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DIGITAL HEALTH
LEGAL AND
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BOOTCAMP

WHAT YOU DON'T KNOW
YOU DON'T KNOW

FRAUD & ABUSE

In the Digital Health World

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Pitch Me.

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WHAT YOU DON'T KNOW
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The digital health paradox.

Are you a medical provider, or are a technology platform?

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WHAT YOU DON'T KNOW
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Both federal and state laws in play...

1. Federal Anti-kickback
2. State Anti-kickback and Patient Brokering
3. Violations of Medicare Rules
4. Stark Law?
5. State Self-Referral Rules?
6. Compound Pharmacy Issues
7. DME Marketing
8. HIPAA



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Telehealth Marketing Strategies

How do you generate business?

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“Everybody’s doing it.”



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Everybody's Doing It...

Things we hear from you every day:

- What's wrong with paying commissions when someone refers you new business?
- "All of your competitors are doing it."
- You have a "high tolerance for risk."
- Your CEO and Board REALLY want you to do this.



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...That Doesn't Make it Legal!!!

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The Most Common Marketing Issue...

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How do you incentivize people to send you
business?

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Paying for Patients...

- Even if you don't take Federal funds (Medicare, Tricare, etc.), you must be aware of state laws.
- For example:
 - Florida Patient Brokering Act
 - § 650 (2016), California Code, Business and Professions Code
 - Texas Solicitation of Patients Act
 - Illinois Insurance Claims Fraud Prevention Act

And don't forget the standard of care...

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Does anyone have a problem with this? (This was the 2017 version.)

HEALTHCARE. REFRESHINGLY SIMPLE.

Get a doctor's prescription for \$25.

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How about now? (The 2018 version)

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Same Day Online Doctor Visits for \$25

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Any issue with this?

Erectile dysfunction medicine prescribed & delivered to your door every month.

 \$10 gift card with your first order

get started

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Has anyone heard of Monty Grow?



Monty Grow, left, during his playing days with the Jacksonville Jaguars. The former Florida Gator was sentenced to 22 years in prison on Monday in a healthcare fraud case in Miami. - Herald archives

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How about this Monty Grow?



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The story of Monty Grow...

- [The] former [NFL](#) and University of Florida football player has been sentenced to nearly 22 years in prison for a health care fraud scheme that prosecutors say bilked the federal government out of about \$20 million.
- Federal court records show that 46-year-old Monty Grow was sentenced Monday and ordered to pay about \$18 million in restitution.
- Grow was convicted earlier this year on 17 counts of health care fraud and money laundering in a kickback scheme from Patient Care America, a South Florida compounding pharmacy.
- Prosecutors say Grow got millions in illegal payments for recruiting patients who were covered by the Tricare health insurance program for the U.S. Department of Defense, which services veterans.

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He hired someone like you...

- “...Grow set up a network of sales representatives who handled hundreds of TRICARE patients and arranged for them to see doctors through “telemedicine” companies who approved their prescriptions for the compound medications provided by Patient Care America.”

--Miami Herald, January 22, 2018

<http://www.miamiherald.com/news/local/article/196046824.html>



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Has anyone heard of Dr. Hageseth?

- The Colorado physician who prescribed an antidepressant over the Internet to a Stanford student who later committed suicide, was sentenced Friday to nine months in county jail.
- Christian Hageseth, 68, faced up to a year in jail after pleading no contest in February to a single felony count of practicing medicine without a license.
- San Mateo County prosecutors said the case was one of the first dealing with “telemedicine,” in which doctors give advice and prescribe drugs via the phone or the Internet, sometimes to patients in states where they don’t have a medical license.
- San Mateo County Superior Court Judge James Ellis said he would allow Hageseth to serve his sentence in Colorado as he recovers from heart surgery and ordered him to pay \$4,200 to the California medical board, which investigated the case.
- --The Mercury News

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HIPAA/Data Ownership Issues

- Who owns your data?
- Are you a Business Associate under HIPAA?
- Business Associates:
 - Significant compliance obligations
 - BAs subject to:
 - HIPAA audits
 - Civil monetary penalties
 - Criminal sanctions

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HIPAA/Data Ownership Issues

- **Business Associate Agreements are no longer boilerplate**
 - Most include indemnification provisions requiring the BA to indemnify the Covered Entity from all claims and expenses resulting from the acts or omissions of the BA or any of its subcontractors
 - Many also require BA to pay costs of breach caused by BA/subcontractor
 - Notice requirements
 - Cyber-insurance requirements

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Questions???