



# Ten Ways to Have Your Podiatry License Put in Jeopardy

Avoid these deadly mistakes.

BY LAWRENCE F. KOBAK, DPM, JD

Paul Simon said there are 50 ways to leave your lover. There are over 40 ways to have your professional license put in jeopardy. For starters, each individual state grants you your license to practice podiatry and each state has jurisdiction to limit or remove that license. Each state has its own Board of Podiatry. In some states, that Board is part of the Medical Board.

Investigations in most states can start from various sources. The most common are a dissatisfied patient or a disgruntled former employee. These former employees often think they know more than they do. However, they know just enough to potentially give you big headaches. That is why “disgruntled” and “former employee” are words you do not want to see in the same sentence.

Often, a complaint is due to an insurance company unhappy over your billing. Sometimes, it is from a plaintiff’s attorney trying to get you disciplined to aid in their malpractice suit against you. It costs them nothing! Sometimes one of your “colleagues” decides that filing a complaint may reduce the competition. I have seen it happen. The key to remember in all these scenarios: the reason the person has in complaining to the Podiatry Board is usually irrelevant; you must defend yourself based upon the veracity and accuracy of what they are investigating. Their

intent is relevant insofar as their credibility is at stake to prove a case against you.

Let’s look at 10 scenarios concerning potential professional license discipline:

## 1. Driving While Intoxicated

Even though the police pulled you over while you were not treating patients, if you plead to even a

would be similar for illicit drug use and other crimes.

## 2. Inappropriate Relationship with a Patient

Do not tell dirty jokes with your patients. Do not say anything to them that is remotely suggestive. If the patient is wearing pantyhose to the office, leave the room when they are removing their hosiery. If you know

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misdemeanor, that will be reported to the National Practitioner Data Bank, also known as your permanent professional report card. If you have either been found guilty by a jury or admitted your guilt in a plea bargain, you cannot argue your innocence to the Board of Podiatry; it is a done deal. At best, you can demonstrate mitigating factors. These would include your stellar community service and charity work. Perhaps you have subsequently enrolled in AA or taken some kind of course concerning drinking and driving. You can still be disciplined even though not one patient of yours was harmed; you broke the law. The scenario

that a patient does not usually wear underwear and will have her feet elevated on an examining chair, cover her legs with a blanket of some kind. You cannot go wrong with having a chaperone in the room. Note it in your chart. If a patient attempts to be inappropriate with you, note it in your chart. Explain to the patient that this is a doctor’s office and, as such, you must keep it professional. Do not date your patients! Many states do not allow relationships with active patients. In defending yourself against inappropriate behavior with a patient, your credibility is everything. Unlocked treatment room

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doors, access to medical assistants, chaperones, all go to enhance your believability. Unfortunately, there is a small minority of practitioners that continue to be inappropriate. They will pay a steep price in today's "me too" climate.

### 3. Billing Fraud

We have all heard the stories about a podiatrist charging for bilateral toenail debridement when the patient is a leg amputee. Once may be a clerical error. However, if you performed bilateral bunionectomies on the same day, and you bill them on different dates so that you do not get paid 50% for the second bunionectomy, that is fraud. With digital x-rays and EMR, that is not so hard to prove. It is stupid. Do not do it. Do not even think of doing it. Not only can you lose your license, you can wind up in jail. Remember, you can also wind up in jail over scenarios 1 and 2.

### 4. Practice of Podiatry without a License

You cannot allow unlicensed podiatry students to treat anyone in your office. You cannot allow med-

ical assistants to perform podiatric treatment in your office; that would include debridement of keratoses and toenails. Remember the disgruntled former employee? Enough said.

it! Practicing out of scope is criminal battery. The one time that your treatment causes a problem will be the time that you get caught.

### 6. Fraudulent Prescriptions and Deductible "Help"

Have you ever written a prescription in your patient's spouse's name

because your patient is not insured? Ever thought of "helping" a patient meet their deductible? Resist this temptation. This very nice and appreciative patient will be the first to turn you in when (s)he is threatened with losing insurance coverage. When you do it, the patient might even tell others that "the doctor is working with me." Watch how fast that changes when it is their backside or yours!

His "sources" for his analgesics had dried up. Fortunately, today, physicians can treat terminal cancer pain effectively without a stigma. However, it would be quite unusual for a podiatrist to be prescribing opioids at very high levels for long periods of time. Do not get the reputation of being the "candy man"

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### 7. Opioids

Unless you are unconscious, you are aware that anybody that can prescribe opioids is under extra scrutiny. When I was in my first year of podiatric practice, a rather

prominent podiatrist tried to get me to write prescriptions for him for opioids. Even though it was 1976, I knew it was wrong. He was not my patient. He was a big shot at the local hospital and threatened to have patients sue me if I did not cave into his demands. I decided it was better to be sued (never happened) than be blackmailed by a drug abuser. For all I knew, he was selling the drugs on the street. We cannot cross these lines. I later found out that he was dying from cancer and was in tremendous pain.

for drug abusers in need. That will become a quick route to losing your license.

### 8. Prescribing Inappropriate Medicine

A podiatrist is an integral part of the medical team. S/he prescribes medicine daily for treating conditions of the foot and ankle. It would be foolhardy not to consider that these medications affect the rest of the body. People have allergies; steroids can elevate the blood glucose, especially in a diabetic. Take a careful history. Ask questions. Have a good relationship with your patients' primary healthcare providers. When in doubt, obtain a consult. Practicing substandard medicine can certainly impact on your license. You will be asked to defend yourself based upon if you are practicing good medicine.

### 9. Disruptive Podiatrist

These days, many practitioners are in group practices, clinics, and hospitals. The days when healthcare providers could rant and rave at others are over. Nurses will not hesitate to report you. Chronic complainers will soon find enemies on the hospital board coming after them. Disruptive conduct is actionable in all states. If you make enemies of various department heads at the hospital, they will conduct peer reviews on as many cases as it takes to impact on your hospital privileges. That in turn will be reported to your state board. The best piece of advice is to learn to play well in the sand box with others or get out

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### 5. Practicing Out of Scope

We have all been tempted to treat verrucae on the fingers at the same time as we are treating them on the feet. How about removing sutures on someone's arm? An injection into the knee? If this is out of scope in your state, do not do

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of the sandbox. Anger management therapy is often mandated for such people. It is nobody's idea of a good

block. He desegregated his office as he began to lose his African-American patients to the competition. Green became the most important color. However, one must be aware

There you have it. The good news is that all ten of these potential licensure issues are avoidable if the correct preventative steps are taken. Please, take them. If nothing else, think of the legal fees you will save. **PM**

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time. More than one career has been destroyed over this issue.

## **10. Racism and Prejudice in the Office**

As time has gone on, there seems to be a lot less of blatant prejudice in the podiatrist's office. I remember one podiatrist from west Texas who would brag about his segregated treatment rooms. An African-American podiatrist opened down the

that accusations of racism and prejudice from fired employees are out there. Keeping a complete and accurate personnel file on every employee is your best defense against any baseless accusation. This is one area where the complainer's intent can influence the outcome. A former employee's revenge could affect his or her credibility. Your keeping complete and up-to-date personnel files will enhance your credibility.



**Dr. Kobak** is Senior Counsel in Frier Levitt's Healthcare Department in the Uniondale, New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Health Care Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.