

## **Time Considerations in License Law Actions**

Law in all of its objectives and processes is ordinarily exceptionally time-sensitive. California professional/occupational licensing law features some conspicuous departures from the typical pre-occupation and focus on time and time limits that are generally so pervasive in our legal system. For example, with a few specific exceptions (attorneys, dentists, CSLB contractors and trades, teachers) there is no statute of limitations for enforcement actions by the State against a professional/occupational license holder. Administrative law practitioners with extensive experience in the defense of State licensees all have seen extreme cases of license denials based on ancient matter such a misdemeanor conviction of nearly 40 years past.

State license discipline is a sector of law and law enforcement that is peculiarly flexible in time considerations. Many State license-holders erroneously believe that their occupational licenses are automatically revoked or suspended or otherwise un-useable as of the time of the disposition of an arrest, or from the time of the disposition (usually by plea) in the criminal case. Not true. Enforcement or disciplinary proceedings in professional/occupational licensing law does not occur automatically, immediately, or suddenly.

Most California licensing agencies are statutorily empowered to issue interim orders of suspension (sometimes called Temporary Suspension Orders). These are not uncommon in cases involving health and community care facilities and individual licensees engaged in the care of elders and children. Except in these kinds of cases, interim orders of suspension by the State are rare.

In the absence of an interim Order of Suspension, state professional and occupational licensees have the legal right to continue to work under the license until the effective date of a final and formal Order of Revocation (or suspension or probation with a term of suspension). Revocation or suspension occurs --if at all -- only upon completion of a lengthy course of administrative due process rights.

In many cases, experienced licensing counsel can extend the time from disposition of the criminal case through conclusion of the administrative process for at least 20 months, and sometimes much more. The fiscal crisis that began around 2008 and gripped the State of California in subsequent years caused a significant slowing of license discipline investigation and enforcement activity by the State, and some license enforcement processes were extended to 3 years and even beyond without completion of the State's action.

This extended period of time for license proceedings can be a critical benefit for the licensee's economic planning and for marshaling of financial resources against the need for defense of the license discipline case and against the potential outcome of an enforced cessation of work or loss of employment as a consequence of license discipline. Simply put, the licensee can continue to work and earn through the day of final resolution of this process.

Even more importantly, during the whole span of time that the enforcement action is pending, the professional/occupational licensee has an excellent opportunity to build evidence that can have a significant favorable impact on the outcome of the licensing case. By law, the State must give consideration and weight to the the criteria for rehabilitation set forth in the Business and Professions Code in determining the appropriate penalty for misconduct by a licensee. If the

hearing is delayed two years, those two years provide an unlimited opportunity for development of meaningful evidence in satisfaction of the statutory rehabilitation factors. Most of the statutory criteria for rehabilitation pertain to affirmative conduct that is easily within the capabilities of a licensee. For example, one of the statutory factors is the nature and extent of the licensee's participation in charitable or community activities on an on-going basis. Few licensees fail to understand or appreciate the opportunity to build strong evidence in satisfaction of this rehabilitation factor in the months before the licensing enforcement action culminates in a decision about the nature of discipline that will be imposed against the licensee.

It can be a critical service to the criminal defendant for criminal defense counsel to accurately advise the State occupational licensee of the right to work under the license until the full formal administrative process is completed. That fact may facilitate a sound plea or other resolution in the criminal matter, and it enables sound financial planning by the licensee at the time when that information is most critical and useful.