Language
The Importance of Clarity

Michael A. Moné, BSP, JD
Executive Director
Kentucky Board of Pharmacy
Veterinarian - Taxidermist
Either way…. you get your dog back.
Public / Professional Duties

- Distinction between public duty and professional duty.
- How does the Board accomplish its mission?
- What is the role of professional associations?
Ex parte Communications

• Tendency upon the part of professionals to look at the Board as a vehicle to protect them.
• Purpose is to protect the public from the professionals.
• If the issue is to be decided, discipline or substantive, must be done on the record.
Board Meetings

• Full Board Meeting
  – generally open meeting not public meeting

• Probable Cause Meeting

• Public Hearing
  – generally administrative regulations
  – task force meetings
  – intended to obtain information from the public
Discipline

• “unprofessional practice”
  – do you really want to rely on this standard?

• KRS 315.121(1)
  – The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these
Discipline

– actions against any licensee, permit holder, or certificate holder for the following reasons:
  • (a) unprofessional or unethical conduct

• (2) Unprofessional or unethical conduct includes, but is not limited to, the following acts of a pharmacist or pharmacist intern:
Discipline

• (d) engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
Discipline

• (e) engaging in grossly negligent professional conduct, with or without established proof of actual injury
Disciplinary Actions

• Chapter 460.016 F.S. - Pharmacy
  – (1) The following acts constitute grounds for denial of a license or disciplinary action:
    • (a) to (r)

• Chapter 459.413 F.S. - Chiropractic
  – (1) The following acts constitute grounds for denial of a license or disciplinary action:
    • (a) to (ff)
Disciplinary Actions

• 460.413(1)(k) F.S. - making misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic medicine or employing a trick or scheme in the practice of chiropractic medicine when such trick or scheme fails to conform to the generally prevailing standards of treatment in the chiropractic medical community.
Disciplinary Actions

- 460.413 (1)(h) aiding, assisting, procuring, or advising any unlicensed person to practice chiropractic medicine contrary to the rules of the department or the board.
Disciplinary Actions

- KRS 315.121 (1)(j) knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board.
FARB Article IV. Discipline

• Section 401 (a) The Board…upon one or more of the following grounds as determined by the Board:
  – (1) Unprofessional conduct as determined by the Board;

• Where is the standard? Where is the notice to the regulated professional?
Orders

• Say what you mean and mean what you say.
• If the offense warrants a fine, set the fine, don’t do the following:
  – The Respondent shall pay a fine of $2,000, $1,500 of which is probated provided the Respondent complies with the terms of this Order and …. 
• Consequences on subsequent violation.
Penalties

- An area where specificity is critical.
  - Boneski v DPR
  - Turner
    - Reinstatement, Revocation, Relicensure
    - How is the petition treated?

- Direct v indirect:
  - consent agreements, stipulations
  - Final Orders
Questions?

• Thank you.