Promoting Public Protection with Emergency Action: Lessons Learned through the Temporary Suspension Process

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Define and review due process steps with temporary suspension (TS) process

Review Minnesota TS statutory history

Review MBN TS process utilization/changes

Identify steps in MBN TS process improvements

Lessons Learned

Temporary Suspension

My quick definition....

A temporary suspension is an emergency action that enables a health-licensing Board to flip the order of due process to quickly remove a licensee from practice if the Board finds probable cause that continued practice would create an imminent risk of serious harm to the public.

BON
Informal
Complaint
Handling
Process –
Due
Process
Path to
Disciplinary
Action

Receive and review complaint

Determine jurisdiction

Obtain evidence

Possible NPA violation warranting action, send Notice to nurse

Panel meets with the nurse

Panel recommends disciplinary action and offers proposed settlement agreement

Panel recommends disciplinary action and offers proposed settlement agreement

Nurse signs settlement agreement

Unable to agree to settlement

To full Board for approval

Contested Case Hearing Temporary Suspension Process -Due Process Path to Disciplinary Action Receive and review complaint

Determine jurisdiction

Probable cause for imminent risk of serious harm

Temporary Suspension approved

Serve TSO and Notice of Hearing

Prehearing Conference with ALJ, Panel's attorney, & nurse/nurse's attorney.

Temporary Suspension Hearing held

ALJ issues recommendations for disciplinary action

Board adopts final Order

Minnesota Temporary Suspension Statute Ambiguity

- Imminent risk of harm standard (prior to 2016)- no definition in statute and no applicable MN case law guidance
- Prior to 2014, the MBN followed the temporary suspension provisions in the Minnesota Nurse Practice Act (NPA) that gave the Board broader discretion in temporary suspension cases. The NPA stated "the Board <u>may</u>...temporarily suspend" which provided the Board discretion to pursue temporary suspension of a nurse's license.
- At the same time, another Minnesota statute, Chapter 214, that governed all health-licensing boards stated "the licensing board <u>shall</u> temporarily suspend."

MBN Temporary Suspension Process (Pre-2014)

- Ambiguity between NPA & Chapter 214
 What statute does the Board follow?
- No clear statutory definition of what conduct posed an imminent risk of harm
 - How does the Board interpret the standard?
- Little to no Minnesota case law addressing imminent risk of harm standard in health-licensing cases
 - What guidance does the Board rely upon?
- Little expertise causing reluctance to engage in the temporary suspension process.
 - Who really understands this process?

MBN Temporary Suspension Process (Pre-2014) continued

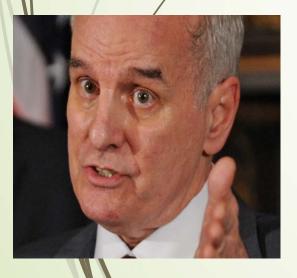
While there was a higher priority and sense of urgency with these case investigations, the cases often followed the same complaint resolution process as other cases as the Board interpreted it had discretion to do so under the NPA provisions.

 As a result of the aforementioned issues, from FY 2009 to FY 2013, the MBN temporary suspended a nurse's license only four times in five years.

MBN IN THE NEWS...

2013

- MN newspaper published an investigative series criticizing the MBN for taking too long to take nurses out of practice and giving nurses "second chances."
- Reporter reviewed over 1000 MBN public disciplinary actions



MN Governor Mark Dayton's response It would appear the board is more interested in protecting bad nurses than the public...Where does it come from that their job is to give subpar nurses chance after chance after chance?

Dayton promised to "do whatever is necessary" to change the atmosphere of nursing in Minnesota. After investigative newspaper series, Minnesota Legislature ordered a legislative audit in 2014 of the Board's complaint resolution process.

At the same time, it changed the temporary suspension statute for all health-licensing boards.



The Legislature's message was clear.

MBN has the tool of temporary suspension.

USE IT!

2014, MN Legislature clarified Chapter 214:

Notwithstanding any provision of a health-related professional practice act, when a health-related licensing board receives a complaint regarding a regulated person and has probable cause to believe continued practice by the regulated person presents an imminent risk of harm, the licensing board <u>shall</u> temporarily suspend the regulated person's professional license... Minn Stat. 214.077, subd. a.

CHAPTER 214 (2014) TS Due Process Requirements

- TS shall take effect upon written notice to the licensee
- The written notice shall specify the reason for the suspension
- At the time it issues the suspension notice, the appropriate licensing board shall schedule a disciplinary hearing
- Licensee provided at least ten days' notice of the hearing and
- The hearing shall be scheduled to begin no later than 30 days after issuance of the suspension order

CHAPTER 214 (2014) TS Due Process Requirements continued

If the board has not completed its investigation and issued a final order within 30 days, the temporary suspension shall be lifted, unless the regulated person requests a delay in the disciplinary proceedings for any reason, upon which the temporary suspension shall remain in place until the completion of the investigation.

Within 30 days from when? When the TS is served? When the ALJ issues a recommendation?

In 2014, statutory ambiguity continued to exist

TS Process Improvement Project GOALS: INCREASE ULITIZATION, CREATE CONSISTANCY, and GAIN EXPERTISE

Pre-audit: Board members and staff engaged in internal process improvement steps to reduce all complaint resolution times & temporary suspension times

July 2013: "Kaizen event" - Process improvement project that Board members & staff participated in to increase productivity & eliminate inefficiencies in the Board's dayto-day complaint resolution process for all cases.

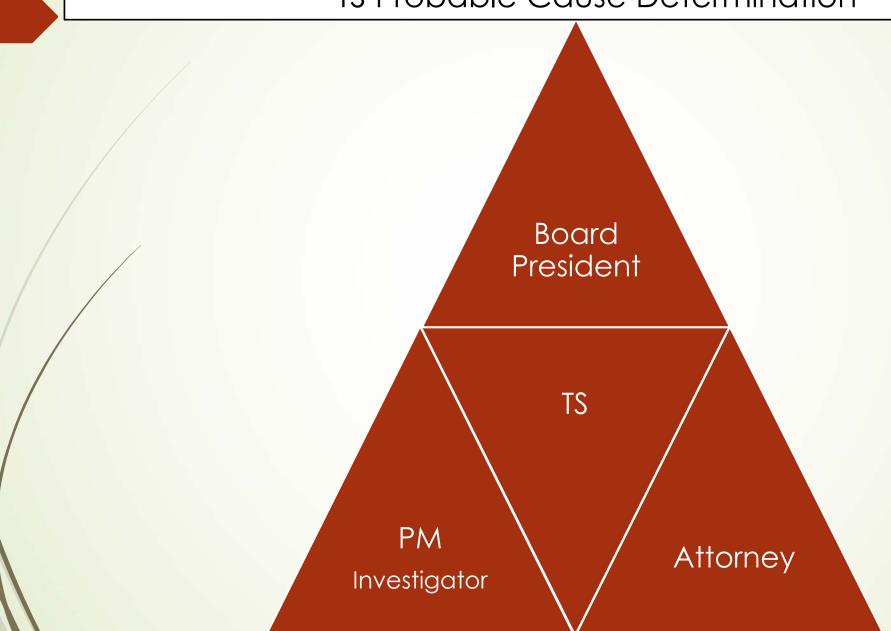
TS Process Improvement Project continued

February 2014 - Project manager (investigator) is assigned to lead all temporary suspension cases

- create improved subject-matter expertise
- more streamlined system of case management & communication among Board members, staff, and legal counsel

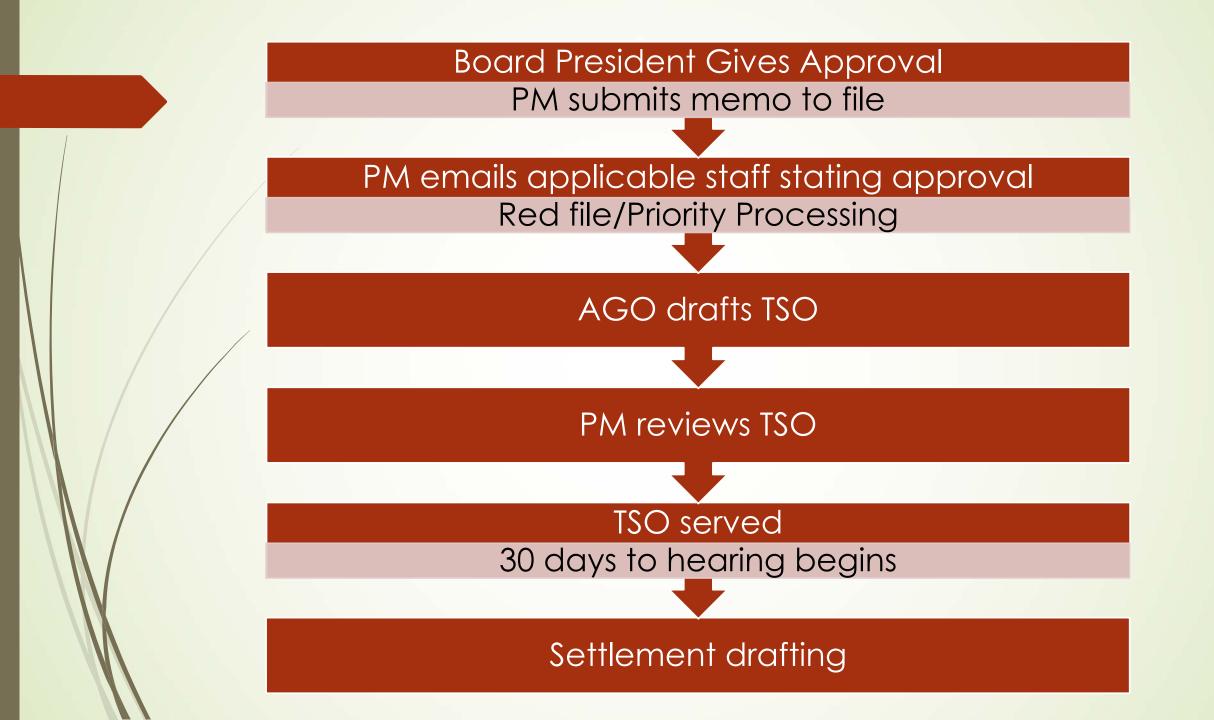


Board President + Investigator + Attorney = TS Probable Cause Determination



Imminent risk of harm standard (2014) Some factors for consideration:

- Seriousness/egregious nature of the conduct?
- Is the conduct ongoing/high risk to reoccur?
- Did actual patient harm occur?
- Vulnerable adult/minors involved?
- Criminal activity or charges (felony-level)?
- Multiple complaints with same/similar conduct?



Prehearing held

- Hearing, discovery dates
- Continuation
- Default Motion

TBO Hearing

 Must be held within 30 days of prehearing ALJ Findings • Must be within 30 days of

hearing

TBO

Final Board Decision

 Must be within 30 days of ALJ findings Historically, the Board met every other month to adopt Final Orders in disciplinary matters

 Thus, if a settlement agreement was reached or ALJ report was issued after a Board meeting, no action could be taken upon the nurse's license until the next Board meeting.

In 2014, the Board began meeting every month to address disciplinary cases to make all final disciplinary case resolutions more timely.

MN Office of the Legislative Auditor (OLA) Report (March 2015)

OLA REPORT FOCUS: (1)Timeliness of the resolution of complaints (2)Appropriateness of Board decisions in discipline cases

"The board has acted too slowly to suspend nurses, which has placed the public at risk. Although the board has generally resolved complaints within time frames set in statute and board policy, it has not always acted quickly enough when public safety is at risk." MN Office of the Legislative Auditor (OLA) Report (March 2015) continued

"The board has rarely used its authority to issue temporary suspensions to quickly remove nurses from practice. It issued only 11 temporary suspensions in fiscal years 2009 through 2014, with 7 of the 11 issued in 2014. Although temporary suspensions are done in situations where the public is at a serious risk of harm, the board issued the suspensions within four months of receiving a complaint in only about half of these cases. We identified several instances where the board could have—and should have—acted more guickly than it did."

MEASURING IMPROVEMENT FY 2014 (7 cases) FY 20

- Complaint receipt to final complaint resolution - 287 days
- Complaint receipt to TS -168 days
- Date of TS of the nurse's license to final complaint - 118 days
- (July 2013) Kaizen event focused on complaint resolution process improvement
- (Feb 2014) TS specific process improvements began

FY 2015 (13 cases)

- Complaint receipt to final complaint resolution -143 days (144 fewer days)
- Complaint receipt to TS -62 days (106 fewer days)
- Date of TS of the nurse's license to final complaint resolution - 75 days (43 fewer days)

MEASURING IMPROVEMENT

FY 2015 (13 cases)

- Complaint receipt to final complaint resolution -143
 days
- Complaint receipt to TS 62 days
- Date of TS of the nurse's license to final complaint resolution - 75 days

FY 2016 (12 cases)

- Complaint receipt to final complaint resolution – 190 days (47 more days)
- Complaint receipt to TS -121 days (59 more days)
- Date of TS of the nurse's license to final complaint resolution - 70 days (5 fewer days)

MEASURING IMPROVEMENT

FY 2016 (12 cases)

- Complaint receipt to final complaint resolution –
 190 days
- Complaint receipt to TS -121 days
- Date of TS of the nurse's license to final complaint resolution - 70 days

FY 2017 (5 cases)

- Complaint receipt to final complaint resolution – 259 days (169 more days)
- Complaint receipt to TS -176 days (55 more days)
- Date of TS of the nurse's license to final complaint resolution – 83 days (13 more days)

MEASURING IMPROVEMENT

FY 2017 (5 cases)

- Complaint receipt to final complaint resolution – 259 days (169 more days)
- Complaint receipt to TS -176 days (55 more days)
- Date of TS of the nurse's license to final complaint resolution – 83 days (13 more days)

- PM medical leave 6 months
- One licensee passed away during TS process
- One TS hearing with prolonged continuation up until trial

More changes to Chapter 214....

Imminent risk of serious harm standard adopted (2016)

No further definition or clarification in statute

Statutory timeline clarified - 30-30-30 timeline adopted (2017)

- 30 days from TSO service to TS Hearing
- 30 days from TS Hearing to ALJ recommendation
- 30 days from receipt of ALJ recommendation to Board final decision

LESSONS LEARNED

- One investigator One attorney Board President did expedite timeliness
- Best evidence in hand before TSO service
- Heavy reliance on internal subject matter expertise to interpret the imminent risk of (serious) harm standard
- More reliance on witnesses than experts
- Preparing settlement documents at the same time as the TS Order expedites settlement
- Exercise caution in TS use with prolonged investigations TS after failure to settle could be viewed as retaliatory

LESSONS LEARNED

- Proactive focus on settlement led to fewer contested cases
- (FY16/FY17) TS cases identified much later in the investigation process so "complaint receipt" may not be the best data point for all cases - consider date of reassignment to PM.
- More on-going consultation with other investigators to identify cases more quickly
- Consider more standardized documentation to clearly identify the TS "tipping point"
- Difficult to extrapolate meaningful findings from the data due to small number of cases, i.e. examine data in context (downward trend in the total number of complaints)

LESSONS LEARNED

- Consider other agreements, i.e. Stipulation to Cease Nursing Practice – protects the public, mitigates TS probable cause, and saves litigation resources (resolving more this way in FY 17/FY 18)
- Consider tracking data related to resolution of cases that initially met TS probable cause but settled with other agreements to better track TS utilization or lack thereof
- Continue to focus on continuous improvement for the whole complaint resolution process – TS is only one tool!
- Continue to work with the Legislature to refine TS statutes as 2017 changes to Chapter 214 had unintended administrative consequences, i.e. special Board meeting in FY 18 to meet statutory deadlines.

Thank you! Questions?