

# Collateral Consequences for Health Care Professionals

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# What are the Collateral Consequences?

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

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

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



# Involvement of Police Department

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- 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?

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- 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?

- 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

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- 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?

- 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?

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- 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
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# Recent Changes Affecting Nurse

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- 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

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- 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

- 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

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- "What Is Maltreatment and How Can It Affect My Job." Education for Justice Fact Sheet. [www.LawHelpMN.org](http://www.LawHelpMN.org)
- "Job Disqualifications." Education for Justice Fact Sheet. [www.LawHelpMN.org](http://www.LawHelpMN.org)
- "Disqualifications/Maltreatment/DHS Fair Hearings." Meghan Scully, Staff Attorney, SMERLS.
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# Case Examples

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- *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

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