

**2015 BOC Athletic Trainer  
Regulatory Conference**



**Illegal, Unethical, Dangerous!  
Stopping Unlicensed Practitioners.**

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# Back to Basics: What is a Regulated Profession?

- Regulation typically represents the recognition of a profession as such.
- It essentially grants a monopoly to those who become licensed or registered.
- Regulated professions are regulated by the government (i.e., State Health Boards), or they can be self-regulated.



## Regulation / Licensing

- The licensing body / regulator is responsible for setting educational, technical and ethical standards. Generally, the power to govern has two aspects: the power to license and the power to discipline;
- Part of this role involves taking action against people who are not members of the profession, but who are practising that profession illegally.



# Legislation Governing Professions

- Legislation typically prohibits the practice of profession unless the individual is licensed under the legislation;
- Restricts the use of professional designations such as “Doctor”, “Lawyer”, “Professional Engineer” or “Chartered Accountant” by the unlicensed;
- The purpose of such provisions is to ensure that the public is protected from those who are not qualified to practise the professions;
- The legislation for various professions creates a quasi-criminal offence for the unauthorized practice of the profession;
- In addition to charges, legislation also often provides for the possibility of seeking injunctive relief to stop unauthorized practice;



# Legislation Governing Professions

- Legislation typically gives professional organizations jurisdiction over its members with respect to charges of professional misconduct;
- But this type of jurisdiction ought not be confused with jurisdiction over non-members practising without a licence (although some professional organizations have been expressly delegated additional powers by the legislature to seek injunctive relief against non-members to stop unauthorized practice);
- There's a philosophical difference among professions about the vigour with which they pursue illegal practitioners.



## Examples of Unauthorized Practice

- **Use of occupational titles:** For example, “doctor”, “lawyer” or “psychologist” which may be interpreted by the lay public as indicating a special expertise or qualification
- **Practising without a licence:** A governing body’s most effective way to ensure that professional services are provided competently, and with professional integrity, is through licensure. Permission to practice is restricted to those who meet the standards, and the right to practice can be withdrawn from those who breach them
- **Practising while under suspension:** Typically when the right to practise is temporarily removed (i.e. non-payment of fees, competency or fitness to practice, or discipline/professional conduct penalties)



# Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

## Florida:

- Department of Health (DOH) works to protect, promote and improve the health of Floridians through integrated state, county and community efforts;
- The DOH unit – the Unlicensed Activity (ULA), protects Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from an unlicensed person;
- Florida’s program is funded by a \$5 per health licensee initial and renewal fee which funds efforts to combat unlicensed activity;
- *Recently in news:* ULA in a joint investigation with the Osceola County Investigative Bureau led to the arrest of Gustavo Aranguren Hernan for the alleged unlicensed practice of dentistry.

<http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2014/05/061614-Kissimmee-ULA-Arrest.pdf>



# Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

## California:

- California's Medical Board has an Enforcement Unit within it;
- The Medical Board's Operation Safe Medicine (OSM) Unit within the Enforcement Program addresses the unlicensed practice of medicine;
- The OSM staff is exclusively assigned to the proactive identification, investigation, and prosecution of unlicensed individuals;
- *Recently in news:* San Diego; an undercover investigation led by the OSM and San Diego law enforcement arrested Robert Oldham Young for conspiring to practice medicine without a license.

[http://www.mbc.ca.gov/About\\_Us/Media\\_Room/2014/news\\_releases\\_20140124\\_young.pdf](http://www.mbc.ca.gov/About_Us/Media_Room/2014/news_releases_20140124_young.pdf)





# Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

## Nevada:

- In response to a significant number of illegal surgeries, unlicensed health care, and incident reports, including death, the Nevada State Health Division initiated a state-wide review in 2013;  
<http://health.nv.gov/PDFs/unlicensedMedicalActivity/RespondingToUnlicensedHealthCareNV-ActionPlanFinal.pdf>
- Nevada Health Division's enhanced efforts regarding reporting of unlicensed health care for example a text service along with free phone lines to report such incidents;
- Co-ordinated efforts to combat this problem – for example the Pharmacy Board, the State Board of Dental Examiners, Cosmetology Board, the State Medical Association.



## What do we need?

- **We need evidence of:**
  - Holding self out as qualified
  - Using a protected title or designation and/or
  - Performing specific acts restricted to those who are licensed.
- **Cost Factors**
  - Travel
  - Legal counsel
  - Additional investigators or outside help
- **Internal resource limitations**
  - Training



## Where Do We Get It?

- **Documentation**
  - Advertising
  - Client files
  - HR files
- **Interviews**
  - Coworkers
  - Employers
  - Patients / clients



## Where Do We Get It?

- **Surveillance**
  - Following the suspect
  - Observing the location
- **Undercover**
  - Engage the suspect for services
  - Work along side the suspect
  - Infiltrate agencies



## Challenges

- Non-cooperation
- Determining where an IP may be working
- Suspected collaboration with others
- Ethnic barriers to gaining access
- Identity theft issues
- Jurisdictional issues

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# Investigation Strategies



## Non-cooperation

- Exercise powers available to you
  - E.g. search warrant
- Try to get other agencies to apply pressure
  - Other regulatory bodies
  - Insurance companies
  - Police
- Calm fears of co-workers / employers being in trouble
- Appeal to their sense of morality



## Determining Where the IP is Working

- Pretext calls to suspected locations
- Surveillance
- Social media searches
- Photographs – Search via “geo-tagging”





## Suspected Collaboration

- Undercover investigations (U/C)
  - Get hired by the agency you suspect
  - Hire the agency or individual
  - If collaborator is a patient get insurance company to help (possibly threaten to cut off their insurance coverage unless cooperative)



## Ethnic barriers to gaining access

- Use an investigator of same ethnic origin and do U/C investigation
- Surveillance
  - May lead to further options such as search warrant
  - Witness identification and subsequent interviews



## Identity theft issues

- Interview known associates
- Surveillance
- Background checks
  - DOT searches
  - Internet and social media searches
  - Property searches
  - Lien searches
  - Military records



## Jurisdictional Issues

- Try to arrange memos of understanding to cooperate re:
  - Information sharing
  - Investigative resources (e.g. when work is happening across state lines)
  - Applying respective influence
- Consider same approach with Police agencies



## Prevention

- Make it harder for them
  - Get rid of cards for licensure (force people to go online)
  - Educate prospective employers
  - Post lists of known IPs with known aliases etc.
  - Press releases after successful prosecutions



# Legal Considerations

- Authorities to investigate
- Powers of investigation
- Legal options
  - Cease and desist orders / legal undertaking
  - Criminal or quasi-criminal prosecution
  - Injunctions (civil court orders)



## Resource Considerations

- Policy Decisions
  - Should we be doing this?
    - Allocation of staff
    - Use of resources
    - Public relations
  - Legal approach
  - Internal or external investigators



## Resource Considerations

- Cost factors
  - Travel
  - Legal counsel
  - Additional investigators or outside help
- Internal resource limitations
  - Training







## Recommendations

- To support, encourage, and facilitate the governing bodies of the major health care boards to meet regularly to see how they can best to share resources and training as well as discuss on-going efforts to address the issue of unlicensed health care;
- To provide regulatory bodies with fining authorization and inclusion where appropriate for boards to obtain remuneration for investigative costs;
- To press for more power and more resources to conduct unannounced inspections;
- Attend to other concerns regarding possible ramifications surrounding the reporting of unlicensed activities;



## Recommendations

- Intervention by the governing bodies e.g. peer assessments, spot audits of the members who are suspected to be supporting unauthorized practice;
- Follow up measures wherever action has been taken against unlicensed person to ensure that they do not start illegally practicing again;
- Other suggestions: better reporting of suspicious transactions; use of technology – Anti-fraud software;
- There is no one solution, but the best path going forward includes co-ordination amongst various regulatory bodies, public awareness and shared resources.

# 2015 BOC Athletic Trainer Regulatory Conference



## Thank You



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+ ASSOCIATES

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