

Jurisprudence 2017

John W. McClane III O.D.



12/19/16edit

How many Optometry offices in Florida have a swimming pool?

- Answer: At least one!

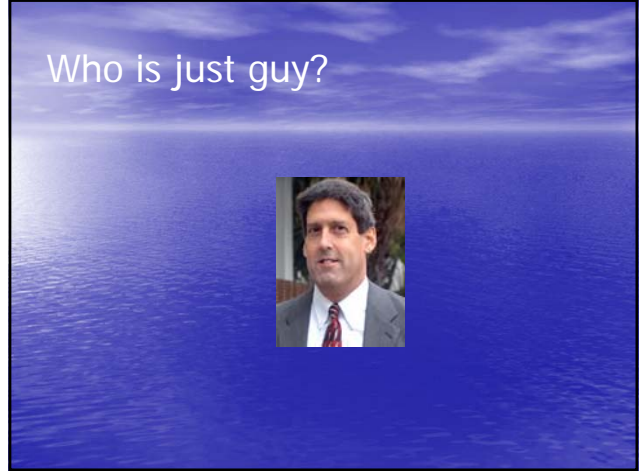
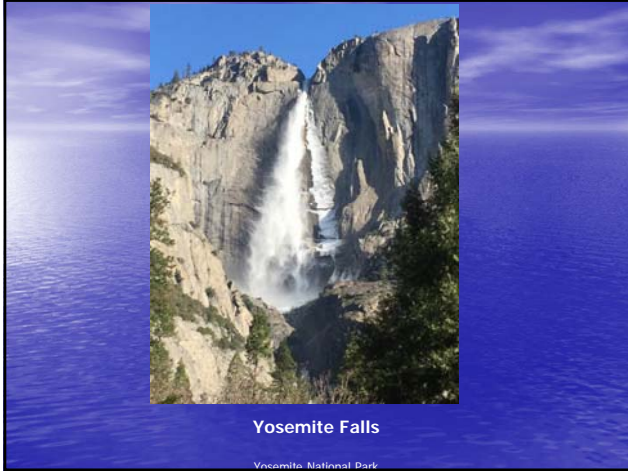


My office



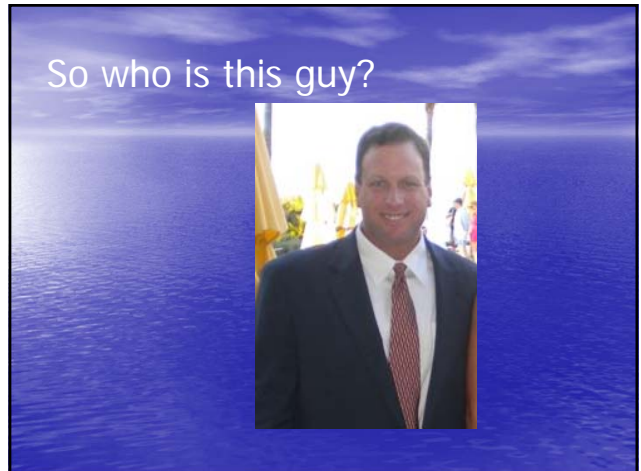
Enough about me- How about my kids!





He is Alan Mendelsohn MD
Prisoner #279438

- He is the Ophthalmologist who paid off the legislator's that prevented us from passing our Optometry bill for over 10 years.



He is Dr. Ken Lawson

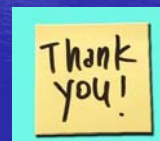
- He is the guy who crushed the Florida Society of Ophthalmology and led us to victory in Tallahassee



- He is also Past President. of FOA

When you see Ken, thank him

- If you see Ken, Please thank him personally.
- Or email your thanks to Docjst@aol.com



A little history



- Until 1981 there was no prohibition on OD's using drugs.
- They were not mentioned in our law.
- We practiced under a positive Attorney General's ruling.
- Then the AG with a little help from FSO said we needed a law passed to use drugs

History lesson cont:



- We passed a topical drug law in 1983, that Governor Graham vetoed after FSO donated \$25,000 to his campaign.
- We passed a law again in 1986 that he signed. (for a \$25,000 campaign contribution from us)
- We litigated the law until 1991 when we prevailed against ophthalmology's suit.

It only took from 1986 to 2013 to get a new Optometry Law.



- We are finally able to move Florida Optometry into the 21st Century.
- Florida Society of Ophthalmology signed off on all sections of our new law.
- They cannot complain about optometric care of patients in Florida any more.

Are you Happy?

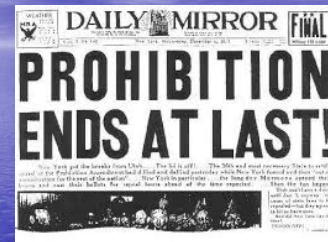


- I am.
- And you should be too!

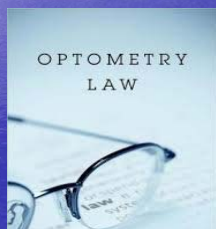


So how did the vote go?

- House 116-0
- Senate 40-0



Lets go section by section and look at the changes in the law



First Change: Deletes (**topical**)

- (4) "Certified optometrist" means a licensed practitioner authorized by the board to administer and prescribe **topical** ocular pharmaceutical agents



Adds (**oral**) & limits Surgery

- (5) "Ocular pharmaceutical agent" that is administered topically or **orally** for the dx or tx of ocular conditions of the human eye and its appendages **without the use of surgery**.



Defines Surgery



- "Surgery" means a **procedure** using an instrument, including a laser, scalpel, or needle, **in which human tissue is cut, burned, scraped** or vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, or radiation. Includes a procedure which requires the **closure of human tissue** by suture, clamp.

You can't do this!



You have to take a course & test



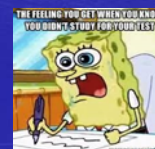
- Before an optometrist may administer or prescribe oral ocular pharmaceutical agents, you must provide proof of **successful completion of a course and exam**, on general and ocular pharmaceuticals and the side effects.

How many Optometrists in this Room have not taken the test?



GOOD for those of you that have already passed the test

- For the rest of you....



How many Hours do you need?

- The course consists of **20** contact hours, all of which may be **web-based**.



How do you sign up?

Sign Up

- Go to <http://optometristonlinece.com>
- Pay \$995.00
- Take the course and test.
- After passing the course and test you may use authorized oral drugs after notifying the Dept. of Health

How do you notify the DOH

- Mail a copy of your completion certificate to DOH (return receipt requested)
- Florida Department of Health
Florida Board of Optometry
Division of Medical Quality Assurance
4052 Bald Cypress Way Bin #C07
Tallahassee, Florida 32399-3257
- Now you can begin!



Can you use the hours for your regular CE?

- Successful completion of the exam **may be used to satisfy 20 hours of CE** only for the biennium in which the course and exam are taken.



What if you don't take to course?

- If an optometrist does not complete a course and exam, the optometrist is only authorized to administer and prescribe **topical** ocular pharmaceutical agents.



Who picks the drugs?

- The **board shall establish** a formulary of **topical** ocular pharmaceutical agents.
- The Formulary committee is deleted.



Who picks the oral drugs?



The Legislature!

- there is a **statutory** formulary of oral ocular pharmaceutical agents,



What does that mean?

- It means we still need to support our individual representatives and senators to continue to grow and expand our right to practice Optometry as we are taught!



Who in here knows who your representative and senator are?

- Have you contacted them to talk about Optometry?
- Have you offered to support their campaign?

Now is the time to get involved, they all voted for our bill!



Which pain meds can we use?

- ?



Pain Meds

- 1. **Tramadol** hydrochloride.
- 2. Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg. (**Tylenol #3**)



How Long can we use them?

- Analgesics may not be administered or prescribed for more than **72 hours** without consultation with a physician licensed under ch. 458 or 459 who is skilled in diseases of the eye:



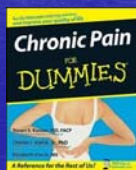
Pain med limitations



- A certified optometrist **may not** administer or prescribe:
- (a) A controlled substance listed in Schedule III, IV, or V, **except for** an oral analgesic placed on the formulary for the **relief of pain due to ocular conditions of the eye and its appendages.**

Can't use for chronic pain

- b) A controlled substance for the treatment of chronic nonmalignant.



What oral antibiotics can we use?

Dancing pills



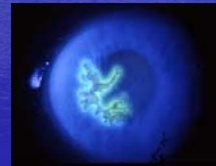
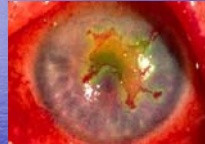
Antibiotics

- 1. Amoxicillin with or without clavulanic acid.
- 2. Azithromycin.
- 3. Erythromycin.
- 4. Dicloxacillin.
- 5. Doxycycline/Tetracycline.
- 6. Keflex.
- 7. Minocycline.



What anti-virals can we use?

- ?



Three Antivirals

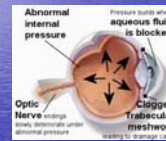
- Acyclovir
- Famcyclovir
- Valcyclovir
-

Not



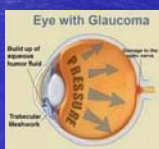
What about oral anti-glaucoma?

- ?



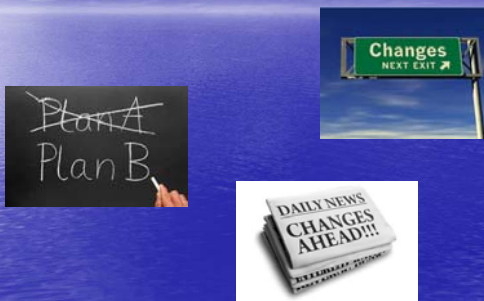
2 Oral Anti-glaucoma drugs

- Acetazolamide
- Methazolamide
- may not be administered or prescribed for more than 72 hours:



Rio Grande River
Big Bend National Park

More Changes!



What is Chapter 548?




- 463.0135 Standards of practice.—
- (10) A certified optometrist is authorized to perform an eye examination, required by **chapter 548**.

WHAT IS IT?

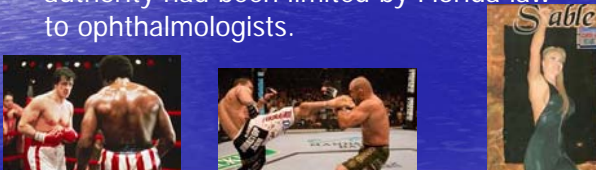
Chapter 548

- PUGILISTIC EXHIBITIONS




Pow, Bam, Crunch, Boom...

- Certified optometrists are now authorized by statute to perform dilated eye exams for boxing exhibitions and MMA fights necessary for licensure. Previously, this authority had been limited by Florida law to ophthalmologists.




New Co-Management Rules



Formal Co-management rules

- Co-management of postoperative care shall require a **patient-specific transfer of care letter** that governs the relationship between the physician who performed the surgery and the licensed practitioner.



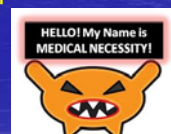
Co-Management rules cont:

- The patient must be fully **informed** of, and **consent in writing** to, the co-management relationship for his or her care.



Transfer of care Letter

- transfer of care letter **shall confirm that it is not medically necessary** for the physician who performed the surgery to provide such postoperative care to the patient and that **it is clinically appropriate** for the licensed practitioner to **provide** such postoperative **care**.



Co-Management cont:

- Before co-management of postoperative care commences, the patient **shall be informed in writing** that he or she **has the right to be seen** during the entire postoperative period **by the physician** who performed the surgery.



Fee information:

- the patient must be **informed of the fees**, to be charged, and must be **provided with an accurate and comprehensive itemized statement** of the specific postoperative care services rendered, along with the charge for each service.



FSO can not complain about Co-management any more.

- Florida Optometrists' ability to provide co-management of post-operative care is, for the first time, codified in the Florida Statutes under **identical documentation** requirements and rules **established previously under Federal CMS/ Medicare**.



Are certain Acts prohibited?

- Prescribing, ordering, dispensing, administering, supplying, selling, or giving any drug for the purpose of **treating a systemic disease, systemic drugs** by a licensed practitioner **is prohibited**.



Are there exceptions?

- However, a certified optometrist is permitted to use commonly accepted means or methods to immediately address incidents of **anaphylaxis**.
- You can use an epi-pen



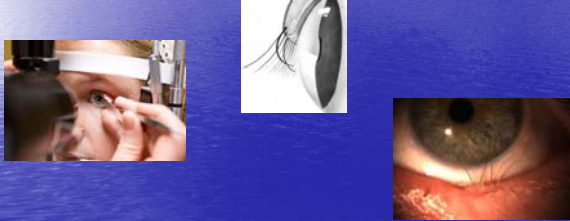
Since Surgery is prohibited, what can we do?

- Certified optometrists **may remove superficial foreign bodies**. The term "superficial foreign bodies" means any foreign matter that is embedded in the **conjunctiva or cornea** but that **which has not penetrated the globe**.



not prohibited from:

- removing an eyelash by **epilation**,



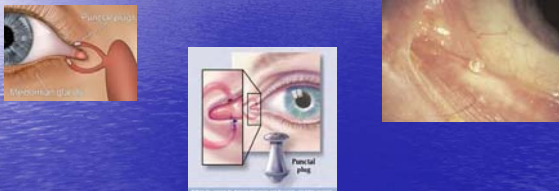
not prohibited from:

- probing** an uninflamed **tear duct** in a patient 18 years of age or older,



not prohibited from:

- blocking the puncta by **plug**,



not prohibited from:

- superficial scraping** for the purpose of removing damaged epithelial tissue or superficial foreign bodies



not prohibited from:

- taking a culture of the surface of the cornea or conjunctiva



Do you have to report Adverse incidents?

- Effective January 1, 2014, an adverse incident occurring must be reported to the department



How do report?

- The required notification must be in writing and submitted to the department by certified mail.
- notification must be postmarked within 15 days after the adverse incident if the adverse incident occurs when the patient is at the office



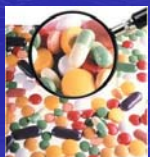
What about an adverse incident that is not at the office?

- when the patient is not at the office of the licensed practitioner, the required notification must be postmarked within 15 days after the licensed practitioner discovers, the occurrence



What constitutes an Adverse incident?

- term "adverse incident," means any of the following events when it is reasonable to believe that the event is attributable to the prescription of an **oral ocular pharmaceutical agent**



Adverse incidents:

- a) Any condition that requires the transfer of a **patient to a hospital**



Adverse incidents:

- b) Any condition that requires the patient to obtain **care from a physician** licensed under ch 458 or 459, other than a referral or a consultation



Adverse incident reporting cont:

- c) **Permanent physical injury** to the patient.



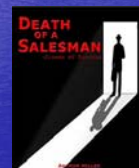
Bad:

- (d) Partial or complete permanent loss of sight by the patient.



More Bad:

- e) Death of the patient.



Then what?

- The department shall review each incident and determine whether it potentially involved conduct by the licensed practitioner who may be subject to disciplinary action.
- Disciplinary action, if any, shall be taken by the board.



Why do we have to report adverse incidents?

- This was a compromise added to match current physician adverse incident language.

109,991
reports
of new or severe adverse reactions to drugs last year

16.2
percent
increase in such reports compared with those in 2009





Entrance to Carlsbad Caverns
Carlsbad Caverns National Park

Are we added to other Chapters of Florida law?

- Yes we are!
- 483
- 893
- 641
- What are these?



We are added to Clinical lab testing statutes!

- 483.035 Clinical laboratories operated by practitioners
- (1) A clinical laboratory operated by one or more practitioners licensed under ch 458,459, **chapter 463**



Lab testing

- You can have your own lab
- Must follow lab testing rules and standards



483.181 Clinical labs

- A **clinical laboratory** licensed under this part **must accept** a human **specimen** submitted for examination by a practitioner licensed under ch 458, 459, chapter, **chapter 463**



We are now included in the Controlled substance section

- **893.05** Controlled substances
- A certified optometrist licensed **may not administer or prescribe** a controlled substance listed in Schedule **I** or Schedule **II**.



Why is this important?

- Since optometrists are now mentioned in the controlled substance chapter
- You will **now be able to get a DEA #** in Florida



How do you get a DEA #?

- If you have successfully completed the oral drug course and test, then you go to the DEA website and apply for your #.
- www.deadiversion.usdoj.gov
- Note: you are a mid-level practitioner.



Optometry is added to 641.31 Health maintenance contracts

- health maintenance policies or contracts which provide coverage, benefits, or services as described in s. 463, shall offer to the subscriber the services of an optometrist



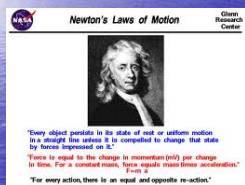
Questions about the law?

- Are you still happy?



What's next?

- The Board of Optometry writes rules explaining the law.



Who are these people?



Board Members



- Stuart Kaplan OD Chair
- Tamara Maule OD Vice-Chair
- Stephen Kepley OD
- Christopher King OD
- Carl Spear OD
- John Griffin-consumer member
- Vacant- consumer member



Can the board write any rule they want?



NO!

- All rules must have a basis in law.
- Rules may only explain or clarify the statutes they are based on.
- All new rules are reviewed by the AG,s office and if they are found to expand or contravene current law they are invalidated.



Let's talk about other sections of Florida law we are mentioned in!



Real Estate Tax Exemption



196.101 Exemption for totally and permanently disabled persons.—



196.012(11)



- Any real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person, as defined in s. [196.012](#)(11), who must use a wheelchair for mobility or who is **legally blind**, is exempt from taxation.

You can sign this form:

- OPTOMETRIST'S CERTIFICATION OF TOTAL AND PERMANENT DISABILITY
- I, (name), an optometrist licensed pursuant to ch 463, hereby certify that (name of disabled person), ss #, is **totally and permanently** disabled as of Jan. 1, (year), **due to legal blindness**.
- It is my professional belief that the above-named condition renders (name of disabled person) totally and permanently disabled and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.
- Signature
- Address (print)
- Date
- Fl. Bd. of Optometry license #
- Issued on



What does this mean?

- You can help homesteaded **blind people** obtain a **real estate tax exemption** on their property.
- Many people, especially Optometrist's aren't aware of this law.



Permanent Impairment Benefits



440.15 Workers Compensation Law

- Once an injured employee has reached maximum medical improvement, impairment benefits become due and payable to the employee.



Disability determination

- Under Subsection 440.15(3) Optometrist's **may make a determination that an employee suffers some permanent impairment** after reaching maximum medical improvement.
- The standard is the AMA Snellen chart for eye injuries.



Disabled Parking Permits

- An individual who is certified as being **legally blind** is eligible to receive a **disabled parking permit** from the Fl. Dept. of Hwy. Safety and Motor Vehicles.



Blind Drivers cont:

- Subsection 320.0848(b) authorizes Fl. Optometrist's to **certify** to the Dept. that an individual is **legally blind** for purposes of **obtaining a disabled parking permit**.



Driver's License

- To obtain a driver's license in Florida an individual must pass an eyesight test.
- 322.12(3) Class E
- That test may be administered by a Fl. Optometrist.



Truck Drivers:

- 322.12(4) Commercial driver's license
- That test may be administered by a Fl. Optometrist.



Convenience Renewal

- An individual who is at least **80 years** of age and who seeks to **renew** his driver's license by using a convenience renewal, **must submit to a vision test** as a condition of renewal.



Convenience Renewal cont:

- 322.18(5)(a)2, provides that vision test may be administered by a Florida Optometrist.



Old drivers:

- The results of the test must be submitted on a form obtained from the Dept of Hwy. and Motor Vehicles and must be signed by the Optometrist.



Anasazi Cliff Dwellings

Mesa Verde National Park

2016, we passed another New Law

- SB 340 prohibits an insurer, a prepaid limited health service organization (PLHSO), or an (HMO) from requiring a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another insurer's, PLHSO's, or HMO's vision network, respectively.



More

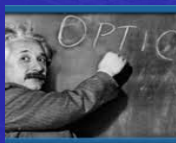


- The bill provides that this provision does not restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or labs



More New Law

- The bill also prohibits these plans from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical labs.



And Finally More

- The bill requires insurers, PLHSOs, and HMOs to update their online vision care network directory monthly to reflect currently participating providers in their respective network.



Volunteer and get CE



- Statute 381.00593 Public School Volunteer Health Program: **practitioners who participate** in the program and provide services, **without compensation**, in a **public school** for at least **80 hours** a year for each school year during the biennium **shall be eligible for waiver of the biennial license renewal fee and fulfillment of a max of 25% of the CE hours** required for renewal.
- Volunteer at a School, The Florida Board of Optometry will be posting this type of CE for you. Please mail your documentation to: FLORIDA BOARD OF OPTOMETRY 4052 BALD CYPRESS WAY BIN C-07 TALLAHASSEE, FL 32399-3257



Driving into Yosemite

Yosemite National Park

Making the law Exciting



What are the Primary laws that govern Florida Optometry?

- Chapter 456 – Health Professions and Occupations: General Provisions
- Chapter 463 – Optometry Practice Act
- Chapter 465.0276 – Dispensing Practitioner

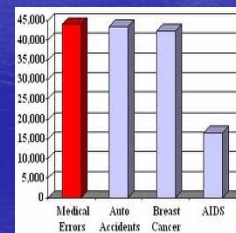
Chapter 456: Why is it important?

- This chapter regulates all Health Care Practitioners
- Who is required to take medical errors and HIV courses?



456.013 Medical Errors

- The boards, shall require the completion of a 2-hour course relating to prevention of **medical errors**...



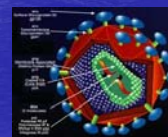
456.033 Requirement for instruction for certain licensees on HIV and AIDS

- The following requirements apply to each person licensed under ch 457; 458; 459; 460; 461; **chapter 463**; 464; 465; 466; 468; or 486:



456.033 HIV continued:

- Each person shall be required ... **to complete** no later than **upon first renewal** a continuing educational course, approved by the board,...



456.035 Address of record.--

- 1) Each licensee is solely responsible for notifying in writing the licensee's current mailing address and place of practice, .. A licensee's failure to notify of a change of address constitutes a violation ,



Address

- Electronic notification shall be allowed ; however, it shall be the responsibility of the licensee to ensure that the electronic notification was received



Are optometrist's defined as physicians?



456.056 Treatment of Medicare beneficiaries; refusal, emergencies, consulting physicians.--

- "Physician" means a physician licensed under ch 458, an osteopathic physician under ch 459, a chiropractic physician under ch 460, a podiatric physician under ch 461, or an optometrist licensed under chapter 463.



Who owns patient records?



456.057 Ownership and control of patient records...

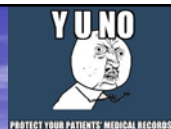
- the term "records owner" means any **health care practitioner who generates a medical record** after making a physical or mental exam of, or treating or dispensing drugs to, any person;
- any practitioner to whom records are transferred by a previous records owner;

Record owner!



- any practitioner's employer, including, but not limited to, **group practices and staff-model HMO**,
- provided the employment **contract** or agreement between the employer and the practitioner **designates the employer as the records owner**.

456.057 records cont.



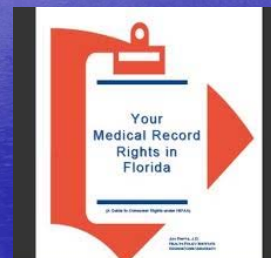
- the terms "records owner," "health care practitioner," and "health care practitioner's employer" **do not include any of the following** persons;
- furthermore, the following persons are not authorized to own medical records, but are authorized to maintain those documents required by the chapter under which they are licensed:

456.057 NOT record owners

- (a) Certified nursing assistants
- (b) Pharmacists and pharmacies .
- (c) Dental hygienists .
- (d) Nursing home administrators .
- (e) Respiratory therapists.
- (f) Athletic trainers .
- (h) Clinical laboratory personnel .
- (j) **Opticians and optical establishments licensed or permitted under part I of chapter 484.**



If a patient demands their original records do you have to give them to the patient?



456.057 records release

- Any health care practitioner who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person **shall**, upon request of such person or the person's legal representative, **furnish, in a timely manner**, without delays for legal review, **copies of all reports and records** .. including X rays and insurance information.



Can you charge a fee for providing records to a patient?



Records release cont.

- The **furnishing** of such report or copies **shall not be conditioned upon payment** of a fee for services rendered.

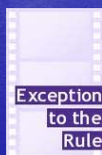
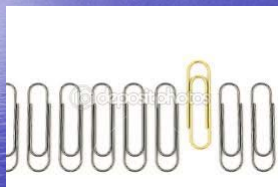


Records release:



- records may not** be furnished to, and the medical condition of a patient **may not be discussed with, any person other than**
 - the patient**
 - the patient's legal representative
 - or other health care providers involved in the care or treatment of the patient,**
 - except upon written authorization of the patient

Are there any exceptions?



Exceptions



- To any person, that has procured or furnished such exam or Tx with the patient's consent
- When compulsory physical exam is made, FI Rules of Civil Procedure, in which case copies of the **medical records shall be furnished to both the defendant and the plaintiff.**
- In any **civil or criminal action**, upon the issuance of a **subpoena**
- For **statistical and scientific research**, provided the information **protects the identity** of the patient
- The dept. may obtain patient records pursuant to a subpoena without written authorization if the department and the **probable cause panel** requests.

If you perform a procedure where the patient is harmed should you tell the patient?
(or what should you do when you screw up?)



456.0575 Duty to notify patients.

OOPS!

- Every licensed health care practitioner shall inform each patient, in person about adverse incidents that result in serious harm to the patient.
- Notification of outcomes of care that result in harm to the patient shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence

NO EVIDENCE

What needs to be included in every advertisement for free or discounted services?

-20%

BIG discounts

456.062 Advertisement by a health care practitioner of free or discounted services; required statement

- In any advertisement for a free, discounted fee, or reduced fee, exam, or Tx by a health care practitioner licensed under ch 458, 459, 463, 484, , the following statement shall appear in capital letters clearly distinguishable from the rest of the text:
- THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.

Can a new graduate practice under another doctors license while they are waiting for their board results?



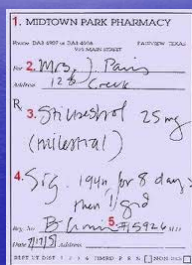
456.065 Unlicensed practice of a health care profession

- It is a **felony of the third degree**, to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession.

Note: new graduates!



What is your responsibility when writing a prescription?



456.42 Written prescriptions for medicinal drugs.

- A written prescription for a medicinal drug must be **legibly** printed or typed so as to be capable of being understood by the pharmacist...; must contain **the name of the practitioner, the name and strength of the drug, the quantity...**, and the **directions for use...**; must be dated; and must be signed ... on the day when



What about electronically generated prescriptions?

ePrescribing 101

Practitioner (A) → eRx → Pharmacist (Retail and Mail Order) (B)

Web or PDA → (A) → eRx → (B) → Pharmacist

Pharmacist → (B) → eRx → (C) → Patient Health plan

CONFIDENTIAL
 PATIENT No. 9999
 A. Patient: 123 A Bond Any town County P01234
 Issued on 06/06/2007
 allopurinol capsules for inhibition 10 100mg
 100mg one daily
 30 caps
 From 30 days
 salmetersol with fluticasone cfm free inhaler 25 micrograms (250micrograms)/actuation
 Inhaler 2 doses twice daily
 1120 dose (20-dose) (30) Prev: 30 days
 Other Current Medication:
 (1) Clostridium difficile (100mg) (100mg)
 (2) Salicylic acid (100mg) (100mg)
 (3) Salicylic acid (100mg) (100mg)
 (4) Salicylic acid (100mg) (100mg)
 (5) Salicylic acid (100mg) (100mg)
 (6) Salicylic acid (100mg) (100mg)
 (7) Salicylic acid (100mg) (100mg)
 (8) Salicylic acid (100mg) (100mg)
 (9) Salicylic acid (100mg) (100mg)
 (10) Salicylic acid (100mg) (100mg)
 DR: Medical Doctor
 The Any Town Burgary
 Any Town
 00000 000000
 Account Name Signature

prescriptions continued

- a prescription that is **electronically generated** and transmitted must contain the name of the practitioner, the name and strength of the drug, the quantity... prescribed in numerical format, and the directions for use... and must be dated and signed by the... practitioner only on the day issued, which **signature may be in an electronic format**



Chapter 465 PHARMACY

465.0276 Dispensing practitioner.—

So, can you sell drugs in your practice?



DRUG SALES
OR USE ON
THESE PREMISES
WILL LEAD TO
ARREST AND
PROSECUTION!

Yes you can!

You just have to follow a few simple rules...



(2) A practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind, whether direct or indirect, must:



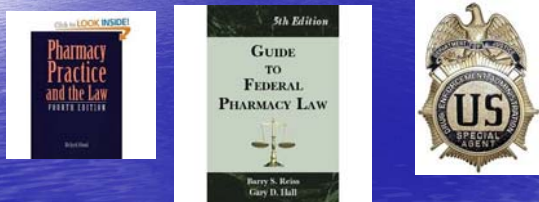
Register

- (a) Register with her or his licensing board as a dispensing practitioner and pay a fee not to exceed \$100 at the time of registration and upon each renewal of her or his license.



Comply

- (b) **Comply with** and be subject to **all laws and rules applicable to pharmacists and pharmacies**, including, but not limited to, this chapter and chapters 499 and 893 and all federal laws and regulations.



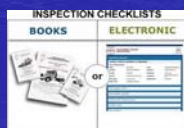
Advise

- (c) Before dispensing any drug, give the patient a written prescription and orally or in writing **advise the patient** that the prescription may be filled in the practitioner's office or at any pharmacy.



Inspection

- (3) The department **shall inspect** any facility where a practitioner dispenses medicinal drugs... in the same manner and with the same frequency as it inspects pharmacies for the purpose of determining whether the practitioner is in compliance with all statutes and rules



Guilty

- (4) The registration of any practitioner who has been found by her or his respective board to have dispensed medicinal drugs in violation of this chapter **shall be subject to suspension or revocation**.



So, how you solve this dilemma?



No Charge

- 5) A practitioner who confines her or his activities to the dispensing of complimentary packages of medicinal drugs to the practitioner's own patients..., without the payment of fee or remuneration of any kind, ..., and who herself or himself dispenses such drugs is not required to register



So if you give away free samples do you have any requirements?



Of course you do!

What are the requirements for giving away free samples in your practice?



Label

- The practitioner must dispense such drugs in the manufacturer's labeled package with the practitioner's name, patient's name, and date dispensed, or, if such drugs are not dispensed in the manufacturer's labeled package, they must be dispensed in a container which bears the following information:
 - (a) Practitioner's name;
 - (b) Patient's name;
 - (c) Date dispensed;
 - (d) Name & strength;
 - (e) Directions for use.



Highway? in Canyonlands
Canyonlands National Park

Everything we discussed previously applied to all physicians
Now we will start talking about Optometry.

Specifically Chapter 463:



Who can an optometrist discuss a patient's care with without written authorization?



Except upon written authorization of the patient ... the condition of the patient may not be discussed with any person other than the **patient** or his or her **legal representative** or **other health care providers** licensed under Ch 463, 458, or 459, who are **involved** in the diagnosis and treatment of that patient



Who is responsible for maintaining the confidentiality of your medical records?



You are!



It is the responsibility of a licensed practitioner to insure that his or her employees, as well as any personnel who are not his or her employees but who are performing assigned ministerial duties, tasks, and functions, do not violate the confidentiality of patient records.

Are you responsible for computerize data?

- In addition to federal HIPPA rules FL Statute 817.5681 governs the security breach of unencrypted "personal information" in optometrists computerized data systems.



What is "personal information"

- "personal information" means an individual's name or initials, in combination with any one or more of the following data elements when the data elements are not encrypted:
 - (a) Social security #.
 - (b) Driver's license # or FI Id Card #.
 - (c) Account #, credit or debit card #, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

What is a security breach?

- "breach" means unlawful and unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information...



What do you do if you believe data has been acquired by an unauthorized person?

- You must notify your patients in writing or electronically within 45 days.
- Failure can lead to fines of \$1000/day.
- Or \$500,000 fine if not reported in 180 days.
- If more than 1000 records are breached notice must also be given to all consumer reporting agencies.

Pensacola News Journal June, 2013

- **Optometry EHR Breached in Florida, 9,000 Notified**
- An unauthorized individual or company accessed and copied all or parts of the electronic health records system at Sight and Sun Eyeworks in Gulf Breeze, Fla.
- According to a notice from parent company Gulf Breeze Family Eyecare Inc. "Patients should closely monitor their credit card, bank and other financial statements for signs of fraud and identity theft."
- The Pensacola News Journal reports about 9,000 patients were affected. Clinical and demographic information, along with Social Security numbers, were among the compromised data.

Delivering Eyeglasses When the Optometrist is Out of the Office

- Can non-licensed support personnel deliver prescription eyeglasses to a patient when the optometrist is out of the office?
- And the answer is?



It Depends...



- ...on whether the non-licensed support personnel is **simply transferring physical possession of the eyeglasses** to the patient or whether the non-licensed support personnel **performs data gathering**, such as obtaining PD or seg height, as part of the delivery.

What is General Supervision?

- "General supervision" as defined in subsection 463.002 (7), Florida Statutes, **does not require the optometrist to be on the premises when the ministerial duty, task, or function is performed but does require the optometrist to be readily available.**



What are ministerial duties?

- Non-licensed supportive personnel, who need not be employees of the optometrist, **may perform ministerial duties**, tasks, and functions under the optometrist's general supervision. The Board of Optometry has described the types of ministerial duties, tasks, and functions which can be performed under general supervision as including the **delivery of eyeglasses, selection of frames, adjustment of frames, and instruction for the insertion, removal, and care of contact lenses.**



What is Direct Supervision?

- 463.002 (6), Fl. Statutes, defines direct supervision as **requiring the optometrist to be on the premises while all delegated procedures are performed** and to give final approval once the procedure has been performed.



Need to be on the premises for..

- Section 463.009 allows non-licensed **supportive personnel to perform data gathering**, preliminary testing, prescribed visual therapy, and related duties **under the optometrist's direct supervision**.



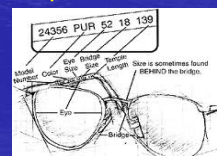
General Supervision Summary

- Non-licensed supportive personnel **may transfer** physical possession of the glasses to the patient when the optometrist is not on the premises
- The non-licensed supportive personnel **may also adjust frames** in the optometrist's absence.



Direct Supervision Summary

- Obtaining **PD measurements** or obtaining **seg ht.** measurements for bifocal or trifocal lenses **are data gathering** duties which are required by law **to be performed only under the direct supervision** of the optometrist.



Footnote:

- M.D.'s may use **General** Supervision for most of their activities.
- Licensed Opticians personnel must be under **Direct** Supervision at all times.

64B13-3.009 Advertising

- Who is responsible to make sure Optometric Advertising is not false or fraudulent ?



Advertising

- The licensed practitioner has the duty to review and proof all advertisements prior to publication, and is fully responsible for the content therein.



3.009 Affirmative Disclosure

- Are you allowed to practice under a trade name?



YES

-) A licensed practitioner may practice under .., trade names,.., so long as any dissemination of information, including signs,.. contains the **name under which the practitioner is licensed**... in which the practitioner practices and so long as the information **identifies the practitioner**... as **being engaged in the practice of optometry**

Examples (all ok)

- Irving Borish O.D.
- Dr. Irving Borish
Optometrist
- Irving Borish O.D.P.A.
- Dr. Irving Borish
Board Certified Optometric Physician

Example (not ok)

- Dr. Irving Borish O.D.
- This is not illegal it is just **bad** grammar!
- (One of my personal pet peeves!)



Trade names

Is it OK to name your practice
"Best" Optometry?



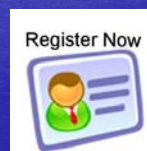
No

- ...may not adopt and publish or cause to be published any practice identification name, trade name, which is, contains, or is intended to serve as an **affirmation of the quality or competitive value** of the optometric services...



Trade names cont:

What is the requirement to practice under a trade name?



You must register trade names

- Any licensed practitioner who is practicing under a practice identification name, trade name **must register with the Board of Optometry** identifying the specific name as registered...



Is it legal to have your patients sign this form?

Patient Dilation Waiver

Dilating your patients with eye drops is a routine procedure, and a standard part of a comprehensive eye exam for new patients. Pupil dilation allows your doctor to see the internal parts of your eyes and examine them for eye diseases or abnormalities. Refusal to undergo dilation may prevent detection of diseases that could potentially lead to permanent vision loss. By signing this form you are indicating that you do not want your pupils dilated today. Be advised, you may return at your convenience to have this procedure performed on a different day, at no extra charge.

And the answer is:

- To be in compliance with 64B13-3.007(2)(f), certified optometrists **shall** perform a dilated fundus examination during the patient's initial presentation, and thereafter, whenever medically indicated. **If**, in the certified optometrist's sound professional judgment, **dilation is not performed** because of the patient's age, physical limitations, or conditions, the **reason(s) shall be noted** in the patient's medical record

Dilation Rule Summary:

- Shall** means you have to do something
- Do not ask the patient if they want to be dilated.
- Tell them you are going to dilate them,
- Then if they refuse, **Document** the reason.

What is your responsibility to your patients outside your regular office hours?



A licensed practitioner **shall have an established procedure appropriate for the provision of eye care to his/her patients in the event of an emergency outside of normal professional hours**, and when the licensed practitioner is not personally available

Can you have your answering machine send patients to the emergency room?



Since the licensed practitioner's continuing responsibility to the patient is of a personal professional nature, **no licensed practitioner shall primarily rely upon a hospital emergency room as a means of discharging this responsibility.**

What is your responsibility with your records when treating patients with other doctors?



Patient records shall clearly identify the optometrist who examined or treated the patient on each separate occasion.



How long do you need to keep your patient records?



A licensed practitioner **shall keep patient records for a period of at least five years** after the last entry



Statute of Limitations



- Some optometrists choose to retain patient records in excess of the required five (5) years period. Their motivation includes not wanting to discard any patient record prior to the expiration of the potential seven (7) **year statutes of limitation for malpractice actions** contained in section 95.11, Florida Statutes.

What do you need to do with your records if you leave or discontinue your practice?



Upon the discontinuance of his or her practice, the licensed practitioner shall either transfer all patient records which are less than five years old to an eye care practitioner licensed pursuant to Chapter 463, 458, or 459, where they may be obtained by patients, or he or she shall keep them in his or her possession for at least five years and make them available to be obtained by patients.



Saguaro Cactus
Saguaro National Park

What is the number one rules violation that optometrists are charged with?



Answer:

- Minimum Exam rule violation



64B13-3.007 Minimum Procedures for Comprehensive Eye Examination.

- (2) A comprehensive eye examination shall include the following minimum procedures, which shall be recorded on the patient's case record:
- (a) Patient's **history** (personal and family medical history, personal and family ocular history, and chief complaint);
- (b) **Visual acuity** (unaided and with present correction at initial presentation; thereafter, unaided or with present correction);
- (c) **External examination**;
- (d) **Pupillary examination**;



Minimum Exam Cont:

- (e) **Visual field testing** (confrontation or other);
- (f) **Internal examination** (recording, optic nerve health, blood vessel status, macula health, and any abnormalities);
- (g) **Biomicroscopy** (binocular or monocular);
- (h) **Tonometry**; (with time of measurement);
- (i) **Refraction** (with recorded visual acuity);
- (j) Extra ocular **muscle balance** assessment;
- (k) Other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the comprehensive eye examination;
- (l) **Diagnosis and treatment plan**.

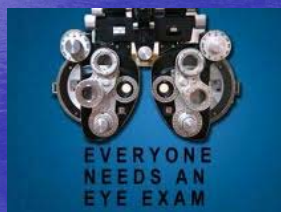
What do you need to do if you can't perform all the required minimum examination tests?



Just document the reason on the record!

- (3) **If** because of the patient's age or physical limitations, one or more of the **procedures** specified herein or any part thereof, **cannot be performed**, or if the procedures or any part thereof are to be performed by reason of **exemption from this rule, the reason or exemption shall be noted** on the patient's **case record**

How often are you required to perform a minimum exam?



Minimum Exam cont:

- 4), the minimum procedures shall be performed prior to providing optometric care during a patient's initial presentation, and thereafter at such appropriate intervals as shall be determined by the optometrist's sound professional judgment: provided,

Comprehensive Eye Exam

- however, that each optometric patient shall receive a comprehensive eye examination prior to the provision of further optometric care if the last comprehensive eye examination was performed more than two years before.

What are the exceptions?



Minimum Exam exceptions:

- (a) Emergencies;
- (b) Trauma;
- (c) Infectious disease;
- (d) Allergies;
- (e) Toxicities; or
- (f) Inflammations



Minimum Exam exceptions:

- above shall not be required in the following circumstances:
- (a) providing specific optometric services on a secondary or tertiary basis in patient **co-management** with one or more health care practitioners skilled in the dx and tx of diseases of the human eye

Minimum Exam exceptions:

- providing **consultative** optometric **services** on a limited basis at the request of health care practitioners licensed to Ch 458, 459, or 463



Minimum Exam exceptions:

- (c) When an optometrist performs public service **visual screenings** or visual screenings for governmental agencies.



When you are performing a visual screening what do you need to inform the patient of in writing?



Minimum Exam exceptions:

- 1. The **limitations** of the screening;
- 2. That the screening is **not representative of or a substitute for a comprehensive eye examination**; and
- 3. That the screening **will not result in a prescription** for visual correction.



Daily Wear Contact Lenses

- How long is a daily wear contact lens prescription good for?



Answer:

- 2 years
- This applies to FDA approved daily wear contact lenses only.
- 1-800-Contacts is filing complaints against OD's who are writing year on their daily wear cl prescriptions.



How Long is a spectacle Prescription good for?

- ?



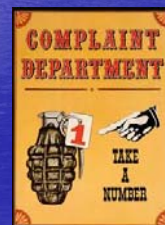
Spectacle Prescriptions!

- A spectacle prescription shall be considered valid for a period of five (5) years,



Joshua Tree
Joshua Tree National Park

What is the number one reason complaints about optometrists are filed with the board?



Economic Disputes



- Most complaints are filed by unhappy patients mad that the doctor did not refund money for a variety of alleged grievances.
- Patients didn't like Rx, glasses, cl's
- Crazy



Solution

- Always refund patients
- It is much cheaper and less stressful than having a complaint filed.



What don't you do if a complaint is filed?

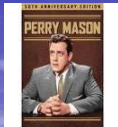


Don'ts

- Don't call a board member.
- Don't talk to the complainant.
- DO NOT alter your records!
- You do not have to respond to the complaint without counsel.



Do's



- Seriously consider hiring an attorney familiar with Florida administrative law.
- If you decide to defend yourself:
- Carefully review your record and prepare a typed narrative response explaining your examination, diagnosis and treatment plan.



Consumer Services Unit



- The Consumer Services Unit (CSU) is the central intake for all complaints
- CSU includes investigators and government analysts assigned to specific professions. Staff reviews each complaint for possible violations of laws and rules.

CSU cont:

- All complaints are assigned a complaint number
- An acknowledgement of receipt of a complaint is sent to the complainant
- Staff reviews each complaint for possible violations of laws and rules.



CSU cont:

- Section 456.073(1), F.S., specifically provides that "...A complaint is **legally sufficient** if it contains ultimate facts that show that a violation ...has occurred."
- After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred the complaint is legally sufficient for investigation



Examples of complaints that may be investigated

- Practicing below minimum standards or negligence
- Impairment/medical condition
- Advertising violation
- Sexual misconduct with a patient
- Misfilled/mislabeled prescription
- Failure to release patient records

Complaints
Investigator

Complaints that may not be investigated

- Fee disputes (broken or missed appointments)
- Billing disputes
- Personality conflicts



Anonymous Complaints

- CSU may investigate an anonymous complaint provided it is legally sufficient



Complaints cont:

- It is important to respond in a timely manner.
- If an investigator calls or comes in to talk to you remember even though he may be friendly he is a detective trying to discover evidence against you.



Investigative Services Unit

- Obtaining medical records, documentation and evidence related to the complaint
- Locating and interviewing the complainant, the patient, the subject and any witnesses
- Drafting and serving subpoenas for necessary information



ISU cont:

- After the information is collected and interviews are conducted, the investigator will write an investigative report.
- The report is forwarded to the department's attorneys for legal review.



Prosecution Services Unit

- **Attorneys review the investigative report to recommend a course of action which may include:**
- Emergency Order
- Expert Review
- Closing Order
- **Administrative Complaint**



Cont:

- If it is clear no violation has occurred the case is dismissed.



- If not...

Complaint process:

- If the case has merit it is next sent to Board of Optometry Probable Cause Panel consisting of 2 or 3 board members and the prosecuting attorney and board attorney.



Probable cause:

- The case is reviewed for legal merit and if there is clear and convincing evidence the case is voted to be sent to the board
- Probable cause is "confidential"



Board Options

- If sent for prosecution the optometrist has Four options.



Option One



Hearings Involving Disputed Issues of Material Fact –

The subject disputes the facts in the Complaint and elects to have a hearing before the Division of Administrative Hearings (DOAH). If this occurs, all parties may be asked to testify.

Option Two

Consent/Stipulation Agreement –

The subject enters into an agreement to be presented before the board or . Terms of this agreement may impose penalties negotiated



Option Three



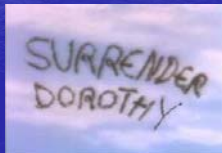
Hearings Not Involving Disputed Issues of Material Fact –

- The subject does not dispute the facts in the Complaint. The subject elects to be heard before the board . At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the action

Option Four

Voluntary Relinquishment of License

– The subject of the Administrative Complaint elects to surrender the license and to cease practice.



Final Action

- - Cases (as well as cases where the subject has failed to respond) are presented before the board for final action. The subject may be required to appear before the board. The complainant is notified of the date and location where the case will be heard and may attend.

Punishment



- If found guilty the board determines the punishment based on the type and extent of the violation.
- This may range from a letter of guidance to fines, increased CE courses, probation, suspension or revocation of license.



Questions?

