



A number of legal changes in the past two months are affecting the ways physicians practice medicine in Florida. A recent appeals court decision on covenants not to compete in physician employment agreements is changing the playing field once a physician leaves a practice. Also, Governor Bush signed into law a number of new requirements for physicians. Physicians must pay attention to new rules, now, governing the supervision of nurse practitioners and physician assistants at satellite locations. When placing ads, providers must make sure to review the new rules on disclosure of licensure status. Also, physicians must make sure non-physicians are properly identifying themselves to patients in certain settings. It may be time for a trip to Office Depot to get new name tags for all satellite clinic employees. These changes and other issues are the subject of this July 2006 newsletter.

CHANGES IN THE WORKS

Court: Can't stop former employee from treating new patients in restricted geographic area, despite non-compete agreement.

Physicians across Florida are reviewing their non-compete agreements after a recent decision by an appeals court. Published May 10, 2006, the fifth district court of appeals held that prospective patients referred by other physicians are not "legitimate business interests" under Section 542.335 of the Florida Statutes. The case involved Rambabu Tummala, M.D., a Lake County physician whose employment agreement with Florida Hematology & Oncology, P.A. was terminated without cause. His employment agreement restricted him from engaging in the practice of medicine for 2 years within 15 miles of any FHO office. Tummala set up shop within 15 miles of one of the offices, but took great efforts to avoid seeing any FHO patient. For example, he did not solicit them, he placed an ad in the paper saying he would not accept FHO patients and even asked on his intake form if patients had ever been treated at FHO. If they had, he refused to treat them.

At issue, though, were referrals of new patients from other physicians. FHO argued that Tummala could see absolutely no patients from an office in the prohibited, 15-mile area. The court disagreed, saying that the Florida Statutes require that the employer has a legitimate business interest when enforcing a restrictive covenant. The court found that as the patients at issue had never been treated by FHO, FHO lacked a legitimate business interest in them. The effect of this case is to undermine the geographic restrictions in current covenants as to new patients only.

[Email us](#) if you would like your restrictive covenant reviewed in light of the decision.

New Rules for P.A.s and ARNPs at Satellite Offices

In an effort proponents said would increase patient safety at satellite clinics where physicians are not always present, Governor Jeb Bush signed the Safe Supervision bill into law. Effective July 1, 2006, the details are as follows: A physician can supervise no more than five offices for primary care, three for specialty care and three (eventually lowering to two) offices offering primarily dermatologic care (also referred to as aesthetic clinics or med-spas). Additionally, at the primarily dermatologic satellite clinics, the physician has to be board eligible or board certified in dermatology or plastic surgery. The law also includes restrictions

on how far satellite locations can be from primary practice locations for the predominately-aesthetic clinics. Many are viewing the new law as a med-spa law, but portions apply to all satellite clinics where PAs and ARNPs practice. Satellite offices must now post the hours that the physicians are present at the clinic. It appears that at all clinics' front desk staff must, when scheduling patients referred by other practitioners, tell patients whether a PA or ARNP will see the patient. Further, patients must be given a disclosure form indicating the patient's choice of practitioner and the patient may choose the level of practitioner he or she wants to see. Finally, there is a requirement that the supervising physician reviews the medical record and sends a report to the referring physician within 10 days.

Any physician office that employs ARNPs or PAs should review their current practices in light of this new law. Even before this bill, issues of the relationship between physicians and physician assistants or nurse practitioners existed, such as maintaining proper protocols, reporting protocols to the State, review of P.A.s' medical records entries and how to properly bill "incident to" a physician's services.

[Email us](#) to request consultation about supervision of non-physician practitioners in light of this new law.

Identify Yourself

Also as of July 1, 2006, all Florida practitioners -- MDs, DOs, ARNPs, PAs and others -- must identify to their office or clinic patients their licensure status, either orally, in writing or by way of name tags. It is now grounds for professional board discipline to fail to identify through written notice (including use of a name tag) or orally, the type of license the practitioner holds. It does not apply when treating patients in mental health facilities, hospitals or nursing homes. It may be time for a trip to Office Depot to buy name tags for all staff. Another creative solution may be to display pictures with staffer's names below them in the lobby or on a bulletin board that patients would see.

New Advertising Rules

When placing ads, all providers must be specific as to their licensure status, according to a new Florida law effective July 1. "Dr. Bob Smith" is no longer acceptable. It must be "Bob Smith, M.D." or "Bob Smith, Chiropractor" or "Bob Smith, Optometrist." The legislation amended the section in the statutes addressing discipline of licensed medical professionals.

Relationships with Lincare under Investigation

The federal Office of Inspector General for the Health and Human Services Department is investigating physicians nationwide who received kickbacks for referrals of patients to Lincare Holdings-owned respiratory therapy services, Florida Medical Business reports. Lincare is headquartered in Clearwater. The OIG just settled with Lincare for \$12 million for its gifts of fishing trips, sports tickets, golf and other gifts to physicians, allegedly in return for referrals of patients. The OIG also settled with a physician group in Boca Raton for the kickbacks it received from Lincare. FMB reports that a government attorney says more investigations of physicians who contracted with Lincare are underway.

HIPPA Investigation Numbers Reported

The Washington Post reported on June 5, 2006 that in the three years since the HIPAA Privacy Standards have been in effect, 19,420 claims of HIPAA violations have been filed with the Office of Civil Rights in the Department of Health and Human Services. About 5,000 cases remain open. At least 309 possible criminal violations have been reported to the Justice Department, the Post reported. To date, no civil fines have been imposed and two criminal cases have been prosecuted.

Continued Regulation of Office Surgery

The Florida Department of Health seems to be continuing its scrutiny of office surgery. In the June 23, 2006 Florida Administrative Weekly, it announced a proposed rule to require surgeons to add to their logs of Level II and Level III surgeries 1) the time of arrival in the operating suite, 2) the name of the physician

who provided medical clearances, 3) the surgeon's name, 4) diagnosis, 5) CPT codes, 6) patient ASA classification, 7) the level of surgery and 8) the anesthesia provider.

BUSINESS TIP OF THE DAY: E-Consults

A number of payors are now reimbursing physicians for consultations with patients via electronic modalities. Blue Cross Blue Shield of Florida started a system years ago and it is reported that Aetna implemented a program recently. This can allow a physician to bill for consultations with patients after hours, which can increase revenue. Contact your provider representative to learn more about participation, but be aware of the risks of electronic communications. Avoid expansion of e-visits outside of the payors' parameters. Also be aware of issues of crossing state lines. For example, the Florida Board of Psychology recently issued a Declaratory Statement that the psychological treatment of patients who are physically located in Ohio by telecommunications, including telephone sessions, e-mails and video conferencing by a Ohio-licensed psychologist physically located in Florida, constitutes the practice of psychology in Florida requiring Florida licensure.

COMPLIANCE TIP OF THE DAY: Diversion

Diversion and abuse of controlled substances within the health care industry continues to be an issue. If you believe an employee or other person is calling in prescriptions using your DEA number or has stolen prescription pads, notify local law enforcement, the DEA field office and affected pharmacies immediately. The DEA field office telephone number is located on the DEA's website. Keep documentation of who you reported the problem to and what actions you and others took.

SPOTLIGHT ON SERVICES: Compliance Plans

One of the best forms of prevention of health care billing problems is the development of a compliance plan tailored to your office. The Firm is currently scheduling clients for billing audits and compliance plan implementation for the Fall of 2006. [Email us](#) for information about our compliance plan, billing edits and education services.

*The content of this newsletter is not legal advice and should not be relied on as legal advice.
Consult your attorney for advice on these and other legal matters.*

The Bittinger Law Firm
13500 Sutton Park Drive South, Suite 201, Jacksonville, FL 32224
Tel: 904-821-9000 | Fax: 904-821-9400
www.bittingerlaw.com