

**Creative Ways to  
Maximize  
Professional Efforts  
Most Effectively and  
Avoid Practice Pitfalls**

# Disclosures:

No relevant disclosures.

No irrelevant disclosures.

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# Other thoughts...

- My goal is to analyze the business of dermatology efficiently so as to maximize effort
- At least some (if not all) of the action items I'll discuss today are applicable to your own practice
- Mantra: Money  $\neq$  Success. Freedom = Success!
- Sincere thanks to the AOCD for having a meeting in California!

# Relevant References

- 1 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1237745/pdf/westjmed00264-0092.pdf>
- 2 <http://scholarship.law.edu/cgi/viewcontent.cgi?article=1529&context=jchlp>
- 3 [Torres A, Desai T, Desai A, Kirby W. Lasers in Dermatology and Medicine. \*Medicolega Issues \(Documentation/Informed Consent\)\*. Springer. Chapter 31. Pgs: 382-386. Springer. October 28<sup>th</sup>, 2011: ISBN: 978-0857292803](#)
- 4 [Torres A, Desai T, Desai A, Kirby W. Lasers in Dermatology and Medicine. \*Ethica Issues\*. Chapter 30. Pgs: 379-382. Springer. October 28<sup>th</sup>, 2011: ISBN: 978-0857292803](#)
- 5 <http://www.ombc.ca.gov/>
- 6 [http://www.mbc.ca.gov/Consumers/Complaints/Complaints\\_FAQ/Practices\\_and\\_Protocols\\_FAQ.aspx](http://www.mbc.ca.gov/Consumers/Complaints/Complaints_FAQ/Practices_and_Protocols_FAQ.aspx)
- 7 <http://blogs.harvard.edu/billofhealth/2013/08/29/the-incentives-to-arbitrate-medical-malpractice-disputes/>

# This lecture is not...

- A risk management lecture
- All inclusive
- An economic/business discussion
- Applicable to all state rules/regs
- A substitute for legal advice

# This lecture is...

- Encouragement to use non-traditional ways to improve your (not practice but) life...
- A means by which to open the audience's minds to alternative methods of navigating the current medicolegal environment
- A teaching mechanism for insider tips from the speaker who has spent a decade working in the most litigious city in the most litigious state with the most challenging patient population in the universe

# Most Importantly...

- This lecture is intended to give you ten real, actual, inexpensive, tangible action items to strongly consider incorporating into your own practice
- Not only might they prevent an unwanted interaction with a patient but they may likely increase patient satisfaction, employee retention and you might be pleasantly surprised to find that they are emotionally rewarding
- While you'll experience many academic lectures over the next few days, it is my contention that this one in particular can offer a positive impact on your practice



# And...

- You don't need to take notes
- The material is dense and will be peppered with captivating personal stories and enchanting anecdotes
- I'll emphasize anything important
- **There will be a one page recap at the end highlighting all ten action items!!!**
- I'll leave time for Q and A as well
- Do NOT call me next week!

# Offense Vs. Defense

- Practitioners are often focused on the maximization of patient volume, management of patient schedule, reimbursement and collections.
- The leaves less time (or the outright neglect) of compliance with rules/regulations, and medicolegal considerations.
- The point?
- Offense makes money and defense protects the practice. And a good practice has both!

# What to do?

- Many ways to improve “offense” (which means just increase revenue): Hire practice manager, marketing, advertising, expanding hours, hiring allied health care professions, see more patients, work faster, work longer hours, accept more insurance plans, etc.
- But how do you best manage the “defense”?
- Better put: “Winterize your beach house”

# Winterize Your Beach House



# But Why?

- Why does it matter if I am familiar with the state rules and regulations? My competitors aren't.
- Lawsuits are scary... but the State Medical Boards are like Mike Tyson on Redbull and Roofies!
- “If you aren't *at* the table then you *are on* the table”

# State Rules and Regulations

- Quagmire
- Overregulated Industry
- Conflicting rules and regulations
- Lack of compliance by competitors
- Absence of uniformity in rules/regs enforcement
- Dearth of transparency in the review process

# Hire Health Care Attorney to Review Your Practice

- Paid by the hour. Thus, one could argue that they are incentivized to work slowly and inefficiently
- Often bill to obtain information that you can easily obtain by yourself
- Emotionally taxing for you: Fear based practices lead unnecessary and excess work
- But some are excellent and can help ensure that your “defense” is strong

# What to Do About Rules/Regs?

- Simply go to your state medical board website to begin:
  - I. Subscribe to the monthly newsletter. They often make useful announcements
  - II. Go to the FAQ section of the website.
  - III. Review the posted (monthly or quarterly) newsletters to see why others ran into issues.
  - IV. Apply to become an expert reviewer...



# Expert Reviewer

- The Medical Board will contact you to review cases
- You'll be financially compensated for your time and effort
- You are protected from lawsuits related to the case
- In some states you remain anonymous
- They often provide training as to how to be an expert reviewer
- You get to participate in the review process and enforcement of rules/regs = best way to truly understand how to keep your practice in compliance

# Quarterly Medical Board Meetings

- Attend in-person
- Most have teleconferences where you can listen in remotely
- You can monitor and assembly bills or senate bills coming down the pike so you can be prepared
- You'll build professional relationships with lobbyists and influence rules regs

# LAWSUITS



# Discussion of Lawsuits

- Expensive to defend
- Time consuming
- May coincide with complaint (and subsequent investigation) to the medical board
- Your insurance company may force you to settle
- Emotionally taxing
- Listed as a malpractitioner in the National Practitioner Data Bank (NPDB) pursuant to the Healthcare Quality Improvement Act of 1986 (HCQIA).

# Medical Malpractice Insurance

## ■ DUH

- You obviously need med-mal insurance
- Your insurance broker is not your friend
- They will try to sell you more insurance than you need or could ever use
- But annual med-mal review is a good idea; you might be performing procedures that your policy doesn't even cover

# Medical Malpractice Claims

<b>Cause of Action</b>	<b>No. (%) of 174 Cases</b>
Lack of informed consent	53 (30.5)
Fraud	15 (8.6)
Loss of consortium	13 (7.5)
Assault/battery	9 (5.2)
Strict products liability	9 (5.2)
Breach of contract	8 (4.6)
Infliction of emotional distress	8 (4.6)
Negligent misrepresentation	7 (4.0)
Gross negligence	5 (2.9)
Recklessness	5 (2.9)
Deceptive trade practices	5 (2.9)
Negligence per se	4 (2.3)
Other	16 (9.2)

# Informed Consent

- Informal:
- Often an informed consent comes informally in the course of discussion with a patient during a routine office visit or similar situation.
  
- Formal:
- Informed consent can also be given formally, by having a patient sign a document that states that the health care provider has fully discussed a treatment or procedure and that the patient fully acknowledges and agrees to the risks.

# What Happens if You Perform a Treatment Without an Informed Consent?

- You could be charged with battery or fraud.
- Battery is defined as an unlawful act of applying force to the person of another without consent.
- You could be accused of negligence in a medical malpractice lawsuit.



# Imperative Parts of a Solid Informed Consent

- Layman's terms
- Offer alternatives to the treatment
- Alternatives included no treatment at all
- Side effects of treatment
- Chances of developing side effects
- Section for patient to document that they understand the informed consent
- Acknowledgement that they aren't under the influence or were coerced into signing
- Acknowledgement that all questions were answered.
- Acknowledgement that patient requests treatment

# Arbitration Agreement

- Check with a health attorney in your respective state
- If it is allowed in your state then consider incorporating an arbitration agreement
- An arbitration doesn't take rights away from patients – it just solves disputes much more inexpensively and quickly
- Your fate isn't in the hands of a jury
- Arbitration agreements many dissuade frivolous lawsuits

# Obtain Proper Training

- Reps aren't your friends nor are they qualified to teach you how to use a product or a device
- Your training must be documented and quantified
- Your training needs to meet or exceed the community standards
- Consider seeking out an accredited training facility that offers CME to quantify training



**FIND MORE  
FREE TIME**

# Purge Problem Patients

- Ten percent of your patients cause 90 percent of your problems. And that takes up a lot of time!
- It is very conceivable to think that those problems patients take a big emotional toll on your employees and you.
- Just like any toxic relationship, you can't change them.
- Make a list of your problem patients and legally dismiss them.
- Dismissal must meet specific state requirements

# PATIENT DISMISSAL LETTER

- Must provide letter to patient (USPS letter, certified letter, fax, email)
- Must provide emergency care for 14 days
- Must provide them information as to where they can also receive care
- Provide information on how to obtain medical records

# Providing Medical Records

- Patients may have a copy (not original)
- You have 14 days to provide records
- You can (and should!) charge for the records
- You should always mail the records to the patient

# Hire an NP or a PA

- Add some diversity to your practice
- Allows you to connect with patients you have little in common with
- It's the future
- Can be a great income source
- Allows you to concentrate on more important things in life
- Dermatology is the holy grail of medicine because of its relationship with NPs or PAs!



# Preventing Burnout



# Refund Release Form

- Financial arguments with patients are stressful.
- Consider giving refunds anytime a patient complains.
- When you do give a refund, require that the patient sign a Refund Release form.
- The Refund Release form requires them to agree to your terms (no disparagement, no complaint to the medical board, no legal action, etc.)
- When the patient cashes the refund check...

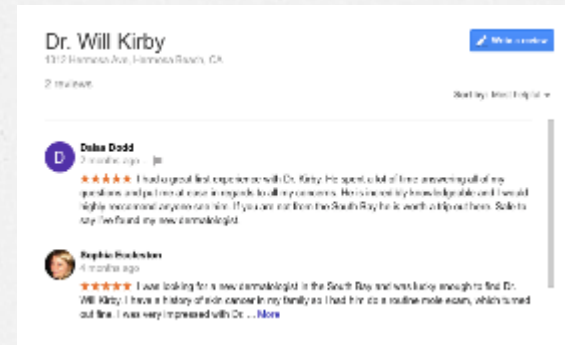
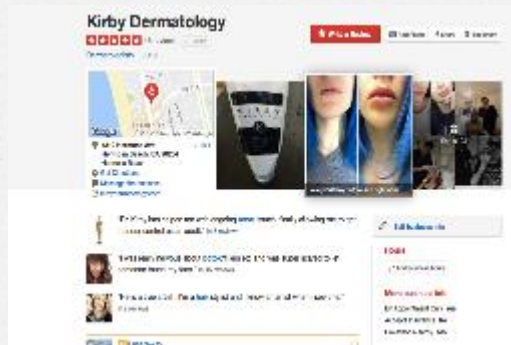
# Join the Academic Faculty of a Dermatology Residency Program

- The time commitment is extremely flexible
- Patients love having young doctors present
- You keep your skills sharp by teaching
- Education is backbone of our profession
- Dermatology residents have a command of the rules/regs!!!


# Improve Your On-Line Reputation

- Wide net vs. efficient net
- Having an excellent on-line reputation will allow you to capture the best patients
- Perception is Reality
- Social media is the future
- Putting your head in the sand won't make it go away
- You can easily improve your Yelp, Facebook and Google reviews

# Case Study: My Practice



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**Dr. William Kirby, DO**  
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 **Accepting New Patients**

The Next Slide...

...is the only  
slide you need to  
pay attention to!

# TEN POINT RECAP:

- 1 Monitor updates from your state medical board!
- 2 Apply to become an expert reviewer!
- 3 Review your med-mal insurance policy annually!
- 4 Improve your Informed Consent (and add an Arbitration Agreement if your state allows it)!
- 5 Obtain Proper Training!
- 6 Purge Problem Patients (dismiss properly and possibly provide medical records)!
- 7 Add a Refund Release form to your practice!
- 8 Hire an NP or a PA!
- 9 Join the faculty of a dermatology residency program
- 10 Improve your on-line professional reputation!

# Questions and Answers (Tip: All the answers are “no”)

- May I have a copies of your Informed Consents?
- May I have a copy of your Arbitration Agreement?
- May I have a copy of your Refund Release form?
- May I have a copy of your Patient Dismissal Letter?



# Questions and Answers (Tip: All the answers are “maybe”)

- Can you refer me to a med-mal insurance broker?
- Can you refer me, or my NP/PA get proper training?
- Can you refer me to a site to improve my on-line professional reputation?

# Real Questions and Answers

- Ask me anything you like...
- I'm an open book...
- I'd rather you ask me now than accost me while I eat a stale muffin in eight minutes...
- I might say "no".
- But you can always email me at anytime in the future if you think of a question at a later date: [DrWillKirby@hotmail.com](mailto:DrWillKirby@hotmail.com)

# Thank you!

- Will Kirby, D.O., FAOCD