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Licensing Board Stipulations: Beware Unanticipated Consequences

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Physicians, dentists, and other healthcare providers who run into problems with their state medical board or other licensing agency are often offered a stipulated resolution to avoid formal proceedings, additional costs, and potentially more severe sanctions. Although such stipulations may be an appropriate and efficient way to resolve concerns, providers should beware of the unanticipated consequences of such stipulations, including the following:

1. NPDB Reports. Licensing boards are generally required to report such stipulations involving physicians or dentists to the National Practitioners Data Bank (“NPDB”). (See 45 CFR § 60.8). Hospitals and other entities are required or permitted to check the NPDB during the physician credentialing process. An NPDB report will become a black mark on the physician's record for the rest of his or her career unless removed, and may lead to the further actions described below.

2. Reciprocal Actions by Other State Licensing Boards. Many if not all state licensing boards automatically impose reciprocal sanctions against providers who were sanctioned in another state; thus, the action in one state may result in similar actions in other states in which the provider is licensed. That, of course, compounds the physician's problems.

3. Adverse Action by Other Agencies. Other agencies may initiate their own investigation based on the board stipulation. For example, a stipulation relevant to prescribing practices may trigger an investigation by the state pharmacy board. A stipulation involving inappropriate conduct with the patient might lead to criminal charges by the local law enforcement agency. Although such collateral investigations are fairly rare and are usually limited to situations involving egregious facts, there is no guarantee that the stipulation will allow the physician to avoid lengthy and costly investigations or proceedings.

4. Adverse Employment Action. Employment contracts often condition employment on an unrestricted license, and require the provider to disclose or represent that the provider has not been the subject of adverse licensure action. Depending on the language of the contract and the mood of the employer, a seemingly innocuous stipulation may result in loss of employment. At the very least, the stipulation will likely undermine the provider's position with the employer.

5. Adverse Credentialing Actions. Like employment contracts, hospitals

or other facilities consider adverse licensure actions in their credentialing decisions. Depending on the medical staff bylaws and credentialing policies, licensure stipulations may allow the hospital or facility to deny, suspend, restrict, or terminate a provider's medical staff membership or privileges, thereby limiting the provider's practice options. Such adverse credentialing actions may also adversely affect the physician's employment or relationships with payers who are affiliated with the hospital.

6. Adverse Payer Actions. As with hospitals, many third party payers require that participating providers have an unrestricted license to practice, and that they are free from any adverse action by licensing boards or facilities. The stipulation is likely to trigger third party payer scrutiny and potential exclusion from payer networks and contracts. At the very least, the provider will be left to explain the situation to the payers and/or appeal the presumptive exclusion from participation.

7. Specialty Boards. Specialty boards may require a clean record as a condition of board certification. The stipulation may disqualify the physician from obtaining board certification, which in turn may adversely affect the physician's employment, medical staff membership, and practice.

8. Future Disclosures. Even if existing licensing boards, employers, hospitals, payers, and boards do not discover the stipulation on their own, they often include provisions in existing contracts or rules that require the provider to affirmatively disclose adverse licensing actions. At the very least, the provider will almost certainly need to disclose the stipulation in response to questions in the course of future credentialing actions, applications or renewals. The failure to disclose the stipulation is usually, in itself, grounds for the denial or termination of the requested employment, privileges or participation. Accordingly, the physician is going to have to rehash the stipulation for years to come.

9. Adverse Publicity. In most states, the licensing board is permitted or required to publish the action. Colleagues, patients and others in the community are likely to learn of the stipulation, resulting in professional embarrassment, diminished reputation, and loss of business.

10. Malpractice Insurance. Depending on underwriting requirements, the stipulation may adversely affect the provider's ability to secure or maintain professional liability insurance or the premiums charged for such insurance.

11. Litigation. Finally, the stipulation may result in civil lawsuits. The stipulation may spark suits by plaintiffs affected by the underlying concerns. In addition, plaintiffs' lawyers may attempt to use the stipulation in subsequent litigation against the provider. Even though the stipulation will likely be irrelevant and inadmissible to most malpractice cases, it can still cause discomfort and increase the costs of defense.

Given the potential penalties, providers should carefully consider the consequences of any stipulation. If there is no effective defense to the allegations, the provider may have little choice but to agree to an

appropriate stipulation to minimize costs and avoid potentially worse sanction; however, the provider should attempt to negotiate the terms in the stipulation to minimize his or her exposure. For example, the board might be willing to agree to a private censure or public reprimand instead of imposing restrictions or conditions on licensure. Alternatively, the provider might be able to modify the stipulation to confirm that it does not constitute a restriction on the license, does not limit the physician's practice, and there was no harm or risk to patients. The provider might try to include other provisions that mitigate the harm or minimize the need for future disclosures. As appropriate, the provider should work with a knowledgeable attorney to help evaluate the risks and craft the stipulation in a manner to minimize the damage it will undoubtedly cause.

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