ABMS) as recognizing agencies, and such other recognizing agencies as may request and receive future approval by the Board based upon the following criteria:

1. The recognizing agency must be an independent body that certifies members as having advanced qualifications in a particular allopathic medical specialty through peer-reviewed demonstrations of competence in the specialty being recognized.

2. Specialty recognition must require completion of an allopathic medical residency program approved by either the Accreditation Council of Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada that includes substantial and identifiable training in the allopathic specialty being recognized.

3. Specialty recognition must require successful completion of a comprehensive examination administered by the recognizing agency pursuant to written procedures that ensure adequate security and appropriate grading standards.

4. The recognizing agency, if it is not an ABMS board, must require as part of its certification requirement that each member receiving certification be currently certified by a specialty board of the ABMS.

5. The recognizing agency must have been determined by the Internal Revenue Service of the United States to be a legitimate not for profit entity pursuant to Section 501(c) of the Internal Revenue Code.

6. The recognizing agency must have full time administrative staff, housed in dedicated office space which is appropriate for the agencys program and sufficient for responding to consumer or regulatory inquiries.

**What happens when you disobey the 6th Commandment**

Ina 1999 case, the Board found that a doctor’s business stationery violated Fla. Admin. Code 64B8-11.001(2). The doctor’s stationery indicated he was board certified in neurological and orthopedic surgery, pain management, and neurothermography but he was not in fact certified in neurological and orthopedic surgery and the American Board of Medical Specialties does not recognize a board for either pain management or neurothermography. The Board found other violations in addition to these and issued a $20,000 fine, reprimand and placed the doctor on probation for three years for several statutory violations.[[6]](#footnote-6)

**7th Commandment**

**Thou shalt not convey the impression that you possess qualifications, skills, or other attributes which are superior to other physicians, other than listing post-doctoral or professional achievements recognized by the Board of Medicine or the Board of Osteopathic Medicine.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(h) Conveys the impression that the physician disseminating the advertising or referred to therein possesses qualifications, skills, or other attributes, which are superior to other physicians, other than a simple listing of earned professional post-doctoral or other professional achievements recognized by the Board;

**Board of Osteopathic Medicine, Rule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(j) Conveys the impression that the osteopathic physician disseminating the advertising or referred to therein possesses qualifications, skills or other attributes, which are superior to other osteopathic physicians, other than a simple listing of earned professional, post-doctoral or other professional achievements recognized by the Board;

**8th Commandment**

**Thou shalt always include your name in the advertisement.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(i) Fails to conspicuously identify the physician by name in the advertisement;

**Board of Osteopathic Medicine, Rule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(k) Fails to conspicuously identify the osteopathic physician by name in the advertisement or fails to conspicuously identify the osteopathic physician referred to in the advertising as an osteopathic physician.

**What happens when you disobey the 8th Commandment**

Ina 1999 case, the Board issued a $20,000 fine, reprimand and placed a doctor on probation for three years for several statutory violations.[[7]](#footnote-7) Some of the violations stemmed from an advertisement placed in the Tampa Tribune. The doctor violated many of advertising rules and failed to identify himself by name, which is a violation of Fla. Admin. Code 64B8-11.001(2)(i).

**9th Commandment**

**Thou shalt keep exact copies of audio tapes and/or video tapes of advertisements disseminated through the electronic media for at least 6 months (M.D.s) or 90 days (D.O.s) after the advertisement is aired or shown through electronic media.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

 (4) It shall be the responsibility of any duly licensed physician who utilizes the electronic media for the purpose of advertising to insure that an exact copy of the audio tape and/or video tape is maintained and preserved for a period of at least six months from the date that the actual advertisement is aired or shown through the electronic media.

**Board of Osteopathic Medicine, Rule 64B15-14.001 Advertisings.**

(4) It shall be the responsibility of any duly licensed osteopathic physician who utilizes the electronic media for the purpose of advertising to insure that an exact copy of the audio tape and/or video tape is maintained and preserved for a period of at least 90 days from the date that the actual advertisement is aired or shown through the electronic media.

**10th Commandment**

**Thou shalt include the following information in the advertisement in legible print if you use a referral service:**

* **Advertisements must state that it is for a medical referral service and is on the behalf of the physician members of the referral service;**
* **Advertisements must state that the referral service only refers to physicians who have paid or otherwise been selected for membership in the referral service;**
* **Advertisements must state that membership in the referral service is limited by the referral agency;**
* **Advertisements must state that physicians who use the referral service charge no more than their usual and customary fees.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(6) Any physician who advertises by, through or with a referral service shall be held responsible for the content of such advertising and all such advertisements shall comply with this rule and contain the following:

(a) A statement that the advertisement is for a medical referral service and is in the behalf of the physician members of the referral service.

(b) A statement that the referral service refers only to those physicians who have paid or been otherwise selected for membership in the referral service.

(c) A statement that membership in the referral service is limited by the referral agency.

(d) A statement that physicians who receive referrals from the referral service charge no more than their usual and customary professional fees for service.

(e) These required statements shall be present in reasonably recognizable print or volume equivalent to the size or volume of other information in the advertisement.

**11th Commandment**

**Thou shalt clearly identify yourself as either a Medical Doctor (M.D.), Physician Assistant (P.A.), Anesthesiologist Assistant (A.A.), or Osteopathic Doctor (D.O.).**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(7) No person licensed pursuant to Chapter 458, F.S., shall disseminate or cause the dissemination of any advertisement or advertising that contains the licensee’s name without clearly identifying the licensee as either a medical doctor (M.D.), physician assistant (P.A.), or anesthesiologist assistant (A.A.).

**Board of Osteopathic Medicine, Rule 64B15-14.001 Advertisings.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(k) Fails to conspicuously identify the osteopathic physician by name in the advertisement or fails to conspicuously identify the osteopathic physician referred to in the advertising as an osteopathic physician.

**12th Commandment**

**Thou shalt disclose all the variables affecting a stated fee if you advertise a specific fee for a service.**

**Board of Medicine, Rule 64B8-11.001 Advertising.**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

 (g) Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged;

**Board of Osteopathic Medicine, Rule 64B15-14.001**

(2) No physician shall disseminate or cause the dissemination of any advertisement or advertising which is in any way false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be false, deceptive, or misleading if it:

(i) Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will, in fact, be charged;

**13th Commandment**

**Thou shalt include the following disclaimer in all capital letters if you offer free or discounted services:**

**"THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT."**

**Florida Statutes, Section 456.062. Advertisement by a health care practitioner of free or discounted services; required statement.**

   In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 467, chapter 478, chapter 483, part I of chapter 484, chapter 486, chapter 490, or chapter 491, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.

However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care practitioner defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

**What happens when you disobey the 13th Commandment**

Ina 1999 case, the Board issued a $20,000 fine, reprimand and placed a doctor on probation for three years for several statutory violations.[[8]](#footnote-8) Some of the violations stemmed from an advertisement placed in the Tampa Tribune. Among many of the violations, the advertisement offered a free initial consultation but did not include the required disclaimer language in Fla. Stat. 455.664.

**14th Commandment**

**Thou must publish a schedule of charges if you are an urgent care center. The posting must include the price of services for uninsured persons, must include the 50 most frequently provided services, and must be posted in a conspicuous place in reception area, and be at least 15 square feet in size.**

**Thou may publish a schedule of charges if you are a primary care provider. The posting must include the price of services for uninsured persons, must include the 50 most frequently provided services, and must be posted in a conspicuous place in reception area, and be at least 15 square feet in size.**

**Urgent care centers; publishing and posting schedule of charges, Fla. Stat. 395.107**

An urgent care center **must publish** a schedule of charges for the medical services offered to patients. The schedule **must include** the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule **must be posted** in a conspicuous place in the reception area of the urgent care center and **must include**, but is not limited to, the 50 services most frequently provided by the urgent care center. The schedule may group services by three price levels, listing services in each price level. The posting **must** be at least 15 square feet in size.

**Florida Patient’s Bill of Rights, Fla. Stat. 381.026 (c)(3)**

A primary care provider **may** publish a schedule of charges for the medical services that the provider offers to patients. The schedule **must include** the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule **must be posted** in a conspicuous place in the reception area of the provider’s office and **must include**, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting **must be** at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

**What happens when you disobey the 14th Commandment?**

Florida Statutes Section 395.107 provides that: The failure of an urgent care center to publish and post a schedule of charges as required by this section shall result in a fine of not more than $1,000, **per day**, until the schedule is published and posted.

**15th Commandment**

**Thou shall disclose your licensure status in any of the following manners if you are a M.D, P.A., or A.A.:**

* **Wearing a name tag identifying the licensee as a M.D., P.A. or A.A.;**
	+ **Wearing an article of clothing on the upper body that identifies the licensee as a M.D., P.A. or A.A.;**
	+ **Orally notifying a patient in person;**
	+ **Providing a patient a business card in-person that properly identifies the status;**
	+ **Placing notification in the physician's lobby, which contains a photo of the licensee and the licensee's status.**

**Board of Medicine, Rule** [**64B8-11.003**](http://www.flrules.com/gateway/ruleNo.asp?id=64B8-11.003) **Disclosure of Licensure Status.**

All persons licensed pursuant to Chapter 458, F.S., and not exempt pursuant to Section 456.072(1)(t), F.S., shall identify the license under which he or she practices in one of the following manners:

(1) The wearing of a name tag which identifies the licensee as either a medical doctor (M.D.), a physician assistant (P.A.), or an anesthesiologist assistant (A.A.);

(2) The wearing of an article of clothing on the upper body which identifies the licensee as either a medical doctor (M.D.), a physician assistant (P.A.), or an anesthesiologist assistant (A.A.);

(3) By orally disclosing to the patient, upon the licensee’s initial in-person contact with the patient, that the licensee is either a medical doctor, a physician assistant, or an anesthesiologist assistant;

(4) By providing, upon the licensee’s initial in-person contact with the patient, a business card or similar document which identifies the licensee as either a medical doctor (M.D.), a physician assistant (P.A.), or an anesthesiologist assistant (A.A.);

(5) By placing notification in the lobby or waiting area of the location where the licensee practices, which contains a photo of the licensee and which identifies the licensee as either a medical doctor (M.D.), a physician assistant (P.A.), or an anesthesiologist assistant (A.A.).

**16th Commandment**

**Thou shalt not advertise pain management services unless you register as a pain management clinic**

**Department of Health, Rule 64B-7.001 Pain Management Clinic Registration Requirements.**

(1) Every clinic location, unless exempt under Section 458.3265(1) or 459.0137(1), F.S., must register and maintain a valid registration with the Department. Every registered clinic location upon change of ownership must register and maintain a valid registration with the Department. To be eligible to register with the Department, the clinic must meet the statutory requirements, which include the requirement that the clinic be fully owned by a physician or group of physicians who are currently licensed pursuant to Chapter 458 or 459, F.S., or licensed as a health care clinic with the Agency for Health Care Administration pursuant to Part X of Chapter 400, F.S.

(2) The clinic's designated physician must have a full, active, and unencumbered license, which includes:

(a) Having a clear, active license as a medical doctor or osteopathic physician under Chapter 458 or 459, F.S., that permits the physician to perform all duties authorized by holding a license without restriction.

(b) Having a license that is not designated as limited, restricted, retired, temporary, or training.

(c) Having a license with no restrictions on practice and no current disciplinary or other unsatisfied obligations imposed by the Board of Medicine, Board of Osteopathic Medicine, or the Department that limits or restricts the practice of medicine or osteopathic medicine, which includes suspension, probation, or any other restrictions on practice.

(3) To register with the Department, the designated physician must submit Application for Pain Management Clinic Registration, Form #DH-MQA 1219, 7/11, incorporated herein by reference. This form can be obtained at http://www.flrules.org/Gateway/reference.asp?No=Ref-00704 and from the Department of Health, Division of Medical Quality Assurance, at: 4052 Bald Cypress Way, Bin C-01, Tallahassee, FL 32399 or on the Board of Medicine or Board of Osteopathic Medicine website, which can be accessed at: www.flhealthsource.com or at MQA\_medicine@doh.state.fl.us. At this mail or electronic address, the clinic is responsible to provide notice to the Department of the departure of the designated physician and, within 10 days after termination, the identity of another designated physician for the clinic. At this mail or electronic address, the designated physician at a registered clinic also within 10 days of departure shall notify the board of the date of termination from employment, and each physician in the clinic shall notify the board within 10 calendar days of beginning or ending practice.

**Florida Statutes Section 459.0137 provides the following registration requirement for Pain-management clinics**

**(1) REGISTRATION**.—

(a)1. As used in this section, the term:

a. “Chronic nonmalignant pain” means pain unrelated to cancer or rheumatoid arthritis which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

b. “Pain-management clinic” or “clinic” means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

2. Each pain-management clinic **must register** with the department

(b) Each clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another clinic.

**The following clinics are exempt from the pain-clinic registration requirement:**

2. Each pain-management clinic **must register** with the department unless:

a. That clinic is licensed as a facility pursuant to chapter 395;

b. The majority of the physicians who provide services in the clinic primarily provide surgical services;

c. The clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation’s most recent fiscal quarter exceeded $50 million;

d. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

e. The clinic does not prescribe controlled substances for the treatment of pain;

f. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);

g. The clinic is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or

h. The clinic is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties or the American Osteopathic Association and perform interventional pain procedures of the type routinely billed using surgical codes.

**Registered pain-management clinics must designate a physician who is responsible for complying with all the registration and operational requirements.**

 (c) As a part of registration, a clinic must designate an osteopathic physician who is responsible for complying with all requirements related to registration and operation of the clinic in compliance with this section. Within 10 days after termination of a designated osteopathic physician, the clinic must notify the department of the identity of another designated physician for that clinic. The designated physician shall have a full, active, and unencumbered license under chapter 458 or this chapter and shall practice at the clinic location for which the physician has assumed responsibility. Failing to have a licensed designated osteopathic physician practicing at the location of the registered clinic may be the basis for a summary suspension of the clinic registration certificate as described in s. 456.073(8) for a license or s. 120.60(6).

**Registration will be denied if the pain-management clinics is not fully owned by a M.D. or D.O. or a group of physicians that are M.D.s or D.O.s.**

(d) The department shall deny registration to any clinic that is not fully owned by a physician licensed under chapter 458 [M.D.] or this chapter [D.O.] or a group of physicians, each of whom is licensed under chapter 458 or this chapter; or that is not a health care clinic licensed under part X of chapter 400.

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

(f) If the department finds that a pain-management clinic does not meet the requirement of paragraph (d) or is owned, directly or indirectly, by a person meeting any criteria listed in paragraph (e), the department shall revoke the certificate of registration previously issued by the department. As determined by rule, the department may grant an exemption to denying a registration or revoking a previously issued registration if more than 10 years have elapsed since adjudication. As used in this subsection, the term “convicted” includes an adjudication of guilt following a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

(g) The department may revoke the clinic’s certificate of registration and prohibit all physicians associated with that pain-management clinic from practicing at that clinic location based upon an annual inspection and evaluation of the factors described in subsection (3).

(m) A change of ownership of a registered pain-management clinic requires submission of a new registration application.

**If pain-clinic registration is revoked or suspended, the clinic must cease operating as a pain-management clinic and can no longer advertise as a pain-management clinic.**

(h) If the registration of a pain-management clinic is revoked or suspended, the designated physician of the pain-management clinic, the owner or lessor of the pain-management clinic property, the manager, and the proprietor shall cease to operate the facility as a pain-management clinic as of the effective date of the suspension or revocation.

(i) If a pain-management clinic registration is revoked or suspended, the designated physician of the pain-management clinic, the owner or lessor of the clinic property, the manager, or the proprietor is responsible for removing all signs and symbols identifying the premises as a pain-management clinic.

(j) Upon the effective date of the suspension or revocation, the designated physician of the pain-management clinic shall advise the department of the disposition of the medicinal drugs located on the premises. The disposition is subject to the supervision and approval of the department. Medicinal drugs that are purchased or held by a pain-management clinic that is not registered may be deemed adulterated pursuant to s. 499.006.

**If the pain-management clinic’s registration is revoked, the clinic cannot apply again for 5 years.**

(k) If the clinic’s registration is revoked, any person named in the registration documents of the pain-management clinic, including persons owning or operating the pain-management clinic, may not, as an individual or as a part of a group, make application for a permit to operate a pain-management clinic for 5 years after the date the registration is revoked.

 **(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any osteopathic physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).**

(a) An osteopathic physician may not practice medicine in a pain-management clinic, as described in subsection (4), if the pain-management clinic is not registered with the department as required by this section. Any physician who qualifies to practice medicine in a pain-management clinic pursuant to rules adopted by the Board of Osteopathic Medicine as of July 1, 2012, may continue to practice medicine in a pain-management clinic as long as the physician continues to meet the qualifications set forth in the board rules. An osteopathic physician who violates this paragraph is subject to disciplinary action by his or her appropriate medical regulatory board.

(b) A person may not dispense any medication on the premises of a registered pain-management clinic unless he or she is a physician licensed under this chapter or chapter 458.

(c) An osteopathic physician, a physician assistant, or an advanced registered nurse practitioner must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the osteopathic physician must document in the patient’s record the reason for prescribing that quantity.

(d) An osteopathic physician authorized to prescribe controlled substances who practices at a pain-management clinic is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing controlled substance pain medication. The osteopathic physician shall comply with the requirements for counterfeit-resistant prescription blanks in s. 893.065 and the rules adopted pursuant to that section. The osteopathic physician shall notify, in writing, the department within 24 hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

(e) The designated osteopathic physician of a pain-management clinic shall notify the applicable board in writing of the date of termination of employment within 10 days after terminating his or her employment with a pain-management clinic that is required to be registered under subsection (1). Each osteopathic physician practicing in a pain-management clinic shall advise the Board of Osteopathic Medicine in writing within 10 calendar days after beginning or ending his or her practice at a pain-management clinic.

**(f) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following facility and physical operations requirements:**

1. A pain-management clinic shall be located and operated at a publicly accessible fixed location and must:

a. Display a sign that can be viewed by the public that contains the clinic name, hours of operations, and a street address.

b. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational 24 hours per day.

c. Have emergency lighting and communications.

d. Have a reception and waiting area.

e. Provide a restroom.

f. Have an administrative area including room for storage of medical records, supplies, and equipment.

g. Have private patient examination rooms.

h. Have treatment rooms, if treatment is being provided to the patient.

i. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the clinic-designated physician and the names of all physicians practicing in the clinic.

j. If the clinic stores and dispenses prescription drugs, comply with ss. 499.0121 and 893.07.

2. This section does not excuse an osteopathic physician from providing any treatment or performing any medical duty without the proper equipment and materials as required by the standard of care. This section does not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

**(g) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following infection control requirements.**

1. The clinic shall maintain equipment and supplies to support infection prevention and control activities.

2. The clinic shall identify infection risks based on the following:

a. Geographic location, community, and population served.

b. The care, treatment, and services it provides.

c. An analysis of its infection surveillance and control data.

3. The clinic shall maintain written infection prevention policies and procedures that address the following:

a. Prioritized risks.

b. Limiting unprotected exposure to pathogens.

c. Limiting the transmission of infections associated with procedures performed in the clinic.

d. Limiting the transmission of infections associated with the clinic’s use of medical equipment, devices, and supplies.

**(h) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following health and safety requirements.**

1. The clinic, including its grounds, buildings, furniture, appliances, and equipment shall be structurally sound, in good repair, clean, and free from health and safety hazards.

2. The clinic shall have evacuation procedures in the event of an emergency which shall include provisions for the evacuation of disabled patients and employees.

3. The clinic shall have a written facility-specific disaster plan which sets forth actions that will be taken in the event of clinic closure due to unforeseen disasters and shall include provisions for the protection of medical records and any controlled substances.

4. Each clinic shall have at least one employee on the premises during patient care hours who is certified in Basic Life Support and is trained in reacting to accidents and medical emergencies until emergency medical personnel arrive.

(i) **The designated physician is responsible for ensuring compliance with the following quality assurance requirements.** Each pain-management clinic shall have an ongoing quality assurance program that objectively and systematically monitors and evaluates the quality and appropriateness of patient care, evaluates methods to improve patient care, identifies and corrects deficiencies within the facility, alerts the designated physician to identify and resolve recurring problems, and provides for opportunities to improve the facility’s performance and to enhance and improve the quality of care provided to the public. The designated physician shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients.

2. The identification of trends or patterns of incidents.

3. The development of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients.

4. The documentation of these functions and periodic review no less than quarterly of such information by the designated physician.

(j) The designated physician is responsible for ensuring compliance with the following data collection and reporting requirements:

1. The designated physician for each pain-management clinic shall report all adverse incidents to the department as set forth in s. 459.026.

2. The designated physician shall also report to the Board of Osteopathic Medicine, in writing, on a quarterly basis, the following data:

a. The number of new and repeat patients seen and treated at the clinic who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain.

b. The number of patients discharged due to drug abuse.

c. The number of patients discharged due to drug diversion.

d. The number of patients treated at the pain clinic whose domicile is located somewhere other than in this state. A patient’s domicile is the patient’s fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

**(3) INSPECTION.—**

(a) The department shall inspect the pain-management clinic annually, including a review of the patient records, to ensure that it complies with this section and the rules of the Board of Osteopathic Medicine adopted pursuant to subsection (4) unless the clinic is accredited by a nationally recognized accrediting agency approved by the Board of Osteopathic Medicine.

(b) During an onsite inspection, the department shall make a reasonable attempt to discuss each violation with the owner or designated physician of the pain-management clinic before issuing a formal written notification.

(c) Any action taken to correct a violation shall be documented in writing by the owner or designated physician of the pain-management clinic and verified by followup visits by departmental personnel.

**Board of Osteopathic Medicine, Rule 64B15-14.0051 Standards of Practice for Physicians Practicing in Pain Management Clinics.**

THIS RULE IS APPLICABLE TO PHYSICIANS PRACTICING IN PRIVATELY OWNED PAIN MANAGEMENT CLINICS THAT ARE REQUIRED TO BE REGISTERED PURSUANT TO SECTION 459.0137, F.S., WHO PRIMARILY ENGAGE IN THE TREATMENT OF PAIN BY PRESCRIBING OR DISPENSING CONTROLLED SUBSTANCE MEDICATIONS.

(i) Facility and Physical Operations.

1. A pain management clinic shall be located and operated at a publicly accessible fixed location and shall contain the following:

a. A sign that can be viewed by the public that contains the clinic name, hours of operations, and a street address;

b. A publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four hours per day;

c. Emergency lighting and communications;

d. Reception and waiting area;

e. Restroom;

f. Administrative area including room for storage of medical records, supplies and equipment;

g. Private patient examination room(s);

h. Treatment room(s) if treatment is being provided to the patient;

i. A printed sign located in a conspicuous place in the waiting room viewable by the public disclosing the name and contact information of the clinic Designated Physician, and the names of all physicians practicing in the clinic;

j. Storage and handling of prescription drugs. Clinics that store and dispense prescription drug shall comply with Sections 499.0121, 893.07, F.S., and Rule 64F-12.012, F.A.C.

**You did not register as a pain clinic, now what?**

**(5) PENALTIES; ENFORCEMENT.—**

(a) The department may impose an administrative fine on the clinic of up to $5,000 per violation for violating the requirements of this section; chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Comprehensive Drug Abuse Prevention and Control Act; chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act; or the rules of the department. In determining whether a penalty is to be imposed, and in fixing the amount of the fine, the department shall consider the following factors:

1. The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain-management clinic’s actions or the actions of the osteopathic physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

2. What actions, if any, the owner or designated osteopathic physician took to correct the violations.

3. Whether there were any previous violations at the pain-management clinic.

4. The financial benefits that the pain-management clinic derived from committing or continuing to commit the violation.

(b) Each day a violation continues after the date fixed for termination of the violation as ordered by the department constitutes an additional, separate, and distinct violation.

(c) The department may impose a fine and, in the case of an owner-operated pain-management clinic, revoke or deny a pain-management clinic’s registration, if the clinic’s designated osteopathic physician knowingly and intentionally misrepresents actions taken to correct a violation.

(d) An owner or designated osteopathic physician of a pain-management clinic who concurrently operates an unregistered pain-management clinic is subject to an administrative fine of $5,000 per day.

(e) If the owner of a pain-management clinic that requires registration fails to apply to register the clinic upon a change of ownership and operates the clinic under the new ownership, the owner is subject to a fine of $5,000.

**17th Commandment**

**Thou shalt not advertise that you are HIV negative or free from AIDS.**

**You can advertise negative test results but it must be accompanied by the following disclaimer,**

**"THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT I AM CURRENTLY FREE OF HIV."**

**Board of Medicine, Rule 64B8-11.002** **Advertising of HIV/AIDS Status.**

(1) Public fear regarding the possibility of HIV transmission from health care workers to patients, although scientifically unfounded, has resulted in concerns regarding the safety of medical care. In order to prevent the inappropriate exploitation of such fears and the fostering of such concerns, the advertising of health care workers’ HIV status must be sufficiently regulated.

(2) Public misunderstanding of the significance of HIV test results may cause an inappropriate reliance on negative test results. Reliance on test results may diminish vigilance necessary for the success of universal precautions in the safe practice of medicine. HIV antibody testing is extremely accurate in detecting existing HIV antibodies. However, there are limitations to the testing technology. The “window” period between infection and the appearance of HIV antibodies may produce false negative results. The existence of this “window” period diminishes the reliability of any negative test results.

(3) It is the position of the Board of Medicine that HIV/AIDS issues are best handled on an individual basis directly between patients and health care workers. However, if such advertising is to be utilized the following guidelines must be followed:

(a) No health care licensee under the jurisdiction of the Board of Medicine may represent that he or she is HIV negative or free from AIDS. Only representations as to test results may be advertised or noticed; and

(b) Any such advertisement or notice must clearly state the following:

THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT I AM CURRENTLY FREE OF HIV.

(c) Any referral or endorsement of a health care licensee under the jurisdiction of the Board of Medicine based upon the licensee’s negative HIV test result must clearly state the following:

THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT THE PERSON TESTED IS CURRENTLY FREE OF HIV.

(d) Any representation as to a HIV test result of a health care licensee under the jurisdiction of the Board of Medicine must include the exact date of the HIV test result that is the basis of such representations.

(e) No health care licensee under the jurisdiction of the Board of Medicine may state or imply in any advertisement or notice of his or her own HIV test results that any other licensee is or may be a greater risk to patients due to a failure or refusal to provide similar advertising or notice.

(f) Any health care licensee under the jurisdiction of the Board of Medicine who advertises or provides notice of his or her HIV test results must produce upon the request of a patient, a prospective patient, a former patient, or a Department of Health investigator, an original HIV test result provided by a clinical laboratory regulated by the Department of Health indicating the result of an HIV test. If the advertisement or notice states that the health care licensee has tested negative for HIV, the required test result must indicate a negative result.

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RNB 12-19-11

1. Jeff Testerman, St. Petersburg Times http://www.sptimes.com/News/042001/TampaBay/ Patient\_broker\_gets\_p.shtml (April 20,2011) (last accessed December 16, 2011). [↑](#footnote-ref-1)
2. Examples excerpted from the Office of Inspector General’s (OIG) website at http://oig.hhs.gov/fraud/ enforcement/cmp/kickback.asp (last accessed December 16, 2011). “In each CMP (Civil Monetary Penalties) case resolved through a settlement agreement, the settling party has contested the OIG's allegations and denied any liability. No CMP judgment or finding of liability has been made against the settling party.” OIG, http://oig.hhs.gov/fraud/enforcement/ cmp/kickback.asp. [↑](#footnote-ref-2)
3. 2007 Fla. Div. Adm. Hear. LEXIS 425. [↑](#footnote-ref-3)
4. 1999 Fla. Div. Adm. Hear. LEXIS 5013. [↑](#footnote-ref-4)
5. 1993 Fla. Div. Adm. Hear. LEXIS 5801. [↑](#footnote-ref-5)
6. 1999 Fla. Div. Adm. Hear. LEXIS 5013. [↑](#footnote-ref-6)
7. 1999 Fla. Div. Adm. Hear. LEXIS 5013. [↑](#footnote-ref-7)
8. 1999 Fla. Div. Adm. Hear. LEXIS 5013. [↑](#footnote-ref-8)