

Don'ts for Doctors

Here are some real-life examples of what NOT to do.

BY LAWRENCE F. KOBAK, DPM, JD



This article will cover a number of real-life scenarios. Let's wade right in.

Social Media

An employee at the front desk discovered a juicy tidbit concerning a patient's new steady boyfriend. She promptly announces it on Facebook. Though the name was never used, anyone who knew the parties understood what was being said. The patient was livid. Fortunately, instead of going to the state board or the "HIPAA Police", she went to the podiatrist. The podiatrist gave her a profuse apology. She explained that she would be re-educating her entire staff as to patient privacy and its importance. This type of violation could have resulted in license sanctions, as podiatrists are responsible for the actions of their employees. It also could have resulted in federal and state consequences due to the invasion of the patient's privacy.

Waiting Room Materials and ...

A patient was in the waiting room for his appointment. While looking through the pamphlets and magazines on the tables and racks, he saw campaign pamphlets for the local

town council. It happened to have been touting the candidacy of the patient's opponent, in the same race! When seen that day by the podiatrist, the patient voiced his displeasure. The podiatrist had not put the pamphlet there, somebody else had. At the very least, someone from his staff should have looked at the materials

pens, here is an admittedly unusual true story. The podiatrist fancied herself as a "spiritual poet." She would compose beautiful poetry, with a religious bent, in a well-meaning effort to uplift some of her patients. She would invite them for more personal performances of her poems at her church. One patient filed a com-

**It is inappropriate
and unprofessional to use your office to proselytize
your personal religious beliefs.**

in the waiting from time to time to make sure they were appropriate.

Other examples of inappropriate material were articles in magazines that promoted non-professional production of orthotics, the use of orthopedists for foot and ankle problems (in lieu of podiatrists), and magazines on "unusual" topics. Religious literature will offend a portion of your patients. It is inappropriate and unprofessional to use your office to proselytize your personal religious beliefs.

Lest you think that never hap-

pen, here is an admittedly unusual true story. The podiatrist had to explain that she was not trying to religiously influence anyone. She just desired to uplift their spirits. The board let it go with a "letter warning". She was advised to keep her spiritual concerns separate from her podiatric practice.

Using the Practice as a Dating App

Some podiatrists and other healthcare professionals will unwisely use their patient pool as a source for romantic socialization.

Continued on page 46

Don'ts for Doctors (from page 45)

While each state has different rules, the best advice is not to date any active patient. As their healthcare provider, you may know things about them that you could take advantage of in a social setting. If you date someone prior to their becoming your patient, that is fine. How long should you wait until they are no longer your patient to date them? That may vary from state to state. If you wait one year or more, that should not usually be problematic. Generally, find another way to obtain dates.

Common Sense and Letter to the Editor

A podiatrist had some very strong views on several very controversial topics. The podiatrist frequently sent letters to the editor that were published in the local newspaper. While that is quite legal, he had to endure endless comments from his patients or, often, former patients, explaining why he had some very unpopular opinions about world events.

Hitting the Send Button on an Email

You should always stop, look, and re-read your emails and text messages before you hit the send button. The wrong person will occasionally receive it. This happens when the recipient and someone else have a similar name, and your program “corrects” the address, and it is sent to someone else.

In another scenario, you compose an email soon after a disagreement with someone. The content of what you write might make you feel better for the moment, but a few minutes later, you realize it is inappropriate. When you had to walk the letter to the mailbox, you had time to cool off. With an email or a text message, that is not the case. This could lead to various negative consequences.

Your Garbage Must Be Appropriately Disposed

We know that medical waste must be separately disposed. Save the receipts and agreements you have with your medical waste pickup ser-

vice. Most states can send inspectors to confirm this. This can also be the subject of professional discipline.

It is important for your paper medical records to have access to a shredder. If you scan your paper documents, do not simply dump them into the trash. You do not want to violate any state or federal privacy laws. We have all heard of HIPAA, but your individual state has its own privacy laws, which may differ from what is required by HIPAA.

Your Personal Life

You received a ticket for driving while your blood alcohol was over the limit last weekend. How does that concern you professionally? That depends upon whether your state treats it as a misdemeanor or as a violation. Even a misdemeanor must be report-

treatment rooms to check to see if any of the medicines you are using, or any of the samples you are dispensing, are out-of-date. While you are at it, check to see that your oxygen tank and fire extinguisher are in working order, full, and not out-of-date. Keep a log. Have the person assigned to check these items sign and date the checklists. While you can delegate the task, you cannot delegate who is ultimately responsible if there is a problem. When you need the oxygen tank or fire extinguisher and it does not function, it is too late.

Do Not Prevaricate on an Application or Renewal

States have become extremely intolerant of any falsehoods, or negative items left out of hospital applications, credentialing, professional

**States have become extremely intolerant
of any falsehoods, or negative items left out of hospital
applications, credentialing, professional license
renewals, and the like.**

ed to the National Practitioner Data Bank and your state board. It will be investigated. It is potentially actionable as unprofessional conduct.

Some states will not renew your professional license if you are behind in child support.

Family Prescriptions

Your cousin calls and asks for a prescription of antibiotics for a foot problem. You phone one into the local pharmacy. This is a common scenario. There is no problem, legally or ethically, in treating a cousin, either remotely or in person, if the treatment is medically necessary and under your scope of practice. Most of the time, the practitioner never records this in a legitimate medical chart, either written or electronic. This is a must! That is the problem.

Not Going Through Your Drawers

Every few months, someone from your staff should be assigned the task of going through the drawers in the

license renewals, and the like. Did you forget to state that you were put on probation during your residency many years ago? Were your hospital privileges suspended for a couple of months when you were practicing in another state, 20 years ago? This may seem trivial to you, but your state board will not take it lightly.

Do Not Forget

On your medical records, do not forget to make sure that the date of service is clearly written in your medical records, and make sure that it matches the date of service on your bill, electronic or otherwise. Additionally, do not forget to sign each chart entry, electronic or otherwise. Yes, most EMRs claim that the record will not close until it is signed, but that does not always seem to be the case. Do not forget to check that the actual provider of services is the same provider who is mentioned in the insurance or Medicare bill. The fail-

Continued on page 47

Don'ts for Doctors (from page 46)

ure to do these three obvious things has resulted in some ugly insurance and Medicare audit results. Federal

simply bill it under your number, under the pretense that you were supervising her. This is illegal. You will probably be severely disciplined or thrown out of the pro-

Do not forget to check that the actual provider of services is the same provider who is mentioned in the insurance or Medicare bill.

law requires that the dates match, the providers match, and that you sign your medical records.

Do Not Allow a Provider to Bill Under Your Number

You hire a young podiatrist to work at your office. She has yet to acquire a Workers' Compensation provider number or Medicaid provider number. You allow the young practitioner to treat the patient and

gram involved. Also, any treatment by a provider who has not been credentialed by Medicaid, Workers' Compensation, or an insurance panel will be denied. That means all the money paid will have to be returned. All the money gone, hours of work lost, and you have been removed from the program. You must wait for the provider to be credentialed, and then they can start treating those patients.

Last Word

Do not forget to take some pride in all the wonderful things that you do as podiatrists. The amount of relief from pain that podiatrists afford their patients is unique in the medical world. Be proud of that. We are part of a noble profession. **PM**



Dr. Kobak is Senior Counsel in Frier Levitt's Healthcare Department in New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Healthcare Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.