

Collateral Consequences for Health Care Professionals

CRIMINAL JUSTICE INSTITUTE

AUGUST 22-23, 2017

Marlene S. Garvis, JD, MSN

MARLENE S GARVIS, LLC

What are the Collateral Consequences?

2

- The consequences fall into two “buckets”
 - REGULATORY
 - EMPLOYMENT

Main Impact on Nurses: RNs and LPNs Issue Arises During Employment

3

- Situation: Nurse Conduct During Employment
- Nurse Diverts Medications/Narcotics
- Employer Discovers Discrepancies or
- Co-worker Discovers Discrepancies



Involvement of Police Department

4

- Employer reports diversion to local Police Department
- Nurse is charged with theft or another crime that falls under Minn. Stat. Sec. 245C.15
- Nurse admits to diversion/theft, or makes Alford Plea, or admission of some kind
- Court determines: charge and enters same with stay of adjudication and dismissal of case after completion of probation

What Can Attorneys Do About This?

5

- Greater understanding of the dual situation facing nurses
- Cooperation among the criminal defense, licensing and prosecuting attorneys to protect the public and recognize that the dual impact on nurses and allow opportunities for “second chances”
- Arrive at a court resolution that involves a crime that does not fall under Minn. Stat. Sec. 245C.15
- Caution: DHS/MDH can rely on conduct that constitutes a preponderance of evidence”: e.g., admission, Alford plea, police report, etc.

What Can Attorneys Do About This?

6

- Consider having Court allow HPSP to monitor nurse vs. court-ordered probation (HPSP has more requirements for monitoring)-if nurse is not suspended by BON
- Request/submit motion for early dismissal of probation and closure of case
- Prepare for expungement motion

Main Impact on Nurses: RNs and LPNs Issue Arises Unrelated to Employment

7

- Nurse commits a theft or is found with illegal drugs
- Nurse is charged with theft or other crime that falls under Minn. Stat. Sec. 254C.15 as disqualifying crime; or nurse admits to crime, makes Alford Plea, or makes admission of some kind
- Court determination: Stay of adjudication on a conviction and probation, after which the charge will be dismissed and case closed



What Can Attorneys Do About This?

8

- Greater understanding of the dual situation facing nurses
- Cooperation among the criminal defense, licensing and prosecuting attorneys to protect the public and recognize that the dual impact on nurses and allow opportunities for “second chances”
- Arrive at a court resolution that involves a crime that does not fall under Minn. Stat. Sec. 245C.15
- Caution: DHS/MDH can rely on conduct that constitutes a preponderance of evidence”: e.g., admission, Alford plea, police report, etc.

What Can Attorneys Do About This?

9

- Consider having Court allow HPSP to monitor nurse vs. court-ordered probation (HPSP has more requirements for monitoring)-if nurse is not suspended by BON
- Request/submit motion for early dismissal of probation and closure of case
- Prepare for expungement motion

Recent Changes Affecting Nurse

10

- BON will require Criminal Background Checks for individuals applying for nursing license, beginning January 1, 2018
- Development of employer policies for reporting diversion will include reports to local police department and DEA

Key Statutes

11

- Minn. Stat. Ch. 254C
- Minn. Stat. Sec. 254C.15
- Minn. Stat. Sec. 254C.31
- Minn. Stat. Sec. 152.18
- Minn. Stat. Ch. 364
- Minn. Stat. Sec. 148.261
- Minn. Stat. Sec. 609.72
- Minn. Stat. Ch. 609A
- Minn. Stat. Secs. 214.29, 214.32, 214.33 (HPSP)

Forms and Resource Materials

12

- FORMS:
- Checklist for Disqualification Reconsideration
- Request for Reconsideration Form
- RESOURCES:
- Minnesota BON Reporting Obligations
- Minnesota BON Complaint Resolution Process (2015)
- Mayo Clinic Policy for Reporting and Response to Drug Diversion (2012)
- Minnesota Department of Health: Drug Diversion (2014)

Resource Materials Cont'd

13

- "What Is Maltreatment and How Can It Affect My Job." Education for Justice Fact Sheet. www.LawHelpMN.org
- "Job Disqualifications." Education for Justice Fact Sheet. www.LawHelpMN.org
- "Disqualifications/Maltreatment/DHS Fair Hearings." Meghan Scully, Staff Attorney, SMERLS.
-
-

Case Examples

14

- Ashford v. Commissioner of Human Services (Minn. App. April 10, 2017) (unpublished)
- Pillatzki v. Commissioner of Health (Minn. App. July 15, 2013) (unpublished)
- Thompson v. Commissioner of Health, 778 N.W.2d 401 (Minn. App. 2010)
- Hickman v. Commissioner of Human Services, 682 N.W.2d 697 (Minn. App. 2004)

THANK YOU

15

- Marlene S. Garvis, JD, MSN
 - MARLENE S GARVIS, LLC
 - 4597 Woodridge Road
 - Minnetonka, MN 55345
 - 612-462-9119 (Direct)
 - www.marlenegarvis.com