

HOW STATE DISCIPLINARY BOARDS AFFECT THE BUSINESS OF MEDICINE

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Medicine is a complex science dealing with multiple components and systems within the anatomy of the body. When we take a look at the aesthetic and cosmetic side of medicine, many different variables come into play, since it is usually a fee-for-service entity and not an insurance-based practice. I have continually shared the following in my lectures to show how aesthetic medicine has evolved, yet still remains the same with the following four items:

- Medicine is a science;
- Medicine is a way of healing the sick and injured;
- Medicine is a way of keeping ourselves looking young and beautiful;
- Medicine is a *business*.

I have also shared my top priorities in the aesthetic business, and these values will never change:

- Protect the safety of the patient and your staff, front and foremost.
- Protect your medical practitioners' licenses.
- Have fun.
- Make money.

If you follow the above rules, you will certainly make it easier to bring profitability to your practice. Without making safety your top priority, you most certainly will diminish the trust your patients and staff place in you. Yes, we need to stay profitable to stay afloat, however negative comments about you and lack of reputation management will certainly destroy all of your hard efforts.

Multiple components play a role in effectively managing your practice and the way you treat your patients. The question is how you prioritize these components. Since medicine is governed by regulatory bodies both on the state and federal level, it is most important to know that what may be legal in one state may not be legal in another.

Example: In aesthetic medicine, having medical assistants, aestheticians and RNs performing laser procedures and injectables (dermal fillers and neurotoxins) under the

direct supervision of a physician may be legal in one state and not in another.

There are no federal regulations that mandate these regulations. Physicians, physician assistants (PA), and nurse practitioners (NP) are allowed to perform these procedures in all states that they are properly licensed in. While some states allow a NP to work independently, and allow the NP to open his/her own office, others do not. Some states mandate that protocols be written governing the type of procedures that mid-level providers perform.

There has been a difference in opinion as to how many offices and the number of mid-level providers a physician may be allowed to supervise. This also varies from state to state. The term "medical director" is loosely thrown around in aesthetic medicine because it doesn't really define the standards by which the physician operates. More often than not, all it means is the physician must review and sign off on the medical charts, but may not have ever seen the patient. Is this truly the proper standard of care?

Some states have adopted and mandated that a physician must perform a history and physical on the patient at least once a year, while others states that previously mandated this regulation have since repealed the statute.

What should you look for when opening your practice? As stated earlier, *safety* should be your highest priority. Secondly, you need to look for a location which is suitable to the type of procedures you wish to perform. Remember to secure all of the proper licensing for the type of center you wish to perform services in. These also vary from local (city/county) municipalities and state levels. Next, in order to remain clear, concise and consistent in the legal aspect of how you practice, you must have proper protocols, consent forms, and sound legal and accounting advice.

Ensure you have solid practice management/EMR software for financial tracking and proper storage of your protected health information (PHI). Remember to have proper Business Associate Agreements with all vendors who may come in contact with PHI. This is a federal mandate. This will protect you in the event of a breach of confidentiality by any third party you

currently conduct or intend to do business with.

Staffing is one of the highest priorities in your practice. Improper employee selection and training will make or break you. Remember, you are not the patients' first point of contact; your staff is. Don't be afraid to spend the time, effort and financial resources to conduct continuous training. This is essential in the future development of your practice.

Federal regulatory compliance often demands OSHA training for your staff. This include but is not limited to employee right to know (hazardous chemicals), laser safety training, blood borne pathogens (HIV & hepatitis), domestic violence, etc. Local and state compliance may even require fire safety and means of egress training.

With all of the products to use and sell to our patients, one of the most important concerns you may encounter is the desire to purchase products which may come from outside of the US. Regardless of what you may be told, it is not okay to purchase non-FDA approved/non-domestic fillers and neurotoxins in order to save money on your products. This is a direct violation of FDA/DEA regulations and is subject to extensive fines and possible sanctions against your medical license. Aside from regulatory issues, the manufacturers of these products, even if they are domestically based, will not support you in the event of adverse reactions through no fault of your own.

So let's summarize your priorities:

- Safety
- Location
- Proper licensing (local/state/federal)
- Policies/procedures/protocols
- Practice management and EMR software
- HIPAA compliance and Business Associate Agreement
- Staffing
- OSHA compliance
- FDA approved products and proper vendor selection

Many medical spas, cosmetic and aesthetic medical offices, and even office-based surgery centers have opened, and the surgeons have been fined due to the lack of proper compliance to the regulatory bodies through the state board of medicine. These may include the following:

- Proper history and physicals
- Medical clearance
- Proper consent forms
- Failure to perform pre op examination of the patient
- Violation of proper levels of surgery (level I-III)
- Excessive fatalities in the surgery center
- Lack of, incomplete, or no operative reports

At a recent Board of Medicine meeting in South Florida, I sat through a day full of disciplinary board hearings where physicians were fined and their licenses sanctioned for improper treatment and violations of the standard of care. While I may not have necessarily agreed with the final decisions of the board/tribunal members who made the decisions, the fact

remains physician/practice violations did occur and the ultimate responsibility did indeed fall on the physician.

Fines started anywhere from a minimum of \$5,000 to as high as \$50,000, in addition to supervised probation, suspension, and even permanent revocation of the physician's license. This is a high price to pay for minor infractions, but in some cases no amount or disciplinary action is sufficient when a patient's life was compromised for the ultimate dollar vs. safety.

So what are the next steps? Let's be honest, nowhere in medical school was there a curriculum on the business side of medicine. There may have been lectures on medical ethics, standard of care, and even training from peers and mentors along the way, but no formal program to allow you to know how to operate your business was ever an additional priority.

Dr. Samir Pancholi, a board certified facial plastic surgeon in Las Vegas, gave a lecture several years ago titled, "I've graduated, so now what?" It was one of the most interesting lectures I have ever heard in all my years as a fellow lecturer, practice administrator, and writer. Dr. Pancholi described how he finished his formal training and didn't know where to start next. As he entered the world of medicine on his own, he had all of the formal training to properly treat a patient, but had no idea of how to open a practice, comply with all of the regulations outside of formalized medicine, and now had to run by the seat of his pants.

Fortunately for Dr. Pancholi, his moral ethics as a physician and bedside manner were his shining light to initiate the journey of opening a successful practice, which he purchased from a retiring surgeon. Over the past several years, Dr. Pancholi has continued to enjoy the success of his practice.

I do not advocate fearing the state regulatory boards, but rather adhering to the rules that are set forth for the purpose of practicing safe medicine. After all, most of you are practicing aesthetic medicine in a fee for service environment which allows you to set the fees you want. This is of course within reason of the fair market value with the competition in your area. Our industry has many specialties performing aesthetic services, and the field will only become larger as more physicians become disenchanted with the lower insurance reimbursement for all of their hard efforts, and professional liability and operational costs rising.

In conclusion, let's make our industry fun, exciting, and profitable. Let's treat the patient the way we believe they need and want to be treated, but most important of all, let's all practice *safe* medicine, and the profits will follow. ■



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