



**Regulation Matters:
a CLEAR conversation**

Episode 8: Investigative Excellence Group Award winner **September 11, 2018**

Line Dempsey: Welcome to our podcast, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. For those of you do not know me, I'm the senior investigator with the North Carolina Dental Board, and I'm the current chair of the National Certified Investigator Training Committee with CLEAR.

As many of you may know, the Council on Licensure, Enforcement and Regulation (or CLEAR) is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. Our new podcast is chance for you to hear about the latest and greatest in our community. Today, we welcome the investigators from Colorado Division of Professions and Occupations to discuss the investigation that was nominated and received the CLEAR Investigative Excellence Award in 2017. I'm joined by Kevin Huff, Dawn Gibson, Wunpenn Zaborek and Joseph Berry. Welcome.

Kevin Huff: Thank you. This is Kevin Huff. I'm the director of the investigations for the Division of Professions and Occupations.

Wunpenn Zaborek: And I'm Wunpenn Zaborek. I'm an investigator with Division of Professions and Occupations.

Dawn Gibson: And I'm Dawn Gibson. I'm an investigator with Division of Professions and Occupations.

Joseph Berry: And I'm Joseph Berry. I'm also an investigator with Division of Professions and Occupations.

Line: Great, well thanks for joining me today. So a little background, CLEAR's award program honors exceptional contributions to the regulatory community. The investigative excellence award recognizes an investigative team who has demonstrated exceptional performance in a particular case with performance beyond what is expected or required resulting in a direct and significant impact to the protection of the public or consumer interests. Your nomination in 2017 was a case involving the unlicensed practice of medicine. It is a very interesting case, and as I understand it, the Colorado

Medical Board was notified of an individual that was actively engaged in the unlicensed practice of medicine. So was this a written complaint, or was it anonymous? I guess, how did it come to you guys and what was the nature of the complaint?

Kevin: The complainants came in; the actual victim was not the complainant that came in. The complainant that came in was a social worker who had been working with the victim and came in to file the complaint and also convinced the victim to come in at the same time. So we had a written complaint but then we were also able to see, we as in the Division, were able to see the victim in person as well. And we were able to see the severity of the injuries that were caused by this respondent when they were practicing medicine unlicensed. After seeing the severity of the injuries, the Colorado Medical Board staff decided to get law enforcement involved and specifically they contacted the District Attorney's office and from there, then immediate action was taken and everything was kicked into gear to where investigator Gibson assisted with some interviews with the victim who was non-speaking of English - with a translator, they did that. During that the victim explained how she met with the respondent in July of 2016 for a tummy tuck. He introduced himself as a doctor, but he wasn't wearing the normal doctor clothing or anything like that.

Line: So what kind of office was it?

Kevin: Where she met him, the physician was actually at a medical facility that he, I believe, owned and operated himself.

Line: Okay.

Kevin: So in early August, she went for a medical procedure, her tummy tuck, and at that time, she was given a pill to take. And then various injections were put into her stomach, to numb the area for the tummy tuck. During the operation, she was in lots of pain so they gave her more injections. She was never put completely under - always awake. At several times, she was told to quit squirming and moving around, that her pain with psychological, given more pills to take, and she was also advised that if she didn't stop moving around, she'd be restrained during her operation. Eventually, the operation was completed. She was given more pills and also told to take Tylenol for any pain and then, kind of, on the way she went.

Line: So how did the social worker get involved, and then how did it roll into your office in the form of a complaint? Was she experiencing some type of infection or something like that, that kind of resulted in her needing some additional medical care?

Kevin: No infection, I believe just ultimately it was she realized that the surgery was not the true work of a plastic surgeon and the botched surgery, if you will.

Dawn: Her scar healed really bad, too, and I think she was concerned about the way that they were healed, but they were healed in a square versus straight across, so they weren't tucked in correctly, so

she noticed that it was incorrect.

Kevin: And I'm not sure exactly how the social worker herself actually got involved in that particular part of the case, if you will.

Line: Now, you mentioned that there were some issues with language barriers. Is that something that you guys regularly deal with? How did you handle it in this particular instance?

Dawn: In this instance, we actually had an interpreter that worked for the Attorney General's Office, and she was with us for all the interviews.

Line: Excellent, so when you guys went in, did you guys actually go into the facility where the respondent was practicing medicine, what happened there? What kind of things did you run into?

Dawn: Yeah, well, when it came up to that we all got together in advance and we talked about it because we were working with the DA's office, so we all got together, we talked about what everybody's role was going to be because there were two DA investigators, there were three investigators from DORA, and as well, we had uniformed police officers to assist us. So the DA decided that it would be best if they went in first to secure the perimeter, see if they had any patients in there, with the uniformed officers. And we waited until they cleared and secured the premises. There was, that's when there was that he was performing surgeries.

Line: Oh wow, so he was in the midst of doing another tummy tuck or some other procedure?

Dawn: Correct, he was. So they were able to take him into custody, and they were able to call an ambulance to come and assist and take her to the hospital where she could receive the care that she really needed.

Line: Where she could see a real doctor. So I guess, what other challenges did you guys experience?

Dawn: As far as the challenges - We're regulatory, and they're criminal. So we had to keep in mind that we are regulatory when we were doing this, but we were there to assist them, we had great communication with them, which was really nice to work with. It starts like when we planned this all out, they had to do, of course, a search warrant and we had to do our subpoena for records. They incorporated our subpoena into their search warrant, so that we were all working off of one document, which was really useful. And we kind of divided up the roles when we went in where Wunpenn was taking photographs and Joseph was gathering documentation and I was assisting whoever needed assistance, so everybody had a role. As well, the DA had their own photographer, so that person was also going around taking pictures so we had kind of two people taking pictures, and two people gathering from both agencies so we could kind of overlap and share information.

Wunpenn: And this is Wunpenn. So another challenge that we had was there were a number of

individuals in the office as well, not just the patient but also in the waiting area. There were some perspective patients and then a little while later, the family of the patient that was actually being operated on came back to pick her up. So we kind of had the challenge of trying to get those people interviewed really quickly, get their contact information to be able to follow up, as they were witnesses to the case. So trying to just identify those individuals and maybe cajole them a little to speak with us amidst the chaos of the situation was another challenge. But we were able to split that work up and each talked to anybody that was a potential witness.

Line: Now the respondent, I guess he was a medical doctor maybe in Mexico or a foreign country, is that correct?

Dawn: That's correct, he was.

Line: Was he actually licensed with you guys in some capacity as well, under your regulatory body?

Dawn: He was, he was a surgical technician.

Line: So, that would be someone that had to work under, I guess, the direction of a medical doctor?

Dawn: Correct. He worked for a temp agency and what they did was they sent him out to various hospitals and he worked with different doctors. He had a group of doctors that he performed surgery with as a surgical technician.

Line: What kind of action did you guys end up taking on him? Obviously, there was some criminal element which the DA handled, but did you guys take any action on his license?

Kevin: Yes, yes, we did. The board, I believe, at the time suspended his license initially, which was the fastest way to remove him from being able to practice and then I believe they took further action on his license as well. I will research that a little bit and get back with you on that.

Line: So what do you believe were the key factor or factors in the success of this investigation? Because obviously, you guys were able to protect the public in this matter, and obviously, it garnered the award from CLEAR. I guess, what factor or factors do you think played the most in the success?

Joseph: This is Joseph. I really think the speed at which the Denver DA's office was willing to take action with us. We had spoken to other agencies as well, and the Denver DA's office was really on top of it, and they were willing to go out there immediately with a search warrant to basically shut this guy down. And their willingness to work with us, their willingness to incorporate what documents we needed into the search warrant that had the evidence that they were looking for for their type of case was what allowed us to shut this guy down so quickly and led ultimately to him being convicted and put in prison.

Wunpenn: This is Wunpenn again. And I would just second that - that the willingness to collaborate on the part of the DA's office and really truly act as partners with us helped us really bring this case to a fast conclusion.

Line: So, if you could do one thing differently regarding this investigation or maybe a similar investigation, what would you do differently?

Dawn: We actually talked about this, and when we were out there, we had noticed that there were a lot of narcotics that were probably not from the United States. And it got us to thinking, I mean we're regulatory, so that was more criminal, but to contact other agencies always when we go out somewhere to see if there's other agencies that can participate or want to participate so that we're all doing it at the same level. So we probably would have maybe called the DEA in reference to that and have them be part of this as well.

Line: That would be great.

Kevin: I think part of the deal with any investigation whether it's regulatory or criminal is sometimes investigators can get tunnel vision and only want to go down one path. And so trying to think outside of the box before you get into any investigation is probably the best thing to do, whether it's with communication and/or, as Dawn was saying, gosh hindsight always 20/20. Maybe we should have brought in the DEA or suggested to the DA's office that hey, should we bring in the DEA? It's never a wrong thing to maybe ask them if they want to participate. They don't have to, but as long as we've made that effort, then we've gone through our due diligence. But, it's always good too, to speak with others about an investigation so you don't get that tunnel vision, as well.

Line: So anything that you want to follow up with as far as what we talked about today, anything that you think our listeners might like to hear from you guys?

Kevin: I told you I'd get back to you on his license, what we did after the suspension. We revoked his license as a surgical assistant. So, that's the ultimate that we can do and we did that. Do you guys have anything?

Wunpenn: I think that this went really well because of the open line of communication that we had with the other agency, and the fact that we had collaboration and we were all on the same ground and level that this went so well. I know there's a lot of investigations sometimes that we go out on and there's other agencies, it gets slowed down sometimes when people are not sharing information and we're not able to obtain the evidence or they're not able to obtain the evidence from us because there's not the sharing that's going on. I think that was really successful in this investigation.

Line: That's great. I know in my experience of working for the Dental Board and we have similar scenarios where somebody is practicing dentistry without a license. But we're not fortunate enough to have them being a licensee of some sort, like this Surgical Tech was. So that's not anything - it's not

one of our licenses, we can't really do anything. We can't take their license - they don't have a license. But we've had to work with a local law enforcement or DEA and pursuing that and it certainly poses a lot of challenges, but I'm really impressed with what you guys have been able to do. So, great. Well, thank you, Kevin, Dawn, Wunpenn and Joseph for your time and being a part of this podcast. It is wonderful to be able to honor and recognize the great work being done by our CLEAR members and to have opportunity to share and learn from each other. CLEAR is always pleased to be able to recognize our colleagues for achieving regulatory excellence. We're looking forward to our 2018 CLEAR Awards presentation at this year's annual educational conference in Philadelphia, Pennsylvania in just a couple of weeks. Six awards will be presented at the Awards luncheon and recipients will be highlighted on CLEAR's website as well.

And thank you, our listeners, for listening. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Please subscribe to our podcast, and feel free to visit our website at www.clearhq.org for additional resources. Finally, a special thanks to CLEAR staff specifically Stephanie Thompson, content coordinator and editor for our program. I'm Line Dempsey, and I hope to be speaking to you again soon.

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