

How does a dual-licensed healthcare provider wear two hats and satisfy both professionals boards?

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How do you wear two licensed hats at the same time – if, for example, you're an medical doctor (MD) *and* a chiropractor (DC), or a chiropractor and an acupuncturist – or, a naturopathic physician and a shaman? Well, if you're a naturopathic doctor (ND) who is licensed and a shaman, you have to ask yourself whether your state allows non-licensed providers to offer healthcare services, because you're wearing the hat of a healthcare licensee ND *and* the hat of a non-licensed healthcare provider.

Many healthcare providers have dual roles. I know an MD who is also a DC and an LAc (acupuncturist); a psychotherapist who is a licensed clinical psychologist who also does "Journey" work for groups on the side; a physician who only teaches meditation and Kabbalah; an integrative medicine doctor who prefers to instruct patients in lifestyle modification, nutrition, and yoga; and many other combinations.

These days, with **integrative medicine**, **telemedicine**, **concierge medicine**, and much of health and wellness care being done by **mobile medical apps** or "doctor Google," we are saying more cross-disciplinary collaboration, more reliance on self-care and lifestyle, and less narrow, silo care unless someone is in need of emergency care, urgent care, or acute care.

When wearing two hats, here are a few basic ground-rules:

1. Both licensing boards have a say in your conduct. You are bound to each licensing board's rules and regulations, and the underlying statute.
2. Each licensing board may have its own definition of professional misconduct.
3. You may be held to both standards of care – or, in fact, to the higher standard of care.

Let's say, for example, that you're an MD but only seeing the patient for acupuncture. In a negligence (malpractice) case, the court may impose the medical standard of care.

What can you do?

You can try to disclaim primary care, in your informed consent form. This is a strategy our integrative medicine legal team uses with physicians who want to focus only on modalities such as **functional medicine**, or, to provide specific therapeutic modalities in a **complementary medicine** fashion.

You can clarify the patient's expectations. For example, we've used this approach with an MD who provides only **homeopathic medical care** based on a constitutional analysis of the patient's overall well-being, and not being on diagnostic categories of conventional care.

Now let's stretch the framework. Suppose you have a dual-licensed DC-PA (chiropractor/physician assistant). This is interesting because the PA is a conventional practice, dependent on the MD; the chiropractor is a CAM (complementary and alternative medicine) provider, independent of the MD.

Must the DC-PA act as a PA, under medical supervision, and beholden to medical standards of care, or should the DC-PA act as an independent chiropractic professional, bound only to chiropractic standards of care (with a duty to refer to the MD where the condition is beyond the DC's **scope of practice**)?

Absent express prohibitions (and even in the presence of an express, general authorization for dual licensees), DC-PAs are carving out new regulatory (and practice) territory. In such case, the most legally sensible way to practice is to abide by existing restrictions on each license, and to pro-actively exercise caution in cases where one license might allow activities that the other either prohibits, or simply does not authorize. The bottom line is that the dual licensee is accountable to *both* professional licensing board, and in addition, remains accountable to patients (as well as consumer protection and other government agencies) to maintain clear practice boundaries in any given role or circumstance.

Here are some quick do's and don'ts — and these are generalizable to other professional combinations.

The DC-PA should do the following:

- Respect the scope of practice of their respective license, when functioning within that license.
- If functioning as a PA, ensure that physician delegation complies with state law (for example, when required, is memorialized in a written agreement that conforms to state law).
- When functioning as a PA, mind physician compliance with applicable law. As noted, the physician must abide by specified rules, such as mandatory physician filings with the medical or other regulatory board (for example, of employment, discharge, or supervisor control of the PA), and limitations on the number of PAs the MD may supervise. The DC-PA should be aware of such rules and have an eye toward physician compliance.
- Wear an appropriate name badge.
- Inform the patient of the professional role in which the dual licensee is acting.
- When functioning as a DC, recognize when the duty to refer is triggered. Where the patient's condition exceeds chiropractic skill and expertise, refer the patient to an MD, notwithstanding having the PA license as well.
- Document and chart appropriately.
- Follow all other legal requirements. For example, as noted there are billing restrictions applicable to PA's.

The DC-PA should not do the following:

- Misuse the title "doctor."
- Engage in false, deceptive, or misleading advertising.
- Bill unlawfully.
- Mislead the patient.

The above is not a comprehensive exhaustive list of do's and don'ts, but rather, a sensible set of guidelines in this emerging area.

The perils of violating the above boundaries include professional discipline by one or more regulatory boards, investigation and enforcement action by state prosecutorial authorities, and exposure to liability for negligent practice (malpractice) in a civil action by the patient.

While the pressures contributing to shortage of primary care physicians come from federal law, it is state law that governs scope of practice. Therefore, irrespective of Obamacare or any related federal legislation, we must look to state laws for guidance on how the dual-credentialed practitioner can sensibly manage the two clinical hats.

Because our law firm represents so many integrative medicine clinics and practitioners, we understand the holistic and biopsychosocial models of health, and the legal perils of innovative healthcare practice.



Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.