

# Real-Life Legal Ethical Dilemmas Facing Health Care Lawyers

July 1 and July 2, 2025

Felicia Sze

Athene Law

[felicia@athenelaw.com](mailto:felicia@athenelaw.com)

Stephen Lee

Stephen Lee Law

[slee@stephenleelaw.com](mailto:slee@stephenleelaw.com)



1

## Model Rules vs. State Rules



For this presentation, we'll look at the model rule and at some state rules



Important to check your own rules, especially as some states make changes



2

2

## Scenario 1

*Attorney is working and receives a forwarded e-mail from a client regarding a Motion to Compel Attorney filed on behalf of client, currently pending in court.*

### CLIENT

I received this e-mail from the lawyer opposing you in this case. It says “[a]s a third party whose interests in maintaining the confidentiality of protected patient data are directly implicated by the pending motion, your hospital may wish to evaluate its legal options in responding to the motion.” It says: “do not hesitate to contact me should you have any questions.” Should I contact them?

3



3

## Communications with Represented Persons

### Model Rule 4.2

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

4



4

## Communications with Represented Persons

### Model Rule 4.2

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

### California Rule 4.2

(a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person\* the lawyer knows\* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

(1) A current officer, director, partner,\* or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.....

5



5

## Scenario 2

*Plaintiffs' Attorney makes offer to opposing counsel during court recess regarding timing of discovery responses to resolve pending motion. Plaintiffs' Attorney does not mention waiver of objections.*

*Court then resumes.*

### OPPOSING COUNSEL

We were not willing to resolve this issue because Plaintiffs would only extend the deadline for Defendant to respond to discovery if it waives all objections.

6



6

## Candor to Tribunal

### Model Rule 3.3

(a) A lawyer shall not knowingly:  
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;  
...

7



7

## Candor to Tribunal

### Model Rule 3.3

(a) A lawyer shall not knowingly:  
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;  
...

### California Rule 3.3

(a) A lawyer shall not:  
(1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer;

*Paragraph (a)'s introductory clause incorporates a "knowledge" standard. The requirement of known falsity is important from a practical as well as a policy standpoint. A rule that could be violated by gross negligence would have an improper chilling effect on advocacy and could render the lawyer a guarantor of the truth of the facts presented.*

8



8

## Scenario 3

*You represent a company that is engaged in a type of medical service that you know has faced scrutiny by federal prosecutors. You have concerns that the company is engaged in behavior that is improper, but your client says that they have been told by their biller that everything is fine.*

*How can you proceed? What should you do to proceed?*

9



9

## Communication with client

### **Model Rule 1.4**

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

10



10

## Communication with client

### Model Rule 1.4

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. ...
- The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. ...
- Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult.

11



11

## Scenario 4

*In a health-care fraud case, the government has provided voluminous discovery including patient files, massive spreadsheets, and emails.*

*What are your responsibilities with regards to reviewing all the discovery?*

12



12

## Competence

### Model Rule 1.1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

13



13

## Competence

### Model Rule 1.1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### California Rule 1.1

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes\* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.

14



14

## Competence regarding technology

State	Comment
California	The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.
Florida	To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, including generative artificial intelligence, and comply with all continuing legal education requirements to which the lawyer is subject.
Illinois	To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject
New York	No comment
Texas	Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology. To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

15



15

## Scenario 5

*You receive a brief from an associate full of citations that do not appear to exist.*

*What are your and your firm's responsibilities with regards to the potential use of AI?*

16



16



## ABA Formal Opinion 512/California Bar Guidance

- Duty of Confidentiality
  - Model Rule 1.6 (Confidentiality of Information): must be cognizant of the duty to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent. Other model rules require lawyers to extend similar protections to former and prospective clients' information.
  - A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must anonymize client information and avoid entering details that can be used to identify the client
  - AI system compliance stringent security, confidentiality, and data retention protocols
  - Review the Terms of Use or other information to determine how the product utilizes inputs; ensure provider does not share inputted information with third parties or utilize the information in any manner

17



17

## ABA Formal Opinion 512/California Bar Guidance

- Duties of Competence and Diligence
  - Model Rule 1.1: obligates lawyers to provide competent representation to clients and requires they exercise the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” States lawyers should understand “the benefits and risks associated” with the technologies used to deliver legal services to clients.
  - Understand how generative AI works, its limitations and applicable terms of use and other policies
  - Carefully scrutinize outputs: critically review, validate and correct both the input and output of generative AI
  - Professional judgment cannot be delegated to AI

18



18

## California Bar Practical Guidance on Use of AI

- Duty to Comply with the Law
- Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers
  - Establish organizational policies
  - Subordinate lawyers cannot use generative AI in a manner that violates that lawyer's professional duties
- Communication regarding Generative AI
  - Model Rule 1.4 (Communications): lawyers' duty to communicate with their clients and builds on lawyers' legal obligations as fiduciaries, which include "the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive." Of particular relevance to GAI, Model Rule 1.4(a)(2) states that a lawyer shall "reasonably consult" with the client about the means by which the client's objectives are to be accomplished.

19



19

## California Bar Practical Guidance on Use of AI

- Charging for Work Produced by Generative AI and Generative AI Costs in Fee Agreement
  - Actual time spent; no value billing
  - May charge for cost of generative AI system
  - Model Rule 1.5 (Fees): fees and expenses must be reasonable pursuant to included criteria. ABA states that lawyer may charge for time inputting information into AI system, as well as for the time necessary to review the resulting draft for accuracy and completeness. But, in most circumstances, the lawyer cannot charge a client for learning how to work a GAI tool.
- Candor to the Tribunal; Meritorious Claims and Contentions
- Prohibition against Discrimination, Retaliation and Harassment
- Professional Responsibilities to Other Jurisdictions

20



20

## Scenario 6

*You have been retained by a client, replacing an attorney whom you know socially but do not work with. In the course of the representation, you develop concerns about the former attorney's work, including whether the former attorney properly advised the client about some high-risk areas.*

*Do you have an obligation to report the attorney to authorities?*

21



21

## Reporting Misconduct

### **Model Rule 8.3**

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.

22



22

## Reporting Misconduct

### California Rule 8.3

(a) A lawyer shall, without undue delay, inform the State Bar, or a tribunal\* with jurisdiction to investigate or act upon such misconduct, when the lawyer knows\* of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial\* question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

23



23

## Reporting Misconduct

### California Rule 8.3

*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\* question" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.*

*The rule permits reporting to either the State Bar or to "a tribunal\* with jurisdiction to investigate or act upon such misconduct." A determination whether to report to a tribunal,\* instead of the State Bar, will depend on whether the misconduct arises during pending litigation and whether the particular tribunal\* has the power to "investigate or act upon" the alleged misconduct. Where the litigation is pending before a non-judicial tribunal,\* such as a private arbitrator, reporting to the tribunal\* may not be sufficient. If the tribunal\* is a proper reporting venue, evidence of lawyer misconduct adduced during those proceedings may be admissible evidence in subsequent disciplinary proceedings. (Caldwell v. State Bar (1975) 13 Cal.3d 488, 497.) Furthermore, a report to the proper tribunal\* may also trigger obligations for the tribunal\* to report the misconduct to the State Bar or to take other "appropriate corrective action." (See Bus. & Prof. Code, §§ 6049.1, 6086.7, 6068.8; and Cal. Code of Jud. Ethics, canon 3D(2).)*

24



24

## We Are AHLA

### Our Vision

A diverse health law community working to advance health care

### Our Mission

To deliver authoritative educational content and serve as a professional home for all who engage with health law

### Diversity and Inclusion

In principle and in practice, the American Health Law Association values and seeks to advance and promote diverse and inclusive participation within the Association regardless of gender, race, ethnicity, religion, age, sexual orientation, gender identity and expression, national origin, or disability. Guided by these values, the Association strongly encourages and embraces participation of diverse individuals as it leads health law to excellence through education, information, and dialogue.



25

© 2025 is published by the American Health Law Association. All rights reserved. No part of this publication may be reproduced in any form except by prior written permission from the publisher. Printed in the United States of America.

Any views or advice offered in this publication are those of its authors and should not be construed as the position of the American Health Law Association.

“This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought”  
—from a declaration of the American Bar Association.



26