

Remediation versus Revocation

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"What we've got here is failure to communicate. Some men you just can't reach, so you get what we had here last week which is the way he wants it. Well, he gets it. And I don't like it any more than you men. "

Strother Martin, Cool Hand Luke,
1967

Problem : Ethical Crisis?

- Retrospective review of disciplinary actions:
 - Fraud 895%
 - Sex 339%
- Gallup polls
- Student loans repayments (past)
- Disability Rates
- Public sentiment
- Chiropractic student survey

Problem : Cause???

- Ethical crisis may be due in large part to the ethics of the chiropractic leadership and those who make up most boards!
- "You think the way you think. You have to think the way they think."

Solutions to "problem"

- Civil : Fee issues
- Administrative
- Criminal
- Public sentiment
- Legislative

Regulatory intervention spectrum: Current model

- Warning letter(s)
- Citations, public reprimand
- Fines
- Probation
- Suspension
- Revocation

Regulatory intervention spectrum: In-office vs. out of office

- Warning letter(s)
- Citations, public reprimand
- Fines

- Probation
- Suspension
- Revocation

Regulatory intervention spectrum: Costs

- Warning letter(s)
- Citations, public reprimand
- Fines

- Probation
- Suspension
- Revocation

Regulatory intervention spectrum: Remediation

- Warning letter(s)
- Citations, public reprimand
- Fines
- Remediation

- Probation
- Suspension
- Revocation

W.C. Fields

When caught reading the Bible on his death bed, a friend asked *"Bill, what are you doing reading the Bible? You have never read it before."* WC answered,

"Just looking for loopholes"

Audience for remediation

- Conduct not egregious enough to warrant a higher level of regulatory intervention
- Professional traffic school
- "Okay I got caught speeding and yes I will go to traffic school, but..."
- 85% will **not** take course seriously
- 15% will alter behavior

"My dog ate my homework"

- For the 85% who choose to ignore traffic school, course work eliminates the "I didn't know... defense"
- Each remediation course covers a WIDE spectrum of misconduct.
- 85% can not hide in the future

CEvaptive.com Courses

- Bookmarked
- Course of instruction timed
- Testing components
- No activity = Log off
- Verifiable course instruction
- Coordinated with Western States
- Ensure accountability

CEvaptive.com Courses

- Sexual Misconduct
 - 4 hour course
- Fraud
 - 5 hour course
- Moral turpitude
 - 4 hour course
- Documentation*

Module 1 :

"Getting their mind right"

CEvaptive.com Courses

- Module 1: "Get their mind right"
 - "Scared straight" meets traffic school
 - Goal of course is to educate the doctor of all possible remedies available to boards
 - Remediation is stressed
 - Emphasis is placed on the power to change

Module 1 : Course Content

- Correct Educational Environment
- Power to Change
- State Boards: Power, Control and Function
- History & Makeup of a Regulatory Boards
- Fiduciary & Dual Relationships

Module 1 : Course Content

- Functions of a Regulatory Board
- Reasons for disciplinary actions
- Over-view of regulatory laws

Module 1 : Example

"State boards typically create regulations that control the practice of Chiropractic in one of two ways: Laws which are very specific and those that are very general.

Specific regulations frequently deal with issues concerning very specific actions that a chiropractic can and can not do, e.g. manipulation versus surgery. Such a regulation will spell out what a chiropractic license will allow the holder of that license to do.

The more generalized laws deal with regulations which focus on conduct which is a reflection of moral character. e.g., DUI, drug abuse...

Each of these will be discussed in the following slides."

Examples of specifically prohibited behavior:

*"Sexual relations with patients
Severing and/or piercing of the body
Direct payment for patients or referrals
Prescribe medications*

In each case there maybe very specific laws which address such conduct."

Examples of specifically allowed behavior:

*“Performance of manipulation and therapy
Sign birth and death certificates
Injections of vitamins (Oklahoma)
Minor surgery (Oregon)*

Once again, if one were to review the laws and regulations of each state, there would be a specific law stating the right of a chiropractor to perform manipulation, sign birth certificate... in a properly diagnosed patient.”

*“As we have seen, while some regulations are very specific, others are general and are **overly broad** by design. These broad regulations frequently cover activities which address conduct outside the office.*

The general nature of some regulations are intentional and allows the board wide latitude to cover activities that were never specifically prohibited. No board or legislator could possibly make a specific list of all improper conduct occurring outside the office setting. If done, this would yield pages and pages of specific laws:

*A doctor is not to be naked in a van.
A doctor is not to be naked in a park.
A doctor is not to be naked in the office...*

This is why most boards have generalized regulations which prohibit lewd conduct as a whole. This is also why many regulations consider a conviction or a plea of no contest for either a felony or misdemeanor, unprofessional conduct, no matter if the crime occurred in the office setting or not.”

Module 1 : Course Content

- Big Brother is watching
- Compiling problems
- Power to change emphasized again
- Summary

Sexual Misconduct & Professional Boundary Issues

Module 2 : Sexual Misconduct

1. History of Professional Obligations
2. Fiduciary Relationships
3. Transference
4. Counter-transference
5. Scope of Misconduct
6. Categories of Sexual Misconduct
7. Sexual Relations with Current Patients
8. Sexual Relationships with Former Patients
9. Legal Implications
10. Preventative Measures

Module 3: Sexual Misconduct

“This begins the third and final module of the remediation course on sexual misconduct. In the first module, the duties and power of the state/province regulatory agencies were discussed. This first module also provided instruction in the basic professional duties associated with a fiduciary relationship. With the responsibilities associated with a fiduciary, comes power to control and influence the patient. It is essential for those **who truly desire** to change inappropriate behavior to completely and totally understand the professional obligations which are expected from all fiduciaries.”

Module 3: Sexual Misconduct

- *“The first module also stressed the need to change some bad practice habits. As the saying goes, “You can lead a horse to water, but you can’t make them drink.” This remediation course can only give one the frame work to change, if that is their desired goal.*
- *In the second module of this course the generalized topic of sexual misconduct was reviewed. This included descriptions of the broad classifications of sexual misconduct. Issues of transference and counter-transference were covered in that module as well. The last module of this course will place emphasis on bringing a real world view on the breadth of misconduct and the ramifications associated with such misbehavior.”*

Module 3: Sexual Misconduct

- *“At present, even the mere allegation of sexual misconduct can have such drastic consequences that all well-meaning practitioners should take every precaution to avoid even the air of impropriety. It should be equally as sobering to acknowledge that a lower level allegation of sexual misconduct (verbal) may result in the doctor having to register as a “sex offender” if the current “zero-tolerance” advocates are empowered in one’s state or province. Some people taking this course will erroneously conclude that the authors of this course are overstating the true state of affairs in an attempt to try and scare the doctor into compliance. This is not the case.”*

Module 3: Sexual Misconduct

- *“At this point, the course will turn to real world case examples which will hopefully reveal the scope of misconduct that can result in loss of licensure or disciplinary action. Each one of the presented cases which will follow resulted in loss of licensure for some period of time. In some cases, the loss of license was permanent. While many well-intended clinicians will be disgusted by the conduct of their peers presented in the cases which follow. The educational goals of this portion of the course is to demonstrate the numerous ways a doctor can place their professional license in extreme jeopardy.”*

Categories of Sexual Misconduct:

- Sexual Misconduct: Within Professional Capacity:
 - Non-physical
 - Sexual Violation I
 - Sexual Violation II
- Sexual Misconduct: Outside of Professional Capacity:

Sexual Violation I :Case of Dr. CN

- Dr. CN, a prominent member of the chiropractic community, and a part-time instructor at a chiropractic college, was convicted of *“willfully and unlawfully touching intimate parts of a 21-year-old female patient, against her will and for the specific purpose of sexual arousal, sexual gratification and sexual abuse.”* In this particular case, the female patient happened to have been the daughter of a SWAT (Special Weapons and Tactics) commander. The fact that the patient’s father held such a position with the local police force facilitated the investigation and conviction of Dr. CN. A word of caution, it is impossible to know which patients have similar relationships and/or family ties. In this case, Dr. CN could not have picked a worse patient to prey upon.

Question 5

- 5) Conversations about a patient’s personal life, especially during times of crisis, can increase the transference phenomena.
- a) True
- b) False

Sexual Violation II : Sex with Current Patients Case of Dr. EC

- Almost without exception, allegations of misconduct are levied against **male doctors** by **female patients**. An alarming number of these allegations involve minors. However, with this said, there are some case examples which fall outside of the stated norms. Such is the case of Dr. EC. Under the guise of treatment, *“Dr. EC masturbated patient Charles M (an adult male) on at least **seven separate occasions** with ungloved hands, while patient Charles M. was being treated as one of Dr. EC’s chiropractic patients.”* This case is unique as it involves masturbation and both parties, doctor and patient, were male. Sexual orientation does not allow one to side-step an allegation of sexual misconduct, nor does the fact that the “sex act” consisted of masturbation.

Sexual Violation II : Sex with Current Patients Case of Dr. C

- The case of Dr. C is one of the most complex cases presented in this course. In this particular case, Dr. C used his position of authority to prey upon several patients and their family members. *“On two separate occasions... Dr. C fondled the penis and testicles of Jose B. with ungloved hands. Dr. C having informed patient Jose B that this activity was necessary for the treatment of Jose B’s **wife’s back problems**.”* In this particular case, Dr. C convinced a **non-patient**, that in order to treat the **wife’s back problems**, it was necessary for the doctor to fondle the husband’s penis and testicles. Needless to say, the Dr. C’s license was revoked.

Module 3 Course Content

- Introduction
- Non-physical
 - Verbal statements
 - Videotaping
 - Physical gestures
- Physical
 - Sexual Violation I

Module 3 Course Content

- Sexual Violation II
 - Sex w/ current patients
 - Male-female
 - Male-male
 - Male-male (non-patient) wife
 - Emotionally needy
 - Sex as therapy

Module 3 Course Content

- Sexual Misconduct : Non-professional Capacity
 - Lewd conduct
 - Pornography
 - Child porn
 - Adult porn in office
 - Sex with minors, non-patients
 - Prostitution

Module 3 Course Content

- Summary & Conclusions
- Consequences
 - Personal
 - Professional
 - Financial

Accountability

Conclusion to Module 3

- *This concludes the final module of this course. The three presented modules have **not** provided an exhaustive discussion of every possible offense that can result in a disciplinary action being levied against a doctor's license. Rather, the educational goals of this course have attempted to reveal the variety and scope of activities that can result in board intervention.*
- *Recall this course represents the lowest level of intervention that can be undertaken by a board. Also recall that the chance of losing a license is greater than a 50% chance if a more serious administrative action is undertaken. That is why this course stresses the need to commit to altering misbehavior.*

Conclusion, continued.

- *One should be forewarned at this point in time, the level of responsibility and accountability of the doctor taking this course is now **HIGHER** than before. In short, it is no longer possible for the doctors who have successfully completed this course to claim, "I did not know it was wrong to ..."
The claim of ignorance has now been removed as the board can demonstrate the doctor has been instructed in all categories of sexual misconduct.
The state board now has documentation, from an outside entity, that a special, multiple section course on chiropractic ethics was passed. Course completion can be used to demonstrate knowledge of ethical community standards, should additional legal intervention be needed in the future.*

Remediation : Fraud

Module 2: Course Content

Overview of Frauds

- 1) Never seeing patient
- 2) Seeing patient fraction of time
- 3) Upcoding
- 4) Code-stuffing
- 5) Over-utilization
- 6) Misrepresent who did services
- 7) Unbundling/fragmentation billing

Module 3 : Fraud Remediation

Ethics and Fees for Services

Sections within this module:

- Ethics of Billing
- Introduction to CPT
- History and Background of CPT codes
- “Instructions for use”
- “My Dog Ate My Homework”

Module 4 : Fraud

Repercussions of Fraud

“Those who are required to take this course fall into two general categories. The first situation typically involves a doctor who was caught doing something wrong, but feels that the act which prompted the requirement to take this course was minor and represents a simple misunderstanding. The second category falls into those who are truly uninformed and view this course as an opportunity to learn, with the intent to alter their behavior.

In design of this course, the authors have attempted to use real world examples to illustrate the seriousness of what may truly have been careless billing “errors.” As was pointed out, the notion that the alteration of material facts can be dismissed as “errors” carried out by staff is a naïve concept.”

Case Example: Lester Simmons, D.C.

- Administrative
- Civil x 3
- Administrative, amended
- Criminal
- IRS
- DOJ - civil

Remediation : Moral Turpitude

Module 2

Introduction:

"This program deals with unprofessional conduct, both in and out of the office. In many states, these are frequently referred to as "acts of moral turpitude." The term "moral turpitude" may not be familiar to many clinicians. Turpitude is defined as being "vile, shameful or depraved." Therefore the terms "moral turpitude" represent acts or deeds that are "vile, shameful or morally depraved." There are a great number of human actions which would allow the public to question a doctor's moral character and cause concern for the professional licensing board."

Introduction:

"Since the topic of "Acts of Moral Turpitude" can covers so many different facets of life, the only practical way to cover the topic in this course is to concentrate on the acts and misdeeds which most commonly affect Doctors of Chiropractic. The examples provided for discussion in this course come from actual chiropractic board files. It is hoped that one finds the breadth of discussion in this course, which can lead to professional problems, to be a sobering influence."

Introduction:

"Real cases are cited in this module. This is done to make the educational experience equally as real. It is hoped that those who take this course will learn to see the correlation of immoral and illegal conduct with the need for board intervention.

All of the quoted references in the subsequent module arise from public records. Rather than use the chiropractor's name, we have chosen to use the doctor's initials. The gender of the chiropractor will be identified when necessary."

Module 2

- Public Lewdness
- Sexual behavior by the doctor and staff
- Weapons and violence
- Drug abuse and convictions
- Theft
- DUI

Module 3

- Electronic
 - Computers
 - Cell camera/phones
 - Chat rooms
- Forgery
- False advertisement
- Non-advertisement misrepresentations
 - CV
 - Non-professional massages as CMT
- Violence
 - Spouse

Weapons and Violence: Case of Dr. B

After finishing probation and community service, Dr. B's record was expunged. Unfortunately, when applying for a license the doctor was asked *"Have you ever been convicted or pled guilty or nolo contendere to any criminal charge of any law in any state, the United States or foreign county?"* The doctor failed to disclose this earlier weapons violation on advice of her attorney. The fingerprint record was checked and the prior conviction was discovered. The legal advice she received was incorrect and led to disciplinary action. She was allowed to take her board test and the judge instructed that the license be placed on immediate probation for a period of three years.

Weapons and Violence: Case of Dr. R

The previous example of Dr. B demonstrated that brandishing a weapon could result in criminal and disciplinary actions against the doctor. There are other times where the simple possession of a weapon can have the same result.

Dr. R, a chiropractor who had been licensed for three years, was stopped for a routine traffic stop for excessive speed. Events developed during the stop and resulted in a search of the doctor's car.

Electronic Moral Turpitude, The case of Dr. S

Another case is seen with Dr. S, who was disciplined by the chiropractic board for a similar video offense. Dr. S "...surreptitiously made video recordings of female patients, both adults and minors, while they were unclothed in the examination room of his chiropractic office." The doctor positioned female patients in gowns, over a pinhole camera in the floor. He would video the patients while requiring them to do range of motion and stretching in a manner that exposed their genitalia to the camera. The hidden camera work was suspected when construction workers building the doctor's new office were asked to build a hidden room that contained video equipment and extensive wiring.

Implementation

- Preview course at [CEvative.com](https://www.cevative.com)
- Consider remediation versus revocation
- Full scope of lower misconduct discussed, increased accountability
- Specialty ethics course

Partnering with You

- If a need arises, e.g. documentation, over-utilization...
- Cases which are unique, e.g. use of phone cameras...
- Duplicate CA case study

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