



Medical Law and Ethics

Handout 1.5

Legal Applications to the Healthcare Professions

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The law plays an important role for physicians and healthcare professionals. Physicians and other healthcare professionals have a responsibility to maintain current licenses and perform duties that fall within their scope of practice.

Physicians and healthcare professionals must provide a professional standard of care to their patients and fulfill specified duties and obligations to their employers.

Medical Practice Acts

Medical practice acts are laws governing the practice of medicine for each state in the United States. These acts detail the requirements for licensure (such as mandatory education and training), the scope of practice for licensed physicians in their state, what actions and behaviors can result in a suspension or revocation of their license, and mandatory reports that must be provided to the government and outside agencies (for example, a pediatrician reporting suspected child abuse to Child Protective Services when he or she notices bruises during a physical examination).

Regarding the final point about reporting to agencies, it is not within the physician's duties to determine whether a suspected case constitutes abuse and/or neglect or delve deeper into the actions of the parent or guardian. **He or she just needs to report any suspicions to the appropriate trained professional.** The physician should speak to a professional such as a social worker who is trained to investigate these cases.

Medical practice acts were established to protect the general public from individuals practicing medicine without a license or fraudulent behaviors by quacks (people who practice medicine by pretending to have the necessary credentials that he or she does not have).

The state medical board oversees the licensure of physicians and has the authority to revoke or reprimand physicians for inappropriate or illegal conduct. Similarly, the

professional boards in other healthcare professions such as nursing and pharmacy oversee the licensure for professionals under their jurisdiction and set the requirements to be licensed to practice in their state.

The boards cannot prosecute physicians and healthcare professionals. Their jurisdiction is to investigate any wrongdoings or complaints by examining records that pertain to the physician or healthcare professional. If there is a case involving insurance fraud, they can request access to insurance reimbursement records. If there is a case involved with improper treatment of a patient or inappropriate conduct by the physician or healthcare professional, the boards can request a review of patient records and other medical records relevant to the case.

While there may be minor differences between states regarding duties for these professionals, the acts determine the general functions that licensed healthcare professionals can perform.

To summarize the functions of the medical practice acts:

- They create the State Board of Registration or State Board of Examiners who oversees the process of licensing physicians in their state
- State the prerequisites (such as education and completion of mandatory examinations and training) required to be eligible for licensure
- Ensure that only qualified professionals are granted a license to practice in their state while making sure that unlicensed/unqualified individuals are not allowed to practice medicine
- Provide the foundational baseline to practice medicine where physicians apply professional standards in their practice and patients can receive the necessary care during treatment
- Develop the criteria for a physician's license renewal or reinstatement (if individual has been inactive in their practice); in cases of misconduct: suspension, termination, or revocation of licenses

These points can also be seen in state board requirements in fields such as pharmacy, nursing, and other healthcare professions requiring licensure. The professionals must have the necessary education, training, and examinations completed in order to practice their professions. Healthcare professionals must also maintain professional conduct in their work with colleagues as well as with their patients.

Medical Licensing

We will examine three ways in which state boards approve and grant licensure to qualified professionals.

Examination

In the United States, the USMLE (U.S. Medical Licensing Examination) is a professional licensing examination introduced in 1992 and is normally taken by graduates from accredited medical schools to be able to practice medicine.

COMLEX (Comprehensive Osteopathic Medical Licensing Examination) is also a licensure exam taken by professionals with a Doctor of Osteopathic Medicine (D.O.) degree.

While both M.D. and D.O. graduates can take USMLE, only D.O. graduates can take the COMLEX.

The Federation of State Medical Boards (FSMB) and the National Board of Medical Examiners (NBME) handle issues pertaining to medical licensure, disciplinary actions, and assessment of physicians' work in the United States.

A physician is granted a license by:

- Completing their medical education from an accredited school
- Successfully finishing postgraduate training (internship); For those intending to specialize (such as radiology, pediatrics, or a surgical specialty): additional residency training ranging from three to seven years
- Completing the Steps (Step 1, Step 2 CK (Clinical Knowledge), Step 2 CS (Clinical Skills), and Step 3) and Components of USMLE

OR

- (For those who have a D.O. degree) Completing Levels 1, 2-CE (Cognitive Evaluation), and 3 in the COMLEX

Endorsement

Endorsement is an approval or sanction (authorized permission). When an applicant successfully completes the required qualifying exams (for example, the NBME exam), the state may grant them a license by endorsement. Most physicians in the United States receive their license by endorsement. Applicants who are not licensed by endorsement must successfully pass the state board examination.

International medical graduates (IMGs) have to fulfill similar requirements as U.S. graduates. IMGs must meet the requirements of certification by the Educational Commission for Foreign Medical Graduates (ECFMG Certification) in order to be licensed to practice medicine in the United States. A few requirements include successfully completing USMLE and satisfying the requirements regarding medical education and credentials.

Reciprocity

Reciprocity is when there is a mutual agreement between states to grant a license to a professional who currently holds a license in another state so that they may practice in the state they are applying to. The physician won't be required to take any additional examinations.

Differences between Endorsement and Reciprocity

It can be confusing deciphering between endorsement and reciprocity so here's a short summary:

Endorsement means that an individual has successfully passed their board exams, holds a license in their current state, and is now applying for a license to practice their profession in another state. The board will review the current credentials of the licensed individual and perform a background check to ensure that everything is in order (current license is active and valid, individual is in good standing in the state they are currently licensed, any additional requirements- additional training/refresher courses or documentation are fulfilled, and fees are paid).

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On the other hand, **reciprocity** is when an individual licensed in another state is given permission by the state board to use their current license to practice in their state. The boards of the two states will have an agreement that they will accept the credentials of the individual seeking a license by reciprocity as long as that individual fulfills the requirements of the agreement.

Since there is an agreement that was established between the two states, a professional can practice with their current license in the new state without having to have their credentials re-reviewed (unlike endorsement). Each state within the agreement extends the privileges to the professionals of the other state (and vice versa).

Registration

Physicians must keep their medical license active through renewal or reregistration annually by completing approved continuing medical education. The number of hours

of continuing medical education (CME) units varies by state (around 40-100+ hours) within a 2-4 year period.

Continuing medical education can include:

- Participating in relevant workshops, conferences, and seminars
- Completing self-study modules
- Teaching original content at a live activity
- Publishing an article as a first author

It is illegal for a physician to practice medicine without having an active license. This also applies to healthcare professions requiring licensure such as nursing or pharmacy. Practicing with an unrenewed, expired license is considered practicing without a license under the law.

There are a few exceptions to the requirement of having a valid state license to practice medicine within a state. Some of them include:

- A physician who is licensed in another state and is providing emergency medical care
- A physician whose focus is research and does not perform patient-based medicine
- A military physician practicing in military hospitals
- A physician working at a federal medical facility (the physician just needs a license to practice medicine, but it does not have to be in the state where the facility is located)

License Revocation and Suspension

A physician and any healthcare professional will have their licenses revoked by the state for professional misconduct. The state licensing board oversees the investigation of charges against the physician or healthcare professional. The board also handles any subsequent disciplinary action.

Examples of professional misconduct include:

- Harming/abusing a patient
- Having an unlicensed or unqualified individual under the professional perform duties outside of their scope of practice
- Dishonesty and falsification of medical records
- Substance abuse
- Being convicted of a felony
- Overprescribing medications and mishandling controlled substances

- Insurance and Medicare/Medicaid fraud

Just as we had discussed in an earlier handout regarding due process, physicians and healthcare professionals are entitled to have certain procedures followed when they are charged with professional misconduct.

The process includes:

- Providing the professional who is being charged with complete documentation and sufficient notice of the charges filed against them
- The State Board performing a complete investigation of the charges
- Giving the professional a notice of a hearing in front of the State Board
- Once a decision by the board has been made, the physician or other healthcare professional can appeal the decision

Since revocation or suspension of a license is a very serious matter that essentially will impact a healthcare professional's future livelihood, it is important that physicians and other healthcare professionals are afforded due process of the law.

The board may temporarily suspend a physician from practicing medicine if the charges are potentially harmful such as a criminal charge (attempted rape of a patient) or drug impairment during work (such as using narcotics and then working with patients).

Standard of Care in the Health Professions

Standard of care is the ordinary skill and care that healthcare professionals use when caring for and treating their patients. The standards set by their state licenses and certifications determine the appropriate care that a reasonable professional would use in similar circumstances.

This simply states that professionals must perform their abilities with similar high standards of professional competence throughout their work. Whether it is a physician in Florida versus California or a nurse in Maryland versus New York, their professional expertise and care match those that a person in reasonable standing would use when handling patients.

When we had discussed contracts regarding the physician-patient relationship in our handout covering contract law, we learned that once a physician decides to treat a patient, a contract is formed. This contract notes that the physician must provide a professional standard of care throughout the patient's treatment. **The physician must provide the same knowledge, skill, and care that a physician who is similarly trained would apply in similar circumstances.**

Although physicians don't have an obligation to treat everyone (unless an emergency arises), they must always apply a professional standard of care when they do work with a patient. This includes not performing procedures that a reasonable person would consider harmful or potentially dangerous. Physicians are also expected to utilize any available resources that can assist a patient's treatment. However, exposing patients to unnecessary testing and procedures can be detrimental to a patient's care.

The Prudent Person Rule

The **prudent person rule**, also known as the responsible person standard, states that the healthcare professional must provide the necessary information that a prudent, reasonable person would need in order to make a decision about whether they will agree to or refuse medical treatment.

The physician and other healthcare professionals such as nurses will discuss treatment issues with patients, their families, and guardians. Information that the healthcare team will provide include:

- Diagnosis
- Any risks or consequences of the treatment
- Benefits of the treatment
- What procedures are involved
- Available alternatives to the treatment
- Prognosis with and without treatment
- Financial costs of the procedures and treatment
- Expectations following treatment and procedures (such as amount of pain and aftercare)

Throughout all of this, healthcare professionals must maintain a professional standard of care just as we had discussed in the previous section.