



# Professional Licensing Issues Related to the Prescribing and Abuse of Controlled Substances

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- Education
  - University of Illinois College of Pharmacy
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- Work History
  - The Illinois Department of Professional Regulation Prosecutor
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  - United States Department of Veterans Affairs
  - General Council for a major chain
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  - Rosalind Franklin University
  - Chicago State University
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- Expert Witness~ DEA, Physician Prescribing, and Healthcare Law

# What We Will Cover Today

- Opioid epidemics
- Common Controlled Substance Issues in Healthcare Professions
- Regulators Involved in Addressing Those Controlled Substance Issues
- Definitions of Public Terms
- Office of Inspector General Exclusion

# Purpose of Presentation

- To make individuals aware of the potential legal and financial implications that may possibly affect their clients.
- Make individuals aware of the fact that early legal intervention is important to protect them from possible legal and financial implications associated with the treatment of their addiction.

# Overview

- Addiction is an illness which affects everyone including professionals.
- It affects an individual's family, health, their employment or their ability to practice a profession.
- Unfortunately, a professional, who is afflicted with an addiction, can have their ability to work impacted by many legal agencies.
- Many, if not all professionals, seeking treatment are unaware of the potential legal implications that may affect their ability to practice until it is too late.
- A professional's future ability to practice may be impaired due to prior legal actions or decisions.

# Opioid Epidemic and the Health Professions

- Substance misuse and addiction rates among healthcare professionals are the same as among the general population.
  - However, prescription drug abuse and addiction rates are 5 times higher among physicians than the general population.
  - 10-15% of healthcare professionals misuse substances.
  - The American Nurses Association puts the RN rate of addiction to drugs or alcohol at 10%.
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- “Unique Challenges for Professionals in Addiction Diagnosis and Treatment.” Butler Center for Research. June 1, 2015.
  - “The sneaky prevalence of substance abuse in nursing.” Starr, K. Nursing 2019.

# Common Controlled Substance Issues in Healthcare Professions

- It's almost impossible to list all of the existing and potential controlled substance issues found across healthcare professions.
- The issues can be divided into two categories:
  - Addiction/abuse
  - Professional misconduct

# Addiction and Abuse

- Addiction to controlled substances, alcohol, or illegal drugs
- Diversion
- Driving Under the Influence
- Personal marijuana possession
- Possession of controlled substances without valid prescription



# Addiction and Abuse: Diversion

- Diversion is the taking of “licit drugs for illicit purposes.”
  - In other words, taking drugs from legal and medically necessary uses and using them in ways that are illegal and not medically authorized or necessary.
  - Most common among nurses.
  - In last IDFPR enforcement report, at least 18.6% of the 123 nursing cases dealt with substance abuse and/or addiction.
  - In the same report, 6.7% of medical cases dealt with substance abuse and/or addiction.
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- Drug Diversion in the Medicaid Program, CMS, 2012

# Professional Misconduct

- In the last IDFPR enforcement report, 4% of nursing cases dealt with professional misconduct related to controlled substances.
- In the same report, 13% of medical cases dealt with professional misconduct related to controlled substances.
- Over-prescribing/failure to wean or cut off where appropriate
- Inappropriate prescribing
- Adequacy of notes, testing
- Issues related to referrals
- Prescription pad management – fraudulent, stolen, altered

# Governmental Agencies/Private Organizations Impacting Professionals Ability to Practice

- State Departments of Professional Regulation
- Attorney Registration and Disciplinary Committee
- United States Drug Enforcement Agency
- Office of Inspector General - both State and Federal
- Other
  - Hospitals
  - Third party providers
  - Employers
  - State and local police
  - Department of Justice

# Complaints Against Licensees

- Citizen or patient complaints
- Other health care professionals
- Insurance or 3<sup>rd</sup> party companies
- Hospitals/clinics/institutions
- Other
  - State and federal agencies (Medicaid, CMS)
  - Law enforcement (local, state, federal)
  - Self-reporting by a licensee

# Complaints from Governmental Agencies

- Attorney General
- Public Health
- State and local police
- Drug Enforcement Agency (DEA)
- Office of Inspector General (OIG)
- Federal Bureau of Investigations (FBI)

# Potential Outcomes

- Non-public:
  - Dismissal of case
  - Administrative warning letter
  - Non-disciplinary order
- Public
  - Reprimand
  - Probation (definite or indefinite)
  - Suspension (definite or indefinite)
  - Revocation

# State Departments of Professional Regulations

- State regulatory agencies have the authority to grant professional licenses as well as take them away. Department of Professional Regulation (“DPR”) actually monitors licensure.
- Typical types of discipline
  - Professional regulation departments may impose one or more of the following disciplines on a license:
    - Reprimand
    - Place on probation
    - Suspend
    - Revoke
    - Fine
    - Refuse to issue
    - Refuse to restore

# Definition of Public Discipline

- **Reprimand** - A reprimand is an official record that the license has been disciplined but typically may not affect the status of the license or the licensee's ability to practice. In some instances, the regulatory department will specify conditions the licensee must follow which would not require any ongoing monitoring.



**License**

## License Information

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
090009141	LICENSED VETERINARIAN	ACTIVE	08/18/2004	12/10/2018	01/31/2021	Y

**Other Licenses**

## Other Licenses

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
39*****43	LICENSED VETERINARIAN CONTROLLED SUBSTANCE (Schedules II III IV V )	ACTIVE	09/14/2004	12/10/2018	01/31/2021	N

**Disciplinary Actions**

Click [here](#) for definitions of the different types of disciplinary actions the Department may impose.

The Reason For Action from this Lookup dates back to January 1, 1990. Any actions and/or Reason For Action taken against a license prior to 1990 may not be displayed. Note that the Reason For Action is extracted from the Monthly Disciplinary Report. Therefore, the text in this column may not begin appearing until the report for the month/year the discipline was issued has been compiled.

Please Note: Reason for disciplinary actions which occurred for Real Estate professions prior to February 1, 2008 will not be listed here. Please contact the department for information regarding past Real Estate disciplines.

Case Number	License Number	Action	Discipline Start Date	Discipline End Date	Reason for Action
2009006629	090009141	Reprimand	08/27/2010		due to the providing of veterinary care and treatment that did not comply with accepted veterinary standards of practice.

# Definition of Public Discipline

- **Probation** - Professionals whose licenses are placed on probation are allowed to continue practicing subject to certain terms and conditions. The conditions imposed as part of a Consent Order of probation will vary depending on the circumstances of the case.
  - Orders of probation will also vary in length, but can be imposed indefinitely. In most cases, the disciplined professional has to petition the Director of the Department to have an indefinite probation lifted.
  - During the period of probation, the professional is monitored by the Department's Probation Compliance Unit to ensure all terms and conditions are met.

**License**

License Information

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
049141678	PHARMACY TECHNICIAN	NOT RENEWED	04/05/2002	02/07/2014	03/31/2015	Y

**Other Licenses**

Other Licenses

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
043064742	LICENSED PRACTICAL NURSE	NOT RENEWED	06/22/1987	11/08/2012	01/31/2015	Y

**Disciplinary Actions**

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Case Number	License Number	Action	Discipline Start Date	Discipline End Date	Reason for Action
2008004953	049141678	Probation	06/05/2009	01/31/2011	diverted antibiotics and other supplies from her pharmacy employer.

# Definition of Public Discipline

- **Suspension** - Professionals whose licenses have been suspended cannot practice during the period of suspension. The term of suspension can range from one day to indefinite. In many instances, the period of suspension is followed by probation.
  - Indefinite suspensions generally specify conditions the disciplined professional must meet in order to petition for reinstatement.
  - Temporary Suspension - Several state professional practice acts (including medical, dental and pharmacy) give the Director authority to temporarily suspend a professional's license pending a hearing before the appropriate board or committee where the Director finds that a professional licensee's continuation to practice would constitute an immediate danger to the public.

**License**

## License Information

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
049170613	PHARMACY TECHNICIAN	NOT RENEWED	08/11/2006	09/16/2014	03/31/2015	Y

**Other Licenses**

## Other Licenses

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
043090922	LICENSED PRACTICAL NURSE	ACTIVE	01/05/2005	01/31/2019	01/31/2021	Y

**Disciplinary Actions**

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Please Note: Reason for disciplinary actions which occurred for Real Estate professions prior to February 1, 2008 will not be listed here. Please contact the department for information regarding past Real Estate disciplines.

Case Number	License Number	Action	Discipline Start Date	Discipline End Date	Reason for Action
2016001216	049170613	Suspension	04/22/2016	06/02/2016	Failure to file and/or pay Illinois state income taxes. Notice of tax deficiency release received from Department of Revenue on 06/03/2016.

# Definition of Public Discipline

- **Revocation** - Professionals cannot practice with a revoked license. A petition must be filed with the Director of the department to have a revocation lifted.
- **Fine** - Monetary fines are another remedy available to the Department and are usually issued in conjunction with one of the above disciplines.

**License**

## License Information

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
085000874	LICENSED PHYSICIAN ASSISTANT	ACTIVE	01/27/1997	02/20/2018	03/01/2020	Y

**Other Licenses**

## Other Licenses

License Number	Description	Status	First Effective Date	Effective Date	Expiration Date	Ever Disciplined
38*****32	PHYSICIAN ASSISTANT CONTROLLED SUBSTANCE (Delegated Schedules II III IV V )	ACTIVE	03/26/2001	02/20/2018	03/01/2020	N

**Disciplinary Actions**

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Please Note: Reason for disciplinary actions which occurred for Real Estate professions prior to February 1, 2008 will not be listed here. Please contact the department for information regarding past Real Estate disciplines.

Case Number	License Number	Action	Discipline Start Date	Discipline End Date	Reason for Action
2009006033	085000874	Fine	02/25/2011		after he settled a lawsuit alleging he failed to admit patient with pancreatitis.
2009006033	085000874	Reprimand	02/25/2011		after he settled a lawsuit alleging he failed to admit patient with pancreatitis.

# Care, Counseling and Treatment (CCT) Option in Lieu of Public Discipline

- For some health care professionals the Board may require the professional to enroll in a care and counseling or treatment program for their addiction.
  - Similar to a probation, but not made available to the public.
  - One time offer of CCT, if violated - serious consequences.
  - In lieu of care, counseling, and treatment, the Department may suspend, revoke, or discipline the license of the individual.



# Reasons for the Imposition of a Discipline

The Department may revoke, suspend, place on probation, refuse to renew, or take any disciplinary action as they see proper with regard to a professional's license if any of these cases apply:

- Basis for discipline
  - Habitual or excessive use or abuse of controlled substances, alcohol, or any substance that may affect the judgment of the physician.
  - A pattern of behavior which demonstrates incapacity to practice.
  - Giving self administration of any controlled substance drug.
  - Unprofessional Conduct
    - Act related to professional practice that is willful, wanton, repeated, or flagrant and likely to result in harm to an individual.

# Reasons for the Imposition of a Discipline

- Bases for discipline:
  - Making any misrepresentation for the purpose of obtaining licenses.
  - Pattern of conduct which demonstrates incompetence or unfitness to practice.
  - Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.
  - Discipline in another state/jurisdiction, if at least one of the disciplinary grounds is the same or substantially equivalent to those in the respective Professional's practice act.
  - Violation of probation.

# Reasons for the Imposition of a Discipline

- Bases for Discipline (cont'd)
  - Convicted in a state or federal court of any crime which is a **felony** or any **misdemeanor** related to the professional practice, **of which an essential element is dishonesty.**
  - Habitual/excessive use/addiction to alcohol, narcotics, or any other drug resulting in the inability to practice with reasonable judgment, skill or safety.
  - Willfully making/filing false records/reports in the practice of pharmacy.
  - Gross and willful overcharging for professional services.
  - Repetitiously dispensing prescription drugs without receiving an oral or written prescription.
  - Failure to pay student loans.
  - Failure to pay or late payments for child support.
  - Failure to file or pay state income taxes.

# Reasons for the Imposition of a Discipline

- Board shall consider the following standards:
  - Repeated breach of code of ethics or accepted codes of behavior.
  - Repeated acts/relationship with patient that violate standards of decency or propriety.
  - Willful violation or assistance in violating laws.
  - False statements to induce payment from state Medicaid or other governmentally funded programs.
  - Violate professional association Standards of Practice, provided that non-compliance with these alone shall not be unprofessional conduct, unless of a flagrant or glaringly obvious nature constituting a substantial departure from professional standards.

# Drug Enforcement Agency

- The DEA is responsible for:
  - Oversight of the system
  - Integrity of the system
  - Protection of the public health and safety

# United States Drug Enforcement Agency (DEA)

- Grounds for denial, revocation, or suspension of DEA registration for anyone with the title to manufacture, distribute, or dispense a controlled substance.
  - The individual has been convicted of a felony under law of any state relating to any substance defined as a controlled substance.
  - The individual has had his state license suspended, revoked, or denied and is no longer authorized by state law to deal with controlled substances.
  - DEA form 104 - Voluntary Surrender of a DEA Registration

# State Office of Inspector General (OIG)

- OIG investigates allegations of abuse or neglect of individuals who receive mental health services or developmental disability services in programs that are operated, licensed, certified, or funded by IDHS
- OIG also trains people who work with people who work with adults with disabilities, conducts random checks to ensure that programs take corrective actions resulting from investigations, and makes site visits to state psychiatric hospitals and developmental centers to assist in preventing abuse and neglect

# State OIG

- Prevent, detect, and eliminate fraud, waste, and abuse, misconduct and mismanagement in the following programs:
  - Medicaid
  - KidCare
  - Temporary Assistance for Needy Families
  - Food stamps
  - Child care and other social services



# State OIG - Termination, Suspension, Exclusion

- The OIG may terminate or suspend a physician's/institution's eligibility when it determines that the physician/institution has not complied with Department policies or rules.
- A physician or institution can be terminated, suspended, or excluded for many different reasons, but relevant for today:
  - Furnishing goods or services (including controlled substances) that are in excess of needs or harmful
  - Crimes involving controlled substances.

# Federal Office of Inspector General (OIG)

- It is a legal entity that regulates provider NPI numbers and allows providers to treat Medicare and Medicaid patients.
- Their mission is to protect the integrity of HHS programs, and the health and welfare of the beneficiaries served by those programs.
- They do nationwide audits, investigations, and evaluations.
- Regulates providers through two divisions:
  - Enrollment
  - Exclusion

# Federal OIG - Exclusion of Health Care Professionals

- The OIG has the authority to exclude health care professionals or entities from working in any facility that receives federal dollars to fund patient care. (Medicare, Medicaid, Veterans Affairs, Tricare.)
- This exclusion has major impact on a health care provider's employability and staffing privileges.
- No payment will be provided for any items or services furnished, ordered, or prescribed by an excluded individual or entity.
- In the end, individuals may be placed on the OIG List of Excluded Individuals/Entities ("LEIE").
  - Anyone who hires an individual or entity on the LEIE may be subject to civil monetary penalties.

# Federal OIG - Steps in the Exclusion Process

- Individuals first receive a Mitigation Exclusion Letter (“MEL”) from the OIG followed by a Final Notice of Exclusion Letter (“FNEL”).
- Problem is with the health care provider’s receiving of the letters. Many individuals do not properly or respond at all to either letter.
- Once an individual receives the FNEL, they are placed on the LEIE and can not work at a facility or with an employer that provides care which receives payment from any federal health care program. i.e. Medicare, Medicaid or Veterans Affairs.
- This restriction is a major restriction placed on a health care provider. As stated in the MEL, “The scope of exclusion is broad and, if implemented, would have a significant effect on your ability to work in the healthcare field.”

# Federal OIG - Exclusion of Health Care Professionals

- Two Forms of Exclusion

- Mandatory Exclusion - results from serious offenses such as felony related to health care fraud or conviction related to abuse or neglect of a patient. Individuals on this list are excluded for a minimum of 5 years.
- Permissible Exclusion - results from moderate offenses such as misdemeanor conviction relating to health care fraud or conviction relating to fraud in non-health care programs. Individuals on this list are excluded for a minimum of 3 years.

**Note:** An individual who is convicted in a matter related to controlled substance(s), whether felony or misdemeanor, will have an exclusion imposed upon their ability to practice.

# Federal OIG - Exclusion of Health Care Professionals

- **Mandatory Exclusions - 6 types**

- Conviction of program related crimes - min. 5 yrs.
- Conviction relating to patient abuse or neglect - min. 5 yrs.
- Felony conviction related to health care fraud - min. 5 yrs.
- Felony conviction related to controlled substances - min. 5 yrs.
- Conviction of two mandatory exclusion offenses - min. 10 yrs.
- Conviction on 3 or more occasions of mandatory exclusion offenses - permanent exclusion

# Federal OIG - Exclusion of Health Care Professionals

## Permissive Exclusions

- Misdemeanor or conviction relating to health care fraud - min. 3 yrs.
- Conviction relating to fraud in non-health care programs - min. 3 yrs.
- Conviction relating to obstruction of an investigation - min. 3 yrs.
- Misdemeanor conviction relating to a controlled substance - min. 3 yrs.
- License revocation or suspension - no less than the period imposed by the state licensing authority.
- Exclusion or suspension under federal or state health care program - no less than the period imposed by federal or state health care program.
- Claims for excessive charges, unnecessary services or services that fail to meet professionally recognized standards of healthcare - min. 1 yr.
- Fraud, kickbacks and other prohibited activities - min. none.
- Failure to take corrective action. Minimum Period: None

# Federal OIG - Mitigating Factors for Avoiding Exclusion

- In criminal cases, do not admit or agree to a plea of guilt. Ask court to postpone hearing until legal representation is obtained.
- Obtain proper legal representation for any regulatory or hospital legal matters.
- Patients should pay attention to received mail, i.e. MEL or FNEL.



# Other Mandatory Regulations for Hospitals

- For medical physicians and nurses – all instances in which physicians are impaired mentally by drugs or alcohol abuse must be reported by their institution to the disciplinary board.
  - The board will then determine the supervision of a program of rehabilitation.

# Legal Considerations for All Professions

- Oftentimes, individuals involved with a recovery or professionals program have criminal cases which may lead to a regulatory case.
- Or, the individual may just only have regulatory case.
- Individuals with a criminal case require an attorney(s) with both criminal and a healthcare background. Oftentimes, criminal attorneys are unaware of the implications a guilty plea has on a professional's license to practice.
- Individuals with pending regulatory cases require an attorney with regulatory experience.
- Attorneys, require representation by an attorney familiar with IARDC rules. Health care professionals need representation by an attorney familiar with regulatory rules and laws.
- It is important for patient to be aware of the potential affects their past actions may have on their future ability to practice as a professional.

# Conclusion

- Important for professionals to be legally proactive in their convictions, disciplines, or treatment.
- Early and proper legal intervention is key to positive outcomes.