

Legal Brief

Reporting Impaired, Incompetent, or Unethical Colleagues

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of October 1, 2012; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

There is no legal duty to report impaired, incompetent, or unethical colleagues in South Dakota. However, physicians have an ethical duty to report impaired, incompetent, or unethical colleagues. South Dakota statute lists numerous activities and conduct that constitute impaired, incompetent, or unethical behavior.

Discussion

South Dakota Law

Except as noted below, South Dakota practitioners have no express legal duty to report impaired, incompetent, or unethical colleagues. The South Dakota Legislature has enumerated actions that are unethical in SDCL § 36-4-30. The South Dakota Board of Medical & Osteopathic Examiners (Board) is also afforded broad discretion in determining whether conduct is unprofessional or unbecoming a physician.¹ Failing to report unethical conduct could be considered unprofessional or conduct unbecoming a physician; such a determination would be up to the discretion of the Board.²

The following activities are statutorily unprofessional: employing cappers or steerers; producing or aiding or abetting a criminal abortion; obtaining fees based upon false assurances; willfully betraying a professional confidence; employing untruthful or improbable statements in advertising intending to deceive the public; being convicted of a felony, crime involving the practice of medicine, or crime involving moral turpitude; possessing habits of intemperance or drug addiction that the Board determines affects a licensee's practice of the profession; refusing or neglecting to report the existence of a diseased or unsanitary condition; prescribing intoxicants, narcotics, barbiturates, or other habit-forming drugs in quantities under circumstances that make it facially apparent to the Board that the prescriptions issued are not made for legitimate medicinal purposes or are prescribed in a manner and in amounts calculated to endanger the well-being of an individual patient or the public; splitting fees with or otherwise paying an individual who furnishes a patient; failing to disclose a school of practice or professional academic degree when using a professional title or designation; sustaining a physical or mental disability that renders a licensee's continued practice dangerous; failing to comply with state or federal drug recordkeeping laws; falsifying medical or prescription records; presenting a fraudulently obtained license, certificate, or diploma to the Board; obtaining a license illegally, fraudulently, or wrongfully by using precluded

¹ SDCL § 36-4-29-30.

² SDCL § 36-4-29.

methods or devices to pass an exam or making false statements on an application; violating SDCL 34-23A-10.1, South Dakota's informed consent abortion law; performing medical services which have been declared, by Board ruling, to be of no medical value; engaging in sexual relations with a patient; engaging in gross or immoral sexual harassment or contact; consistently providing or prescribing medical services that are inappropriate or unnecessary; engaging in conduct that is a danger to the health, welfare, or safety of the public or patients; engaging in conduct unbecoming a person licensed to practice medicine; failing to fulfill a valid obligation to a federal or state student loan or scholarship program for medical school education designed to provide medical services to underserved geographical areas; and being disciplined by another state, territorial, or provincial licensing board or the licensing board of the District of Columbia.³

Physicians, as well as the general public, have a legal duty to report felonies known to them.⁴ But, if the physician becomes aware of the felony through privileged communications, no reporting is required.⁵

American Medical Association Standards

The American Medical Association (AMA) Code of Medical Ethics recommends physicians report impaired, incompetent, and/or unethical colleagues.⁶ The AMA recommends reporting impairment when it interferes with a physician's ability to safely engage in the practice of medicine and reporting is necessary for patient protection. It is further recommended by the AMA to report incompetent behavior when it poses an immediate threat to the health and safety of patients. The AMA suggests reporting all such unethical conduct to the appropriate board or authority. However, it should be noted that AMA opinions are merely advisory and not legally binding.

Conclusion

As previously stated, there is no legal duty to report impaired, incompetent, or unethical colleagues in South Dakota. Partners in professional partnerships or other business relationships may incur civil liability due to the actions of a partner or associate, and this possibility must be considered when evaluating whether to report suspect conduct. The SDSMA recommends reporting impaired, incompetent, or unethical colleagues to the Board for patient protection and the moral advancement of the profession.

³ SDCL § 36-4-30.

⁴ SDCL § 22-11-12.

⁵ SDCL § 22-11-12.

⁶ American Medical Association (AMA) Code of Medical Ethics Opinion 9.031 attached hereto as Attachment A.

