

# A Tightening Noose: Collateral Consequences of Professional Discipline & other Catastrophic Events

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By Douglas M. Nadjari, Esq.*

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Smart Counsel. Straight Talk.

## HEALTHCARE QUALITY IMPROVEMENT ACT OF 1996

### Motivation for Legislation

- Dangerous & Incompetent physicians relocate easily  
Angel of Death: Michael Swango, M.D.  
60 deaths - multiple jurisdictions
- Rising number of malpractice cases & no corresponding increase in professional discipline
- Lawsuits quietly settled

## What Must be Reported?

- Malpractice Judgments and Settlements
- Findings of Professional Misconduct
- Termination of Provider Agreements
- DQ/Exclusion from Medicaid & Medicare
- Hospital Adverse Actions for Professional Competence or Conduct that effect clinical privileges (and which last more than 30 days)
- Resignation in lieu of, during or to avoid hospital investigation
- Denial of applications for clinical privileges
- Healthcare or HC Audit related convictions

## Mandated Reporters: Action by One May Trigger Action by All

- Hospitals
- Health Insurers
- Malpractice Carriers
- Peer Review Organizations
- State and Federal Prosecutors
- Licensing Boards
- OIG & OMIG
- Also available to credentialing entities

## Collateral Consequences 2.0

- Actions by 3<sup>rd</sup> Party Pharmacy Benefit Managers
- DEA Surrender & Exclusion
- More vigilant Follow-up by Workers' Compensation Board
- Preclusion from on-line booking platforms

## Proactive Strategies

### Avoid Problems in the First Place

- The Hanging Trio*- Controlled Substances,  
Sexual Boundaries & Fraud
- Scope of Practice & Supervision
- Pain management and No-Fault
- Chaperones, Compliance Plans and Audits
- Medicaid Compliance & test audits

## Proactive Strategies

**Criminal Pleas:** Explore non- healthcare and other offenses that will not trigger exclusion (Tax, FBR, Travel Act )

**Medical Staff Proceedings:**

- Timing of resignation or nonrenewal
- Negotiate or “suggest” wording of NPDB entry
- Counterstatements

**OPMC**

- Avoid Charges
- Explore N-Doc
- Pre-screen with OMIG
- Aggressive use of experts in investigative stage
- Due Process and vigorous hearing

## Proactive Strategies

**Termination of Provider Agreements**

- Take it to hearing before peers

**OMIG and OIG**

- Explore lesser sanctions or early removal from excluded provider list

**Malpractice Settlements**

- Pay out of packet

Or ...

*We shall go on to the end ... We shall fight on the seas and oceans ... We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.*

Winston Churchill June 4, 1940

## Questions

**Douglas M. Nadjari, Esq.**  
**Ruskin Moscou Faltischek, P.C.**

**dnadjari@rmfpc.com**

**(516) 663-6600**