**PAP, OPD, OMIG, and OIG: How to Protect Your License**

For any licensed professional, any complaint, criminal issue, or discipline may result in repercussions with other government agencies that can have severe consequences on your ability to practice. For a nurse dealing with substance-use disorder, it is essential to understand the ground upon which these government agencies may take action and how to defend and protect your license.

The basic statutory grounds for a charge of professional misconduct brought by the Office of Professional Discipline (OPD) are set forth in Education Law §6509 and Rule 29 of the Board of Regents. They include: “practicing the profession with gross incompetence, with gross negligence on a particular occasion or negligence on more than one occasion, practicing the profession while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability, being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, and being convicted of committing an act constituting a crime” (New York State Education Law § 6509(2), (3), (4) and (5)).

Other sections—most notably those involving gross negligence or negligence on more than one occasion and conviction of a crime—are not covered under PAP immunity. That means OPD can still charge a nurse who is enrolled and in compliance with the PAP with charges of professional misconduct under those grounds. The criminal conviction ground is the most common ground, but OPD has used other grounds in cases involving diversion even when a crime had not been charged. Even though the PAP does not provide absolute immunity from professional discipline, a nurse’s participation in the PAP will be taken into account and looked upon favorably.

Whether for a criminal conviction or another ground, typical discipline for a first offense is often a stayed suspension, which is a suspension that is put on hold and will not result in an actual suspension.
of one’s license as long as the nurse complies with the terms of the order. OPD, however, will try to put an actual indefinite suspension into place if the nurse is still not determined to be fit for practice. That indefinite actual suspension and any actual suspension will likely result in actions by the NYS Office of Medicaid Inspector General (OMIG) and the US Office of the Inspector General of the Department of Health and Human Services (OIG). As such, it is very important to attempt to put off any discipline until there is a finding of fitness to practice.

OMIG will exclude anyone who has an actual suspension but can also exclude anyone who has been disciplined by OPD. There is a way to avoid this through a pre-consent determination request. OMIG can exclude anyone who was convicted of a crime relating to delivery of health care, and OMIG must exclude anyone excluded by the federal government. OIG has the authority to exclude individuals and entities from federally funded health care programs for a variety of reasons, including a conviction for Medicare or Medicaid fraud.

An exclusion by OMIG or OIG has a devastating effect on a nurse. Those that are excluded can receive no payment from federal health care programs for any items or services they furnish, order, or prescribe. That essentially means they cannot be employed by any entity that participates in a government health care program, including hospitals, private practices, and nursing homes. Exclusions are not automatically removed, which is a common misconception. A nurse must affirmatively ask to be removed from the exclusion list and must be removed from the OIG before the OMIG will remove them from the state list. This takes time, often many months, during which obtaining employment would be very difficult.

In sum, a nurse facing complaints must be aware of all the various regulatory repercussions and should have legal guidance to protect his/her license.

Margaret Surowka is counsel with Barclay Damon LLP, a leading law firm with nearly 300 attorneys operating from a strategic platform of offices in the Northeastern United States and Toronto. As a member of the firm’s Health Care Controversies Practice Area, Maggie routinely represents health care professionals in disciplinary and regulatory actions before governmental agencies.

This article is not intended as legal advice. Legal advice is based on the specific facts of a client’s situation and must be obtained by individual consultation with a lawyer.
From the Depths of Chaos...to Self-love

Webster’s Dictionary defines chaos as a state of utter confusion and disorder. Three years ago it would have been difficult to find a word more fitting to describe my life. Connections to anything positive had been severed a long time ago and in this untethered state, I tore through my terrifying life. Years were spent without a clear sense of direction and I was constantly uncertain of my thoughts and emotions. Alone and ruled by impulse, I never knew what lie ahead each day, and my lifestyle was literally killing me. At that time, drugs and alcohol were both the cause and solution to this chaos.

When my managers pulled me into their office and confronted me about substance abuse, I had had enough. For the first time, I opened up about it and the sense of despair that I had been living in. Dozens of questions swirled in my mind but one, in particular, was the locus of my attention. Why? Not why me or why did I get caught. But why was I willing to risk my career and even my life for some sense of well-being?

Renowned Vipassana Meditation teacher, Joseph Goldstein once said, “If you want to understand your mind, sit down and observe it.” This simple instruction has altered my life in ways that I did not believe possible. A daily meditation practice, weekly meditation meetings at Refuge Recovery, and work with a psychotherapist have provided insight into the depths of my mind. Now when I have an upsetting thought I can see it for what it is. A thought. It is not a commandment that must be obeyed, run from, or medicated. It will pass as all thoughts do. If it is negative, I question its validity. Often times it isn’t even true.

What I am attempting to convey is that my life today is vastly different from what it used to be. I understand that every time I used drugs and alcohol there was a price to pay. Every instance was corrosive to my integrity and spirit, and it only exacerbated my sense of isolation. Thankfully, I have reestablished connections with my loved ones and created new bonds with people who truly care about me.

But perhaps most importantly I have reconnected with myself. I treat myself as someone I love. Socrates claimed that the greatest goal of one’s life is “to know thyself.” As I sit here today I can honestly say I know why.

~ a grateful SPAN participant

New Online Group

SPAN is piloting an online group for the participants who are unable to attend in person. The group meets on Wednesday evenings from 6:00pm to 7:30pm and is facilitated by Deborah Koivula. The group is hosted via the Zoom platform. Interested nurses can discuss the group criteria with their Regional Coordinator.

Online Group Expectations

Just like in-person meetings, the online meeting has a set of expectations and parameters to help all members get the most out of our peer support process. In addition to the SPAN group rules, please remember the following when attending group on line:

• Confidentiality of group members is of utmost importance. Information shared in group is to remain with group members only. Please do not utilize usernames that display your last name.

• Group participation although mobile, is a private activity. Please make provisions for children and or other adults to not be within viewing or listening distance of group conversation.

• Video etiquette is important for an effective group experience. Although we have the ability to use our mobile devices for participation, please be mindful that heavy movement of the camera, walking and moving while on screen or fidgeting is distracting to other participants. Please use your technology responsibly and effectively.

• Please consider placing your camera at an angle that allows a forward view of your face - not the side or looking up from the ground. Eye contact through video is an important means of demonstrating engagement with your peers.

• Eating during group is discouraged.

• Smoking is not allowed during group.

• Group starts and ends at designated time.

• If you are unable to attend group, please contact facilitator to inform them as soon as possible. Please note that attendance is a commitment. Two unexcused absences will result in removal from the online group process.
Thank you to our SPAN Facilitators

Thank you to all of our volunteer SPAN group facilitators. We couldn’t run the groups without you! There are three facilitators who will celebrate milestone anniversaries in 2020:

**Carol Brown**
(5 years on 4/5/2015)
Adirondack Region

**Kenneth Burwell**
(5 years on 4/20/2015)
Adirondack Region

**Jennifer Aromanda**
(10 years on 7/13/2010)
Metropolitan Region

SPAN Support Groups

**Adirondack:** Canton, Oneonta, Plattsburgh, Utica

**Central:** Binghamton, Elmira, Syracuse (2)

**Eastern:** Albany, Guilderland, Highland, Middletown, Saratoga Springs

**Metropolitan:** Manhattan, Westchester, Queens, Brooklyn

**Southeastern:** Bohemia, Farmingdale, Massapequa, Selden, Staten Island, Syosset

**Western:** Rochester, Olean, West Seneca, Buffalo

For more information, please contact your regional coordinator or the SPAN HELPLine at 1-800-45-SPAN-1 or 1-800-457-7261.