

The Tricks and Traps of Licensing Board Impaired Professional Monitoring Programs

Richard Q. Hark, Esquire

Hark & Hark

Philadelphia, PA

How do professional license investigations start?

- Failing a drug test
 - Medical employers must report positive drugs tests for any illegal or prescribed narcotic for which no prescription is possessed
- New employment related failed drug test
- Self-report on the bi-annual license renewal a conviction for D.U.I. or a drug-related felony criminal offense
- Anonymous source complaining to the Board of alleged drug use or mental health treatment

Drunk Driving Charges Trigger Monitoring Participation Requests: Steps for a licensed professional when charged with driving under the influence (DUI)

- Reporting the DUI triggers a “Letter of Concern” from the PHMP
- The DUI, ARD probation program treatment requirements *are independent of and significantly easier* than those of the “Letter of Concern” or PHMP monitoring
- **If one does not participate in the PHMP assessment and has spoken very little at the DUI, COAD assessment, there is very little information upon which a professional licensing board can rely to suggest any impairment**

The Pennsylvania Professional Health Monitoring Program*

Initial Contact Letter and Evaluation Process

- “It has come to our attention that you may be suffering from a drug or alcohol impairment that affects your ability to practice your profession. We are concerned.”
- Suggests participating in an evaluation to protect your professional license in a confidential manner without disciplinary action.
- Attending these evaluations and being completely cooperative provides the PHMP, the Board, and the social worker evaluator information of which all three are unaware and do not have a right to know.

*I will refer to PHMP as any state's monitoring entity

What to do when the professional receives a “Letter of Concern”

- Unless and until a professional is prepared to "admit that they suffer from a drug or alcohol addiction that renders them impaired and unable to practice their nursing profession safely," the professional should not attend any “letter of concern” assessment, sign a contract entering into the PHMP monitoring program, or even attend the PHMP evaluation.

Don't fall for the tricks...

“This could help avoid disciplinary action...”

“I am here to give you a chance to tell your side of the story...”

“You can tell your side of the story...”

“I am here to make sure I have all of the information to tell the Board.”

Personal statements to Board investigators, monitoring caseworkers, or Board attorneys will become evidence against you



COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
 PROFESSIONAL HEALTH MONITORING PROGRAMS (PHMP)
 UNIT I: VOLUNTARY RECOVERY PROGRAM (VRP)
 PO BOX 10569
 HARRISBURG, PA 17105-0569
 1-800-554-3428
 717-783-4857
 FAX: 717-772-1950
 www.dos.state.pa.us

PARTICIPATION COOPERATION FORM

PCF

PLEASE CAREFULLY REVIEW THE FOLLOWING ASPECTS OF THE PROFESSIONAL HEALTH MONITORING PROGRAMS (PHMP), UNIT I: VOLUNTARY RECOVERY PROGRAM (VRP), CAREFULLY BEFORE SIGNING AND RETURNING THIS FORM:

- The licensee will sign (if eligible) a "PHMP Agreement" deferring formal disciplinary action (i.e. suspension or revocation).
- The licensee will, at his/her own expense, if enrolled participate in a PHMP-approved assessment and/or treatment.
- The licensee will, at his/her own expense, if enrolled, participate in any aftercare plan developed with the primary treatment provider, and agree to be monitored by the PHMP for a period of not less than three years. When enrolled, no disclosure, publication, or public record will be made of the "PHMP Agreement", subject to the licensee's progress in and successful completion of the PHMP.
- If enrolled, failure to comply with the terms of the "PHMP Agreement" will result in initiation of the formal disciplinary process against the professional's license to practice.

I HAVE READ AND DISCUSSED THE PROGRAM WITH A CASEMANAGER AND AGREE TO OPERATE WITH THE VRP AND TO PROVIDE ANY INFORMATION NECESSARY TO DETERMINE MY ELIGIBILITY/INELIGIBILITY FOR THE PROGRAM.

_____, VOLUNTARILY AGREE TO COOPERATE WITH THE PHMP.

 Licensee Signature Date Social Security Number

If you choose not to cooperate with the PHMP, please so indicate by your signature below, and append a brief statement outlining your reason(s) for so choosing.

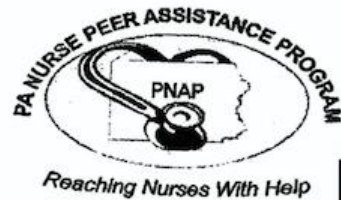
I HAVE READ THE TERMS AND CONDITIONS OF PARTICIPATION, AND REVIEWED THE ABOVE

_____, VOLUNTARILY DECLINE TO COOPERATE WITH THE PHMP.

 Licensee signature Date Social Security Number

What is Your State's Peer Assistance Program?

Pennsylvania's program is called PNAP:
Pennsylvania Nurse Peer Assistance Program



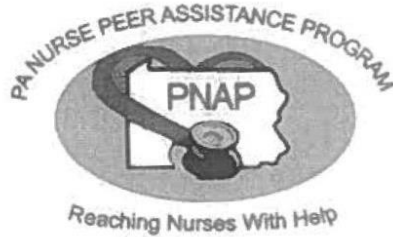
Dear Participant,

Welcome! Enclosed please find pertinent information regarding your enrollment into the P.N.A.P. program. This list of instructions will help expedite your completion of the preliminary paperwork necessary for your contract to be properly implemented:

1. Read the Terms and Conditions for Participation (T&CP.1)
2. Read the Participation Request Form (PRF) I and in the appropriate space, either voluntarily requesting participation in the P.N.A.P. Your signature must be notarized on the P.N.A.P. Participation Request Form. Sign only in presence of the notary.
3. Read the contract carefully. If there are any discrepancies, please notify this office immediately.
4. If a sponsor name is not indicated on page two of the contract, notify this office within fourteen days of obtaining a sponsor, indicating *his or her* name and telephone number. **Have a notary public notarize your signature on the contract.** Have the other signatories to the contract sign it and in your presence whenever possible. They may make a copy of the contract, however, **the original contract must be returned to P.N.A.P.**
5. Consent for Release of Information Forms. Anyone may witness your signature as well as any other signatures on the other forms and consents for release of information. Your Casemanager will sign the contract when it is received as complete in the office. Most forms are two part forms. One gives P.N.A.P. permission to release information from your P.N.A.P. records to your therapist/employer, etc, and one gives your therapist/employer,etc. permission to release information from their treatment/employment records to me. Complete with name of therapist/employer with address and phone number. A significant other, primary care physician, employer (if employed in Nursing) and therapist must be named.

PNAP Personal Data Sheet

- Every VRP “letter of concern” includes the personal data information sheet and medical authorization releases... do not sign any of these documents if one wishes to retain their medical, nursing or other professional license.
- Do not go to the requested assessment—it is not legally required.



PERSONAL DATA SHEET (PDS)

1. Name: _____
2. Address: _____
Street or P.O. Box _____
City State Zip Code
County: _____ Length of time at this residence: _____
Do you plan to relocate? ___ Yes ___ No
If yes, when and where: _____

3. Telephone #: _____
Home or Cell Work
4. Date of Birth: _____ 5. Driver's License #: _____
6. Social Security #: _____ 7. Marital Status: _____
8. Number of children and ages: _____

LICENSURE/CERTIFICATION SECTION:

9. List all states you hold or held a license to practice.

State: Pennsylvania License Number _____ Status _____

10. List any other professional certifications you hold or held (e.g. CRNA, CAC, etc...)?

State: _____ Type: _____ Certification #: _____

State: _____ Type: _____ Certification #: _____

11. Professional specialty (If any: e.g. anesthesiology, critical care, etc...):

12. Has any action been taken against you by any licensing and/or certification board, or is any such action pending? (If yes, provide details. Attach additional sheets if necessary):

EMPLOYMENT SECTION:

13. Are you currently employed? _____ Yes _____ No

Name of employer: _____

Address: _____

Name of supervisor: _____

Phone: _____ Date of hire: _____

Is your employer aware you contacted the PHMP? _____ Yes _____ No

14. List all places you have been employed in the past three years.

a) Name of employer: _____

Address: _____

Name of supervisor: _____

Phone: _____ Dates of employment: _____

DRUG & ALCOHOL TREATMENT:

25. Name of current treatment program/provider: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

Name of aftercare/continuing care counselor: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

26. Have you ever received drug and alcohol treatment in the past? _____ Yes _____ No

a. Name of treatment program/provider: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

Reason for treatment: _____

MENTAL HEALTH SECTION:

27. Have you been diagnosed as suffering from a mental health disorder?
____ Yes ____ No

If yes: complete #28 – #33.

28. I acknowledge that the following facts are true:

I suffer from: _____
(Specify type of mental health disorder)

which I began to develop approximately: _____
(Date)

29. Are you currently or have you ever been treated for a mental health disorder (e.g. Depression, Bipolar Disorder, Anxiety, PTSD, Personality Disorder, etc...)?

____ Yes ____ No

Specify mental health disorders: _____

a. Name of treatment provider: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

Reason for treatment: _____

c. List any medications prescribed for this illness (please provide name of medication, dosage, and number of times a day taken):

30. Have you ever required hospitalization for treatment of a mental health disorder?

___ Yes ___ No

a. Name of facility: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

Reason for treatment: _____

b. Name of facility: _____

Address: _____

Telephone #: _____

Date treatment began: _____ ended: _____

Reason for treatment: _____

If additional providers, please attach extra sheets if necessary

31. Have you ever required therapeutic blood testing for medication prescribed for treatment of a mental health disorder?

___ Yes ___ No

a. When was the last time? _____

b. What were the results? _____

32. Have you experienced suicidal thoughts? ____ Yes ____ No

Have you ever attempted suicide? ____ Yes ____ No

Has any member of your family attempted or committed suicide? ____ Yes ____ No

(Please provide details if you answered "yes" to any of the above questions. Attach additional sheets if necessary.)

33. Please describe any personal consequences you have experienced as a result of your mental health disorder:

MONITORING SECTION

34. Have you ever been a participant in Pennsylvania's PHMP? (If "yes" provide details, including dates of participation, reason for enrollment, and disposition of your case. Attach additional sheets if necessary):

35. Are you a participant, or have you been a participant of a peer assistance program and/or another state's monitoring program? (If "yes" provide details, including dates of participation, reason for enrollment, and disposition of your case. Attach additional sheets if necessary):

I, _____,
(Name)

verify that the facts and statements set forth in this Personal Data Sheet are true and correct to the best of my knowledge, information and belief. I understand that statements in this Personal Data Sheet are made subject to the criminal penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Licensee/Applicant Signature

Date

Social Security Number

License Inactive Documents

- With every PHMP questionnaire and data sheet, PHMP/PNAP case workers are include a voluntary license inactivation document.
- License Restrictions are required before a formal board order
- No credit is given for any of this participation, time, or compliance

PNAP MONITORING CONTRACT FOR THOSE ALSO IN PHMP

I) This treatment/monitoring contract [REDACTED] is made and entered into on [REDACTED] between myself, [REDACTED], my physician; [REDACTED], my therapist; [REDACTED], RN, PNAP Director; [REDACTED], MS, NCC, PNAP Case Manager, and, (mentor to be assigned), representing PNAP.

II) This is a document, which specifies the terms of my monitoring/treatment plan that I, [REDACTED], RN, agree to and understand to follow as part of my rehabilitation program. This contract is effective [REDACTED]. It will expire **three years and one day from the effective date, or as specified in the Board of Nursing Consent Agreement & Consent my** of it plan than that cort as

III) This contract is written to prevent any misunderstanding on [REDACTED] This [REDACTED] and times specified under said contract and what is expected of me.

IV) If I, [REDACTED], RN fail to abide by the terms and conditions of this treatment contract, I understand that I will be in violation of my contract and current Board Order. Whereupon Kathie Simpson, RN, representing PNAP and/or her designee and all the other signatories named in this contract will contact my PHMP Case Manager, who represents the Pennsylvania State Board of Nursing. They will request a full investigation of my professional practice and non-compliance, and will forward my current file to the Pennsylvania State Board of Nursing's Prosecution Division of the Legal Department for review. A violation may result in the suspension of my nursing license.

V) I, [REDACTED], RN, agree to give at least three (3) weeks' notice of my resignation to my present employer if I should decide to seek employment elsewhere. If, for any reason, I should decide to terminate my position with any employer and seek a position as a **Registered Nurse**, this contract shall be made known with such nursing employer until the stated expiration date of this contract. An ADDENDUM to this contract stating such employment must be signed and the proper consent for release of information forms (CRIIA.EMP and CRIIB.EMP) must be properly filled out and returned to the PNAP office before I may start the aforesaid employment as a nurse. Employment in designated practice areas (as defined under Restrictions in my Board Agreement and outlined in this contract) are prohibited unless approved in writing by the **PHMP Case Manager**.

Employers and/or potential employers must be made aware of this contract and my participation in the PHMP and PNAP programs upon interview.

YOU MAY NOT PRACTICE AS A NURSE UNTIL WRITTEN PERMISSION IS RECEIVED FROM YOUR PHMP CASE MANAGER.

RESTRICTIONS:

My PNAP Case Manager will coordinate my return to practice with my PHMP Case Manager and with my consent, will provide appropriate documentation to me employer.

Upon written approval to return to practice from my PHMP Case Manager, I may not practice nursing in any capacity that involves the administering of controlled substances for a period of at least six months following return to work as a nurse. At the conclusion of the six month period, written permission must be obtained from my PHMP Case Manager.

I may not function as a supervisor, in a private practice setting, in a home care setting, or as an agency nurse.

I may not practice in an emergency room, operating room, intensive care unit, cardiac catheterization laboratory, or coronary care unit.

I may not practice nursing without direct supervision. Direct supervision is the physical presence of the supervisor on the premises.

I SHALL:

1. Follow and make such appointments as deemed necessary by my physician and/or treatment provider and PNAP and to maintain those appointment and therapy sessions. This treatment **MUST** include at least a minimum twelve-month period of group or individual therapy (preferably a Healthcare Professional Group). This therapy is to start immediately.
2. Agree to submit urine, saliva, hair, or blood serum samples for drug toxicology screens on a random basis as requested by PNAP (see attached protocol). Copies of the results of these screenings are to be forwarded to PNAP **DIRECTLY FROM** the designated laboratory for review. This protocol may be altered for the duration of my stay at a supervised interim facility such as a halfway house. The results of all drug screens are the property of the Commonwealth and **will not be released to anyone** by my PNAP or PHMP Case Manager. Additionally, if I am selected and for any reason cannot report for my screen, I must contact my PHMP Case Manager. The PNAP Case Manager does not have the authority to excuse any drug screens.
3. Agree to completely abstain from any and all mood-altering drugs, including alcohol (products that may contain alcohol), foods prepared with poppy seeds, and "over-the-counter medications" except on a written prescription from my physician. Agree to notify my PNAP Case Manager telephonically within 48 hours of receiving any prescription. A copy of said prescription must be forwarded to my PNAP and PHMP Case Managers within 5 days of receipt by fax: 570-585-0183/717-772-1950.
4. Agree to have one Primary Care Physician who is aware of my monitoring requirements. He/she will be the only physician permitted to prescribe any medications to me. In the event that I seek treatment from a Specialty Physician or an Emergency Room, I will notify each physician of my participation in the monitoring programs at the time of my treatment. I am required to notify my PHMP and PNAP Case Managers within 24 hours of my visit, sign appropriate releases, and send a copy of any medications and/or prescriptions that I receive within 5 days of treatment.
5. Agree to regular attendance at Alcoholics Anonymous/Narcotics Anonymous meetings and to have the attendance at these meetings documented. I also agree to make at least one meeting a day for the first ninety (90) days after signing this contract ("90 in 90"). I agree to attend a minimum of

three meetings per week thereafter. I am also required to attend specialty meetings for recovering healthcare professionals in my area if available (list enclosed). I also agree to complete my attendance sheets each month and return them to my PNAP Case Manager by the 10th of the following month. If these reports will be late, the PNAP Case Manager must be notified by telephone by the tenth of that month with regard to the reason for the lateness of that month's report and meeting attendance log

6. Agree, if my therapist or his/her designee stipulates to attend additional therapy sessions, such as group, family, or one-to-one; and further agree that those here mentioned may discuss my progress.

7. Agree to call and meet with my District Mentor face to face at least once a month at a location of his/her choice and to keep him/her abreast of my progress. I agree to call my District Mentor at least once a month to inform him/her of any new situations that arise that may be pertinent to any of the stipulations of this agreement. I agree to document these contacts on my monthly report. I agree to have my District Mentor involved in any return to practice decisions. If I experience any difficulty in meeting with my District Mentor, I will contact my PNAP Case Manager within 7 days. If I fail to adhere to these terms, **I will be considered to be in violation of my agreement.** (mentor to be assigned in the future by my PNAP Case Manager).

8. Agree upon employment as a **Registered Nurse** to carry out my professional responsibilities according to the current Nurse Practice Act of the Commonwealth of Pennsylvania. Agree to inform any potential employers of my participation in PNAP upon interview. Upon hire, agree to provide my employer with employee evaluation forms and assure evaluations are submitted quarterly.

YOU MAY NOT RETURN TO PRACTICE WITHOUT WRITTEN PERMISSION

9. Agree to assume any and all financial responsibilities incurred in the execution of any of the stipulations of this agreement, including, but not limited to urine/serum monitoring and submission of reports thereof to **PHMP if applicable**. I also agree to pay an administrative fee of **\$300.00 annually if I am employable as a Registered Nurse; OR to pay an administrative fee of \$100.00 annually if I am a student, an applicant, or if my license to practice nursing is suspended. These fees are payable to PNAP upon execution of this contract and payable annually the 21st day of July thereafter, until completion. Current administrative fees due are: \$100.00.**

10. It is the CLIENT'S RESPONSIBILITY to contact PNAP if anything is unclear or if there is a discrepancy in any of the above arrangements.

11. Agree to notify **PNAP and PHMP IN WRITING** of **any change** in pertinent information contained in this agreement (in address, telephone number, employer, therapist, physician, etc.), within 14 days of any change(s).

12. Agree to meet in person with my **PNAP Case Manager** and/or such persons as PNAP shall designate, every three (3) months if deemed necessary.

13. Agree that at no time during the term of this agreement may I voluntarily withdraw from this agreement as it will be a violation of my Board Order.

14. Agree that my signature on this agreement signifies that I have read all the stipulations of the agreement and I am fully cognizant of all the responsibilities associated with it.

15. Agree to disclose the names of ALL states where I possess a nursing license, including those states where I have begun obtaining a license via reciprocity or original licensure. PLEASE LIST:

8. Agree upon employment as a **Registered Nurse** to carry out my professional responsibilities according to the current Nurse Practice Act of the Commonwealth of Pennsylvania. Agree to inform any potential employers of my participation in PNAP upon interview. Upon hire, agree to provide my employer with employee evaluation forms and assure evaluations are submitted quarterly.

YOU MAY NOT RETURN TO PRACTICE WITHOUT WRITTEN PERMISSION

PNAP Monitored Practice

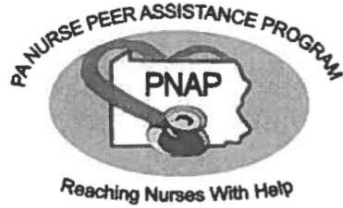
- (22) "Respondent shall attend and actively participate in any support group programs recommended by the treatment provider or the PHMP case manager at the frequency recommended by the treatment provider...Respondents with a chemical dependency or abuse diagnosis shall attend no less than twice a week."
- (30) "Respondent shall give any prospective employer and supervisor a copy of this Order when applying for employment in the practice of the profession and to any prospective school/program when applying for any educational program/course that requires a current license to practice."

MONITORED PRACTICE

28. The terms “*practice*”, “*practice of the profession,*” and “*practice the profession*” shall include any and all activities requiring a license, registration, certificate, approval, authorization, or permit from the Board to perform. It also includes attendance at any educational program/course that includes a clinical practice component with patients and/or requires a current license to practice the profession.

Monitored Practice Continued

29. Respondent shall not practice optometry unless a provider approved by PHMP approves the practice in writing and the PHMP Case Manager gives written permission to practice.
30. Respondent shall give any prospective employer and supervisor a copy of this Order when applying for employment in the practice of the profession and to any prospective school/program when applying for any educational program/course that requires a current license to practice optometry.
31. Respondent shall provide the PHMP by telephone within forty-eight (48) hours, and in writing within five (5) days of the effective date of this Order, obtaining employment, or entering an educational program/course that requires a current license to practice optometry, notification of the following:
 - (a) Name and address of the supervisor responsible for Respondent's practice;
 - (b) The name(s) and address(es) of the place(s) at which Respondent will practice the profession and a description of Respondent's duties and responsibilities at such places of practice; and
 - (c) Any restrictions on Respondent's practice.
32. Respondent shall ensure that Respondent's supervisor submits to the PHMP the following information in writing:
 - (a) Verification that the supervisor has received a copy of this Order and understands the conditions of this probation;
 - (b) An evaluation of Respondent's work performance on a 90-day or more frequent basis as requested by the PHMP; and



for therapist

P.N.A.P.
CRIIB.PRO

Consent for Release of Information

I, _____,
(Name of Participant and last 4 digits of Social Security Number)
give my consent to P.N.A.P. to disclose information from my
P.N.A.P. and Voluntary Recovery Program (VRP) records to

(name of Facility/Provider)

for the sole purpose of maintaining my participation in the P.N.A.P. and VRP program in good standing through monitoring of my treatment and recovery process.

I understand that the information disclosed will be used solely for the purpose of verifying and monitoring treatment and recovery, in order to determine my eligibility for continued participation in the P.N.A.P. program. The information will be limited to **that required to provide a factual context in which effective evaluation/treatment can take place.**

I understand that I have no obligations whatsoever to disclose information from my P.N.A.P. and VRP records and that I may revoke this consent at any time except to the extent that action has been taken in reliance thereon, by notifying P.N.A.P. in writing; and/or specifying a date, event or condition upon which my consent will expire without revocation, which I have done below.

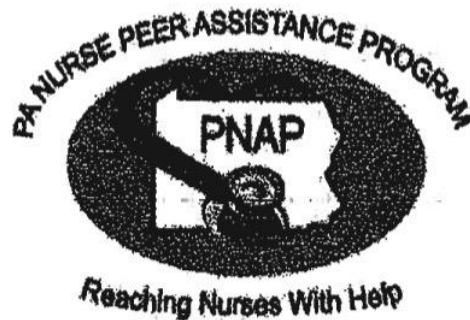
This consent shall automatically expire upon the termination of the
P.N.A.P. monitoring agreement/contract.
(Date, Time, Event or Condition)

(Date signed)

X _____
Participant's Signature

(Date signed)

X _____
Witness



PNAP RETURN TO WORK PROCEDURE

Generally individuals are not permitted to return to practice until they have completed treatment at the Intensive Outpatient (IOP) level of care and are participating in treatment at the General Outpatient (GOP) level of care.

Following is the procedure for requesting and obtaining permission to return to nursing practice:

1. Prepare a written request letter which explains why you feel you are ready to return to practice as a nurse. It must describe any relapse triggers you anticipate encountering as you transition back to work, as well as obstacles to your recovery that you anticipate experiencing upon returning to work. Detail relapse prevention strategies and coping skills for each, and describe how you will manage your ongoing recovery as you resume working. This letter is to be shared with your therapist and therapy group, and then edit it, if needed, based on their feedback. It must then be emailed, faxed, or mailed to your PNAP Case Manager once it has been approved by your therapist.
2. Your therapist must provide a written treatment update endorsing your fitness to return to practice.
3. PNAP will then advocate for permission for you to return to work.

Please contact me if you have any questions.

HEALTH CARE/MEDICAL SECTION:

17. Nature of problem: (Please check all appropriate categories):

_____ Alcohol _____ Other Drug _____ Mental Health _____ Physical

Specify all chronic conditions (e.g. diabetes, hypertension, etc...): _____

Are you currently being treated for any of the problems listed above? ___ Yes ___ No

18. Name of your primary health care practitioner: _____

Address: _____

Phone #: _____

19. List **ALL** medications you are currently taking, the name of the prescribing practitioner, and the condition or illness. (Attach additional sheets if necessary):

_____ Medication	_____ Prescriber	_____ Illness/Condition
_____ Medication	_____ Prescriber	_____ Illness/Condition
_____ Medication	_____ Prescriber	_____ Illness/Condition
_____ Medication	_____ Prescriber	_____ Illness/Condition
_____ Medication	_____ Prescriber	_____ Illness/Condition

LEGAL SECTION:

15. Do you currently have any criminal charges filed against you or is any action pending in any court or jurisdiction? (If yes, provide details. Attach additional sheets if necessary):

16. Have you ever been convicted, found guilty, or pleaded guilty or no contest, or received probation without verdict or accelerated rehabilitation disposition (ARD) as to any felony or misdemeanor, including drug law violations or driving under the influence (DUI)? (If yes, provide details. Attach additional sheets if necessary):

Employee Assistance Drug Programs

- Be careful of disclosing too much information
- Questionnaire asks personal and unrelated questions

Do not unintentionally admit to a substance use disorder:

SUBSTANCE USE SECTION:

22. Are you suffering from or have you previously been diagnosed as suffering from a substance use disorder? ____ Yes ____ No

If yes, complete #23 – #26.

23. I acknowledge that the following facts are true:

I suffer from: _____
(Specify type of substance use disorder)

which I began to develop approximately: _____
(Date)

24. The following represents a brief history of the course and symptoms of my substance use disorder:
- a. My drug/alcohol use began (include age(s) and duration):

 - b. Specific drug(s) used/abused (e.g. percocet, vicodin, cocaine, alcohol, etc...):

 - c. How drugs were obtained:

 - d. Reason(s) for use:

 - e. Amount/time/place/pattern of use (describe progression of the illness; for example: "used between 5 and 10 percocet daily, diverted from work, both on and off the job; also drank 1-2 six packs of beer a night, for three years; progressed to 10 percocet and one pint blended whiskey daily for six months.")

 - f. Date of last use of any drug(s) of abuse (including alcohol):

 - g. List any consequences you suffered as a result of your substance use disorder: (e.g. accidents; overdoses; hospitalizations; treatment; arrests; decline in work performance; employment problems; family/relationship problems; etc).

The PHMP and Medical Authorizations

- The first document sent to every targeted licensee intentionally includes medical releases.
- This allows the evaluators to overlay a medical impairment investigation with drug and alcohol use admissions.
- Medical records permit investigations to develop from an original complaint into additional disciplinary causes unrelated to any impairment or abuse investigation.

Reporting crimes and disciplinary action

- All nurses must report criminal charges filed against them within 30 days of arrest § 21.29a.

What Happens After Criminal Convictions

- All reported or discovered convictions generate petitions for discipline before the Pennsylvania Bureau of Hearings and Appeals.
- The actions seek to suspend, revoke, or discipline a license.
- Responding to these petitions in a timely and legally appropriate manner is the first step in insuring the professional maintains their professional life.
- Once a licensee receives a petition for discipline, they have 30 days from the date of receipt to file an Answer with the Prothonotary, sending a copy to the prosecutor.

Expert Reports, Testimony, and Stipulations

- Make sure their expert comes to court.
- It is important to meet with counsel and corral witnesses to prepare them for what they can and cannot say.
- Employment evaluations, continuing education credits, and character statements are important documentary evidence that needs to be presented at these hearings.

PHMP Procedure

- (4) "Respondent shall cooperate and comply with any requests for written reports, records or verifications of actions that may be required by the PHMP; the request shall be obtained and submitted at the Respondent's expense."
- (6) "Upon request of the PHMP case manager, Respondent shall enroll in a peer assistance program, when available."
- (8) "Respondent may not engage in the practice of the profession in any other state or jurisdiction without first obtaining written permission from the PHMP."
- (13) "Respondent shall cease or limit his practice of the profession if the PHMP case manager directs that Respondent to do so."

PHMP Evaluation Rules

- (14) "If an assessment/treatment evaluation has not been done by a provider approved by PHMP within (30) days prior to the effective date of this Order, or within (30) days subsequent to the effective date of this Order, Respondent shall have forwarded to the PHMP, a written mental and/or physical evaluation by the provider(s) approved by the PHMP."
- (15) "If the treatment provider determines that Respondent is not fit to practice, Respondent shall immediately cease practicing the profession and not practice until the treatment provider and the PHMP case manager determine that Respondent is fit to resume practice with reasonable skill and safety to patients."
- (18) Respondent shall authorize, in writing, the PHMP to receive and maintain copies of the written evaluation reports of the treatment provider(s)."

PHMP Reporting/Releases

- (34) "Respondent consents to the release by the PHMP of any information or data produced as a result of this probation, including written treatment provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Order."
- (35) "Respondent shall sign any required waivers or release forms requested by the PHMP for any and all records, including medical or other health-related and psychological records, pertaining to treatment and monitoring rendered to Respondent during this probation and any corresponding criminal probation, and any employment, personnel, peer review or review records pertaining to Respondent's practice of the profession during this probation to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Order."

PHMP Abstinence

- (24) "Respondent shall completely abstain from the use of controlled substances, caution legend (prescription) drugs, mood altering drugs or drugs of abuse **including alcohol in any form.**"
- (25) "Respondent shall submit to random unannounced and observed drug and alcohol tests (drug testing)."

ABSTENTION

24. Respondent shall completely abstain from the use of controlled substances, caution legend (prescription) drugs, mood altering drugs or drugs of abuse **including alcohol in any form**, except under the following conditions:

- (a) Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's impairment and participation in the PHMP;
- (b) Such medications are lawfully prescribed by Respondent's treating practitioner and approved by the PHMP case manager;
- (c) **Upon receiving the medication**, Respondent must provide to the PHMP, **within forty-eight (48) hours by telephone and within five (5) days in writing**, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of medical information from the prescribing practitioner to the PHMP or its designated representative for the purpose of verification; and
- (d) **Upon refilling a medication**, Respondent must provide to the PHMP, **within forty-eight (48) hours by telephone and within five (5) days in writing**, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of

Nursing Board Petitions for Mental and Physical Evaluations—Remaining Silent

- Do not participate in any employment related or Voluntary Recovery Program (“VRP”) voluntary assessments.
- Agreeing to attend an employee assistance program or PHMP assessment upon receipt of a letter suggesting such creates more evidence for the employer and Board to utilize to discipline the licensee.

EVALUATION - TREATMENT

14. If an assessment/treatment evaluation has not been done by a provider approved by PHMP within thirty (30) days prior to the effective date of this Order, or within thirty (30) days subsequent to the effective date of this Order, Respondent shall have forwarded to the PHMP, a written mental and/or physical evaluation by the provider(s) approved by the PHMP (hereinafter “treatment provider(s)”) assessing Respondent’s fitness to actively practice the profession. Unless otherwise directed by PHMP, the evaluation shall be forwarded to:

This is happening across the country:

**What these statutes look like
State-by-State**

Arizona: § 32-1668. D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section. On determination of reasonable cause, the board, or if delegated by the board the executive director, may require a licensee, certificate holder or applicant to undergo at the expense of the licensee, certificate holder or applicant any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the person's competence or ability to practice safely. § 32-1606 (B) The board shall revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section § 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions five or more years before the date of filing an application pursuant to this chapter. § 32-1664(F) R4-19-405. The Board may order a licensee...to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's or certificate holder's safety and competence to practice.

Alaska: 12 AAC § 44.740(a) A licensee placed on probation for the habitual abuse of alcohol or illegal use of controlled substances, as defined in AS 11.71.900(4), will, in the board's discretion, also be subject to one or more of the relevant terms of probation including the following: (1) physical and mental health examinations, as determined by the board, to evaluate the licensee's ability to perform the professional duties of a nurse; (2) as determined by the board, participation, until completion, in an ongoing program of rehabilitative counseling, alcoholics anonymous, narcotics anonymous, or an impaired nurse group, which includes progress reports from the care provider when requested by the board.

Arkansas: §25-15-201 The Board shall have sole authority to deny, suspend, revoke, or limit any license or privilege to practice nursing or certificate of prescriptive authority issued by the Board or applied for in accordance with the provisions of this chapter, or to otherwise discipline a licensee upon proof that the person: d. Is habitually intemperate or is addicted to the use of habit-forming drugs. The Board shall refuse to issue or shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in § 17-87-312(f). 17-87-309. In any proceeding of the Board involving the denial of a duly made application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the Board of the applicant's qualifications shall be upon the applicant.

California: 2762(b) Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired. The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse.

Colorado: § 12-38-117 The board has the power to revoke, suspend, withhold, limit the scope of, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof... (a) If the board has reasonable cause to believe that a nurse is unable to practice nursing with reasonable skill and safety to patients because of a condition described in section 12-38-117(1)(i) or (1)(j) or section 12-42-113(1)(i) or (1)(j), it may require such nurse to submit to mental or physical examinations by a physician or other licensed health care professional designated by the board. If a nurse fails to submit to such mental or physical examinations, the board may suspend the nurse's license until the required examinations are conducted. Submission by the respondent to such examinations as the hearings panel may order to determine the respondent's physical or mental condition or the respondent's professional qualifications § 12-42-113.

Connecticut: The board may take any action set forth in section 19a-17, if the license holder: Has been convicted of a felony; has been found by the board to have employed fraud or deceit in obtaining his license or in the course of any professional activity, to have violated any provision of this chapter or any regulation adopted hereunder or to have acted negligently, incompetently or wrongfully in the conduct of his profession or is suffering from physical or mental illness, emotional disorder or loss of motor skill, including...the abuse or excessive use of drugs, including alcohol, narcotics or chemicals Sec. 20-192. The Commissioner of Public Health may order a license holder to submit to a reasonable physical or mental examination if his physical or mental capacity to practice safely is the subject of an investigation Sec. 20-195.

Delaware: § 1922 (a) The Board may impose any of the following sanctions (subsection (b) of this section) singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein. 3(a) The accused may be represented by counsel who shall have the right of examination and cross-examination; ARTICLE III. (b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens § 1920A. § 1930 (c) Every person to whom a license to practice has been issued under this chapter has a duty to report...any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

District of Columbia: Revocation, suspension, or denial of license or privilege; civil penalty; reprimand: (b)(1) A board may require a health professional to submit to a mental or physical examination whenever it has probable cause to believe the health professional is impaired. The examination shall be conducted by 1 or more health professionals designated by the board, and he, she, or they shall report their findings concerning the nature and extent of the impairment, if any, to the board and to the health professional who was examined § 3-1205.14. § 47-2853.17.(f) Evaluation of a nurse for participation in the Program shall be the responsibility of the Committee. (g) At the request of the Board, the Committee in consultation with the treatment providers, may evaluate a nurse with a drug or alcohol abuse problem, or mental illness, for readiness to return to the practice of nursing. (h) An impaired nurse who is participating in the rehabilitation program may voluntarily limit or surrender any license issued under Unit A of this chapter in accordance with 3-1205.18. 3-1251.10.

Florida: § 464.018 Grounds for denial of a license or disciplinary action, as specified in s. 456.072(2)(j) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the 1 State Surgeon General or the 1 State Surgeon General's designee that probable cause exists to believe that the licensee is unable to practice nursing, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business.

Georgia: § 43-9-12 Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint. (A) The board shall have the authority to refuse to grant a license to an applicant therefore to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has: (10) Displayed an inability to practice...with reasonable skill and safety to the public or has become unable to practice chiropractic with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material. (B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board.

Hawaii Revocation, limitation, suspension, or denial of licenses (b) If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, or if the applicant 14 reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure. (A) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following: (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects. (C) Where the board has reasonable cause to believe that a licensee is or may be unable to practice medicine with reasonable skill and safety to protect patients, the board may order the licensee to submit to a mental or physical examination or any combination thereof, by a licensed practitioner approved by the board, at the licensee's expense

Idaho: §§ 54-1413; 154-5019. (1) Grounds for discipline. The board shall have the power to refuse to issue, renew or reinstate a license issued pursuant to this chapter, and may revoke, suspend, place on probation, reprimand, limit, restrict, condition or take other disciplinary action against the licensee as it deems proper: (e) Habitually uses alcoholic beverages or drugs as defined by rule (f) Is physically or mentally unfit to practice nursing... Physical or mental unfitness to practice nursing shall mean, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in registered or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. (6-1-78) Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96) Meeting with the Board's professional staff at any time upon request. (7-1-93)

Illinois: Sec. 70-5. (a) The Department may refuse to issue or to renew, or may revoke, suspend, place on probation, reprimand, or take other disciplinary or non-disciplinary action as the Department may deem appropriate...for any one or combination of the causes set forth in subsection (b) below; (9) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that could result in a licensee's inability to practice with reasonable judgment, skill or safety. Sec. 70-5.(e) [T] he Department or Board, upon a showing of a possible violation, may compel an individual licensed to practice under this Act or who has applied for licensure under this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department.

Indiana: IC 25-1-1.1-1 Denial, revocation, or suspension of license or certificate of registration; conviction of crime. IC 25-1-9-7 Physical or mental examination; power to require: Sec. 7. The board may order a practitioner to submit to a reasonable physical or mental examination, at the practitioner's own expense, if the practitioner's physical or mental capacity to practice safely is at issue in a disciplinary proceeding. As added by P.L.152-1988, SEC.1. Amended by P.L.158-2003, SEC.2. IC 25-1-9-8

Iowa: § 152.10 The board may restrict, suspend, or revoke a license to practice nursing or place the licensee on probation...on the grounds: (1) Inability to practice nursing with reasonable skill and safety by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition. The board may, upon probable cause, request a licensee to submit to an appropriate medical examination by a designated physician. Refusal or failure of a licensee to complete such examinations shall constitute an admission of any allegations relating to such condition. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication.

Kansas: § 65-1120 The board may deny, revoke, limit or suspend any license or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced practice registered nurse or as a registered nurse anesthetist (s) failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto, that the individual is unable to practice nursing with reasonable skill and safety by reason of a physical or mental disability or condition, loss of motor skills or the use of alcohol, drugs, or controlled substances, or any combination of these.

Kentucky: § 314.091(1) gives the Board the “power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the Board or applied for..., or to otherwise discipline a licensee, credential holder, privilege holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person: (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States; (f) Abuses use of controlled substances, prescription medications, illegal substances or alcohol.

Louisiana: Acts 1976, No. 351, §1; Acts 1995, No. 633, §1 (f): Upon findings of sufficient evidence that the public health and safety are at risk, the board may require licensees and applicants for licensure to submit to a physical or mental examination by a health care provider designated by the board who is licensed to perform such examination. The licensee or applicant may request a second health care provider to perform an independent medical examination. Refusal of or failure by the licensees or applicant to submit to such examination and to sign for release the findings of such examination to the board shall constitute evidence of any allegations related to such conditions.

Maine: 2 M.R.S.A. §3286 and §3270-C (2) the Board has the ability to order a mental or physical examination of the licensee. For the purposes of this section, by application for and acceptance of a license to practice, a nurse is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a nurse to submit to an examination whenever the board determines the nurse may be suffering from a mental illness that may be interfering with the competent practice of nursing or from the use of intoxicants or drugs to an extent that they are preventing the nurse from practicing nursing competently and with safety to patients.

Maryland: § 8-316 (a) Subject to the hearing provisions of § 8-317, the Board may deny a license or grant a probationary license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the applicant or licensee: (18) is habitually intoxicated; (19) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article. §1A-308. (B) The Board may set conditions on its agreement with the licensee under investigation or against whom charges are pending to accept surrender of the license. §1A-309. (A) The Board may require an applicant or licensee to submit to a mental or physical examination by a health care practitioner designated by the Board.

Massachusetts: Section 5H. Whenever it appears that any physician licensed in the commonwealth may be incompetent or unable to practice medicine with reasonable skill and safety because such physician's ability to practice is impaired due to mental illness or physical illness, the board may order such physician to be examined by one or more physicians designated by the board and at the board's expense.

Michigan: The Public Health Code contains a lengthy list of the grounds for disciplinary action against a licensee, including: Substance abuse, Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner. Licensee...mentally or physically able to practice with reasonable skill and safety to patients. The board or task force may require further examination of the licensee, at the licensee's expense, necessary to verify that the licensee is mentally or physically able § 16221 (b)(I)(iii).

Minnesota: The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice advanced practice, professional, or practical nursing under sections § 148.171 to 148.285. Subd. 5 (a) It may direct the applicant or nurse to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a nurse licensed under sections 148.171 to 148.285 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege §148.261.

Mississippi: The board shall have power to deny, revoke, suspend, or refuse to renew any license or permit to practice nursing issued by the board or applied for in accordance with the provision of this act, including the power to fine said individual, upon proof that such person has violated the provisions of Miss. Code Ann. Chapter 15. When the board finds any person unqualified... (e) Requiring the discipline to submit to care, counseling or treatment by persons and/or agencies approved or designated by the board as a condition for initial, continued or renewed licensure or other authorization to practice nursing or practical nursing; (f) Requiring the discipline to participate in a program of education prescribed by the board as a condition for initial, continued or renewed licensure or other authorization to practice §73-15-29.

Missouri: The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes: (1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter; 6. Before restoring to good standing a license, certificate or permit issued pursuant to this chapter which has been in a revoked, suspended or inactive state for any cause for more than two years, the board may require the applicant to attend such continuing medical education courses and pass such examinations as the board may direct § 334.100. 1.2.

Montana: Suspension of license when licensee is: (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties; (2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board or the board's representative." § 37-3-323.

Nevada: The Board may deny, revoke or suspend any license or certificate applied for or issued pursuant to this chapter, or take other disciplinary action against a licensee or holder of a certificate, upon determining that the licensee or certificate holder: (e) Uses any controlled substance, dangerous drug...or intoxicating liquor to an extent or in a manner which is dangerous or injurious to any other person or which impairs his or her ability to conduct the practice authorized by the license or certificate § 632.347.

New Hampshire: 326-B:37, II. The board may discipline a licensee or applicant for any one or a combination of the following grounds: (c) Convictions by a court or any plea to a crime in any jurisdiction that relates adversely to the practice of nursing or to the ability to practice nursing; (1) Use of any controlled substance or any drug or device or alcoholic beverages to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use may impair his or her ability to conduct with safety to the public the practice of nursing.

New Jersey: 13:37-14.15 (a) The Board may deny or revoke training program approval if the program sponsor has failed to comply with N.J.S.A. 45:11-24(d)(20) to (24). (d) Any Board action for certification suspension or revocation or training program revocation shall take place only upon notice to the licensee and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Mexico: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the...board's regulations. (2) In enforcing the provisions in Subsections D and E of 16.13.18.8 NMAC, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a licensed professional designated by the board § 16.13.18.8.

New York: § 2897. Suspension, revocation and civil penalties. The license or registration of a nursing home administrator may be suspended for a fixed period, revoked or annulled, or such administrator censured, reprimanded, subjected to a civil penalty and otherwise disciplined, in accordance with the provisions and procedures defined in this article, upon decision after due hearing.

North Carolina: Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board § 90-14.

North Dakota: The board may require the individual subject to an investigation to submit to a mental health, chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs. The board may require a copy of the evaluation to be submitted from the evaluating professional directly to the board § 54-02-07-04.1.

Ohio: During the course of an investigation conducted under this section, the board may compel any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter to submit to a mental or physical examination, or both, as required by the board and at the expense of the individual, if the board finds reason to believe that the individual under investigation may have a physical or mental impairment that may affect the individual's ability to provide safe nursing care § 4723.28 (G)

Oklahoma: The Board shall impose a disciplinary action against the person...upon proof of one or more of the following items: The person (4) Is intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients. (E) The Board may authorize the executive director to issue a confidential letter of concern to a licensee when evidence does not warrant formal proceedings, but the executive director has noted indications of possible errant conduct that could lead to serious consequences and formal action §567.8 (B).

Oregon: (1) During the course of an investigation into the performance or conduct of an applicant, certificate holder or licensee, the Oregon State Board of Nursing may order mental health, physical condition or chemical dependency evaluations of the applicant, certificate holder or licensee upon reasonable belief that the applicant, certificate holder or licensee is unable to practice nursing with reasonable skill and safety to patients; (2) When the board has reasonable cause to believe that an applicant, certificate holder or licensee is or may be unable to practice nursing with reasonable skill and safety to patients, the board may order a competency examination of the applicant, certificate holder or licensee for the purpose of determining the fitness of the applicant, certificate holder or licensee to practice nursing with reasonable skill and safety to patients § 678.111 678.113.

Pennsylvania: [t]he licensee is unable to practice professional nursing, with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic, or narcotic drugs or other drugs which tend to impair judgment or coordination, so long as such dependence shall continue. 63 P.S. §224(a)(2). “In enforcing this clause ... the Board shall, upon probable cause, have the authority to compel a licensee to submit to a mental or physical, examination as designated by it.”

Rhode Island: The board of nurse registration and nursing education has the power to deny, revoke, or suspend any license to practice nursing; to provide for a non-disciplinary alternative only in situations involving alcohol or drug abuse or to discipline a licensee upon proof that the person is: (4) Habitually intemperate or is addicted to the use of habit-forming drugs; (6) Guilty of unprofessional conduct which includes §§ 5-34-24, 5-34-25 and 5-34.2-4(c)

South Carolina: Upon finding misconduct the board may cancel, fine, suspend, revoke, issue a reprimand or private reprimand, or restrict, including probation or other reasonable action such as requiring additional education and training § 40-33-110. (A) If the board finds that probable cause exists that a licensee or applicant may be addicted to alcohol or drugs or may have sustained a physical or mental disability that may render practice by the licensee or applicant dangerous to the public, the board, without a formal complaint or opportunity for hearing, may require a licensee or applicant to submit a mental or physical examination by authorized practitioners designated by the board § 40-33-116.

South Dakota: § 36-9-49. The Board of Nursing may deny, revoke, or suspend a license or certificate and may take other disciplinary or corrective action it considers appropriate in addition to or in lieu of such an action upon proof that the applicant, licensee, or certificate holder has (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs to such an extent as to result in incapacitation from the performance of professional duties §36-9-49.1. § 1-26-29...the board may take action pursuant to § 36-9-49 upon a showing that the physical or mental condition of the licensee, certificate holder or applicant endangers the health or safety of those persons who are or will be entrusted to her care. A majority of the board may demand an examination of the licensee, certificate holder or applicant by a competent medical or psychological examiner selected by the board at the board's expense.

Tennessee: The Board has the power to deny, revoke, or suspend any certificate or license to practice nursing as provided in the Nursing Acts 1967, T.C.A. §63-7-115. (The procedure for revocation, suspension or reissuance of a license is described in the Nursing Acts 1967, T.C.A. §63-7-115.) 63-7-127. (h) (1) The board has the power to deny, revoke or suspend any certificate to practice as a medication aide or to otherwise discipline a certificate holder, including, but not necessarily limited to, civil monetary penalties, upon proof of the following: (B) Is guilty of a crime; (C) Is addicted to alcohol or drugs to the degree of interfering with professional duties.

Texas: § 213.33(b). §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency, or abuse of drugs of alcohol. A nurse whose fitness to practice is in question due to a substance use disorder or drug or alcohol related behavior may be required to undergo an evaluation Tex. Occ. Code §301.4521 and Board Rule 213.33. §301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient.

Utah: § 58-31b-401 3(a) If the division and the majority of the board find reasonable cause to believe a nurse who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage in the practice of nursing. (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives consent to: (i) submitting to an immediate mental or physical examination, at the nurse's expense and by a division-approved practitioner selected by the nurse when directed in writing by the division and a majority of the board to do so; and (ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

Vermont: 26 V.S.A. §§ 1582, 1615, 3 VSA § 129a: The Board may warn, reprimand, condition, suspend or revoke any license to practice advanced practice nursing, registered nursing, or practical nursing in Vermont, or otherwise discipline a licensee upon proof that the licensee has committed unprofessional conduct as defined by law. (c) "Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials. The Board may require any applicant for licensure or relicensure to authorize, secure, and provide to the Board an assessment from an appropriately qualified professional person or previous employer of current mental and physical ability to perform safely the duties of a nursing assistant § 1361 17.2 (b)

Virginia: § 54.1-2915. The Board may refuse to issue a certificate or license to any applicant; reprimand any person; place any person on probation for such time as it may designate; impose a monetary penalty or terms as it may designate on any person; suspend any license for a stated period of time or indefinitely; or revoke any license [if]: (2) Substance abuse rendering him unfit for the performance of his professional obligations and duties; (4) Mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public. §§ 54.1-2400.6, 54.1-2908, and 54.1-2909 Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action

Washington: Revocation, suspension, or denial of license or privilege; civil penalty; reprimand: (b)(1) A board may require a health professional to submit to a mental or physical examination whenever it has probable cause to believe the health professional is impaired. The examination shall be conducted by 1 or more health professionals designated by the board, and he, she, or they shall report their findings concerning the nature and extent of the impairment, if any, to the board and to the health professional who was examined § 3-1205.14.

West Virginia: §10-2.12. The Board may take disciplinary action in accordance with Chapter 29A of the WV Code, upon satisfactory proof that an applicant for endorsement or examination, or a licensee. §10-2-15. 15.3.c. 14.2.h. Upon a finding of probable cause that a basis for disciplinary action exists, the board may require a licensed practical nurse to submit to a physical or mental examination by a practitioner approved by the board.

Wisconsin: § 441.07: The board may deny an initial license or revoke, limit, suspend, or deny the renewal of a license of a registered nurse, nurse-midwife, or licensed practical nurse; deny an initial certificate or revoke, limit, suspend, or deny the renewal of a certificate to prescribe drugs or devices granted unders. 441.16; or reprimand a registered nurse, nurse-midwife, or licensed practical nurse, if the board finds that N 7.03 Grounds for denying renewal or disciplinary action: The grounds for denying renewal or taking disciplinary action on a license or certificate: (f) Unable to practice safely by reason of alcohol or other substance use.

Wyoming: Section 3(a) The Board may take disciplinary action against a licensee for the following acts or conduct: (1) Inability to function with reasonable skill and safety. Section 4(b) In cases where the physical or mental condition of a licensee is at issue the disciplinary committee, on behalf of the board, may issue an order for the licensee to submit to a physical or mental examination by a qualified provider selected by the disciplinary committee at the expense of the licensee. In selecting a qualified provider, the committee, on behalf of the board, shall consider the provider's credentials.



More information can be found on the Hark & Hark Blog

I Have Been Contacted by a State Licensing Board Investigator! HELP: <https://penncriminaldefense.wordpress.com/2014/03/06/i-have-been-contacted-by-a-state-licensing-board-investigator-help/>

The Mental and Physical Evaluation
<https://penncriminaldefense.wordpress.com/2014/04/20/the-mental-and-physical-evaluation/>

Legal Counsel is Important in Every Licensing Case
<https://penncriminaldefense.wordpress.com/2015/07/13/legal-counsel-is-important-in-every-licensing-case/>

DUI and ARD and The Letter of Concern — The PHMP Trap
<https://penncriminaldefense.wordpress.com/2015/08/31/dui-and-ard-and-the-letter-of-concern-the-phmp-trap/>

Drugs and the Mental and Physical Evaluation – The Assessment Trick
<https://penncriminaldefense.wordpress.com/2015/11/17/drugs-and-the-mental-and-physical-evaluation-the-assessment-trick/>

PHMP's NEW TRICK – License Inactive Documents
<https://penncriminaldefense.wordpress.com/2016/02/19/phmps-new-trick-license-inactive-documents/>

What Happens After Criminal Convictions
<https://penncriminaldefense.wordpress.com/2015/04/09/what-happens-after-criminal-convictions/>

Employee Assistance Drug Programs — Be Careful What You Disclose
<https://penncriminaldefense.wordpress.com/2014/11/16/employee-assistance-drug-programs-be-careful-what-you-disclose/>

ALL NURSES MUST REPORT CRIMINAL CHARGES FILED AGAINST THEM WITHIN 30 DAYS OF ARREST.

Effective October 17, 2015 The Pennsylvania Nursing Board rules now require all Pennsylvania licensed RNs, LPNs, CRNPs, LDNs, and CNSs to report being charged with any misdemeanor or felony criminal charge, regardless of which jurisdiction the charges originate. The same practitioners must also within 90 days report any discipline from another jurisdiction.

§ 21.29a. Reporting of crimes and disciplinary action.

(a) A registered nurse shall notify the Board of pending criminal charges within 30 days of the filing of the criminal charges or on the biennial renewal application under § 21.29(c)(4) (relating to expiration and renewal of license), whichever is sooner.

(b) A registered nurse shall notify the Board of a criminal conviction, plea of guilty or nolo contendere, or an admission into a probation without verdict or accelerated rehabilitative disposition program within 30 days of the disposition or on the biennial renewal application under § 21.29(c)(4), whichever is sooner.

(c) A registered nurse shall notify the Board of disciplinary action in the nature of a final order taken against the registered nurse by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action, or on the biennial renewal application under § 21.29(c)(4), whichever is sooner.

§ 21.156b. Reporting of crimes and disciplinary action.

(a) An LPN shall notify the Board of pending criminal charges within 30 days of the filing of the criminal charges or on the biennial renewal application under § 21.156 (relating to renewal of license), whichever is sooner.

(b) An LPN shall notify the Board of a criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program within 30 days of the disposition or on the biennial renewal application under § 21.156, whichever is sooner.

(c) An LPN shall notify the Board of disciplinary action in the nature of a final order taken against the LPN by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action or on the biennial renewal application under § 21.156, whichever is sooner.

The Board is specifically concerned with the fact that practitioners were being charged with criminal acts and then enrolled in and completed the ARD program, with an expungement, between reporting periods. As such, the Board found that:

Background and Purpose

This final-form rulemaking accomplishes two goals: (1) amends current continuing education regulations for registered nurses; and (2) requires licensees to report criminal and disciplinary actions sooner than currently required. The Board published continuing education regulations implementing section 12.1 of the RN Act at 38 Pa.B. 3796 (July 12, 2008). To ease implementation, the Board provided registered nurses with a grace period of 6 months to cure deficiencies. Now that licensees have had an opportunity to obtain the continuing education and seek renewal, this grace period is no longer warranted and, in its place, the Board is implementing a procedure for continuing education compliance identical to that applied by the other licensing boards within the Bureau of Professional and Occupational Affairs. Additionally, the final-form rulemaking provides the Board with the flexibility to require licensees to complete continuing education on a specific topic as the necessity arises. This is particularly important when there are advances or changes in practice that affect the entire profession or significant modifications to the Board's regulations.

Regarding the reporting of criminal and disciplinary actions, § 21.29(c)(4) (relating to expiration and renewal of license) requires registered nurses to report these actions on their biennial renewal. Similarly, § 21.723 (relating to license renewal) requires licensed dietitian-nutritionists to report criminal and disciplinary actions at biennial renewal. Conversely, § 21.156 (relating to renewal of license), which applies to practical nurses, formerly did not require reporting of criminal and disciplinary actions at all. In many circumstances, especially in cases when licensees enter into an Accelerated Rehabilitation Disposition (ARD) Program, licensees avoid notifying the Board of the criminal action because the matter has been expunged by the time of renewal. The Board is authorized to discipline licensees who receive ARD, disposition instead of trial or probation without verdict in the disposition of felony charges. In addition, licensees who receive ARD or other pretrial disposition of DUIs and other drug offenses may suffer from mental or physical illnesses or conditions or physiological or psychological dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs which tend to impair judgment or coordination, authorizing the Board to require mental and physical examinations under section 14(a)(2) and (2.1) of the RN Act (63 P. S. § 224(a)(2) and (2.1)) or section 16(a)(6) of the PN Law (63 P. S. § 666(a)(6)). It is therefore imperative that the Board receive these reports in a timely manner.

Call to discuss your criminal case and your reporting requirements.

Share this:

Criminal Charges – Nursing Board Petitions for Mental and Physical Evaluations – Remaining Silent

Effective October 2015 Pennsylvania nurses became responsible for reporting to the State Board of Nursing any criminal arrest/charge (not just conviction). The practical impact of this new reporting regulation is now being felt.

Typically, criminal charges lodged against nurses relate to drug use or diversion and driving under the influence (DUI) of alcohol. These criminal charges, once reported, result in “Letters of Concern” from the Voluntary Recovery Program (VRP), PHMP demands for enrollment, and possible Board action. Nurses who do not enroll in the VRP and PHMP (which they should not – *see my other blogs*), typically end up having filed against them a Petition for a Mental and Physical Evaluation. *This is OK and not the problem, though, because now an expert will do the evaluation, not a PHMP social worker.* My many archived blogs address all aspects of the PHMP and why not to enroll.

The new wrinkle in the Petition for Mental and Physical Evaluation process, compelled via an Order to Show Cause (OSC), is that many professionals will not have completed the criminal process involving the drug or DUI related offense. The criminal matter has yet to reach the County Common Pleas Court in which the charges originate. In some cases, the nurse has yet to be approved for ARD or even had their preliminary hearing. This is significant for the professional who is ineligible for ARD.

Professionals with prior criminal records (*yes, you still can get a license or not loose one and incur a second offense*) are ineligible for ARD. They must fight the DUI charge. In this context, every professional has a right to remain silent. The Commonwealth must prove each element of each criminal offense without using the professional’s own words to secure a conviction. The professional has no obligation to make a statement in any criminal prosecution. In Pennsylvania the professional does not have to help the prosecution prove any element of any offense lodged against them. This is the professional’s Fifth Amendment Constitutional right to remain silent.

The criminal offense reporting regulation ignores this constitutional protection. Expedited OSC petitions compel professionals to talk. In the Mental and Physical Evaluation, the professional is extensively queried about the criminal conduct, historical criminal activity, and recreational non-prescribed drug use. These statements are not confidential. The Petition for Mental and Physical is authorized by the Probable Cause Screening Committee and not the entire Professional Board. The expert who conducts the evaluation and authors a report to the Commonwealth eventually testifies in a formal disciplinary hearing. Statements to the expert are now public, subject to discovery by the criminal court prosecutor. Routine reciprocal discovery requests in criminal cases include whether the defendant has made any prior statement, admission, or testified under oath in another proceeding regarding the facts are allegations contained in the criminal matter. The expedited disciplinary process now raises the question in civil disciplinary prosecutions whether or not the professional, contesting disciplinary action, should speak and waive their constitutional right to remain silent in the criminal context.

Courts in Pennsylvania have addressed this issue in administrative driver's license actions. In Pennsylvania driver's license suspension proceedings civil trial courts routinely continue the civil license suspension trial stemming from a DUI. These twin civil/criminal prosecutions originate from the same DUI arrest investigations when the defendant refuses to submit to a breath or drugs or alcohol test.

Practically and legally, my legal advice in these representations includes advising the DUI defendant to continue the civil matter until the DUI case is closed. The nursing board, it's infinite wisdom, either is unaware of this process or chose to ignore professionals' Fifth Amendment right against self-incrimination. All professionals should be aware of this conflict created by the Nursing Board in these expedited OSC petitions seeking Mental and Physical evaluations when a related DUI or other criminal matter is pending. Please call me to discuss how to resolve this conflict and your professional license disciplinary matter.

Share this:

Drugs and the Mental and Physical Evaluation – The Assessment Trick

I have been overrun by client consultations, new cases, and handling existing cases involving Pennsylvania licensing board's Petitions for Mental and Physical evaluations. I attend almost every one of these with my clients. Two consistent fact patterns that start this entire process are employment based positive drug tests and a driving under the influence conviction or ARD enrollment. A criminal charge or failed drug test typically result from self-medicating due to a physical injury or mental health condition. Sometimes there is the single use of sleeping agent with the unlucky and unfortunate call for a random drug test at work. Professional bureau investigators and employers take these failed drug tests and DUI ARD or convictions very seriously. The Petition for Mental and Physical is the Boards' way to have a professional medically evaluated.

What the employee/professional does upon failing a drug test or receiving a DUI (and now reporting it to the Board in thirty days as required) dictates how the case could conclude. Obviously failed drug tests are a huge concern when the discovery drug is one for which the licensee does not have a valid prescription. The same concerns exist for a drug related DUI.

“What is done” by the professional should be nothing! Mandatory Board reporting is a must. But do not participate in any employment related or Voluntary Recovery Program (“VRP”) voluntary assessments. Don't fall for the threat from a PHMP or PNAP case worker saying “We will have to close the file, report you to the legal department, and you could lose your license.” This is an empty threat. Single offense DUI or testing positive for a medication utilized to treat a documented medical condition will not result in legal action. These PHMP case workers are merely trying to scare professionals into going to their assessments — which never work in the licensees' favor.

Any employment related drug test failure automatically results in job termination and Board reporting. Here is where employers and Board investigations begin. It is my firm conviction that the professional should never attempt to explain a long-term medical or mental health condition that may have gone un-diagnosed or untreated. Sheer speculation on the licensee's behalf that disclosure will save a job merely invokes sheer terror of potential patient injury on the employer's behalf.

Why would a professional attempt to “confess” or seek lenience from an employer whose sole focus of any drug related investigation is to absolve itself of potential civil, criminal or regulatory liability. At this juncture, an employer (hospital, nursing home, medical practice, surgical group, and/or staffing agency) tries to secure incriminating statements from the employee/licensee, secure cause for termination, and concrete evidence for Board reporting. In this context, the medical employer becomes a mandatory reporter to the Board, with immunity to provide all information it secured in its investigation. The statements, drug tests, and any medical records an professional provides merely become the stepping stone and jumping off point of a Board investigation.

Agreeing to attend an employee assistance program or PHMP assessment upon receipt of a letter suggesting such (see my other blogs) just creates more evidence for the employer and Board to utilize to discipline the licensee. Professionals seeking PHMP assessments “to be cleared because this will all go away”

have just given away the farm. Licensees of all sorts are then required to participate in mental health fishing expeditions with compelled disclosure in a non-confidential mental health and medical treatment histories, assessment conducted by untrained individuals who are required to disseminate any and all information provided.

Almost one hundred percent of my clients have attended these assessments. These non-expert assessors are financially motivated to generate business. Stringing together standard and typical histories of long term **social** alcohol use that culminates in a DUI (criminal interaction) allows the Livengrin, Marmont, Caron, Malvern Institute social workers to speciously conclude a DSM -IV diagnosis for alcohol abuse or dependence. It is absurd but is based only on the words coming from the professional licensee who has just agreed to disclose all confidential medical information, signed forms, and told them everything; all done with the hopes of “making this go away” or to “keep my job and license”.

This is the biggest mistake of your career. I have stated it many times in my blogs; Trying to save one’s current job at the expense of your lifetime professional license is analogous to trying to win a small battle in a war, which win will merely cause the loss of the entire war.

Suggestions of impairment, threats of reporting the licensee to the board, or turning files over to the legal department are typical scare tactics. Testing positive for ambien used in a single plane flight, amphetamines used on a single occasion from a family members’ prescriptions, or a weekend back strain causes one to borrow a family members tramadol are all typical occurrences. These actions do not amount to an impaired professional suffering from a drug or alcohol addiction.

Suggestions of such are grossly out of context and not a basis for any person to enroll in the PHMP. The burden of proof is: Does the licensee suffer from a drug or alcohol addiction or disease then renders them incapable of safely practicing medicine? How can one positive drug test allow for this conclusion. Untrained caseworkers seek to secure or a long-term drug or alcohol use history through superficial application of DSM criteria. Overlaying such with a single positive drug test, caseworkers feel empowered to take advantage of licensees who are afraid of “Board involvement” in their license. However, such cannot be farther from the legal truth.

I get exasperated at the level of deceit and untruths told by these caseworkers to take financial advantage of the licensee at a time of grave professional concern.

DO NOT TALK TO THESE PEOPLE. CALL ME FIRST. DO NOT MAKE THE MISTAKE OF BELIEVING ANYTHING THESE CASE WORKERS, SOCIAL WORKERS, ASSESSORS SAY UNTIL YOU SEEK LEGAL COUNSEL. UNDERSTANDING THE KEY WORDS THESE MANIPULATIVE PEOPLE UTILIZE, SO THAT YOU THE PROFESSIONAL UNDERSTAND THE COERCION BEING EMPLOYED WILL RENDER CLEARER THE PATH TO RESOLVING THE LEGAL ISSUES TO BE CONFRONTED.

Share this:

Expert Reports, Testimony, and Stipulations – Make Sure Their Expert Comes to Court

The Pennsylvania Rules of Evidence, promulgated rules and case law interpreting those rules, apply to administrative proceedings. An experienced trial attorney should utilize civil and criminal trial evidentiary rulings discussing the rules to their client's advantage in licensing disciplinary hearings.

The importance of understanding these rules and keeping up to date with the case law cannot be overstated. Inadmissible evidence not objected to becomes part of the record while properly objected to inadmissible evidence is stricken and unavailable for the Board or hearing officer to rely in rendering its decision. This means that any Pennsylvania trial court evidentiary decision should be researched for their applicability in licensing cases.

On March 15, 2016 the Superior Court of Pennsylvania rendered an important evidentiary decision regarding medical records and expert testimony. In that criminal case, the Commonwealth sought to introduce into evidence an emergency room medical record which contained a medical evaluation, diagnosis, and medical conclusion of an injury. The Commonwealth did not ask the doctor to testify, claiming the medical record was not testimonial, admissible as a business record, and therefore the defendant's sixth amendment right to confrontation did not apply. Commonwealth claimed the medical record/report is a business record, which is an exception to the hearsay rules. Superior Court reviewed the Rules of Evidence and the case law, rejecting the Commonwealth's position.

Understanding why this ruling is important for your license case is necessary to hiring the right attorney to handle your licensing case. Medical facts (size, shape and where is an injury) contained in medical report are admissible under hearsay rules.

However, a medical opinion or diagnosis (the specific type and cause of an injury – addictions or impairments) are not. The declarant of the medical conclusion, the doctor rendering the expert opinion, must testify. Pennsylvania Rule of Evidence 803.1 provides: The following statements are not excluded by the rule against hearsay if the declarant testifies and is subject to cross-examination about the prior statement:

(3) Recorded Recollection of Declarant-Witness. A memorandum or record made or adopted by a declarant-witness that:

(A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and

(C) the declarant-witness testifies [sic] accurately reflects his or her knowledge at the time when made.

If admitted, the memorandum or record may be read into evidence and received as an exhibit, but may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

In every impairment case – not just criminal cases – if the Commonwealth seeks to introduce an expert’s report regarding his/her opinion of medical condition, addiction, impairment, and affect on a licensee’s ability to practice, the doctor must come to court. Licensees should never stipulate to the expert report. The expert should be compelled to testify.

This is hugely important in many parts of the licensee disciplinary process. First, never stipulate to any impairment. Signing the PHMP contract admitting you suffer from an addiction or impairment eliminates the legal necessity of the Commonwealth having a licensee evaluated and then calling the expert to testify at a hearing. Secondly, never go to the evaluation of a PHMP approved expert without counsel. You need to be prepared for that evaluation. My prior blogs address these issues.

If the expert concludes the licensee is impaired, hire counsel to fight that conclusion and make sure the expert comes to court. Again, counsel is important here. Make sure you have the expert report before the hearing and that the expert testifies at the hearing. Do not stipulate that his report is admissible and he/she does not have to testify. This is where the Commonwealth v Davis decision is important. The expert must be available and subject to cross examination.

Experienced counsel will know of what issues to cross examine the expert to eliminate certain factual and medical basis for their medical conclusion. It is only during cross examination that the expert’s conclusions will be tested. Thereafter, when briefing the case after the hearing, the record will reflect the doctor’s admissions of what facts are not present in the record to support his decision. When a licensee stipulates to a doctor’s report, such testing and examining the expert’s opinion does not take place.

Three of my recent impairment trials have resulted in significant cross examination and admissions from the Commonwealth’s expert. These admissions eliminate the factual basis for that expert’s medical conclusions. If I stipulated to his report, I would have not secured this type of evidence for my clients. If the expert did not testify, and his report constituted the only evidence upon which the Board could rely to rendering a decision, my clients would not have a chance of winning their impairment case.

Because the expert was subject to the great test of cross examination, as Davis states is required, my clients can win their cases. In each case cross examination revealed omissions of fact and evidence upon which the expert should have but did not consider in rendering his conclusion. Cross examination also revealed the absence of a current medical basis for the expert opinion. Compelling the expert to affirm a licensee’s ability to safely practice, regardless of a medical condition, immediately reveals to a licensee board the weakness in any expert report stating the contrary.

Here is where cross examination is really important. 63 P.S. § 224(a) provides the standard to which the court must subject the expert’s testimony. The provision states: (a) The Board may refuse, suspend or revoke any license in any case where the Board shall find that— (2) The licensee is unable to practice professional nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination,

The typical expert report simply states such. However, on cross examination, factual concessions reveal how weak the expert opinions typically are. Forcing the Commonwealth at a licensing hearing to have the correct witness who can testify and provide admissible and sufficient evidence is paramount. Stipulating to reports and evidence loses your case and your license.

I Have Been Contacted by a State Licensing Board Investigator! HELP

This blog will discuss what to do when a state licensing board investigator confronts you regarding an anonymous report of drug use, drug impairment, or mental health issues.

Professional license investigations stem from several sources. The most prolific of which is failing work-place drug tests. (State law mandates medical employers report positive drugs tests for any illegal or prescribed narcotic for which no prescription is possessed.) The next avenue is new employment related failed drug test. The third source is when you self-report on the bi-annual license renewal a conviction for D.U.I. or a drug-related felony criminal offense. The final and most surreptitious way an investigation commences is an anonymous source complaining to the Board of your alleged drug use or mental health treatment.

The anonymous source is most troubling because it typically arises from a domestic dispute after which a scorned partner revengefully, but confidentially, reports your personal drug use, drug treatment, mental health care, or other improprieties. This source raises serious legal issues because it addresses private conduct, not related to work, not stemming from any workplace investigation, for which no criminal charges have been levied, **and for which there is no evidence other than the reporter's own words**. Competence and impairment are not the focus of the complaint, but rather personal retribution.

Once the anonymous complaint is made, the typical state-agent investigatory pattern is as follows: 1) first they leaving you telephone message, then 2) leave business cards at your front door, and/or 3) attempt early evening surprise visits to your home. Absent positive drug tests, criminal investigations, or workplace reporting, the investigator will seek statements/admissions to corroborate the basis of the investigation. They want you to talk to make their job easier. If you admit, the investigation is successful.

Statements are relatively easy to secure if you fall for the tricks. The investigator (a retired cop from Pittsburgh or Philadelphia) typically suggests:

- 1) "This could help avoid disciplinary action..."
- 2) "I am here to give you a chance to tell your side of the story..."
- 3) "You can tell your side of the story..." ; and
- 4) "I am here to make sure I have all of the information to tell the Board."

All of these ice breakers suggest innocence, but are clearly and surreptitiously used to imply the statement will help you. Admitting to an impairment, drug use, or diversion will only hurt you and your license. If you give a cathartic admission of drug use or diversion, thinking such will appease and conclude an investigation, you are sadly incorrect.

In many cases, the only evidence of drug use stems from the licensee's (your) own mouth (the admission). While there is a confidential report from which the investigation starts, there is no failed drug test, work place admission, criminal case, or DUI B.A.C. test result. There is no evidence. An admission gives the investigatory reason to continue the investigation.

After an admission, the investigator will seek medical authorizations, inpatient treatment records, and the like to support a broader impairment investigation. The investigator will surely NOT (based upon one's licensee's own admissions of drug use) terminate any investigation upon receipt of drug use evidence. An admission to an impairment will necessitate a monitoring program. (Please see my other blogs about the rigorous nature of, and admissions required prior to, enrollment in any monitoring program for any licensee.)

So what is one to do? It is my recommendation that you immediately contact counsel. Do not make any statement against your license to any investigator. Absent cooperation, it is extremely difficult for the investigator to accumulate any evidence of drug use or impairment.

Inpatient treatment is just that, inpatient and confidential. Inpatient treatment on a short-term basis does not imply impairment. Many licensees have unrelated medical conditions for which prescription medications are medically authorized, taken, and appropriately sought to be weaned off of. Mere admission into an inpatient program to properly wean oneself off of Ambien, hydrocodone, Percocet, any other benzo's, or prescription narcotic does not mean a finding of impairment or addiction.

Statements to investigators of casual/social alcohol or illicit narcotic use (marijuana or cocaine) will require further historical development of drug use from youth through adulthood. Admissions of drug use during teenage or college years permit investigators, social workers, assessors, evaluators, and other "quasi-drug addiction professional" (who work in the drug treatment centers where the Board evaluations are completed) to conclude long-term addiction and use histories. Current impairment conclusions will be based on such historical statements and for which monitoring will be required.

Consequently, anybody and everybody should not talk of these investigators without contacting counsel. Please call me to discuss your scenario.

Share this:

Legal Counsel is Important in Every Licensing Case

I write several times a year about the importance of having legal counsel represent licensed professionals before any Pennsylvania professional board during a disciplinary process. From time to time I also write about individual cases that highlight unique issues, changes in prosecution legal strategy, or how cases are being handled differently. This summer I have come across several instances in which prosecution legal strategy would have changed significantly (if an attorney was handling the case) or will because I was hired to handle the settlement negotiations. These developments more than ever highlight the importance of hiring an attorney to assist every professional in these matters.

The three instances span several areas of the disciplinary process, the first being the most typical. Several highly trained medical practitioners contacted me to discuss, after the fact, their complex PHP/PHMP contract into which they were being forced to enter but had already complied by going to an assessment. (See my Spring 2015 blog about why not to do this.) Each professional thought it was in their best interest to consult their hospital compliance officer, rather than an experienced independent attorney, when confronted with a "Letter of Concern" and a PHP/PHMP agreement. Thinking the corporate/regulatory compliance was their "medical friend," they divulged their alcohol use, current PHP assessment, and the PHMP VRP recommendation. Wrong thing to do!!!!

These doctors are now being compelled to go into the monitoring program by their employer, and not just the PHP, to save their job. They regret this decision and did not properly contemplate the rigors of the program into which they were "voluntarily" entering. Thinking about their singular job versus a lifetime license was wrong.

The importance of legal counsel is next displayed in a recent pharmacy board trial I handled. I represent one pharmacist in a disciplinary matter that also involves the owner of the same pharmacy, and two other pharmacies, in an independent but related disciplinary action. The owner/pharmacist chose not to have an attorney at his disciplinary hearing. At that hearing, the prosecution introduced into evidence 350 pages of internal drug supplier/company documents regarding his three pharmacies. The hearing officer utilized those documents and the legal conclusions contained therein to discipline the owner/pharmacist.

Conversely, knowing the documents of the other two pharmacies were not admissible in a court of law under basic evidentiary rules, I objected to some documents being introduced against my client at her pharmacy hearing. I also objected to the prosecutor's expert giving her legal opinion of my client's alleged rule violations as such was based upon many of the documents now precluded. The pharmacy board hearing officer agreed and stripped the Commonwealth of 9/10 of the evidence in their case against my client. The expert was also precluded from rendering an opinion based upon much of the excluded documents. Solely due to having an attorney, the disciplinary result will be significantly better for my client than the suspension proposed against the pharmacy owner/pharmacist who had no attorney.

A third and more devious example of why an attorney needs to assist licensees in any board matter presented itself in a recent, unique settlement agreement I reviewed. My client successfully presented herself at a mental and physical evaluation after a A Rule to Show Cause requiring the evaluation was filed against

her. I was hired to prepare her for that evaluation. The expert found that she did not suffer from any drug or alcohol addiction that rendered her an impaired professional warranting monitoring. This is great.

Nonetheless, some of the facts in the case suggest she should secure additional continuing education credits beyond the standard 24 per cycle. To this end, the prosecutor proposed a “non-public, non-disciplinary” settlement agreement. An unrepresented professional would probably sign the agreement without objection assuming additional education credits was the sole determining factor of the probation term.

However, the agreement’s clauses state probation will terminate only upon approval of a disciplinary type probation officer. The language states “at least” six months probation. The agreement also includes the clause “reinstatement upon approval of either the board or probation officer.” Another clause states the probation officer could seek another evaluation for clearance to confirm public safety before terminating probation.

This new and unique settlement agreement sought to evade the Commonwealth’s chosen expert’s determination of no monitoring. The settlement agreement as drafted would allow the Commonwealth another opportunity for an evaluation in the future to determine if monitoring would be necessary for “public safety.” As counsel, I objected to each open ended and clearly ambiguous contingency type clauses in a continuing education settlement agreement.

Counsel is important. Licensees focusing on their profession, paying bills, raising their children, or simply patient safety do not understand the contingent nature of these settlement clauses. Licensees appearing at hearings without counsel do not know how and why to object to certain documents being presented to the hearing officer. A medical professionals seeing 15 to 20 patients a day, focusing on their “J.O.B.”, will not perceive the long term importance of the legal admissions contained in monitoring agreements and the future restrictions such imposed upon their licenses.

All professionals are focusing on maintaining the status quo. They will do anything necessary to keep working and not shake the apple cart. Do not do this. Do not sign agreements without an attorney. Do not go to hearings without an attorney. Do not contact compliance officers to discuss PHP/PHMP contracts. Any suggestion of an impairment will necessarily alter any and every employer/hospital impressions of a licensed professional. Insurance priorities, attending privileges, hospital malpractice issues will become overriding concerns. Impaired or allegedly impaired doctors or professionals will be given short shrift and hung out to dry by any and every compliance officer.

Call me to discuss your case.

Share this:

More Examples Why Counsel is Important in Licensing Cases

This week I wrote a blog about the importance of having an attorney handle your professional disciplinary license case. On July 9 & 10, 2015 two more Commonwealth Court cases were handed down affirming my opinion. Each case magnifies the importance of my blogs on why licensees need an attorney at all times in these professional disciplinary cases. The cases are *Gray v. Bureau of Professional and Occupational Affairs* and *Tarapchak v Bureau of Professional and Occupational Affairs*.

Gray is an applicant who answered yes to having a prior criminal conviction on the state Board of Medicine application. Gray sought a behavior specialist license. Gray acknowledged a 1977 burglary conviction and a February 2008 simple assault, reckless endangering another person, terroristic threats conviction for which he was still on probation in 2012 when he applied for licensure. Gray was provisionally denied a license due to character and fitness deficiencies and timely appealed.

Gray attended the hearing without counsel and attempted to present certain evidence at the hearing that was not properly authenticated or admissible. The precluded evidence was Gray's letters attesting to his moral character and fitness. In every application case for which someone is denied licensure due to character and fitness, evidence of good character and rehabilitation is paramount.

This evidence must be presented via live testimony with individuals appearing in court. Gray, not having counsel, did not properly anticipate this issue and did not come prepared with live witnesses to testify on his behalf. As a application case addressing fitness, character, and morals, his fate was sealed before the hearing began.

The attorney prosecuting the case, an experienced litigator, Joan Miller, Esquire, properly objected to the proposed hearsay evidence. The hearing officer for the Medical Board properly sustained the objections and Gray's letters of reference were excluded. He lost his case before it began. Absent counsel, Gray did not know this and suffered the legal consequences for his lapse.

Tarapchak, acting without counsel, appealed a decision indefinitely suspending her license to practice osteopathic medicine and surgery for no less than three years, retroactive for 18 months. Tarapchak's disciplinary matters started in 2010 when, as an osteopathic physician and surgeon, a petition to compel a mental and physical evaluation addressing her fitness to practice medicine was filed against her.

Similar to a Dr. Woody mental and physical evaluation, the medical board chose Pogos Voskianian, M.D., a psychiatrist, to conduct the evaluation. He determined that Tarapchak suffered from a drug or alcohol or mental health impairment that rendered her unable to practice osteopathic medicine with reasonable skill and safety absent an increased level of monitoring and a higher degree of treatment. Tarapchak, without counsel objected to this conclusion, which was overruled and required her to enter the monitoring program.

Tarapchak relented and agreed, signing a consent agreement and order in 2011. Prior blogs address the importance of having counsel prepare every licensee for and attendance with the licensee at these mental and physical evaluations. It does not appear Tarapchak had counsel at that evaluation.

Once Tara was fully enrolled (meaning a final consent agreement was entered by the Board) in the monitoring program, she violated its terms. Tarapchak failed to 1) submit to an assessment, 2) provide drug specimens, 3) make timely payment of costs, and 4) cooperate with the PHMP caseworker. The prosecutor eventually filed a petition for relief, seeking to have Tarapchak kicked out of the monitoring program and indefinitely suspend her license. Tarapchak's noncompliance with the monitoring programs strict protocols was the issue.

Unfortunately, Tarapchak then began engaging in a series of legal petitions that were both a waste of time and did not have legal merit. The primary issue of which she tried to address I have written on many occasions; she had "buyers remorse" for signing a consent agreement that bound her to the terms of the PHP/PHMP monitoring program. Tarapchak did not realize the significance of what "cooperation" meant. One of my spring 2015 blogs clearly defines these terms. Once Tarapchak was stripped of her license and compelled PHMP enrollment, she ran out of money.

The importance of this case is clear. Do not attend a mental and physical evaluation without having counsel properly prepare you for the expert evaluation. **DO NOT GO TO ANY ASSESSMENT WITHOUT COUNSEL PREPARATION.** Absent counsel and a clear understanding of the importance of attending the mental and physical evaluation, and being properly prepared for the evaluation, Tarapchak really lost her license in 2010. While the appellate court case is dated July 2015, Tarapchak effectively lost her license in 2010 when the decision for monitoring was issued by the expert who conducted the mental and physical valuation. The next five years of her professional existence simply focused on not complying with its terms and then struggling with the consequences of not being prepared at that mental and physical evaluation.

Please call me to discuss your case.

Share this:

PHMP TRICKS and TRAPS

The tricks and traps of the PHMP/PMP are extensive. Traps include compliance with professional boards' legal conditions for reinstatement of which PNAP and PHMP caseworkers do not advise non-working program participants. One recent trick a PNAP case worker tried to pull on a client almost foreclosed their timely completion of the PHMP & Board requirements, thereby extending the participation period (drug testing) of PHMP.

Every professional is charged with being aware of their licensing board's continuing education regulations. For nurses these are found at 49 PA. Code § 21.131–21.134. These regulations are also posted on every board's website. For nonpracticing professionals (those who licenses have been revoked or suspended and are required to also enroll in PHMP/PMP) complying with the rigors of the PHMP, it is also hard to focus on a website and educational requirement in their recovery/compliance protocols.

However, it is important to be aware of these education requirements – 30 hours of continuing education and possible reactivation training or re-examination tests. Prior to reinstatement after a minimum five year absence, every professional must either successfully complete a new initial licensing exam, complete a board approved reactivation program by passing a board approved achievement examination, or provide evidence that the applicant has practiced in another jurisdiction for those five years. The professional who is 1) either suspended, revoked, or nonpracticing, 2) compliant with the PHMP/PMP, and 3) wants to be eligible for reinstatement, it is easy to satisfy these requirements at the same time as maintaining sobriety.

The education requirements are time consuming and calendar based. For the professional counting down the time left in a three, four, or five year monitoring program, PNAP and PHMP case workers will not counsel about these educational requirements. As such, not being made aware of these additional education requirements and not satisfying them (but having completed the minimal time in the monitoring program) will delay full compliance with Board reactivation regulations. While the professional may be deemed to have completed the PHMP/PMP process, and receive a advocacy letter from the case worker, the Board will not reinstate the professional to a full non-monitored license until proof of continued competency and completion of CE credits is established. Watch the registration windows for these classes, get PHMP approval to attend and take the tests as soon as eligible.

Importantly, this information is MANDATORY evidence attached to any suspended or revoked professional's Petition for Reinstatement. My other blogs address post-revocation rehabilitation and good deed evidence addressing character and fitness issues individual board members look at in professionals seeking reinstatement. The boards also look at the educational requirements as fundamental proof of the professional's good faith interest in their profession warranting reinstatement.

Please call me to discuss your petition for reinstatement, compliance with PHMP/PMP and other licensing issues.

Share this:

PHMP's NEW TRICK – License Inactive Documents

Pennsylvania's monitoring program, PHMP has instituted a new trick in their playbook. Now, with every PHMP questionnaire and data sheet, PHMP/PNAP caseworkers are including a voluntary license inactivation document. WHAT IS THIS? DON'T SIGN IT.

This is a new attempt to limit voluntary recovery program (“VRP”) participants from changing their mind before the Board enters a consent agreement formally accepting them into the VRP. In essence, most potential monitoring program targets/enrollees are actually INeligible for the VRP. Most do not suffer from any drug or alcohol addiction that renders them unable to perform their profession. The caseworkers just pressure them to admit this.

These VRP participants, however, mistakenly sign the contract, get stuck with a false bills of goods, contact counsel and seek to change their minds. I TELL ALMOST EVERYONE TO WITHDRAW FROM THE PROGRAM, DO NOT ADMIT TO ANY IMPAIRMENT AND FIGHT FOR THEIR MEAL TICKET. NEVER ADMIT ANY IMPAIRMENT.

If the licensee signs this new form, voluntarily rendering their license inactive, there is no point in changing their mind to go back to work. They can't because their license is now inactive. Formal Board action is required to reactivate that license. While the same PHMP Mental and Physical evaluation (SEE MY OTHER BLOGS) will take place, the licensee now cannot work during this 3-7 MONTH process. This is compared to not signing the form, not going into the program, fighting the case, **and working** pending the PHMP evaluation with an expert, not a cracker jack box assessor!

My prior blogs discuss why almost every licensee should not voluntarily enroll in the monitoring program. The blogs discuss the burdens of proof and difficulty of complying with all confirms and conditions of the monitoring program. GO READ THEM.

Importantly, there is a 6-8 MONTH time lag between the initial PHMP/PNAP “letter of concern” contact with the licensee and when a formal signed board approved consent agreement binds a licensee into the PHMP. Remember, this is a voluntary process. Prior to an executed professional license board FORMAL consent agreement being entered, EVERY licensee (doctor, nurse, pharmacist) is free to change their mind and withdraw from the program.

If a licensee signs a voluntarily inactive agreement, the program is no longer voluntary. If the licensee signs a voluntary license inactive document, changing their mind and withdrawing from the PHMP — because of the bait and switch tactics of the caseworkers quickly reveal themselves — signing an agreement to have a license deemed inactive handcuffs the licensee into the program.

Remember, the VRP is just that; voluntary. Every licensee must acknowledge a drug or alcohol addiction and that renders them incapable of safely practicing their profession. If a licensee does not suffer from a potential drug or alcohol abuse or dependence disorder and/or are capable of safely practicing your profession, DON'T SIGN ANY DATA QUESTIONNAIRE, PHMP CONTRACT AND, ESPECIALLY, AN AGREEMENT TO VOLUNTARILY RENDER A LICENSE

INACTIVE. Once the license is inactive, whether you change your mind about the program or not, withdrawing from the program does not allow a licensee to work.

That's another important aspect of these PHMP contracts. PHMP/PNAP/PHP/SARPH agreements require licensees agree to abide by any terms and conditions imposed by their caseworker. Some caseworkers compel not working in the licensee's profession for a short period of time. Nonetheless, previously, the license was still active. Now, if a licensee signs that inactive agreement, the caseworker has ultimate control over the licensee, their career, their profession, and their wallet.

The case worker has the licensee's professional career by the neck and will not let go until licensee completely satisfy them. TRUST ME, THE CASE WORKER AND PHMP case managers are not and never act as the licensee's "advocate." Their allegiance is to the board, their job, and their pay check, not the licensee's.

With a license inactive, the caseworker must file a formal board document asking for re-activation prior to even them even being able to permit the licensee to work (even when in the PHMP). The Boards sit on these requests for multiple months. As such, these voluntary inactive documents further extend and strengthen the caseworkers' control over the licensee. It is inappropriate, unacceptable and could be deemed it illegal to compel a licensee to sign a interactive document as part of PHMP contract.

Remember, enrollment in the PHMP does not constitute discipline of a license. Only after the Board accepts the PHMP contract in the form of a consent agreement has discipline been entered. Opting out of the PHMP prior to Board approval does not constitute discipline and the licensee's license is not restricted in any manner. If the licensee withdrawals from the PHMP and has not signed any license inactive document, they can go to work right away.

If the licensee agrees to sign the interactive document request, there's no difference between withdrawing from the PHMP or not, as they will not be able to work until the license is reactivated. DON'T SIGN THIS NEW DOCUMENT WITHOUT LEGAL COUNSEL. DON'T SIGN THIS DOCUMENT UNDER ANY CIRCUMSTANCES, NO MATTER WHAT.

Share this:

PNAP Conditions for Nursing License Reinstatement

The recent Commonwealth Court case of *Blair v. Board of Nursing*, 2013 Pa. Commw. Unpub. LEXIS 388 (May 28, 2013), reviews a Pennsylvania Nursing Board decision affirming the substantial and egregious hurdles PNAP places on reinstatement of nursing licenses. Blair, unfortunately, plead guilty to a misdemeanor drug possession charge in 2006 and admitted to heroin addiction stemming from migraine headaches. Over the next several years he entered and successfully completed several drug treatment and detoxification programs, securing temporary reinstatement of his license. Blair was compliant with all recommendations of PNAP even though he refused to enroll in PNAP. Blair rejected PNAP because he successfully worked as a home nurse in a setting without the ability to be monitored. This monitoring was PNAP's only condition, of forty-two, to which he could not comply and PNAP would not waiver, requiring the institution of disciplinary proceeding. This case discusses the disciplinary action the Board of Nursing took against Blair and the results.

Importantly, the appellate court's review of Department of State licensing board decisions is limited to determining whether the findings of fact are supported by substantial evidence and whether the board committed errors of law or constitutional violations. The licensing board may accept or reject the testimony of any witness, either in whole or in part. When reviewing a board decision, the appellate court may not reweigh the evidence or second guess the board's credibility determinations. Appellate review of a board's disciplinary sanction (requiring monitoring in this case) is limited to determining whether the board flagrantly abused its discretion or executed its duties or functions in a purely arbitrary and capricious manner. This is a very high burden.

In Blair, several facts are significant. Blair plead guilty in 2006 to heroin possession, Blair voluntarily submitted to a mental and physical examination, Blair was diagnosed as suffering from heroin dependence disorder in **remission**, and the finding that Blair "is safe to practice professional nursing only if he participates in a structured monitoring and treatment program for three to five years for his opiate dependence disorder." Blair's examination was performed pursuant to 63 P.S. §224(a)(2), which states in part, "in enforcing this clause ... the Board shall, upon probable cause, have the authority to compel a licensee to submit to a mental or physical examination as designated by it." Blair's admission of heroin dependence gave the Board probable cause to seek the mental and physical examination. A conviction for violating any provision of the Drug Act is both an automatic one year suspension and probable cause for an evaluation upon reinstatement. DUI's do not automatically constitute a basis for evaluation but the Board will try to use it as a basis to seek voluntary enrollment in PNAP. Don't fall for this.

Once compelled to be examined (through voluntary enrollment in PNAP or by order), the trap is set. The catch is the report language the Board's doctors know to employ becomes the death blow to any license. The Commonwealth's attorneys uniquely and solely rely on their expert to hang their entire license stripping case. No other evidence is necessary. The Board's doctors performing these examinations are aware that a diagnosis of any condition, regardless of remission, is the kiss of death for any license. The Board's doctors employ the same language in every medical and physical report involving individuals with drug use histories. Softly concluding the licensee's medical condition of drug addiction or use is in "full remission" is a meaningless phrase which the Board ignores.

PNAP Conditions for Nursing License Reinstatement

The recent Commonwealth Court case of *Blair v. Board of Nursing*, 2013 Pa. Commw. Unpub. LEXIS 388 (May 28, 2013), reviews a Pennsylvania Nursing Board decision affirming the substantial and egregious hurdles PNAP places on reinstatement of nursing licenses. Blair, unfortunately, plead guilty to a misdemeanor drug possession charge in 2006 and admitted to heroin addiction stemming from migraine headaches. Over the next several years he entered and successfully completed several drug treatment and detoxification programs, securing temporary reinstatement of his license. Blair was compliant with all recommendations of PNAP even though he refused to enroll in PNAP. Blair rejected PNAP because he successfully worked as a home nurse in a setting without the ability to be monitored. This monitoring was PNAP's only condition, of forty-two, to which he could not comply and PNAP would not waiver, requiring the institution of disciplinary proceeding. This case discusses the disciplinary action the Board of Nursing took against Blair and the results.

Importantly, the appellate court's review of Department of State licensing board decisions is limited to determining whether the findings of fact are supported by substantial evidence and whether the board committed errors of law or constitutional violations. The licensing board may accept or reject the testimony of any witness, either in whole or in part. When reviewing a board decision, the appellate court may not reweigh the evidence or second guess the board's credibility determinations. Appellate review of a board's disciplinary sanction (requiring monitoring in this case) is limited to determining whether the board flagrantly abused its discretion or executed its duties or functions in a purely arbitrary and capricious manner. This is a very high burden.

In Blair, several facts are significant. Blair plead guilty in 2006 to heroin possession, Blair voluntarily submitted to a mental and physical examination, Blair was diagnosed as suffering from heroin dependence disorder in **remission**, and the finding that Blair "is safe to practice professional nursing only if he participates in a structured monitoring and treatment program for three to five years for his opiate dependence disorder." Blair's examination was performed pursuant to 63 P.S. §224(a)(2), which states in part, "in enforcing this clause ... the Board shall, upon probable cause, have the authority to compel a licensee to submit to a mental or physical examination as designated by it." Blair's admission of heroin dependence gave the Board probable cause to seek the mental and physical examination. A conviction for violating any provision of the Drug Act is both an automatic one year suspension and probable cause for an evaluation upon reinstatement. DUI's do not automatically constitute a basis for evaluation but the Board will try to use it as a basis to seek voluntary enrollment in PNAP. Don't fall for this.

Once compelled to be examined (through voluntary enrollment in PNAP or by order), the trap is set. The catch is the report language the Board's doctors know to employ becomes the death blow to any license. The Commonwealth's attorneys uniquely and solely rely on their expert to hang their entire license stripping case. No other evidence is necessary. The Board's doctors performing these examinations are aware that a diagnosis of any condition, regardless of remission, is the kiss of death for any license. The Board's doctors employ the same language in every medical and physical report involving individuals with drug use histories. Softly concluding the licensee's medical condition of drug addiction or use is in "full remission" is a meaningless phrase which the Board ignores.

Once diagnosed, the doctor typically concludes that the licensee must still undergo treatment and monitoring in PNAP. Once PNAP is recommended, the proposed consent decree/settlement agreement with PNAP becomes the problem. This is because, as the Blair court stated, “PNAP’s standard treatment contract, which is modeled after the Bureau of Professional and Occupational Affairs’ (Bureau) Professional Health Monitoring Program (PHMP), prohibits participating nurses from practicing either in a home care setting or without direct supervision in the workplace. As part of its agreement with PHMP, PNAP cannot modify the contract provisions prohibiting practice...”

It is this important statement, of which every Board attorney knows, the Board knows, and the licensee does not know. The forty two conditions of every PNAP agreement, contract, stipulation, settlement, or Board Order, are non-negotiable. It’s a take it or leave it settlement. Unfortunately, once PNAP is proposed, Blair reveals that the hearing officers and the Board will compel the exact same forty two conditions regardless of the licensee’s individual circumstances, which conditions the appellate courts will not disturb. This is why experienced counsel is necessary to avoid consensually stepping into this PNAP trap. Please call me to discuss your case.

Share this:

QUESTIONS THE PROFESSIONAL SHOULD ASK THEMSELVES BEFORE ENTERING PENNSYLVANIA'S PHMP

Should you expect your VRP case worker's cooperation when you complete the PHMP (whether voluntary or not) three year program? Will your PMP, PNAP, SarPH case worker be your advocate? Will the program finish within the three year time? When will your licensing board hear your reinstatement application? These are all important questions for any professional considering Pennsylvania's Voluntary Recovery Programs.

The answers to these questions constitute the basic assumptions each professional will possess and seek to understand prior to entering the PHMP. Whether doctor, nurse, pharmacist, or any other professional, understanding the full extent of your professional recovery program (they are almost all the same) prior to signing the enrollment contract is paramount to managing your expectations and experiences in the PHMP. See this link for the terms and conditions.

http://www.dos.pa.gov/ProfessionalLicensing/OtherServices/ProfessionalHealthMonitoringPrograms/Documents/terms_and_conditions_for_participation.pdf

The first issue is how long is the PHMP. If you think your personalized PHMP will be only three years from the date you sign the VRP contract, you are wrong. See the terms and conditions link.

http://www.dos.pa.gov/ProfessionalLicensing/OtherServices/ProfessionalHealthMonitoringPrograms/Documents/terms_and_conditions_for_participation.pdf.

Upon signing and submitting the contract to your case worker, your compliance is necessary. (You have now admitted an addiction which causes an impairment to practice safely. See my other blogs on why not to do that.) The three year period only commences upon your licensing board's approval of that contract—thus becoming a board ordered agreement that they can enforce. However, what your PHMP caseworker intentionally omits telling you is that it takes 3, 6, or maybe 9 months for your licensing board to approve your enrollment contract. As such, the three-year term of the PHMP is really 39, 42, or 45 months. This becomes excruciatingly long.

Secondly, every professional expects their PHMP caseworker to advocate for their return to practice. Each enrollee hopes to have someone assist them navigate the complexities of the drug testing, treatment, and evaluations. Within several months of PHMP enrollment, whether your contract has received board approval, reality clashes with expectations. Every participant with whom I have spoken quickly realizes that "their advocate" — their PNAP or PHMP caseworker, is merely an enforcement officer. This enforcement officer does not help, but merely enforces the terms of the contract of sobriety into which you the professional has entered.

Your PNAP, PMP, PHMP, VRP case worker demands payment, drug testing, re-drug testing, and all medical records. They require retests and timely answers to all questions. Each case worker will be the first to suggest a violation of the program and seek automatic and lengthy extensions for failing drug test for other program protocols. Your advocate becomes your violator, cop, the PHMP enforcer — not an advocate for you.

Lastly, if you have been drug free for 36 to 45 months, you the professional would think your compliance warrants license reinstatement without restriction. However, there are several additional steps in the process of which the case worker never discloses until the three year time period has run, thus delaying reinstatement longer.

Each participant must pass fitness for return to work evaluations. These evaluations delay full reinstatement for significant time periods. Case workers only schedule these evaluations at the end of the programs. A mix of participant and expert scheduling coordination, report generation and final approval by PHMP supervisors extent your PHMP enrollment many more months. Thereafter, petitions to the board for reinstatement must be filed, for which hearings and decisions could take additional months. All the while, the professional must remain compliance in the program. None of this is explained to the unknowing and scared PHMP participant.

It is at the end of the PHMP 3 year time period when case worker manipulation is rampant. Specious drug test violations magically show up. Chain of custody protocols become suspicious. Allegations of participant "no showing" or lost samples for drug tests are routine. Case workers begin to unilaterally extend the PHMP time period by refusing to schedule fitness for work evaluations. Refusing to advocate for you the professional becomes the final delay tactic of choice.

If you have been in the program for drug and alcohol use and now you're being required to undergo a mental health evaluation for no reason, they will seek to extend your enrollment for noncompliance. If you received drug treatment, but were not told you had a mental health diagnosis (anxiety otherwise unspecified) and you have not received any mental health treatment for three years because no one suggested it, recommend it, or require it, your case worker will attempt to delay your fitness for return to work for now a mental health evaluation. These are examples of your advocate refusing to advocate on your behalf.

Legal counsel is necessary to insure that the board understands the arbitrary and capricious nature of case workers' lack of support, advocacy, or basic assistance in helping you get through the program. Frayed nerves, empty wallets, and frustration rule the professional PHMP participant's day. Please call me to discuss missed drug tests, positive drug tests, or delayed scheduling of fitness to return to work evaluation. Please call me to discuss the abusive, obnoxious and demeaning caseworker treatment of you in your attempt to get back to your professional life. Lets file that petition for reinstatement and get you out of the PHMP in the time they suggested.

The PHMP program is only available to the following licensees:

Chiropractic

Dentistry

Medicine

Nursing: RN Law and PN Law

Occupational Therapy

Optometry

Osteopathic Medicine

Pharmacy

Physical Therapy

Podiatry

Psychology

Social Work, Marriage and Family Therapists and Professional Counselors

Speech-Language Pathology and Audiology

Veterinary Medicine

Share this:

Typical PHMP and PNAP Investigator Trap Tactics

My last several blogs dealt with Pennsylvania licensing board investigator trap tactics. A March 14, 2014 New York Times article identifies the same type of measures on a national scale. The article appeared NY Times business section and is entitled a Dagnet at Dewey and Lebouf Snares A Minnow.

The article set forth the course of conduct of FBI, DEA, Securities and Exchange Commission, and other state investigators use in ensnaring unsuspecting and unsophisticated targets. The strategy depicts the same typical, atrocious, and surreptitious investigatory techniques that you can now expect, and for which I have witnessed, from Pa State Board investigators. In the NY criminal case, the target of the case was a low-level office administrator/potential business attorney and a multimillion dollar law firm.

The New York State investigatory authorities reached out to Zachary Warren regarding the premature bankruptcy and business failing of the national law firm. This young individual was extremely ethical, graduated from Georgetown law school, clerked for a Federal District Court judge and a Sixth Circuit Court of Appeals Judge. He was confident in his lack of involvement in any criminal activities. He happily met with the SEC investigator.

However, at that first meeting, along with the NY State investigator, also present was a SEC lawyer, an assistant district attorney, a FBI agent. Other New York State prosecutors were listing and participating over the phone. This unseasoned and young attorney, previously a simple paralegal, was not prepared by any attorney for the meeting. He had never been questioned before, and had not engaged in any legal practice that would have prepared for the type of questioning put to him by attorneys, FBI, and SEC investigators.

Apparently, the article reads, he became quite defensive, did not do well in the eyes of the lawyers with whom he was meeting. They set up the meeting with one person, brought ten, and secured unsuspecting incriminating admission/statements about some part of a investigation of which Mr. Warren was completely unaware. Skip forward three years. He has been indicted and is named as one of the main defendants in the criminal bankruptcy fraud proceedings against the defunct firm's former leaders.

This is a text book example of devious investigators from any state agency that underscore my concerns for any unseasoned licensee talking to any PA State board investigator or attorney general's office detective about any investigation. It is their goal to secure an admission of inappropriate conduct from any unprepared, nervous individual of whom they are investigating. First scare them into meeting and then secure statements that will be used against them in the future. This is what happened in Mr. Warren.

Pennsylvania licensing board investigators and Attorney General state trooper/detectives are engaging in this same conduct in trying to secure meetings with young unsuspecting nurses, physical therapist, physicians assistants, or doctors. The typical language they use is, "we want to get your side of the story "or we just want to hear what you have to say to make sure the investigation is balanced". Do not aid or assist in any part of their investigation.

Enticements like this trap young, unsuspecting and inexperienced individuals in the legal wares of these officers. Admissions eliminate any need for these state employees to do any part of their job; find evidence and investigate the case. Once you talk, you give them the case. Say nothing and refuse to meet. You are not compelled, required, or forced to meet. You are not required to cooperate and incriminate yourself.

These are serious cases being investigated by seasoned attorneys and retired police officer investigators. It is their goal to have the individual licensee do the job of the investigator. Securing admissions of drug use, diverting drugs, or any type of impairments will foreclose a licensee's future. Call me before you meet with anyone or talk with anyone over the phone.

Share this:

What Happens After Criminal Convictions

Criminal convictions of differing types affect your Pennsylvania professional license differently. If a licensee is found guilty, pleads guilty, or enrolls in the Pennsylvania's ARD – pretrial diversion program, these criminal trial dispositions must be reported to your licensing board. If your guilty plea or conviction involves a felony Drug Act charge or relates to a Medicare/Medicare fraud from Pennsylvania or elsewhere, harsher disciplinary action may come quicker. Under either circumstance, the disciplinary process will soon commence.

All reported or discovered convictions (for any offense but especially DUI, forgery, credit card fraud, insurance fraud, or non-medical insurance fraud) generate petitions for discipline before the Pennsylvania Bureau of Hearings and Appeals. The actions seek to suspend, revoke, or discipline a license. Responding to these petitions in a timely and legally appropriate manner is the first step in insuring the professional maintains their professional life.

Once a licensee receives a petition for discipline (“A Rule to Show Cause”), they have thirty days from the date of receipt to file an Answer with the Prothonotary, sending a copy to the prosecutor. It is important for counsel to make only appropriate admissions to certain legal pleadings or allegations, raising affirmative defenses, and properly preserving objections to the evidence attached to the “Rule”. Once the “Rule” is timely responded to, meeting with counsel, organizing witnesses, and collecting exhibits to present both as an explanation of the criminal conviction and of who the professional is is the only way to properly preserve the licensee's professional life.

Many cases address the type of mitigation evidence that can be presented. It is important to meet with counsel and corral witnesses, preparing them for what they can and cannot say. Employment evaluations, continuing education credits, and character statements are also important documentary evidence that needs to be presented at these hearings. For the licensee, providing counsel with extensive and appropriate explanations of the criminal act, especially in cases involving others (a conspiracy) is very important for these types of disciplinary hearings.

Case law discusses mitigation evidence appropriately presented in cases involving Medicare/Medicaid fraud and its Pennsylvania counterpart. It is appropriate in mandatory disciplinary cases to seek retroactive application of suspension time. Here, previously surrendering a license, long-term prosecutorial cooperation, and minimal participation in a larger conspiracy are issues that should be discussed with counsel so that such can be properly presented at the hearing. Letters from prosecutors regarding cooperation, motions filed in federal court, and transcripts of proceedings at a sentencing are all important documents that should be presented to any licensing board.

Please call me to discuss your criminal legal matter and any resulting disciplinary action currently being sought against your license.

Share this:

What is PHMP “Cooperation”

A licensee who has chosen to enter the VRRP, enters a program the PHMP administers and is monitored daily by a PNAP, Sarph, or other Board case worker. The touchstone of every program is binding the licensee to “cooperation”. Cooperation requires each participant to insure their assigned case worker perceives “cooperation” at every level of the program. *Cooperation of everything and anything* a case worker requires is the fundamental part of the agreement.

Perceived cooperation starts before the PHMP/PHP contract is signed, regardless of whether the respective professional board has executed the Consent Agreement. (See my blog discussing the 6 to 9 months between entering the PHMP/PHP and receiving the formal consent agreement.) Cooperation begins with the initial assessment, not contesting the untrained social worker’s specious conclusion of an impairment, and enrolling in the designated drug or alcohol treatment regiment at their location for which they have a financial interest.

Compliance means signing releases for entire medical histories, work evaluations, drug and alcohol test reports, and employment monitoring documents and then paying for all such documents. Compliance means not working in the specific areas of professional practice of which your case worker unilaterally decided was against the program. Compliance means going to drug or alcohol testing facilities on time, complying with their specimen donation protocol, and paying for all associated costs every day or week even when you are not working because your case worker unilaterally decided that you can’t work.

Compliance means eating certain foods, undergoing certain medical procedures, and releasing all pharmacy records. Compliance can also mean (according to your designated caseworker) not contesting certain certain chain of custody mistakes or errors in specimen collection, chain of custody, or specimen retesting requirements. Compliance could also mean not seeking earlier evaluations for return to work or termination of the PHMP program upon completion of the time set forth in the PHMP contract.

Compliance, or lack of compliance, could also mean acknowledging or not agreeing to a positive/failed drug test for a substance not permitted in your PHMP contract. Noncompliance is not admitting to a violation. Caseworkers seek admissions of violating the drug or alcohol provision of the contract. These admissions constitute an automatic basis to terminate or extend the PHMP contract.

At this juncture a lack of admission/compliance prompts every caseworker to change their demeanor. Rather than an advocate, caseworkers become policemen seeking to secure evidence/admissions. Admissions of violating the drug policy for any type of banded substance are used against the PHMP participant in a Rule to Show Cause petition for termination or revocation proceeding. Minor violations of drug and alcohol policy (based upon complete abstinence) are treated the same as major violations of the program for prescription medications.

Counsel is necessary to help navigate these issues of compliance or noncompliance. Statements made to caseworkers are always used against the participant. They are placed into pleading language presented to the board as a basis for termination or revocation. Call me to discuss.

Share this:

What to do when the professional receives a “Letter of Concern”.

Routinely, criminal contact (from public intoxication, a DUI, to a drug diversion allegation or sleeping in the work place) comes to the attention of every professional’s licensing board and the PHMP. This triggers a “Letter of Concern”. This is a letter sent to the unsuspecting licensee, commencing with the sentence; “It has come to our attention that you may be suffering from a drug or alcohol impairment that affects your ability to practice your profession. We are concerned.” This letter is from the PHMP and suggests participating in an evaluation to protect your professional license in a confidential manner without disciplinary action. DON’T FALL FOR IT.

At this point of the many, two reactions are typical. NO WAY. I’m not going. These licensees hit the internet, research, find my blogs and call me. Good plan. You may skip to the end of this blog. For those who are on the fence, keep reading.

The second reaction is that many think the evaluation will help. These inexperienced licensees, but to no one’s surprise, attend the evaluation, thinking he or she will pass “with flying colors”. This thought process is a mistake and wrong. Unbeknownst to these professionals, the evaluation is conducted by untrained, non-medically based treatment evaluators. These social workers or counsels work at these facilities, get paid for conducting these evaluations and routinely diagnose people to need PHMP monitoring and treatment at their facility. These licensees forget that the PHMP referred them to the treatment facility who has a financial interest in finding a treatable condition for which it would be capable of providing care.

For the professional that freaks out but is on the fence about attending, researching what are PHP, PHMP, & PNAP will lead them to my blogs and this possible blog. After reading you will realize the evaluation is merely a fishing expedition. The evaluator is fishing for anything upon which they can hang their diagnosis of a drug or alcohol abuse, use, or dependence disorder for which treatment and/or monitoring is required. My prior blogs review what documents these evaluators seek, medical records they wish to review, and medical authorizations they try to get signed.

These evaluators only know of you what you the professional tells them. There is no prior basis for professional monitoring. While telling the truth is important, you have no obligation to attend a PHMP suggested evaluation stemming from a “letter of concern.” There is no Board order. Your professional license is not under investigation and no discipline has been handed down compelling attendance or treatment. My question then, is, why go?

This voluntary participation is the problem. Attending these evaluations and being completely cooperative provides the PHMP, your Board, and the untrained social worker evaluator information of which all three are unaware, don’t know and do not have a right to know.

Cathartic as it may feel to unburden and talk to this PHMP evaluator, most of the time it will lead to significantly more legal problems. Disclosing information and authorizing the evaluator’s entity to obtain confidential, non-work related medical records opens the professional up to a much deeper evaluation than the “letter of concern” originally suggested or even what the professional anticipated in attending the evaluation.

Many professionals receive proper medical care and take prescribed medications for short or long term diagnosed medical or mental health conditions. Many evaluators know nothing about the complexity of medical care, treatment regimens, prescription medication protocols, or dosages. These are medical decisions for which only licensed doctors can interpret and address. Telling drug social workers at a treatment facility about the prescription medications only leads to their stereotyping you into some medical condition requiring monitoring or further evaluations. This just deepens the fishing expedition.

When you read your “Letter of Concern” do not freak out. Call me to discuss your options. DO NOT SCHEDULE OR ATTEND THE EVALUATION.

Share this: