

Documenting Unprofessional Conduct in Clinics and Externships

2015 AALS Conference on Clinical Legal Education

Thursday, May 7, 2015 8:30 am – 9:45 am

Concurrent Session #4 Track 3

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In 2004 Dr. Maxine Papadakis published (with co-authors) a very influential study of graduates of the Medical School of the University of California, San Francisco (UCSF) who had been disciplined by the Medical Board of California from 1990-2000. Maxine A Papadakis, et al, *Unprofessional Behavior in Medical School is Associated with Subsequent Disciplinary Action by a State Medical Board*, 79 ACADEMIC MEDICINE 244 (2004). The research showed that students who had received comments regarding unprofessional behavior in one or more courses were TWICE as likely to be disciplined than a control group of otherwise similar graduates. In contrast, standardized test scores and medical school grades did not identify who would have disciplinary problems in practice. Maxine A Papadakis, et al, *Unprofessional Behavior in Medical School is Associated with Subsequent Disciplinary Action by a State Medical Board*, 79 ACADEMIC MEDICINE 244 (2004).

This groundbreaking article was followed the next year by a report in medicine's most prestigious journal that expanded the research to include two additional medical schools, the University of Michigan and the Thomas Jefferson Medical School in Philadelphia. This project studied graduates disciplined in any state (except California, to avoid duplicating the research reported in Papadakis 2004) between 1990 and 2003. Each disciplined physician was matched to two doctors who had graduated within a year but had not been disciplined; one of the comparison doctors was in the same specialty. Researchers searched through reports of admission interviews, course evaluations, deans' letters of recommendation for residency programs, and any other documents in student files looking for negative comments about professional behavior. Comments were then assigned to one of eight categories of unprofessional behavior (e.g. irresponsibility, resistance to self-improvement, poor initiative). This study found that disciplined physicians were THREE times more likely to have displayed unprofessional behavior in medical school than the control group. Among the categories of unprofessional behavior, students who displayed irresponsibility were EIGHT times more likely to be disciplined. Low MCAT scores and low grades in the first two years of medical school also had some predictive value but much less than documented unprofessional behavior. Maxine A. Papadakis et al, *Disciplinary Action by Medical Boards and Prior Behavior in Medical School*, 353 NEW ENGLAND JOURNAL OF MEDICINE, 2673 (2005).

Also in 2005 Dr. Papadakis and colleagues published further analysis of the data collected for their 2004 article. They categorized comments documenting unprofessional behavior according to criteria used in an evaluation form initially developed by UCSH to be submitted by directors of upper level clinical courses and later adapted for use also in small group and clinical courses in the first two years. (Both forms are attached.) They discovered of the nine “domains” of unprofessional behavior that three in particular were strongly associated with later disciplinary action: (1) poor reliability and responsibility, (2) lack of self-improvement and adaptability, and (3) poor initiative and motivation. They comment: “A recent concern has been that although medical schools report they have incorporated professionalism into their curriculum, they still seek ‘valid and reliable means’ for the evaluation of professionalism. A goal of this study was to address this concern by expanding and testing the validity of an instrument which measures professional behaviors by linking those behaviors to future disciplinary actions. ... Findings from this study, if replicated, could help develop consensus about the most problematic domains of unprofessional behaviors as the identified domains were evidence-based through their linkage to the outcomes of disciplinary licensure actions.” Arianne Teherani et al, *Domains of Unprofessional Behavior During Medical School Associated with Future Disciplinary Action by a State Medical Board*, 80 *ACADEMIC MEDICINE* S17 (2005)

Bibliography

Maxine A. Papadakis et al, A Strategy for the Detection and Evaluation of Unprofessional Behavior in Medical Students, 74 *Academic Medicine* 980 (1999)

D. Michael Elnicki et al, Patterns of Medical Student Abuse during the Internal Medicine Clerkship: Perspectives of Students at 11 Medical Schools, 74 *Academic Medicine* S99 (1999)

Maxine A. Papadakis et al, Early Detection and Evaluation of Professionalism Deficiencies in Medical Students: One School’s Approach, 76 *Academic Medicine* 1100 (2001)

Maxine A Papadakis, et al, Unprofessional Behavior in Medical School is Associated with Subsequent Disciplinary Action by a State Medical Board, 79 *Academic Medicine* 244 (2004)

David T. Stern et al, *The Prediction of Professional Behaviour*, 39 Blackwell Publishing Ltd *Medical Education* 75 (2005)

Maxine A. Papadakis et al, Disciplinary Action by Medical Boards and Prior Behavior in Medical School, 353 *N Engl J Med*, 2673 (2005)

Arianne Teherani et al, Domains of Unprofessional Behavior During Medical School Associated with Future Disciplinary Action by a State Medical Board, 80 Academic Medicine S17 (2005)

Carol S. Hodgson et al, The Relationship Between Measures of Unprofessional Behavior During Medical School and Indices on the California Psychological Inventory, 82 Academic Medicine S4 (2007)

Maxine A. Papadakis et al, The Education Community Must Develop Best Practices Informed by Evidence-Based Research to Remediate Lapses of Professionalism, 87 Academic Medicine 1694 (2012)

Table 1. Description of the 740 Violations among 235 Physicians That Led to Disciplinary Action on the Part of 40 State Medical Boards.

Type of Violation	No. (%)
Unprofessional behavior	
Use of drugs or alcohol*	108 (15)
Unprofessional conduct	82 (11)
Conviction for a crime	46 (6)
Negligence	42 (6)
Inappropriate prescribing or acquisition of controlled substances	39 (5)
Violation of a law or order of the board, of a consent or rehabilitation order, or of probation	32 (4)
Failure to conform to minimal standards of acceptable medical practice	31 (4)
Sexual misconduct	29 (4)
Failure to meet requirements for continuing medical education or other requirements	26 (4)
Fraud or inappropriate billing practices (e.g., Medicare billing irregularities)	20 (3)
Failure to maintain adequate medical records	19 (3)
Failure to report adverse actions against oneself in accordance with rules of the board	10 (1)
Conduct that might defraud or harm the public	10 (1)
Other (less than 1% of any single category)	57 (8)
Total	551 (74)
Incompetence	
Health-related problems, incompetence, or impairment	44 (6)
Unknown†	
Violation imposed by another board or agency	87 (12)
License revocation or suspension	28 (4)
Inappropriate treatment or diagnosis of patients or malpractice	7 (1)
Other or not available (less than 1% of any single category)	23 (3)
Total	145 (20)

PHYSICIANSHIP EVALUATION FORM FOR FIRST- AND SECOND-YEAR STUDENTS

Student name (*type or print legibly*)

Course (*Dept. & Course No.*)

Course director

Quarter, Year

Course director's signature

Date this form was discussed with the student

The student has exhibited one or more of the following behaviors that need improvement to meet expected standards of physicianship.

This student needs further education or assistance with the following: (circle)

1. Reliability and responsibility

- a. Fulfilling responsibilities in a reliable manner.
- b. Learning how to complete assigned tasks.

2. Self improvement and adaptability

- a. Accepting constructive feedback
- b. Recognizing limitations and seeking help
- c. Being respectful of colleagues and patients
- d. Incorporating feedback in order to make changes in behavior
- e. Adapting to change

3. Relationships with students, faculty, staff and patients

- a. Establishing rapport
- b. Being sensitive to the needs of patients
- c. Establishing and maintaining appropriate boundaries in work and learning situations
- d. Relating well to fellow students in a learning environment
- e. Relating well to staff in a learning environment
- f. Relating well to faculty in a learning environment

4. Upholding the Medical Student Statement of Principles

- a. Maintaining honesty
- b. Contributing to an atmosphere conducive to learning
- c. Respecting the diversity of race, gender, religion, sexual orientation, age, disability or socioeconomic status
- d. Resolving conflicts in a manner that respects the dignity of every person involved
- e. Using professional language and being mindful of the environment
- f. Protecting patient confidentiality
- g. Dressing in a professional manner

Comments & Suggestions for Change:

This section is to be completed by the student.

I have read this evaluation and discussed it with my course director.

Student signature

Date

My comments are: (optional)

**UCSF SCHOOL OF MEDICINE
PHYSICIANSHIP EVALUATION FORM**

Student name (type or print legibly)

Course (Dept. & Course No.)

Site Director

Quarter, Block and Year

Site Director's Signature

Location

Date this form was discussed with the student _____

A student with a pattern of the following behavior has not sufficiently demonstrated professional and personal attributes for meeting the standards of professionalism inherent in being a physician:

Circle the appropriate category. Comments are required.

1. Unmet professional responsibility:

- a. The student needs continual reminders in the fulfillment of responsibilities to patients or to other health care professionals.
- b. The student cannot be relied upon to complete tasks.
- c. The student misrepresents or falsifies actions and/or information.

2. Lack of effort toward self improvement and adaptability:

- a. The student is resistant or defensive in accepting criticism.
- b. The student remains unaware of his/her own inadequacies.
- c. The student resists considering or making changes.
- d. The student does not accept blame for failure, or responsibility for errors.
- e. The student is abusive or critical during times of stress.
- f. The student demonstrates arrogance.

3. Diminished relationships with patients and families:

- a. The student inadequately establishes rapport with patients or families.
- b. The student is often insensitive to the patients' or families' feelings, needs, or wishes.
- c. The student uses his/her professional position to engage in romantic or sexual relationships with patients or members of their families.
- d. The student lacks empathy.
- e. The student has inadequate personal commitment to honoring the wishes of the patients.

4. Diminished relationships with members of the health care team:

- a. The student does not function within a health care team.
- b. The student is insensitive to the needs, feelings, and wishes of the health care team members.

5. Please comment on an appropriate plan of action to pursue when counseling the student.

This section is to be completed by the student.

6. I have read this evaluation and discussed it with the clerkship director.

Student signature

Date

7. My comments are: (optional)

FLORIDA BOARD OF BAR EXAMINERS

Administrative Board of the Supreme Court of Florida
1891 Eider Court
Tallahassee, Florida 32399-1750
(850)487-1292

Michele A. Gavagni
Executive Director



Univ of Miami Law School Health Rights
1311 Miller Drive, #300A
Attn: JoNel Newman
Coral Gables, FL 33146

FILE NO.
DATE: 04/21/2015

NAME:
A/K/A or F/K/A:
SSN:
POSITION: Fellow/Intern
DATES OF EMPLOY: 08/13 -

You are being contacted as a current or past employer of the above-named applicant who is seeking admission to The Florida Bar. The Board investigates the background of all applicants for admission to the bar. The applicant has authorized sources to cooperate by making information available to the Board and has released and exonerated all sources from any and all liability of every nature and kind pertaining to the furnishing of information to the Board. This form was developed to facilitate your reply; however, if you wish to write a personal letter, please attach it to this inquiry form (that contains a bar code for automated receipt) and return both documents.

1. Please check yes or no below:

- Yes No a. Do you know the applicant? Length of time: ____ years Relationship: _____
- Yes No b. Would you recommend the applicant for a position of trust? If no, please state reasons below.

- Yes No c. Would you re-employ? If no, please state reasons below.

2. Please check yes or no. If your answer to any is **no**, provide a short summary of details below.

- Yes No a. Is the applicant honest?
- Yes No b. Is the applicant thorough in fulfilling obligations?
- Yes No c. Is the applicant punctual?
- Yes No d. Does the applicant meet deadlines?
- Yes No e. Does the applicant treat others with civility?

3. Please check yes or no below. If your answer to any is **yes**, provide a short summary below. To your knowledge has the applicant:

- Yes No a. been accused of a violation of the honor code or student conduct code, warned, placed on scholastic or disciplinary probation, suspended, requested or advised to discontinue studies, dropped, expelled, or requested to resign or otherwise subjected to discipline for academic or personal conduct reasons by any educational institution?
- Yes No b. been a party to legal or administrative proceedings?
- Yes No c. been charged with, arrested for or convicted of any traffic or criminal offense?
- Yes No d. been accused of a violation of trust?
- Yes No e. been denied admission to the Bar of any other state?
- Yes No f. had a pattern of unexcused absences from school or work?
- Yes No g. demonstrated violent or disruptive behavior?
- Yes No h. been at work under the influence of alcohol or controlled substances?
- Yes No i. been addicted to or dependent upon the use of narcotics, drugs or intoxicating beverages within the past 10 years?
- Yes No j. been hospitalized during the past 10 years for treatment of any of the following: schizophrenia or other psychotic disorder; bipolar or major depressive mood disorder; drug or alcohol abuse; impulse control disorder, including kleptomania, pyromania, explosive disorder, pathological or compulsive gambling; or paraphilia such as pedophilia, exhibitionism or voyeurism?
- Yes No k. been treated or received a diagnosis during the last 5 years for any of the following: schizophrenia or other psychotic disorder; bipolar or major depressive mood disorder; drug or alcohol abuse; impulse control disorder, including kleptomania, pyromania, explosive disorder, pathological or compulsive gambling; or paraphilia such as pedophilia, exhibitionism or voyeurism?
- Yes No l. had a mental health condition that currently impairs or limits, or if left untreated could impair or limit, the ability to practice law in a competent and professional manner?
- Yes No m. been delinquent in any financial obligations?

4. Your personal remarks are solicited. Please attach a separate sheet of paper if needed.

5. Please list the names, addresses and occupations of other persons who may have knowledge of this applicant.

	Name	Occupation	Address, City, State, Zip
a.	_____	_____	_____
b.	_____	_____	_____

The Board sincerely appreciates your cooperation in completing this form and assures you that the information furnished by you will be revealed only in accordance with the Rules of the Supreme Court Relating to Admissions to the Bar.

The information furnished by me is true and correct to the best of my knowledge and belief.

Date: _____ Name: _____ Title: _____

Enclosure: Return Envelope
Authorization and Release



Center for
Professional Responsibility

Rule 8.3: Reporting Professional Misconduct

Maintaining The Integrity Of The Profession

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment on Rule 8.3

Maintaining The Integrity Of The Profession

Rule 8.3 Reporting Professional Misconduct - Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as

a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.