



Medical Law and Ethics Handout 1.8 Medical Practices and the Healthcare Professional

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Now that we looked at the general aspects of managed care in the United States, we can turn our attention to the individuals who handle patient care and safety on a daily basis—the healthcare professional.

In addition to physicians, there are a variety of healthcare professionals who play a role in a patient's care. Nurses, pharmacists, physical therapists, and medical social workers are a few of the allied health professionals who contribute to a patient's well-being and care. As we move from the general macro level of managed care from the previous handout to the individual micro level interactions between healthcare professionals and their patients, we will learn how the specialized knowledge and skills of allied health professionals complement the physician's work when providing quality patient care.

Healthcare Quality Improvement Act of 1986

The **Healthcare Quality Improvement Act of 1986 (HCQIA)** was passed by Congress to combat the increasing rates of medical malpractice lawsuits from the 1970s and 1980s. Prior to this, physicians were able to move to another state and not disclose previous adverse actions or malpractice lawsuits held against them. Supporters of HCQIA addressed the importance of patient safety in medical care. Under HCQIA, physicians undergo peer review by other physicians and healthcare professionals.

HCQIA established the **National Practitioner Data Bank (NPDB)**, a program from the U.S. federal government which created a confidential tracking system on a national level with information about a healthcare provider's past history of medical malpractice awards and adverse actions such as healthcare related criminal convictions. Authorized users such as state licensing boards, hospitals, and law enforcement can search for information (query) in the NPDB to verify information used for screening such as checking professional qualifications for employment. **To maintain the confidentiality of a healthcare professional's background, the information in the NPDB is not available to the general public.**

For a comprehensive look on the National Practitioner Data Bank, please visit the Health Resources and Services Administration website at www.npdb.hrsa.gov

Medical Practices

After completing their training, physicians may choose to work in a variety of environments. These environments include private practices, hospitals, managed care, research, or providing medical care abroad.

Let's take a look at the different types of practices.

1. A solo practice is a medical practice where the physician works alone. This type of practice is commonly seen in dentists. Physicians in this practice may have contracts or agreements with other physicians to cover for them in instances such as vacation plans. Although solo practice provides physicians with independence, many are hesitant due to factors such as paying off debts from their medical education and training along with high costs associated with maintaining a practice alone.

2. A sole proprietorship is a type of solo practice where one physician hires other physicians to work in the practice, but the head physician is in charge of all of the administrative decisions and payment of expenses. The head physician (owner) is responsible and liable for the actions of all of the employees under him or her. He or she also retains all of the assets.

Since the head physician of a sole proprietorship has to handle many of the administrative responsibilities in the practice, he or she may have to work longer hours to devote time to patient care.

3. A partnership is when two or more physicians form a legal agreement to share the business operations of the medical practice including responsibility and accountability for the actions of the other partners. A partnership spreads out the responsibilities in the practice to lessen the burden for the other partners. Partners can assist with patient care, overhead expenses, and financial contributions to office maintenance.

However, physicians in a partnership also share liabilities (such as debt) even if only a certain partner or partners are responsible unless a written partnership agreement was formed. Since partners are held accountable for the actions of the other physicians in the practice, creating a written partnership agreement detailing the required duties and responsibilities (should there be any legal action involved).

4. An associate practice is a legal agreement formed by physicians to share a facility and staff, but do not share the responsibility for each other's legal actions such as debts (unlike a partnership). It can be seen as a solo proprietorship where each individual physician manages their own responsibilities.

Since this differs from a partnership, it is important to detail a clear legal contract of agreement among the physicians specifying the responsibilities for each individual party. Patients must also be informed that the physicians operate independently and only share the facilities and staff in the event a malpractice lawsuit is initiated against one of the physicians.

5. A group practice is when three or more physicians share the facility and equipment and practice medicine together. Physicians in a group practice may share a single common specialty (e.g. pediatrics or obstetrics and gynecology). For single specialties, there may be competition for patients as a result of the similar backgrounds among the physicians.

In a group practice, the income level may be lower than a smaller partnership or solo practice due to higher expenditures coming from the increased number of physicians working with a larger patient load.

6. A corporation is a type of medical practice managed by a board of directors. In the 1960's laws were established allowing professionals (such as physicians, nurses, lawyers, and accountants) to incorporate, providing the corporation with legal and financial benefits.

Professional members of the corporation are referred to as shareholders. A few advantages to a corporation include

- **Fringe benefits**, which are non-wage compensation for performance in addition to the standard salary or pay (e.g. employees are allowed to use a company owned vehicle for commuting purposes, are provided tuition reimbursement for education or training, or are provided comprehensive insurance [medical, dental, life] coverage).
- **Protection from individual loss of assets in the event of legal action**- when a lawsuit is initiated against a physician in a solo practice, his or her individual assets can be touched; however, if a corporation is sued, the individual assets of the members cannot be touched.

Unlike a solo practice where the practice can end after the owner's death, the corporation can continue on until it is legally dissolved/closed down. Many medical practices today are corporations.

Group practices can be designated as an HMO or an independent practice association (IPA). **Independent practice associations** are groups of physicians in private practice who form together in order to contract with HMOs. The physicians can then treat patient members of the HMO in their practices on a modified fee-for-service system.

Ethical Issues In Medical Care: Fee Splitting

In Handout 1.7, we touched upon The Stark Law under “Ethical Issues in Managed Care.” The Stark Law prohibited physicians from referring patients for designated health services in which they (or an immediate family member of theirs) have financial interests or compensation agreements.

In this section, we will discuss **fee splitting**, an agreement between physicians in which one physician offers to provide payment or compensation to another physician or agency for the referral of patients.

Since this can cause conflicts of interest in the physician-patient relationship, it is considered an unethical practice. The financial commission gained may take precedence over the patient’s well-being and care. In this case, patients will be referred to other physicians with whom the patient’s physician has a fee splitting agreement with rather than to an appropriate specialist.

Fee splitting between physicians for patients under Medicare or Medicaid is considered a felony.

According to the U.S. Department of Health and Human Services Centers for Medicaid and Medicare Services Medicare Learning Network’s definition of Medicare fraud:

“Knowingly soliciting, paying, and/or accepting remuneration to induce or reward referrals for items or services reimbursed by Federal healthcare programs”

OR

“Making prohibited referrals for certain designated health services”

Penalties for engaging in these activities include fines and/or imprisonment.

To read more about Medicare fraud, please see the Medicare fraud information sheet that accompanies this Handout.

Franchises

Unlike fee splitting, a patient can be referred to a **franchise**, which is a business run by an individual to whom a franchisor grants the exclusive right to market a product or service in a certain market area. A franchise in a hospital can be a pharmacy, testing lab, nutrition services, or dental services. The **franchisee**, a person or company who holds a franchise, legally pays the hospital proportionate to the amount of business received from the hospital patients.

Board Certified Medical Specialties

Currently, there are twenty-four specialty boards approved by the American Board of Medical Specialties.

These include:

American Board of Dermatology	American Board of Neurological Surgery
American Board of Obstetrics and Gynecology	American Board of Anesthesiology
American Board of Ophthalmology	American Board of Plastic Surgery
American Board of Otolaryngology	American Board of Physical Medicine and Rehabilitation
American Board of Orthopaedic Surgery	American Board of Colon and Rectal Surgery
American Board of Pediatrics	American Board of Preventive Medicine
American Board of Psychiatry and Neurology	American Board of Family Medicine
American Board of Radiology	American Board of Allergy and Immunology
American Board of Urology	American Board of Nuclear Medicine
American Board of Internal Medicine	American Board of Thoracic Surgery
American Board of Pathology	American Board of Emergency Medicine
American Board of Surgery	American Board of Medical Genetics and Genomics

Although many physicians choose to practice primary patient care (i.e. family medicine or general practice), there are also those who pursue further specialization (e.g. surgery or dermatology). The specialty boards encourage physicians to pursue additional education and training to advance their knowledge and skills for patient care and medical research. Candidates are evaluated by the board who then examines each candidate's qualifications and conducts the certifying examinations.

The physicians who successfully pass the board's evaluation are certified as **diplomates**. Board-certified physicians can be addressed as diplomates or fellows and may use the designation after their name. For example, John Doe, M.D., Diplomate of the American Board of Emergency Medicine or Melissa Lee, D.O., Diplomate of the American Board of Radiology.

As discussed in the beginning of this handout, physicians work in a variety of environments including hospitals, community clinics, practices, or a medical care corporation. As advancements in the medical field continue to develop, board certification in specialties among physicians have played an important role in improving treatment and the standard of care.

Fellowships are also granted by bodies such as the American College of Surgeons and the American College of Physicians. **Fellows** are physicians who have completed their residency and are pursuing additional specialized training in their fields. Candidates who successfully meet the requirements and evaluation are admitted into the fellowship. As mentioned above, they can use the Fellow designation after their name. For example, Fellow of the American College of Surgeons (FACS) or Fellow of the American College of Physicians (FACP).

Allied Health Professionals

Allied health professionals are healthcare personnel who have completed specialized education and/or training in their fields. These healthcare professionals must meet specific requirements in their state such as obtaining the necessary license, certification, and registration to practice legally.

Licensure, which is usually conferred by the boards of each individual state, is a mandatory credentialing process that allows a professional to perform specialized skills and procedures legally. Nurses, pharmacists, and physical therapists are a few examples of healthcare professionals who must graduate from an accredited institution and successfully pass the licensing examination of their profession in order to practice.

Certification is a voluntary credentialing process provided by professional organizations such as universities or accreditation bodies. Although it is usually voluntary, there are some states requiring (or moving towards requiring) mandatory certification in order for healthcare professionals to practice in their fields. For example,

phlebotomists (allied health professionals who draw blood for clinical testing purposes) in California are **required** to be certified in order to practice phlebotomy in the state.

Certified healthcare professionals include phlebotomists, paramedics, respiratory therapists, and pharmacy technicians.

Registration provides an official record or register indicating that an individual has met certain requirements in that particular profession. Employers and other official bodies can access the registry list to determine if a potential employee has fulfilled the requirements to practice. For example, the state boards list the names of professionals such as registered nurses, pharmacists, and social workers who hold licenses in their states.

Similar to physicians, healthcare professionals are not allowed to perform outside of their scope of practice or duties specified under their licensure. Acting outside his or her area of expertise can result in legal ramifications. If a patient is injured as a result of the healthcare professional's lack of competence, the professional can be held liable for negligence or medical malpractice. This can put a healthcare professional's license in jeopardy which can result in fines or a suspension or revocation of his or her license.

Healthcare professionals have a responsibility to keep their licenses and certifications active so that they may legally practice.

As we had seen throughout this handout, patients will encounter a variety of healthcare professionals assisting the physician who will contribute to their care. Board certified physicians and specialized healthcare professionals provide patients with an expansive range of clinical knowledge and skills throughout their treatment. As a result, a higher level of quality care can be provided to ensure that the patient receives the necessary medical care he or she seeks.

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