

## Ask Part B News

## Must you rehire suspended providers who get their license back? Look to contract.

***Question:** I understand that when providers lose their medical licenses they can be fired or removed from a partnership agreement because not having a license prevents them from doing their job, i.e., treating patients and being paid for it. But sometimes these providers get their licenses back. Are there circumstances under which they must be rehired by their former practice?*

**Answer:** This mainly depends on the contract, and nearly all of them have just-cause clauses that clearly include the inability to practice and get paid as reasons to remove a provider.

“Think of it from the employer’s perspective,” says Christopher Kutner, a partner in the health services practice group at Rivkin Radler LLP in Uniondale, N.Y. “Loss of license prevents you from being able to see patients and from being able to bill for services. Therefore [the employer] doesn’t have an obligation to pay you because you’re not able to produce revenue for them.”

Kutner worked previously for a managed care company as general counsel “and in our agreements with our network of doctors, there was always a provision that said your participation is terminated upon your loss of license,” he says.

In fact, says Kathleen A. Westfall, a health care attorney with the Kerr Russell firm in Detroit, while there have been cases of license-deprived providers doing non-clinical work within their organizations, in some cases they can’t even do that. “State laws often require professional entities, including medical practices, be owned and managed by licensed persons,” Westfall says. “In Michigan, if a physician is a co-owner of a medical practice and, whether due to license suspension, revocation or otherwise, becomes legally disqualified to practice medicine, Michigan law requires the physician to sever all employment and financial interests in the medical practice within a reasonable time.”

It’s true that not every license removal is permanent. Richard F. Cahill, vice president and associate general counsel of the Doctor’s Company in Napa, Calif., notes that the provider may suffer “temporary suspension for a set term, or probation, with or without conditions such as proctoring or additional supervised training or monetary fines.”

Sometimes the provider may be under investigation by a board and their license suspended as a precaution prior to judgment. The provider’s license may not even be technically suspended, but rather “encumbered,” allowing the provider to fulfill some of their regular duties (*PBN 8/4/20*). But most contracts anticipate that eventuality in their drafting. Kutner says counsel for a provider may attempt to get the board to stay the suspension, which removes their inability to practice — though, again, the contract probably gives the employers or partners the right to remove the provider notwithstanding.

In short, contract terms that commit an organization to rehire a provider once their license issue is resolved are very rare. “Maybe some employment agreements should say, ‘if the license is suspended temporarily, there’s a duration of time within which the employer would have an obligation to employ,’” Kutner says. “But I’ve never seen that language.”

Despite the lack of legal requirements, it’s possible an organization that is invested in a provider may wish to work out a deal to prevent their ouster, Westfall says.

In that case the affected parties should get together to discuss “the nature of the allegations, the plan to defend against the investigation/complaint, and whether the investigation/complaint may impact the provider’s ability to provide services, if at all,” Westfall says. “Depending on the circumstances, and particularly for more serious allegations, the parties can determine whether a sabbatical or other temporary leave of absence may be necessary or appropriate to avoid termination in the event of adverse action against the provider.”

But Cahill brings up another concern: If you rehire or retain a provider who has been sanctioned while in your employ and something goes wrong, it could be trouble for you: “A subsequent adverse event involving that same clinician may lead to another licensing board complaint and investigation and possibly a professional liability claim for malpractice in which the employer may be held vicariously liable for negligent hire or supervision,” he says. — Roy Edroso ([roy.edroso@decisionhealth.com](mailto:roy.edroso@decisionhealth.com)). ■

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