

# Ethical Dilemmas in Medical Practice and Coding



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- \* DC Bar Disciplinary Actions taken (2017-18) – 149

# Consider This...

- \* Serge In, DPM, completed residency in 2015 and has been working in a large practice for the past several years. While the job is going well she wants to join a smaller practice in hopes of one day of buying it.
- \* Dr. In thinks she found the perfect practice. It has a strong patient base with a mix of surgery, wound care and sports medicine, It's near her home, and she gets a long really well with the owner.
- \* Dr. In asks to review the books since she hopes one day to own it, and she notices some very questionable billing practices.
- \* What should the prospective associate do?

# What is a Code of Ethics?

- A blueprint for standards of conduct and ethical behavior.
- Internalized set of moral values that define for the doctor his/her own sense of what is right and what is wrong.



# Core Values in Medical Ethics

- **Autonomy:**
  - The patient's right to refuse or choose treatment.
- **Beneficence:**
  - The doctor should act in the best interest of the patient.
- **Non-maleficence:**
  - "First, do no harm."
- **Justice:**
  - Fairness and equity in the delivery and dispensing of health services and treatment.
- **Dignity:**
  - The patient and the person treating the patient have the right to be respected.
- **Truthfulness and Honesty:**
  - The concept of informed consent.



*Principles of Biomedical Ethics, Beauchamp and Childress*

# Why is there a Code of Ethics?

- To encourage and promote that doctors aspire to the highest possible standards of conduct and ethical behavior.
- To assure that doctors provide the best care to the individuals and groups whom they serve.



# What is the Scope of the Code of Ethics?

- Applies to all aspects of professional life -- within a variety of contexts as health care providers, administrators, educators, researchers, consultants, and employers.
- Also applies to maintaining a professional decorum in public and private life outside of professional practice.

# APMA Code of Ethics

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# APMA Code of Ethics

- Medical Ethics
- Business Ethics
- Association Ethics
- Interpretive Guidelines



# APMA Code of Ethics

## Medical Ethics

- Professional Judgment
- Informed Consent
- Confidentiality
- Patient Respect/Advocacy
- Professionalism
- Physician Health Responsibilities
- Research Ethics

## Business Ethics

- Advertising
- Business Transactions
- Inter-professional Referrals
- Employees/Associates
- Respect for Law
- Staff Respect/Advocacy
- Managed Care/Insurance Issues

## Association Ethics

- Conflict of Interest
- Confidentiality
- Commercial Relationships
- Association Conduct

# State Oversight

[Ohio Revised Code](#) » Title [\[47\]](#) XLVII OCCUPATIONS - PROFESSIONS

## **Chapter 4731: PHYSICIANS; LIMITED PRACTITIONERS**

### **4731.22 Disciplinary actions.**

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice or certificate to recommend, refuse to issue a certificate to an individual, refuse to renew a certificate, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(18) Subject to section [4731.226](#) of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American Podiatric Medical Association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

# Ethical Considerations – Federal

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- \* What should the prospective associate do?



# Consider this...

- \* Have you ever been a member of a practice in which you became aware that questionable billing practices were occurring ?

# Consider this...

If yes, which of the following actions did you take

- \* Nothing
- \* Brought my concerns to the attention of the practice owners
- \* Talked with the owners about my concerns but seeing no change in billing procedures, I reported the practice to the insurance company and/or OIG
- \* Reported the practice to the insurance company and/or OIG without first discussing my concerns with the owners.

# What should Dr. In do?

**Business Transactions:** *The podiatrist has the responsibility to maintain high moral, ethical, and legal standards in business transactions. Claims, bills, statements, and records must accurately reflect the services provided. (See interpretive guideline.) (BE2.0)*

**Interpretive Guideline:** *Fraud includes but is not limited to knowingly presenting (through actual knowledge, deliberate ignorance or reckless disregard) or causing to be presented a false or fraudulent claim. (BE2.0)*

*The podiatrist is obliged to report known violations of conduct by providers to the appropriate authority. (BE 5.11 )*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# Work Harder not Smarter

A practice with 3 doctors hires a new associate Michael Toe-en, DPM. The contract stipulates a base salary only. Three months in, two of the doctors leave the practice and the new associate's workload goes up significantly and new associate is at the office until 8p six nights a week finishing charts. Practice owner Ronald J. Grump, DPM, tells new associate, "What's wrong with a little hard work – this is how I learned the practice! This practice is hu-uge and you should have expected this. You will need to work a lot harder to make this work. What did you actually learn in DPM school? Work harder or you're fired!"

Is this appropriate behavior? If not, what should the practice owner do and what are the associate's options?:

- 1) Continue as is and work under the contract that was signed
- 2) Renegotiate a new agreement



**Is this appropriate behavior? What should Dr Toe-en do?**

# Is this appropriate behavior? What should Dr Toe-en do?

*Professionalism The podiatrist should, at all times, act in a professional manner before patients, colleagues, and the general public. This conduct should extend not just to the podiatrist's professional life but should encompass his/her public and private lives as well. (ME5.0 )*

*The podiatrist has the responsibility to carry out all aspects of their career with compassion, respect, honesty, and integrity. (ME5.11 )*

*The podiatrist shall not engage in any deliberate act of emotional abuse, physical abuse, sexual misconduct, or sexual exploitation related to the podiatrist's position as an employer, employee, partner, or associate. (BE 6.1 )*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# Case Studies: The Daily Ethics Question Survey Results

Our 6 Daily Questions ...

... Did You Respond?

# Rolling the Dice

While taking ER call, you see a woman with a seriously infected foot. You quickly diagnose that gangrene has set in and at least a portion of the foot (up to the midfoot) will likely need to be amputated. You inform her that this is the only way to fix the problem. You also inform her that time is of the essence. The woman is a casino employee who is on her feet all day long. She worries that the amputation will negatively affect her work; therefore, she refuses this option. You agree to debride the foot and see how it goes. While under anesthesia, you discover the gangrene is more pervasive than you realized.

**What do you do?**



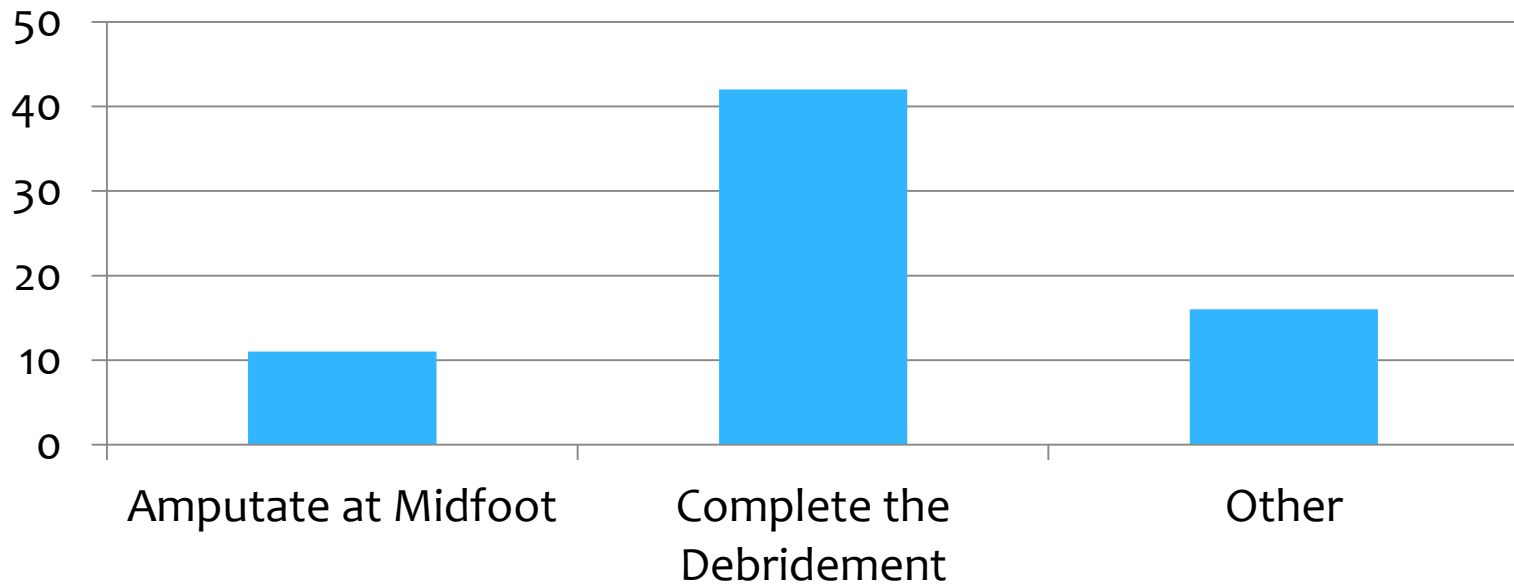
# What Should You Do?

- \* Patient has refused the amputation to midfoot, but
- \* In your professional judgment, you feel that the amputation is necessary to save the patient...

**What did you say?**

# What Should You Do?

## Rolling the Dice



# Rolling the Dice

*Within the responsibility of a podiatrist is the need to evaluate the patient, initiate care decisions, and decide on the best treatment plan. The plan should encompass the entirety of the patient and utilize appropriate consultation or referral. (ME1.31)*

*The podiatrist will evaluate the patient and use appropriate treatments in the care of the patient, taking into consideration any physical, financial, cultural, or emotional limitations that may result in harm during the treatment process. (ME4.11)*

*The podiatrist strives to ensure that the patient is cognizant of the nature of the illness or condition, the treatment proposal or its alternatives with reasonable explanations of expected outcomes, potential complications, and length of recovery. (ME2.11)*

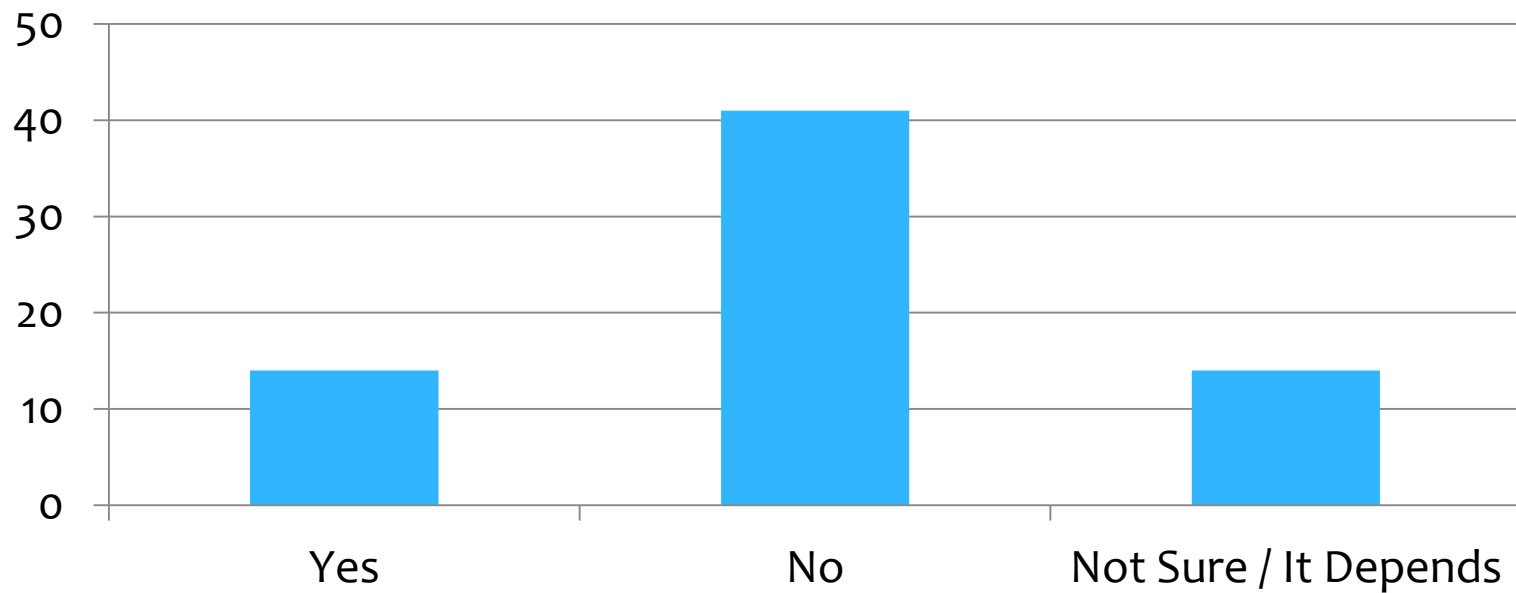
# Foot the Bill

Is it ever appropriate to bill differently for the same procedures or services based upon whether a patient has insurance coverage?



# What Did You Say?

## Foot the Bill



# Foot the Bill

*Claims, bills, statements, and records must accurately reflect the services provided. Fraud includes but is not limited to knowingly presenting (through actual knowledge, deliberate ignorance or reckless disregard) or causing to be presented a false or fraudulent claim. (BE2.0)*

*The podiatrist shall not base treatment decisions on managed care incentives/disincentives when such decisions are, or may be, detrimental or when they are not in the best interest of the patient. (BE2.33)*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# You've Been Served

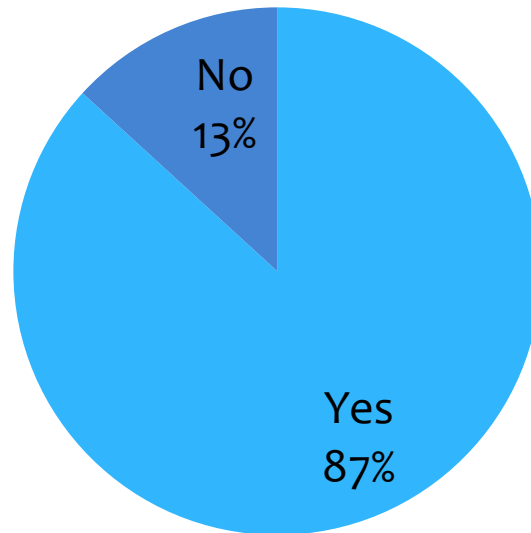
You are playing racquetball with a friend. While returning a serve, your friend leans back against the wall and accidentally whacks himself in the head, splitting open a 2.5 cm gash above his right eyebrow. Your office is in the office complex next door. You take him into your office and stitch up his forehead.

Have you practiced out of scope?



# What Did You Say?

## You've Been Served



# You've Been Served

Podiatrists have a duty to do all in their power to avoid actions that would cause harm. Physical harm may be the result of poor professional judgment in the diagnosis and treatment of the patient's medical condition, including treatment beyond the scope of competency, and/or experimental procedures without the full consent of the patient. Financial harm may be the result of inappropriate and misleading advertising, unnecessary procedures, and/or inappropriate and/or fraudulent billing procedures. Emotional harm may result from harassment and/or the undertaking of a personal relationship with a patient. (ME4.11)

A doctor should refrain from providing care for any individual with whom he/she has a relationship of a nature that may cause them to provide care with reduced objectivity, interfering with the exercise of sound medical judgment. (ME1.33)

Fraud includes but is not limited to knowingly presenting (through actual knowledge, deliberate ignorance or reckless disregard) or causing to be presented a false or fraudulent claim.

Fraudulent acts include but are not limited to:

1.) Willfully making or filing false records or reports within the scope of practice. (BE2.0 )

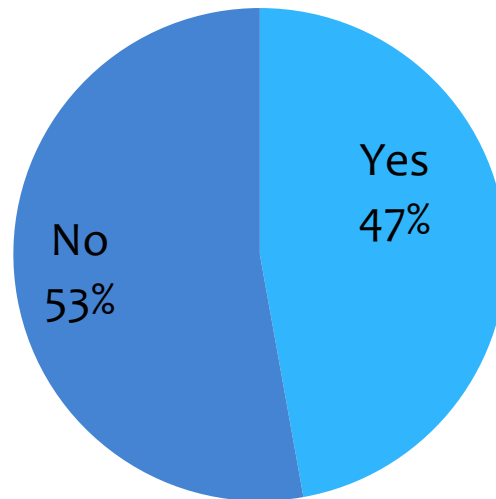
# Scanning the Crowd

Have you ever been scanned for credit for a lecture (at this meeting or others) without having actually attending the entire lecture?



# Scanning the Crowd

## Scanning the Crowd



# Scanning the Crowd

No legacy is so rich as honesty.

William Shakespeare



# Scanning the Crowd

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

*The podiatrist maintains continuing competence by participating in professional study and life long learning activities designed to ensure that their skills and knowledge are consistent with ongoing developments in the art and science of podiatric medicine and surgery. (ME1.14)*

*The podiatrist has the responsibility to accurately and honestly report compliance with any Continuing Medical Education (CME) requirements for licensure, certification, and credentialing. (ME1.15 )*

*The podiatrist has the responsibility to carry out all aspects of their career with compassion, respect, honesty, and integrity. (ME5.11)*

# Momentary Lapse

Artur Desis, DPM, has a close relationship with Sarah Huckaboot Plantars, MD, anesthesiologist on staff at the hospital where he brings most of his foot cases. Dr. Plantars reveals to Dr. Desis that she has recently experienced brief lapses of consciousness and admits that she has also experienced a partial seizure in the OR that was so brief that no one observed it.

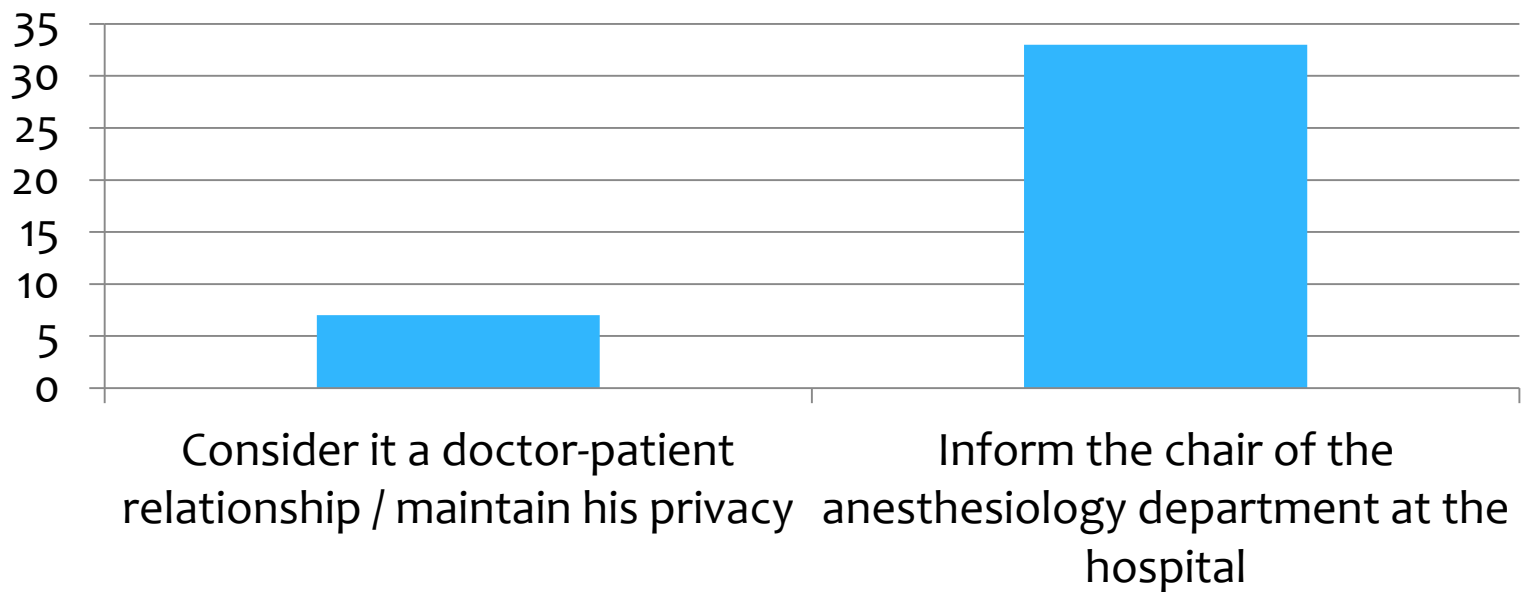
What should Dr. Desis do with this information?

# What should Dr. Desis do with this information?

- 1) Consider it a doctor-patient relationship and maintain her privacy.
- 2) Inform the chair of the anesthesiology department at the hospital.

# What Did You Say?

## Momentary Lapse



# Momentary Lapse

The podiatrist who is physically, mentally, chemically, or emotionally impaired should withdraw from those aspects of practice that could be detrimentally affected by the impairment. If the podiatrist does not withdraw, other podiatrists who know of the impairment have the duty to take action to prevent the impaired podiatrist from harming themselves or others. (ME6.11)

Interpretive Guideline: Physical disability includes but is not limited to, deterioration through the aging process, or loss of motor skill that results in the inability to practice the profession with reasonable judgment, skill or safety.  
ME6.11 Physical disability includes but is not limited to, deterioration through the aging process, or loss of motor skill that results in the inability to practice the profession with reasonable judgment, skill or safety. (ME6.11 )

The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)

# What should Dr. Desis do with this information?

## **Confidentiality**

*The podiatrist and their staff must maintain strict confidentiality (subject to federal and state laws) as to the condition and treatment of all patients. Release of any information must be premised on the consent of the individual patient, unless otherwise mandated by law. (See interpretive guideline.) (ME3.0)*

## **Interpretive Guidelines:**

*A patient has the right to have all identifiable medical and health information treated in strict confidence. This right includes the right to control the dissemination of such information. A patient must be secure in the expectation that medical information disclosed to the podiatrist will remain confidential. Failure to respect the right of privacy may cause patients to withhold important information vital to their care. Unauthorized release of confidential material may result in embarrassment, stigma, discrimination, and possible legal liability. (ME3.0 )*

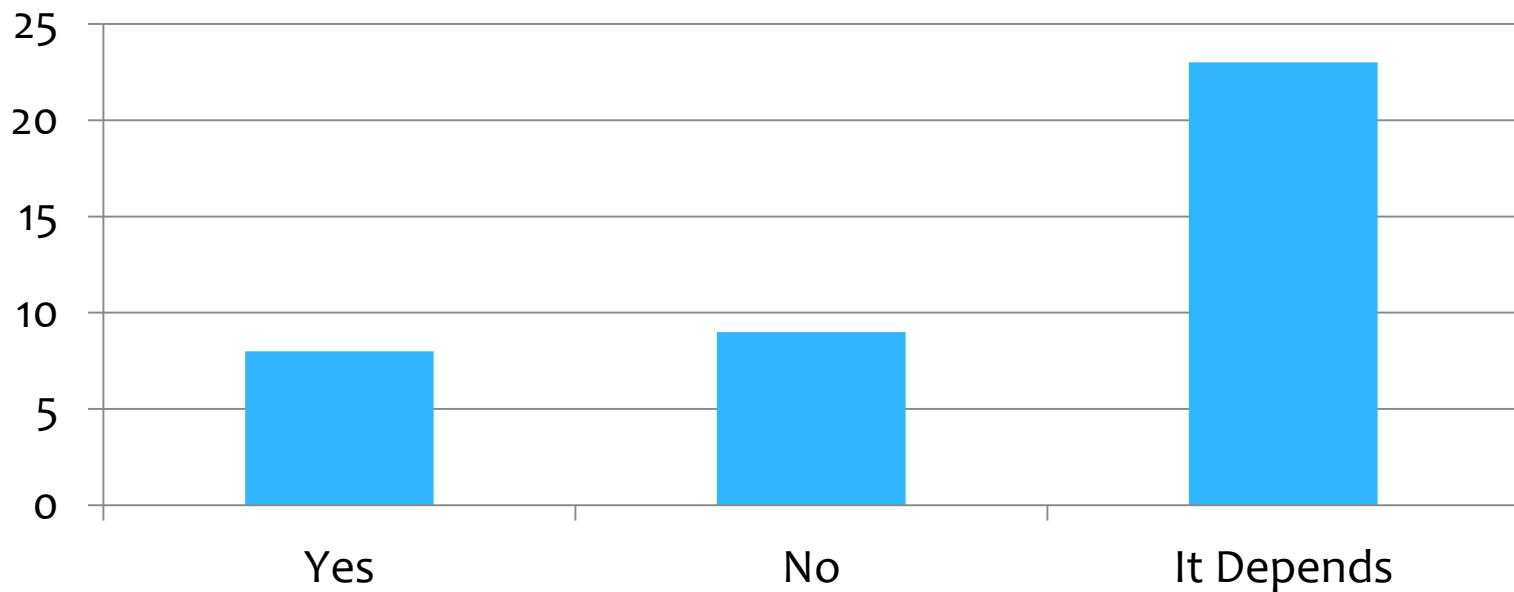
# No Pain, no Gain

Would you ever undertreat a patient's pain because you were concerned about repercussions or because you believe the patient might become addicted to opioids?



# What Did you Say?

## No Pain, No Gain



# No Pain, no Gain

*Within the responsibility of a podiatrist is the need to evaluate the patient, initiate care decisions, and decide on the best treatment plan. The plan should encompass the entirety of the patient and utilize appropriate consultation or referral. (ME1.31)*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

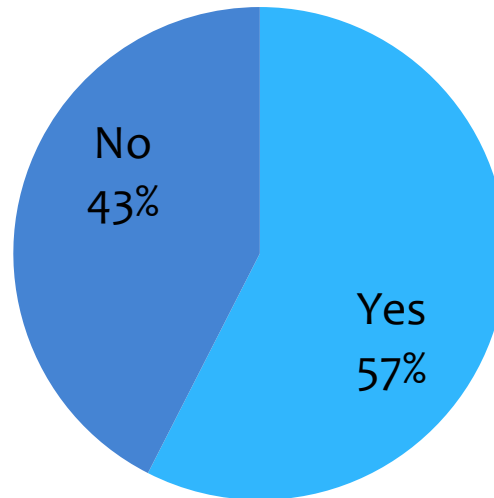
# Without Peer

Are you more ethical than your peers?



# Are you More Ethical Than your Peers?

**Without Peer**



# Without Peer

Humility is the solid foundation of all virtues.

Confucius



# Without Peer

*The podiatrist has the responsibility to carry out all aspects of their career with compassion, respect, honesty, and integrity. (ME5.11)*

*The podiatrist strives to maintain the highest standards of practice in accordance with the responsibilities conferred by the state, profession, and society. (ME1.11 )*

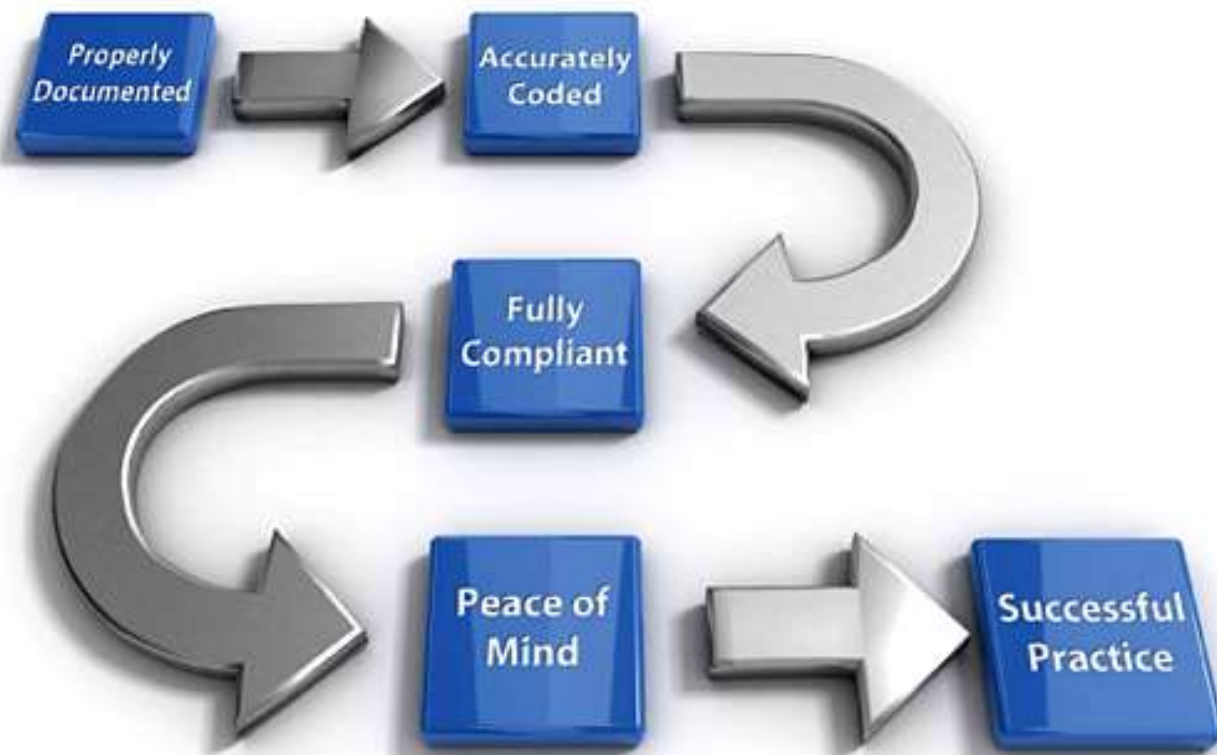
*The podiatrist recognizes their competencies and strives to practice in an environment that is consistent with those competencies. (ME1.12 )*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# Questions?

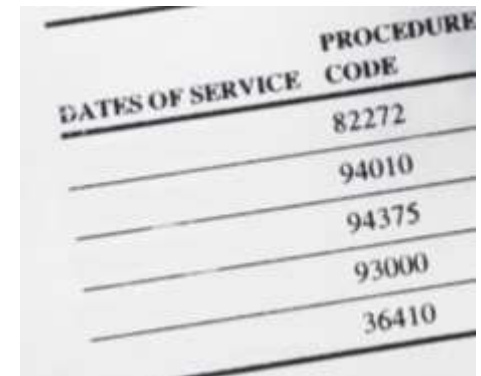


# Ethical Coding



# Down Coding

Several years ago, Dr. Arthur O. Scopee had several claims denied for diabetic patients he was treating. He worried that an audit might be coming next. In order to avoid more denied claims and to prevent the possibility of an audit, Dr. Scopee decided he would undercode the services and procedures he was providing for his diabetic patients. He understood that he might not be reimbursed as much but it was better to be underpaid rather than denied or audited.

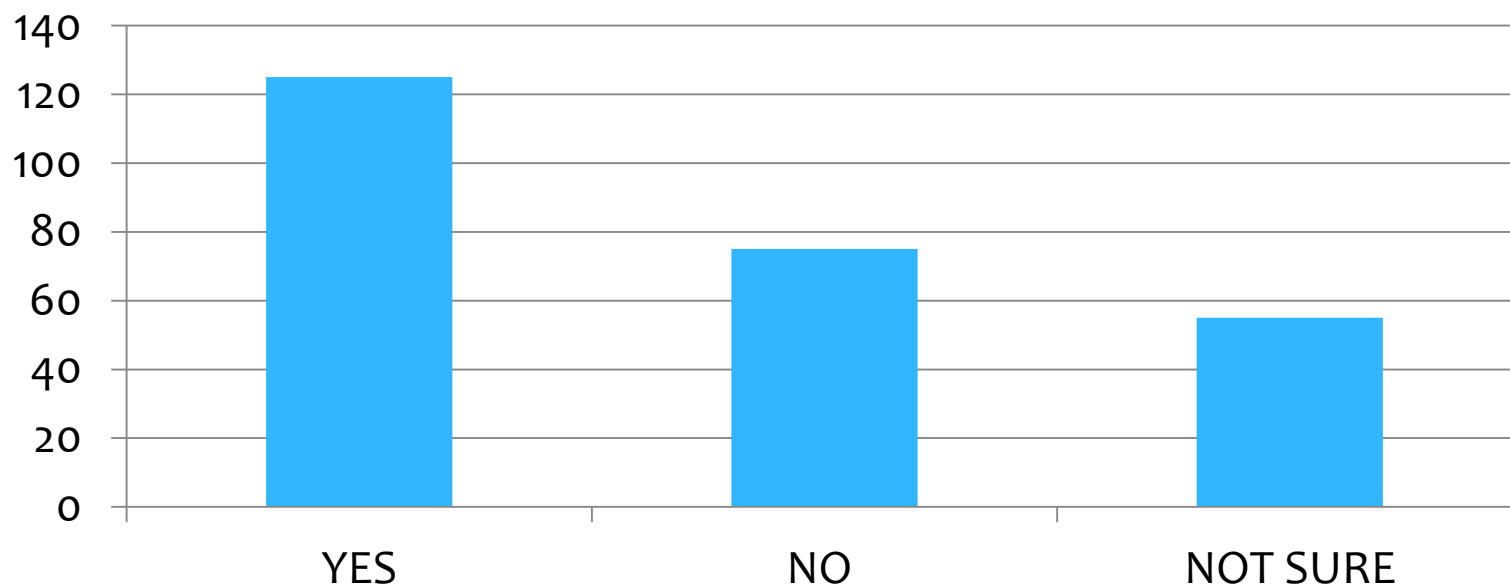


DATES OF SERVICE	PROCEDURE CODE
	82272
	94010
	94375
	93000
	36410

**Has Dr. Scopee come up with an appropriate way  
to avoid any more denied claims?**

# Has Dr. Scopee come up with an appropriate way to avoid any more denied claims?

## Down Coding



**Has Dr. Scopee come up with an appropriate way to avoid any more denied claims?**

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(BE2.0)*

# Skin in the Game

If a patient has two ulcers and I debride 3 sq cm of dermis out of both, I can only code one unit CPT 97597. But if I say I debrided 3sq cm of dermis from one and 3 sq cm of subQ from the other, I can code both CPT 97597 and CPT 11042. That pays a lot more money. How will they know to what depth I actually debrided?



# Brain Drain

- \* I performed an incision and drainage that went below the level of fascia on a patient with an abscess. CPT 28003 has a 90 day global. Can I just use CPT 11043 instead because it has a zero day global? I DID debride away some muscle!

## Common Medical Billing Errors



# Home Alone

My hospital's EHR now allows me to log in to the patient's chart from home. Now I can sign my residents' notes without even having to go in! Yahoo!

Can this doctor sign notes from home and code for these visits if she is discussing the case with her residents, looking at pictures sent over the phone, and dictating care?



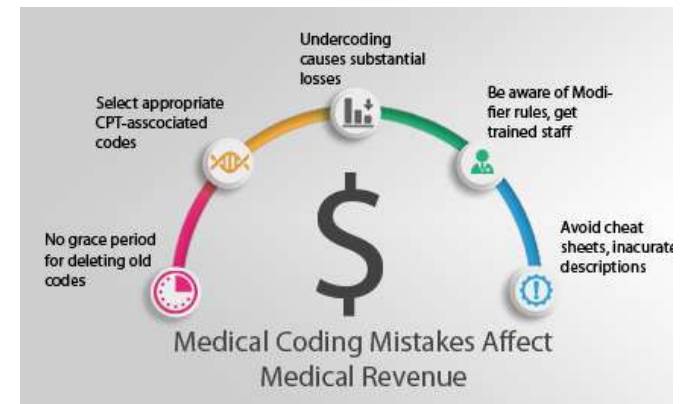
# Global Piece

I performed an incision and drainage that went below the level of fascia on a patient with an abscess. CPT 28003 has a 90 day global. Can I just use CPT 11043 instead because it has a zero day global? I DID debride away some muscle!



# At Risk– You or Patient?

This carrier says I should only collect a copay if the patient has an E/M performed. Some of these copays are \$40, \$50 nowadays. I can't afford not to collect those. If a patient comes in for just at-risk foot care I'm just going to make up something simple like a CPT 99212 for xerosis or something so I can collect that copay.



# Previous Case Studies: The Daily Ethics Question Survey Results

# Professional Image

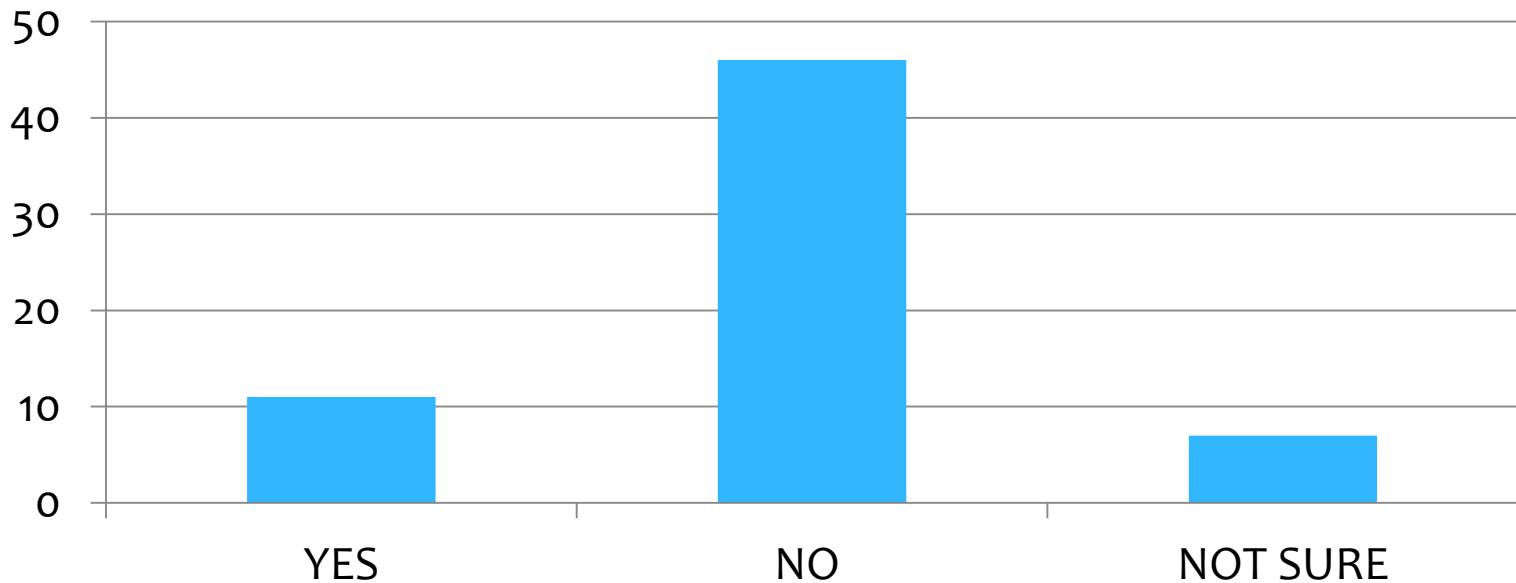
Dr. Aniko Mykosis is in a part time practice and has an 8-year old x-ray unit that still works great (except for an occasional radiation leak) and a tank hand-dipped developing system that he acquired when he opened his practice 20 years ago. This system is arguably two generations behind current standard technology, but Dr. Mykosis can't justify spending tens of thousands of dollars on a new x-ray machine and DR imaging technology, but rather prefers to continue use of the equipment, concluding that the image produced is “good enough.”



**Is Dr. Mykosis correct in maintaining use of his existing equipment?**

# Is Dr. Mykosis correct in maintaining use of his existing equipment?

## Professional Image



# Is Dr. Mykosis correct in maintaining use of his existing equipment?

## *ME4.1 Do No Harm*

*The podiatrist will evaluate the patient and use appropriate treatments in the care of the patient, taking into consideration any physical, financial, cultural, or emotional limitations that may result in harm during the treatment process. (See interpretive guideline.) (ME4.11 )*

## *BE4.3 Duty to Comply with Professional Standards*

*The podiatrist strives to practice podiatric medicine consistent with the standards of care established within their community (BE4.31 )*

# Picture This

Drs. Shoe-mer and Ped-losi are fond of taking foot pics of their patients. They often use these pictures in their duties as academic and conference lecturers on the “Make Podiatry Great Again” Lecture Circuit. The Docs are careful not to mention the names of their patients. One particular picture is of the calf of a patient which bears a relatively distinct tattoo of notable APMA luminary and former ED Glenn Gastwirth



**Is it appropriate for Drs. Shoe-mer and Ped-losi to use these Photos, even if they don't use patient names?**

# Is it appropriate for Drs. Drs. Shoe-mer and Ped-losi to use these Photos, even if they don't use patient names?

## **Confidentiality**

*The podiatrist and their staff must maintain strict confidentiality (subject to federal and state laws) as to the condition and treatment of all patients. Release of any information must be premised on the consent of the individual patient, unless otherwise mandated by law. (See interpretive guideline.) (ME3.0)*

*The podiatrist will take all reasonable means necessary so that confidentiality of patient medical records and conversations are strictly maintained in the use of any on-line, website, or **social networking** communication medium. (ME3.13)*

## **Interpretive Guidelines:**

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# HIPAA: Permitted Uses and Disclosures

## Treatment, Payment, Health Care Operations.

- \* *Treatment is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.*
- \* Payment encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual<sup>21</sup> and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
- \* Health care operations are any of the following activities:
  - (a) quality assessment and improvement activities, including case management and care coordination;
  - (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation;
  - (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs;
  - (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk;
  - (e) business planning, development, management, and administration; and
  - (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.

# What should Dr. Desis do with this information?

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# Assisting the Assistant

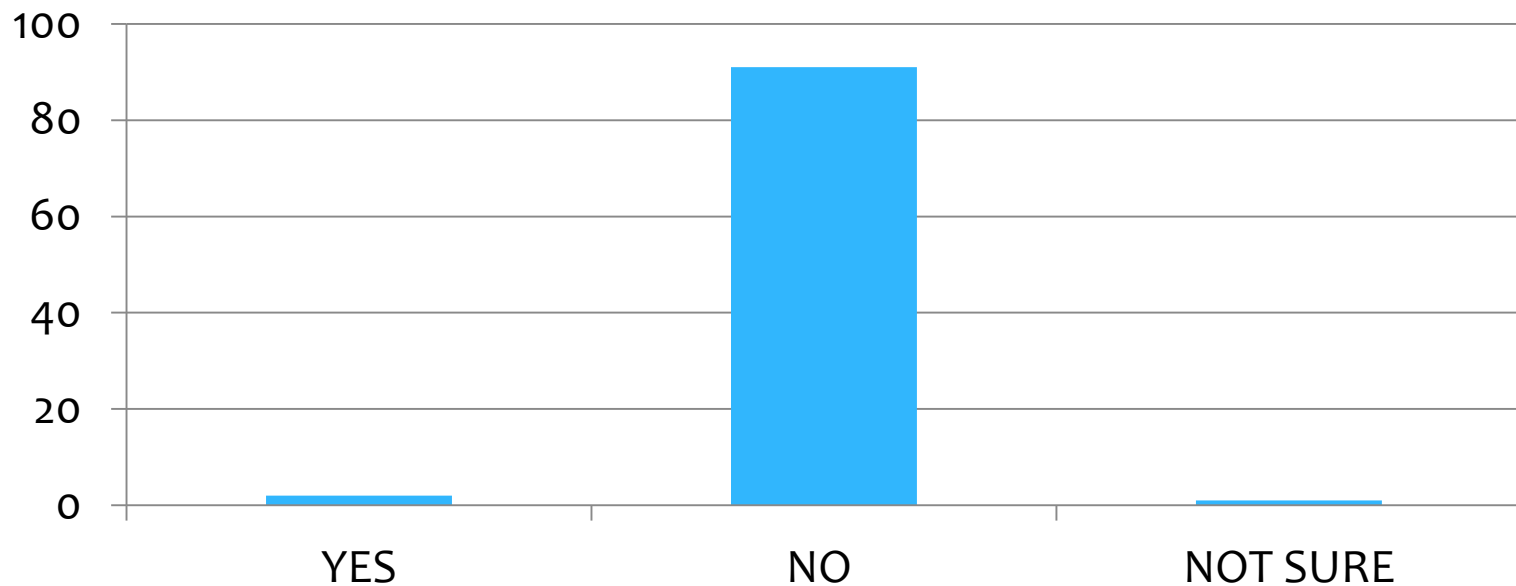
Dr. Mehta Tarsal's office assistant broke her wrist two years ago and has had severe pain since. The twice daily dosing with Vicodin ES has escalated to 3-4 times a day but her primary care physician will not write larger quantities of the prescription. Dr. Tarsal orders a stock bottle of 250 Vicodin ES tablets through the office to supplement her needs.



**Is Dr. Tarsal providing appropriate care and treatment  
for his ailing office assistant?**

# Is Dr. Tarsal providing appropriate care and treatment for his ailing office assistant?

## Assisting an Office Assistant



# Is Dr. Tarsal providing appropriate care and treatment for his ailing office assistant?

*Within the responsibility of a podiatrist is the need to evaluate the patient, initiate care decisions, and decide on the best treatment plan. The plan should encompass the entirety of the patient and utilize appropriate consultation or referral. (ME1.31)*

*A doctor should refrain from providing care for any individual with whom he/she has a relationship of a nature that may cause them to provide care with reduced objectivity, interfering with the exercise of sound medical judgment. (ME1.33)*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# The Groupon Deal

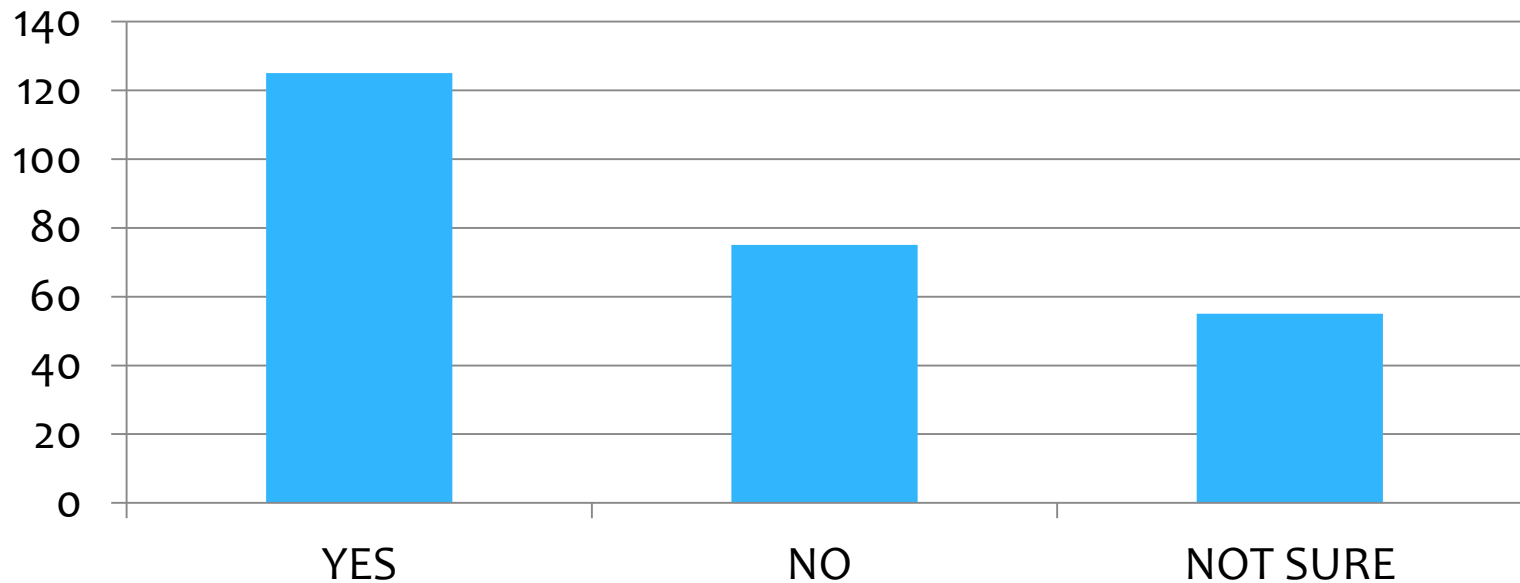
Dr. Perry Nickia is running a Groupon special. His Groupon deal offers a free foot-screening exam at his office. In the small print of the deal is this statement: “Additional fee for x-rays, injections, and procedures.”



**Is it appropriate for Dr. Nickia to charge for these additional services at the time of the free foot screening?**

# Is it appropriate for Dr. Nickia to charge for these additional services at the time of the free foot screening?

## The Groupon Deal



*As an inducement to provide additional services for a fee, doctors may advertise and offer free examinations or free services provided they do not charge a fee to any patient or any third party payer for any service provided at the time that the free examination or medical services are provided. (BE1.31)*

*In the event that an urgent condition presents at the time of a free examination, reasonable charges for the treatment may be allowed upon written consent from the patient for the services and related charges (BE1.31)*

# Dating a Former Patient

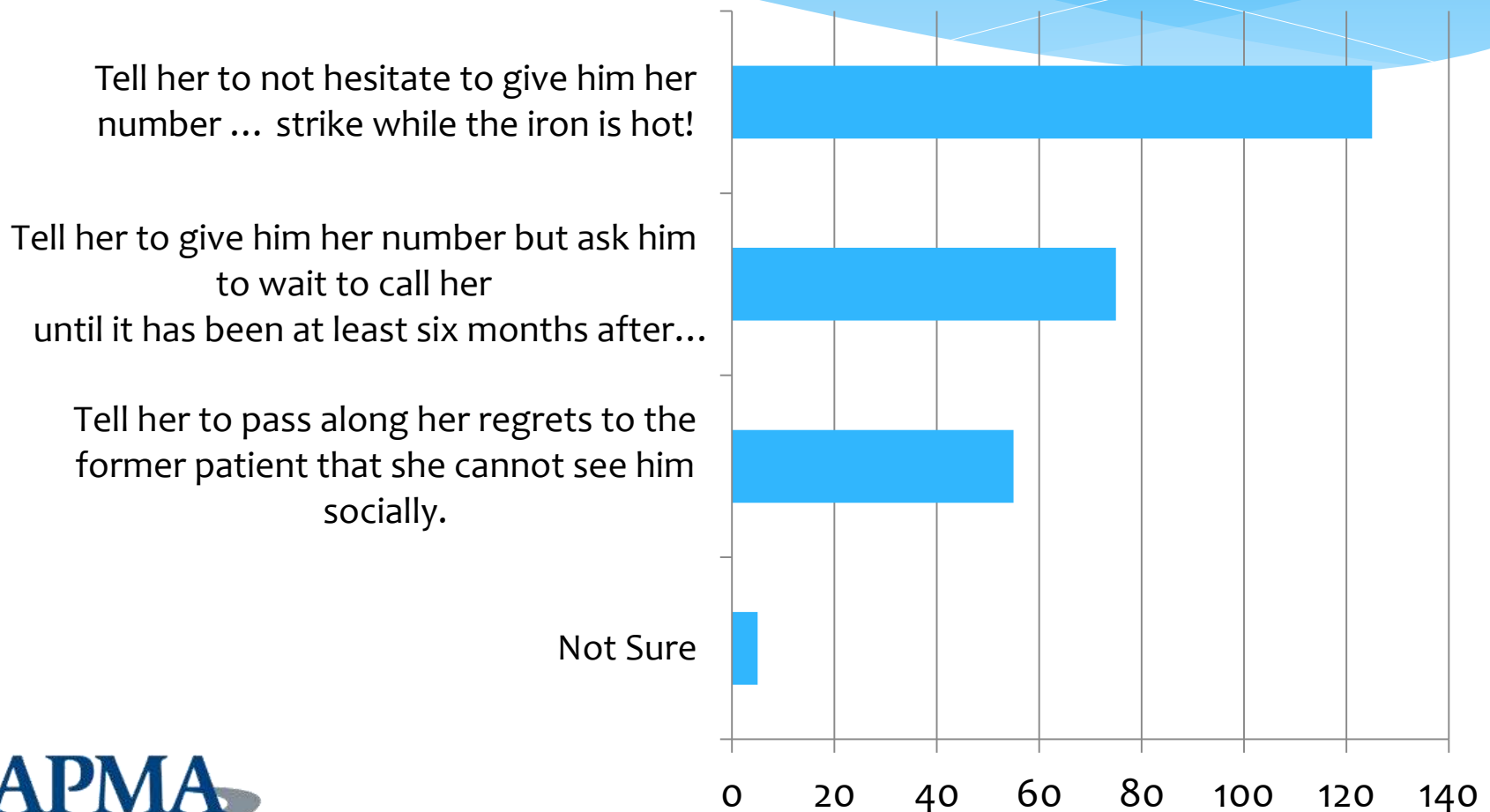
A month after dispensing custom orthotics to a patient who has now been discharged from her care, Dr. Helga S. Veres encounters the former patient at a local shopping mall. The former patient suggests to *Helga* that he would like to get to know her better. He asks her for her cell number.



**What would you recommend that Dr.  
Veres do?**

# What would you recommend that Dr. Veres do?

## Dating a Former Patient



*Sexual intimacy with patients, students, residents, fellows, or employees is inappropriate unless the personal relationship precedes the professional relationship. (ME4.31)*

# Assisting an Office Assistant

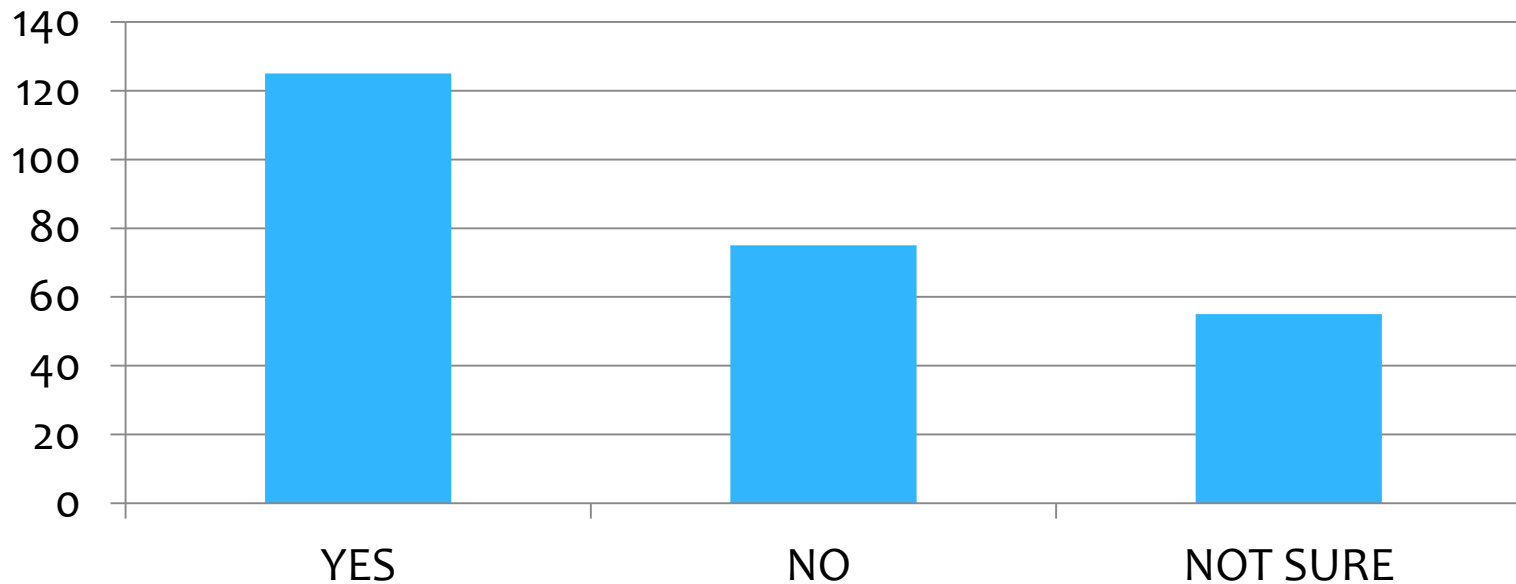
Dr. Austin “Bunny” Ectomy’s office assistant broke her wrist two years ago and has had severe pain since. The twice daily dosing with Vicodin ES has escalated to 3-4 times a day but her primary care physician will not write larger quantities of the prescription. Dr. Ectomy orders a stock bottle of 250 Vicodin ES tablets through the office to supplement her needs.



**Is Dr. Ectomy providing appropriate care and treatment for his ailing office assistant?**

# Is Dr. Ectomy providing appropriate care and treatment for his ailing office assistant?

## Assisting an Office Assistant



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*A doctor should refrain from providing care for any individual with whom he/she has a relationship of a nature that may cause them to provide care with reduced objectivity, interfering with the exercise of sound medical judgment. (ME1.33)*

*The podiatrist is obliged to comply with the letter of all applicable laws and regulations. (BE5.0)*

# A Wild and Crazy Guy

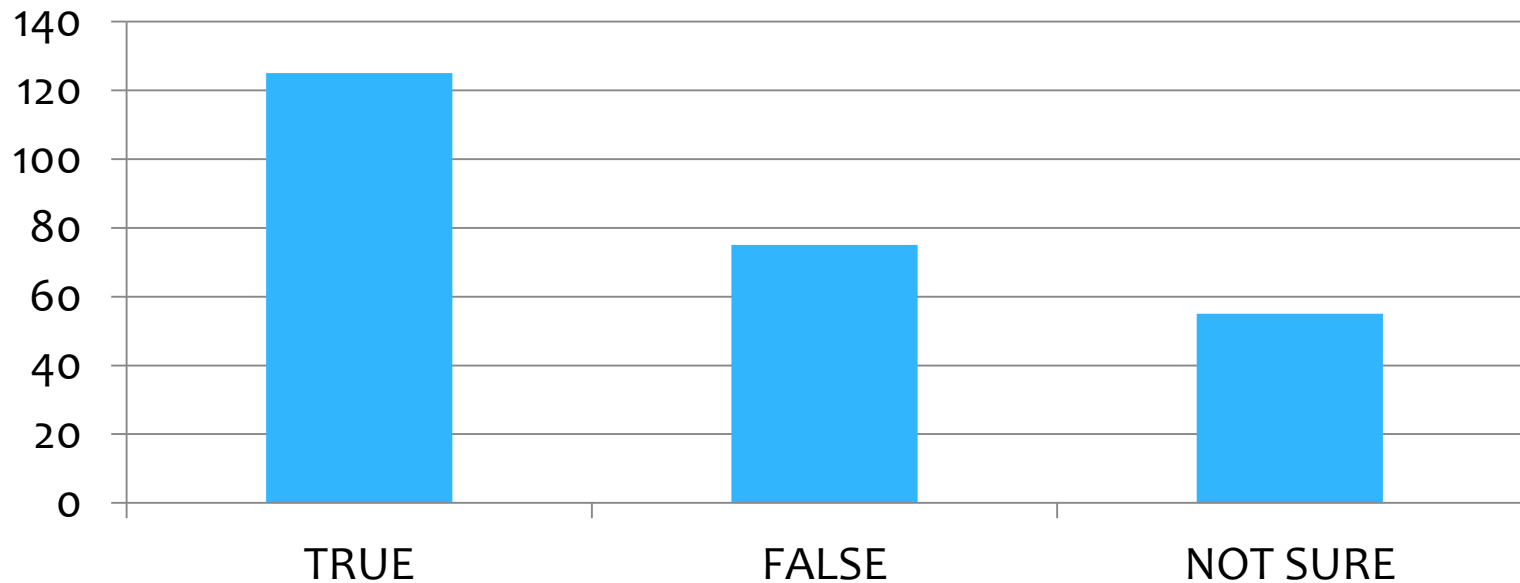
Dr. Daryl B. Payne is adored by his patients. He has never had any ethical, legal, or malpractice claims against him. On Friday nights, Dr. Payne enjoys letting his hair down. He drinks to excess and occasionally ends up getting slapped in the face by a few women who find him to be overly friendly. He's always around for last call.



**What Dr. Payne does in his off time is his business and has no bearing on his professional life.**

**What Dr. Payne does in his off time is his business and has no bearing on his professional life.**

### **A Wild and Crazy Guy**



*The podiatrist should, at all times, act in a professional manner before patients, colleagues, and the general public. This conduct should extend not just to the podiatrist's professional life but should encompass his/her public and private lives as well. (ME5.0)*