The development and production of the 2014 Professional Responsibility Course is underwritten by the Harris Lee Nussenblatt Lecture Series Endowment. This endowment was established in 1992 by the Nussenblatt Family in memory of former Associate Professor Harris Nussenblatt, OD. The Lecture Series focuses on issues related to professional ethics, public health and practice administration.

Joe DeLoach, OD, ABO, FAAO
Coursemaster

The 2014 Professional Responsibility Course is presented by Joe DeLoach, OD, ABO, FAAO, Coursemaster.

**PROFESSIONAL RESPONSIBILITY COURSE**

- Texas Optometry Board amendment to Rule 275.1 (CE Rule)
- Course designed to present material related to professional ethics, Texas Optometry Board rules, judicious prescribing, pain management and drug abuse. Material will change or be updated each year.
- One hour per year – mandatory completion for all levels of licensure

**PREFACE**

The content of the Professional Responsibility Course is at the discretion of the Texas Optometry Board. This year, the Board has requested a significant number of issues be addressed, based on calls and complaints to the Board during the year. Many of these items were covered in prior Professional Responsibility Courses. Since everyone has to take this course, someone is sleeping during the presentation. Please pay attention this year so we do not have to repeat topics.

**AGENDA**

- Prescription signature requirements
- Rules regarding prescribing oral medications
- Relation of HIPAA to prescribing regulations
- 2013 HIPAA advertising rules
- Standard of care issues
- Medicaid/Payor fraud and abuse issues
- Reclassification of hydrocodone and Texas optometrists
- Peer Assistance Program

**PRESCRIPTION ISSUES**
YOUR PATIENT'S GLASSES PRESCRIPTION

Texas Optometry Act
The Law: Sec. 351.365.
Rules: Title 16, Part 453 – TOB Rule 279.4

Also a Federal Law – Federal Trade Commission Sect. 456

GLASSES PRESCRIPTION: CURRENT ISSUES

• Patients are entitled to a copy of their prescription at the time it is determined WITHOUT ASKING
• Prescriptions are valid for at least one year unless you state otherwise – rare justification for limiting it to less
• Prescription can be transmitted by telephone ONLY if deemed an emergency situation
• You cannot charge a patient for a copy of their prescription if requested at a later date – but there is no law stating you have to release it to them later

GLASSES PRESCRIPTION: NEW ISSUES

There is no legal requirement that you specify a PD on the prescription or release PD, seg height, eye size or any other related information to the patient or to a dispensing entity.

But…

CONTACT LENS PRESCRIPTION ISSUES

• MUST be a written Rx (cannot be verbal)
• MUST release once final fitting parameters are determined – don’t play games with this part of the rule
• MUST release original copy to patient. If using FAX copy, write “BY FAX” on the Rx
• MUST authorize emergency refill if requested by patient (unless medically contraindicated)

YOUR PATIENTS CONTACT LENS PRESCRIPTION

Texas Optometry Act
The Law: Occupations Code Title 16 Part 315
Chapter 353.151 – 353.202
Rules: Chapter 279 – Rule 279.2

Also a Federal Law – Federal Trade Commission Sect. 456

CONTACT LENS PRESCRIPTION ISSUES

• CANNOT use private label lenses not available to optical industry as a whole (unless medically necessary – don’t play games here either)
• CANNOT charge the patient for a second or additional copy of their Rx
• CANNOT withhold the Rx because patient’s third party payor has not paid you or patient owes you money
• MAY charge a fitting fee that includes fee for lenses used during fitting process
Amendments to Rules 279.2 & 279.4

These amendments update the signature requirements for glasses and contact lens prescriptions. These prescriptions may be signed as follows:

- A manually signed prescription (no stamps)
- An electronically signed prescription as long as it is a replicate of the practitioner’s manual signature and each use of the EHR is authorized

The proposed rules for glasses and contact lenses DO NOT require the use of tamper resistant prescription pads.

PRESCRIPTION SIGNATURE UPDATE

PRESCRIBING ORAL MEDICATIONS

- The Board receives multiple calls from doctors and pharmacists regarding prescriptions written by ODs for oral medications. The Board encourages all optometrists to understand the statutory limitations regarding prescribing oral medications. This information can be found on the Board's website – “Table of Contents” “Main Information Page” “Drug Prescribing (oral)”
- The Board receives calls from optometrists wanting information on whether or not a drug is a controlled substance – you should already know this information
- The Board feels that some optometrists do not know or know where to find specific information on drugs and drug dosing – you should also know this information as well

PRESCRIBING ORAL MEDICATIONS

- Doctors who do not know or understand what they are prescribing should not prescribe those medications.
- As a quick review, Texas optometrists with OGS certification (TG) may prescribe:
  - 10 day supply of antibiotics
  - 72 hour supply of oral antihistamines
  - 7 day supply of non-steroidal anti-inflammatory
  - 3 day supply of any analgesic in Schedule III, IV, V
  - oral carbonic anhydrase inhibitor for emergency purposes
  - other restrictions related to all glaucoma medications
- For dosage and prescribing information on medications, consult your PDR, Epocrates, WebMD, Medicare, Erx system or a host of other sites and APPS – not the Texas Optometry Board

As a side comment, the Board did not make this law that is considered one of the worst and most restrictive optometric practice acts in the United States.

But the Board still has to uphold the law.

Don’t like the law, do something to change it.

SIGNATURES ON MEDICATION PRESCRIPTIONS

Any medication prescription must be either:

- Manually signed
- Electronically signed, as long as:
  - The electronic signature is a replication of the practitioner’s actual signature
  - The EHR system requires the practitioner to personally authorize each use
  - The prescription is printed on paper “designed to prevent unauthorized copying, erasure or modification except by the practitioner” – often called tamper resistant prescription pads (many sources available on-line)

ONE MORE SIGNATURE ISSUE

Per Healing Arts Identification Act (Section 104.003 Occupations Code) and the Optometry Act (Section 351.226):

- A prescription must include the name of the prescribing doctor identified as an optometrist (see next slide for allowable designations)
- A fill-in doctor or new graduate cannot sign a prescription under the name of another optometrist (with exceptions)
- A doctor with a lower level license cannot sign a prescription under the name of an optometrist with a higher level of licensure
HEALING ARTS IDENTIFICATION ACT

Legal identification per state law includes:
- Optometrist
- Doctor, Optometrist
- Doctor of Optometry
- O.D.

It is illegal to use any designation or advertising that could mislead the public into thinking you are any health care practitioner other than an optometrist.

NOTE...

The Healing Arts Identification Act is a State law – not written by your State association or the Optometry Board. But again, the Board has to uphold the law as written.

HIPAA AND PRESCRIPTIONS

Since they are related to treatment of the patient, request for prescriptions or prescription refills do not require patient authorization. These include:
- Requests for refills on prescriptions for medication(s)
- Request for a glasses prescription from an optical, online dispenser or another practitioner
- Request for a contact lens prescription from an optical, online dispenser or another practitioner

Look for yourself:
www.hhs.gov/ocr/privacy/hipaa/faq/disclosures/270.html

HIPAA AND PRESCRIPTIONS

This does not mean you can not or should not verify with your patient that they have requested the prescription information be released to a particular entity.

It does mean you should not play games or make up ridiculous reasons you cannot release the patient’s medical information.

HIPAA AND PRESCRIPTIONS

You also do not need patient authorization to release any other part of the patient’s medical record to another doctor.

Minors by Texas law and under HIPAA have very specific rights regarding treatment and their medical record. You should be familiar with these regulations (if you do not know them, check with your HIPAA consultant or a HIPAA attorney).
HIPAA AND PRESCRIPTIONS

HIPAA does not require you to release a patient’s information to another doctor, even if they want you to. But except in very rare circumstances, you cannot refuse to release this information to the patient.

The patient may sue you for unjustified withholding of their medical information (including all prescriptions). Justification never includes the fact they owe you money or their insurance company owes you money.

2013 HIPAA ADVERTISING CHANGES

New law further restricts a physician providing marketing communications to patients when it involves a third party product.

To provide this communication, the physician must have a signed authorization from the patient and the communication must have an “opt-out” clause.

There are exceptions....

2013 HIPAA ADVERTISING CHANGES

Exceptions:

• When the physician receives no compensation of any kind for the communication
• The promotion provides general health information without mention of a specific third party product
• The communication involves government or government sponsored programs

LET’S BOIL IT DOWN

Three questions....
1. Does the communication contain patient information?
2. Does the communication contain information about a third party product?
3. Did you receive compensation of any kind for the communication?

If yes to all three...VIOLATION
VERY COMPLEX…
HERE ARE A FEW EXAMPLES
OF WHAT YOU “FOR SURE”
CANNOT DO (AND SOME
NOT SO SURE!)

EXAMPLE
A company provides your recall or newsletter
that is mailed to the patient – they pay you
money for this or pay for all or part of the
production or mailing costs. The
communication has information about their
new contact lens, frame line, treatment…etc.

VIOLATION

EXAMPLES
A company provides your recall or newsletter that is
mailed to the patient – they provide you a discount on
their services, free or reduced fee products in return for
this work. The communication has information about
their new contact lens, frame line, treatment…etc.

VERY SHAKEY
Not recommended

EXAMPLES
A data mining company sends out an information
piece containing information about a new
contact lens, medication, etc. They are paid by
the company that makes that contact lens,
medication, etc.

PROBABLE VIOLATION
(some attorneys say yes, some no – how much of a gambler are you?)

EXAMPLES
A company that makes a product or service
assists you directly or indirectly in designing
your website in return for advertising their
product(s)

NOT A VIOLATION
(as long as recipient list is “de-identified”)

HYDROCODONE
LAST PRESCRIPTION ISSUE HYDROCODONE

Under extreme pressure from various medical groups, the FDA proposed in October 2013 to reclassify hydrocodone containing drugs from Schedule III to Schedule II.

This move is intended to curb the widespread over-prescribing and abuse of opioid drugs.

Final approval of this move is left to HHS and DEA. Both are expected to approve the change in early 2014.

STANDARD OF CARE

Let’s start by defining what is standard of care. There are several interpretations:

“The degree of care an ordinary, reasonable and prudent person would exercise in given circumstances”

“The degree of prudence and caution required of an individual who is under a duty of care”

Possibly the best one:

“The level at which the average, prudent provider in a given community would practice under the same or similar circumstances”

STANDARD OF CARE

The Texas Optometry Board does not and cannot define standard of care. It is only defined in a court of law. But they do have a responsibility to make sure optometrists are delivering appropriate care in a competent manner.

Every licensed optometrist should have that same desire to deliver appropriate care in a competent manner in every patient encounter.

STANDARD OF CARE

Simple - it means your patients will lose access to the major category of moderate to significant pain medications. You will NOT be able to prescribe pain medications containing hydrocodone (sp. Vicodin).

Again, the Board did not make this change that will impact your ability to care for your patients in the state that has an optometric act considered one of the worst and most restrictive the United States. But the Board will have to uphold this change.

Don’t like the law, do something to change it.
**STANDARD OF CARE ISSUES**

Appropriate and competent care includes not exceeding the scope of practice as defined by the Texas Optometry Act - but also includes...

- Not practicing in a manner “required of an individual who is under a duty of care”
- Statute 351.360 – Optometrists by law are held to the “same standard of professional care and judgment as a person practicing as an ophthalmologist”

Too much, too little – just as bad!

**STANDARD OF CARE ISSUES**

Things that may be considered in defining standard of care include:

- Published preferred practice patterns
- Published clinical guidelines
- Peer reviewed literature
- Practice statutes (Texas Optometry Act)
- Legal precedence
- Opinions of “experts”

**AUDITS**

**ESP. MEDICAID**

**THE AGE OF AUDITS**

Is this the Golden Age of audits?

**YES!**

So, you’re broke, you need money, your system is under scrutiny because it loses more and more money – you are presented with an investment opportunity with a historical 50:1 return on investment.

What would you do???

**THE AGE OF AUDITS**

What Has Changed?

- First and foremost – if you hadn’t heard, the government is broke and looking for money!
- Health care reform – major emphasis on fraud, abuse and WASTE
- Change in False Claim Statute from “knows or has reason to know” to “knows or should know” (ignorance is no longer bliss!)
- Qui Tam – The Whistleblower Act
- Recovery Audit Contractors – the witch hunt is on
TAKE HOME MESSAGE...

Auditing is VERY good business!
Per Medical Director Aetna: “Audits are one of the single most profitable aspects of our business.”

THE AGE OF AUDITS

What Triggers an Audit

- Specialization
- Success (The “Ladder Principle”)
- Repetition
- High utilization of single codes
- Billing codes not commonly used by the majority of your colleagues
- Billing codes at a higher percentage rate than the majority of your colleagues

None inherently wrong, but...

THE AGE OF AUDITS

What ELSE Triggers an Audit

Greed and Stupidity including:

- Billing for medically unnecessary services – EVEN IF THE DIAGNOSIS IS ON THE ALLOWED LIST
- Over-coding office visits – especially Evaluation and Management Codes
- Claims that make no sense – it is a red flag to come look at you in general

THE AGE OF AUDITS

MEDICAL NECESSITY IS EASY!

If you are conducting and billing services because you CAN, that is wrong

If you are conducting and billing services because it is in the best interest of the patient, you are being a responsible doctor

AUDIT DEFENSE

The best defense is always a great offense!

- Keep exquisite medical records
- Know your payor rules and policies (remember they are REGIONAL!!)
- Keep updated by signing up for payor website listserves and newsletters
- Have someone conduct “mock” audits of your medical records every few years

PEER ASSISTANCE PROGRAM
Peer Assistance Program

The Professional Recovery Network (PRN) was covered in both the 2010, 2011, and 2013 PR Courses. Let’s review:

- The PRN was created to assist impaired optometrists through a recovery program without involving the Optometry Board or license sanctions.
- A doctor may report themselves or a colleague. A friend or a concerned individual may report them. The reporting individual’s name is held in confidence.

PROFESSIONAL RECOVERY NETWORK

- This is one of the best things the Optometry Board has done for our colleagues. Unlike other health care regulatory boards, prior to 2010 issues related to impaired optometrists had to be referred to the board for almost mandatory disciplinary action that would end up on their record forever.
- In 2010, the Texas Optometry Board enacted a program to properly and confidentially assist impaired practitioners through the Professional Recovery Network.

PROFESSIONAL RECOVERY NETWORK

Mission

PRN works through confidentiality and trust to educate, prevent, intervene, refer, support, and monitor professionals who are experiencing problems that threaten both their well-being and the quality of their professional practice. The focus is on early intervention and advocacy for program participants.

Goal

The focus of PRN is to help participants get the assistance they need and support their recovery so they can remain employed in their profession. As long as participants comply with the Professional Recovery Agreement, their participation in the program is confidential. Should the participant refuse to be evaluated or follow treatment recommendations, a report may be made to the appropriate state regulatory board.

PROFESSIONAL RECOVERY NETWORK

Contact Information

1-800-727-5152

www.rxpert.org

For additional reference material on making ethical decisions as a doctor and/or businessperson, the following are recommended.

- How Doctors Think by Jerome Groopman, MD
- www.ethicsunwrapped.utexas.edu
Thank you for your attention
and have a great 2014

jwdeloach@uh.edu
Coursemaster