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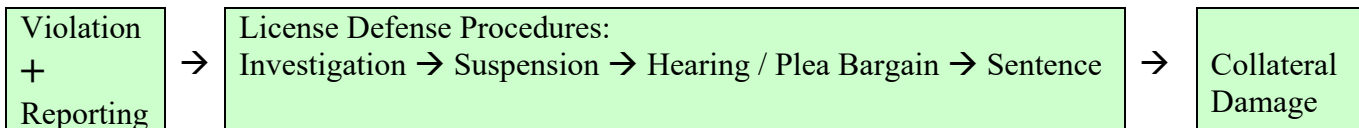
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Newsletter, February 2016 Overview of License Defense for a Physician

This article gives you a birds eye view of professional discipline for a physician, that is, the process by which your medical license comes under attack and your defense of it. To summarize the process:



Violation. The process of professional discipline starts with your violation of law. California statutes contain a large list of prohibitions for physicians, the violation of which triggers professional discipline against the physician's license. Some examples include:

- Excessive use of alcohol or drugs,
- Billing fraud,
- Dishonesty,
- Disciplinary action taken against you by other regulatory agencies,
- Unprofessional conduct, which includes, among other generalities, violation of a provision of the Medical Practice Act.

Notice that these violations incorporate other laws, and also disciplinary action taken against you by other agencies. This creates an infinite pool of possible violations. The laws applicable to physicians are voluminous and growing, with most of the laws being unknown to you and everyone else, but your violation of any one of them can start the process of professional discipline.

Reporting. The CA Medical Board learns of your violation from a number of sources, including from informants (beware employees). CA law also requires reporting from certain persons. For example,

- A physician must report his own felony charge, or misdemeanor or felony conviction. [Doesn't it feel unfair to force people to rat on themselves?]
- A district attorney must report a physician's felony charge.
- 805 Report—A hospital must report actions taken against physicians.
- Professional liability insurers must report settlements and judgments for claims for death or personal injury.

The ideal scenario is to stop the process before a report is made. Once the report gets made, you're in the system, and the system has a life of its own.

License Defense Proceedings. As I outline above, the legal proceedings flow like this:

Investigation → Suspension → Hearing / Plea Bargain → Sentence

For the Medical Board, the investigation is an appetizer, leading to the first course -- whether a suspension is warranted. From there you can demand a hearing, or you can immediately start to plea bargain for a reduced sentence. Usually the physician's violation is an established fact (like a DUI), so the discussion isn't whether you violated the law, but what's the punishment.

The Medical Board has standard ranges of discipline for each offense. For example, the range for excessive treatments is a minimum of 5 years probation up to a maximum of license revocation; the range for dishonesty related to patient care, billing etc. is a 1 year suspension + from 7 years probation up to license revocation. For some offenses, e.g. billing fraud, the Medical Board imposes permanent revocation of your license. You argue your case hoping for a sentence closer to the minimum.

The law uses two factors in locating your punishment between the minimum and maximum. You should argue both factors, that is, (1) you do not pose a risk to patient safety, and (2) you are in rehab and getting appropriate treatment and education.

Collateral Damage. The scariest thing in license defense is the cascade effect among the various agencies that regulate the medical industry. The agencies cross-default their violations, meaning that a violation of one agency's regulations will trigger discipline by another agency, which triggers discipline by still another agency. Everyone's coming to the party, and you're the piñata.

Francois de La Rochefoucauld

(French author, 1613 –1680)

- Only people with some strength of character can be truly gentle: usually, what seems like gentleness is mere weakness, which readily turns to bitterness.
- What usually prevents us from showing the depths of our hearts to our friends is not so much mistrust of them as mistrust of ourselves.
- Nearly all of our faults are more forgivable than the means we use to hide them.
- The reason why lovers are never bored with each other's company is because they are always talking about themselves.



“Your daughter is a pain in the ass.”