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PROTECTING YOUR PRACTICE

It is fundamental that patients should have the freedom to choose what type of treatment is right for them, but this is not always the case. Anti-aging practitioners, diagnostic labs and compounding facilities are often targeted and pursued by the FDA, state medical boards, and other regulatory agencies, sometimes for nothing more than offering certain products or treatments, such as human growth hormone, hydrogen peroxide therapy, or even vitamin and nutrient supplementation. Some medical boards have tried, and in some instances succeeded, in disciplining practitioners solely on the basis that they strive to strengthen a patient's immune system or focus on other healthful ways to live. Although the tides are slowly turning in this regard, if you are an anti-aging doctor, or are considering becoming one, there are things you should do, and things you should know, to protect yourself and your practice. It is a reality that must be dealt with: anti-aging practitioners are scrutinized and judged differently than "traditional" practitioners. Accordingly, anti-aging practitioners must take extra measures to protect themselves and their practices. We provide a summary herein of a few of the methods we suggest practitioners implement and periodically review and update.

CREATE A BULLET-PROOF RECORD

Your first line of defense, and arguably the most important one, is to learn how to create what we call a "bullet-proof" medical record. Of course, a completely bullet-proof record is not realistic, but creating a more than adequate record should always be on your mind as you treat your patients and document your records. The goal, in short, is to prepare the treatment record accurately, *and* defensively. For example, include in the chart every indication from the patient of better health as a result of your treatment. Keep accurate, complete, good records and ensure that your staff is trained to do so, as well. Have a written emergency protocol, train your staff on how to handle medical emergencies, and keep records of the training. If possible, obtain and review the patient's records from past health care providers prior to beginning treatment. If you retain one thing from this section, it should be document, document, document!

INFORMED CONSENTS

ALWAYS have patients sign well written informed consents and have one for each specific treatment that you offer that is outside of traditional medical practice. Have the form signed prior to initiation of the procedure or treatment, and indicate on the form that individual procedures are not always effective for everyone. Also, avoid language in the informed consents (and everywhere else in your practice) that might incite an unreasonable expectation of results on

the part of the patient. State law may require certain language in consent forms, and local factors and practice may affect the content of your consent forms, so consider having the forms you use reviewed periodically. Change your consent forms as necessary to stay current, medically and legally. Your patients should sign new consent forms periodically, if the forms change, if the patient is undergoing a new therapy, if the patient has not been seen in a while, or if there is continuing treatment over an extended period of time. Always give the patient a copy of the form and keep the consent(s) in the patient's file, as well. Complete and signed informed consents are a big part of creating a bullet-proof record, as described above.

IN-OFFICE PROTOCOL

It is best to have as much office procedure, medical and otherwise, in writing as is reasonably possible. Train your staff well and know what is going on in your office, as you may be seen as responsible, at least to some degree, for the things that your staff does or does not do. Devise and put in writing procedures for dealing with emergencies and with disgruntled patients, and make sure your staff is aware of how you want such situations handled. Collect and retain studies, articles and other materials that support the treatments that you offer, and update your knowledge, and the knowledge of your staff, regularly. Provide pro *and* con articles to patients relating to the treatments they will receive. Communicate with patients, and, when possible and as appropriate, to family members and other care providers, and promptly respond to patient requests for information and records. It is unhappy patients who have been ignored or mistreated (or their families) who complain to regulatory boards. Encourage your staff to attend educational and continuing education courses and to maintain various certifications, as a well-trained, knowledgeable and courteous staff is a great line of defense from many perspectives.

WHEN SOMEONE SHOWS UP AT YOUR DOOR...

At some point, someone will be unhappy with something that you did or did not do. If someone from the state medical board, the FDA or the DEA shows up at your door, suppress your inclination (and their recommendation) that you immediately comply with their requests to review your records, interview your staff, tour your facility, or whatever it is they want to do. Be pleasant; tell them you will cooperate but that your lawyer has directed you to contact him or her prior to taking any action. Unless you are under an order requiring you to accept random drop-ins, and that is rare, you can respectfully decline to cooperate, and direct them to your lawyer. This usually includes a subpoena or request for records, but an exception to this rule is the existence of a valid search warrant. Be prepared and have your lawyer's phone number readily accessible to your staff.

Many of our clients have unwittingly tilted their cases in the state's favor at an initial phase of their case, due to the inclination to oblige. Everyone is taught to cooperate with authority, and we advocate cooperation as well, but your cooperation does not have to be on someone else's time table. When you hear from an investigator or someone else from a regulatory agency, *call your attorney*. You may think it will be cost effective for you to handle the matter yourself, but in most cases, you will be far better served to have an experienced attorney to protect you and try to resolve the issue as soon as possible. Also remember to review your records for accuracy prior to turning over a copy, and to keep a copy of *everything* you give to anyone.

There are many other issues to be addressed, but we hope this short summary has provided you with some important, useful information that you can begin implementing in your practice.

Augustine, Kern and Levens, Ltd. is a law firm located in Chicago, Illinois, with affiliated offices in New Jersey and New York, that concentrates in professional license related issues and general health law. The ideology of the firm centers on the premise that competent adults should be able to choose the health care that they receive, and pursuant to that premise, AKL represents doctors, including alternative care practitioners, all over the country in licensing matters, often involving medical and other health-related boards. Mr. Al Augustine is the Senior Partner at AKL and can be contacted at aa@akllaw.com. Ms. Lisa Fosler Kelly is the Senior Associate and can be contacted at lfkelly@akllaw.com.