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# **FIVE** **MUST HAVE** **LEGAL** **DOCUMENTS**

**FOR EVERY FUNCTIONAL MEDICINE DOCTOR**



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# MEET SCOTT

Scott Rattigan, J.D., is a licensed healthcare attorney and a co-founder of a functional medicine practice with his wife Linda Matteoli, DO.

Scott helps Integrative, Functional, and Personalized medicine providers establish solid business and legal plans to protect themselves and their businesses from excess risk so that they can practice with the confidence and security to powerfully change the lives of their patients.



He is a nationally recognized attorney and business consultant for integrative and functional medicine practices.

Together with his wife, he helps run a thriving functional medicine practice so he understands both the legal issues and the practical business issues that practices face today.

He consults practices all across the country and is up-to-date on all of the latest telemedicine laws, regulations, and temporary orders. Scott is a graduate of William & Mary Law School.

# THE FIVE MUST HAVE **LEGAL DOCUMENTS** FOR EVERY FUNCTIONAL MEDICINE DOCTOR

In a few moments, you'll know why these are the most important documents to have in place in your practice:

01 INFORMED CONSENT

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02 PATIENT AGREEMENT

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03 NOTICE OF PRIVACY PRACTICES

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04 MEDICARE OPT-OUT AFFIDAVIT

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05 PRIVATE CONTRACT

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06 BONUS: WEBSITE MUST-HAVES

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# STEP ONE

# INFORMED CONSENT



**Informed consent** is the single most important document you can have to protect your business and medical license. Absolutely every functional, integrative, and personalized medicine practice should have this document and policy in place.

Why is it so important?

It is the best tool you have to protect against malpractice suits AND board complaints. Poor informed consent can be grounds for a medical malpractice lawsuit by the patient, even if you were not negligent.

The document itself is merely a record of a conversation you should be having with all of your patients before seeing them as a patient. You should discuss the reasons why you are proposing your treatment plan, the risks, the benefits of that plan, and any outside options the patient has for seeking treatment instead of seeing you.

Then, after the patient has had their questions answered to their satisfaction, you ask them to sign the informed consent document. Then you can rest assured you have minimized your risk of malpractice claims.

## STEP TWO

# PATIENT AGREEMENT



You want to have protection for yourself, so you want to have an agreement in place with your patients. This limits your liability, makes sure patients know how and when to pay you, and sets clear expectations for both you and the patient.

Different styles of patient agreements would include a **Patient Membership Agreement**; a **Program or Package Agreement** (e.g., 3- or 6-month programs); and a **Fee-For-Service Agreement** (i.e., where patients pay by the visit).

Whatever business model you use, the agreement should limit your liability, set out the rights and obligations of the patient and the provider, describe what happens if a dispute arises, and communicate expectations of both parties over the life of the relationship.

The agreement shows the patient that you are legitimate and that the patient has some protections, too. For example, if you fail to provide the services or the products, then they may be able to get their money back. It also gives your patients and you peace of mind, knowing the rules of the relationship are clear.

## STEP THREE

# NOTICE OF PRIVACY PRACTICES



A **Notice of Privacy Practices** lets your patient know when you are required to disclose their Protected Health Information (PHI); when you are permitted to disclose PHI; and whether or not they have a say in your disclosure or your sharing of their information.

The Notice is a required document under HIPAA, and most states have a similar requirement written into state laws. And if you have a website, posting a copy publicly on your site is also required under HIPAA.

Privacy is (quite obviously) a big issue in the medical world, and you may be subject to hefty fines and possibly even criminal charges if you fail to protect your patients' information appropriately. Having a good Notice of Privacy Practices in place can help reduce some of your risk.



## STEP FOUR

# MEDICARE OPT-OUT AFFIDAVIT



If you are a cash-based functional medicine physician, you may want to consider opting-out of Medicare. A physician who opts-out, enters into private contracts with individual patients, bills the patients directly instead of billing Medicare, and is not subject to the Medicare's limits on reimbursement rates.

To opt-out properly, you need to submit a **Medicare Opt-Out Affidavit** to your relevant Medicare Administrative Contractor(s). Contact us for more information on how to properly opt-out and how to maintain your ordering/referring status (as required by federal law).

## STEP FIVE

# PRIVATE CONTRACT



Once you have opted-out of Medicare, you will need to enter into an agreement with patients who are current and (soon-to-be) Medicare beneficiaries. When you opt out of Medicare, Medicare does not cover services provided by you and Medicare payments cannot be made to you directly or indirectly. Also, Medicare will not make payments to your patients for items or services provided directly by you.

**The Private Contract** is an agreement where the patient agrees to pay for your services, without Medicare limits, and agrees not to seek reimbursement from Medicare for your services. It informs and protects both you and your patient from any potential Medicare fraud issues.



# STEP SIX [BONUS]

# WEBSITE MUST-HAVES

## A. Terms and Conditions

If you have a website, you must have Terms and Conditions (“T&C”). If you don't have them, you're needlessly exposing yourself to legal liability. Terms and conditions are just an agreement between you and your website visitors. It sets the rules for their use of the site, tells them that the website is yours, and tells them what they can expect as a visitor.

It should also include language that shows you are complying with various internet laws and regulations. Here is where you often see important wording that limits your liability, such as *“always consult a physician before starting a new diet or exercise plan”*. It also adds legitimacy to your business to have these in place.

## B. Privacy Policy

If you collect emails or any other information from your website visitors, you need a privacy policy. If you don't, you run the risk of violating federal and state laws.

The privacy policy lets your visitors know what you will do with their information, such as whether or not you are going to sell their information to a third-party for marketing purposes. But it also informs them on what they can do if they have a complaint. In addition to complying with laws and limiting your liability, having a Privacy Policy helps your visitors know that it's safe to share their information with you, because you are taking steps to safeguard it.

## C. Disclaimer

Particularly important in medicine, you need to clearly tell your website visitors what they are getting when they come to your website. This document can protect you from any misunderstandings that could lead to malpractice suits or regulatory issues down the road.

The disclaimer makes clear what relationship is formed (and, more importantly, not formed) through the use of your site, limiting your liability and protecting your license.



# HAVE QUESTIONS? **WANT MORE RESOURCES?**

We offer **Discovery Calls** for providers and practices looking for legal clarity.

The Discovery Call is a **20-minute video appointment** that gives you a chance to learn more about your situation.

We will also discuss how Functional Lawyer can help through the groundbreaking

## **Practice Protection Program**

Learn more at [www.functionallawyer.com/ppp](http://www.functionallawyer.com/ppp)

**SCHEDULE YOUR CONSULTATION**

Or visit [www.functionallawyer.com/discovery-call](http://www.functionallawyer.com/discovery-call)

# CONCLUSION



There you have it.

Now you know a little more about the ways you can protect yourself.

The world needs functional medicine providers like you to succeed so functional medicine becomes the standard.

You can find these documents, legal education, and ongoing support for your practice at [Functionallawyer.com](https://Functionallawyer.com).

Now go create health with your new protections in place!

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