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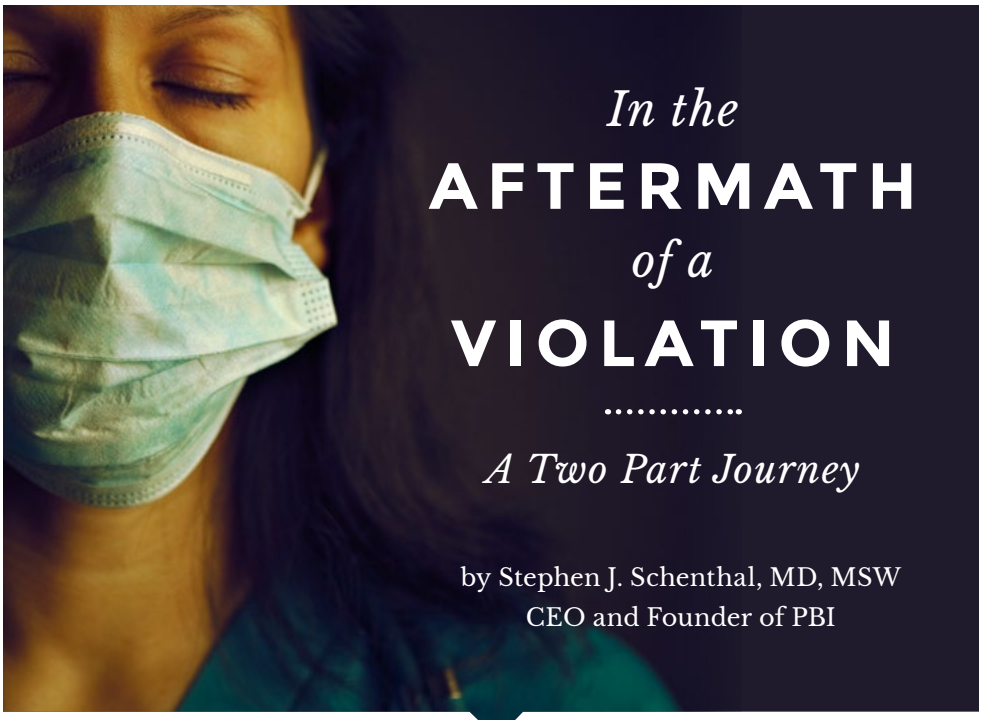

In the AFTERMATH *of a* VIOLATION

A Two Part Journey

by Stephen J. Schenthal, MD, MSW
CEO and Founder of PBI

As health care professionals, we know the advantages of preventive care. So it's only natural that we try to help professionals avoid boundary violations before they get in trouble. Sadly, the medical profession has done a poor job of teaching providers how to maintain their professional health, but those of us who see the painful results—for providers and patients alike—are committed to doing all we can to prevent future problems.

Just as we know that a patient is more likely to exercise and maintain a healthy weight if he understands the potentially devastating effects of hypertension, we believe that one of the best ways to help professionals stay professional is to help them understand just how catastrophic a boundary violation can be to their professional and personal lives.

And once someone is already in trouble, it's every bit as important to help them persevere, learn from their mistakes, and find their way back to a rewarding life. Patients need to believe that their treatment will eventually make them better; in the same way, professionals who have been diswciplined need to know that the often painful process of recovery can lead them to a better life. They need hope.

So in this two-part article we take a look first at the sequela of professional violation: the devastating cascade of misery that often follows in the wake of a board action. Then for those who are already suffering and in danger of losing hope, we offer a first-person account of how one professional found her way back to a happy and productive life.

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ARTICLES

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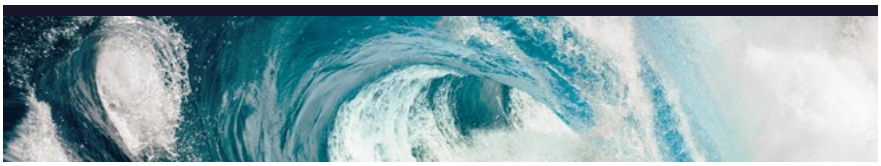
We see people suffering the tsunami of violation every day, and we see them emerge from the struggle just as often, generally stronger and more at peace. The key is not to fight against what is happening but to learn from the experience, to understand both how it all happened and why. Only then can someone turn the tsunami of violation into a two-part journey that begins in pain but ends in a happier, more secure life.

Here, then, are two parts of the journey.



PART ONE

The TSUNAMI *of* VIOLATION

People who have lived through a tsunami describe what at first seems a small, unremarkable line of water approaching, like an unusually high tide. But the wall of water doesn't stop; it keeps coming, relentlessly uprooting everything that once seemed permanent and secure.

The seemingly unending impacts that follow in the wake of a professional violation are like that.

The violation itself is often momentary—an uninvited hug, a misunderstood comment, a lapse in judgment. When a complaint is made, and the board opens an investigation, it can seem like a ludicrous over reaction. If you're the one being investigated, you may, like many, think it will all blow over or end up with a simple fine, like a parking ticket. For months, your life may go on as it always has, even as the case is passed to a probable-cause committee and then onto the licensing board.

But then the board announces its decision. It is not a parking ticket. Your license has been suspended or revoked; or perhaps you're been put on probation and told to enroll in remedial classes. You're in shock. "How can this be happening? It was a momentary mistake in a long, unblemished career. It doesn't make any sense."

Before you have a chance to regain your footing, the tsunami surges on, sweeping away the life you have known. Even a light disciplinary action—a six-month probation, say—can trigger almost immediate action by the rest of the medical credentialing community.

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WE WANT TO KNOW WHAT YOU THINK

Please let us know what you think of *The Practical Professional,* and what you'd like to see in upcoming issues.

You can email us at:
cindy@professionalboundaries.com

UPCOMING LIVE COURSES

MEDICAL ETHICS AND PROFESSIONALISM (ME-22)
March 11-12 | Sacramento

PBI MEDICAL RECORD KEEPING COURSE (MR-17)
March 12-13 | Irvine
April 9-10 | Orlando

THE PBI PROFESSIONAL BOUNDARIES COURSE (PB-24)
April 8-10 | Orlando
April 29-May 1 | Irvine

THE PBI PRESCRIBING COURSE: OPIOIDS, PAIN MANAGEMENT, AND ADDICTION (RX-17)
April 9-10 | Orlando
April 30-May 1 | Irvine

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Once the board posts its decision on the National Practitioners Databank (where it will live forever), your hospital credentials are pulled, your board certification revoked, your insurance protection withdrawn. The career you have worked so hard to build up, now lies in rubble at your feet.

Anger is likely to be your first response. The board is just wrong, unjust. You will fight back, appeal, make this right. But sooner or later you learn that your outrage and resistance only make things worse. Eventually you have to face the fact that no amount of fighting is going to change the board's decision. You have to accept the reality of what has happened.

And then it hits you: you are no longer the respected professional you have always known yourself to be. Colleagues, partners, patients, neighbors—nearly everyone you thought of as part of your life now shun you, as if you're shame is contagious. If you're lucky, those who are closest, family and friends, stick with you, but you can see how they, too, are suffering as a result.

You feel humiliated, ashamed, afraid to go out and risk the scorn of others who have heard about what's happened. And as the local media jumps on the story, the circle of those who have heard about your case grows exponentially. The mere possibility of meeting people at the mall brings on a panic attack. You start shopping in the middle of the night.

If you're like many professionals, you have come to define yourself by what you do, to equate your value as a human being with the respect and admiration your career has brought you. Now all that is gone. Nothing feels secure anymore, not even your identity. Even if criminal charges are not filed, and you avoid jail, you will likely face legal fees and possibly civil penalties. Your marriage may founder.

At this point, all the rage you had been directing outward—at the board, at the person who brought the complaint—turns inward.

Months of deep depression are common at this stage, leading many to think about suicide. A small number, no one knows how many, actually take their own lives. In a 2015 article about physician suicide, *The Daily Beast* (March 23, 2015) told the story of of Dr. Gregory Miday, a young hospital physician with addiction problems, who reported himself to his Physicians Health Program in 2011. He had recently been awarded a respected oncology fellowship, but now, fearing that he would lose his license and his career, Miday drew a bath, lit candles, surrounded himself with family photos and used his surgical skills to end his life. Afterwards his mother, a psychiatrist, said, "When you threaten doctors with the loss of everything they've worked so hard for, what do you think it's going to do? It's going to make them feel like they have no way out."

PEOPLE WHO HAVE LIVED THROUGH A TSUNAMI DESCRIBE WHAT AT FIRST SEEMS A SMALL, UNREMARKABLE LINE OF WATER APPROACHING, LIKE AN UNUSUALLY HIGH TIDE. BUT THE WALL OF WATER DOESN'T STOP; IT KEEPS COMING, RELENTLESSLY UPROOTING EVERYTHING THAT ONCE SEEMED PERMANENT AND SECURE.

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Miday's incident is an extreme case. The vast majority of violators find the strength to seek help and move forward. For those who hang on, the crucial next step can seem the most degrading. With no source of income and bills piling up, once lavish lifestyles have to be abandoned. No longer able to do what they have always done, many are compelled to take whatever work they can find, however distasteful. A surgeon ends up selling cars; a psychiatrist waits tables; a lawyer answers phones.

Paradoxically, it's at this low point that people often begin to rally. Forced to try something other than the career that has always defined them, they can begin to take stock of who they are and what they have to offer. Having lost so much of what they thought was essential, they find a new freedom to rethink priorities and reinvent themselves. Almost always, those that reach this point, begin a journey of recovery that brings them back not to where they were, but to someplace better, leaving them more balanced, more secure, and say many, happier than they were before the tsunami struck.

PART TWO
The WAY BACK

Each person's journey back is unique. What is common to almost all is a willingness to take responsibility for their actions and to understand the pain and suffering they've caused their victim. They also find the strength to probe their own vulnerabilities, look afresh at what they have to offer, and to realize that they are not alone. Easy enough to say. But as the firsthand account on the following page demonstrates, doing it is far more difficult and far more rewarding than most people realize.

"Part Two" continues with "My Story" on page 5

PUBLICATIONS

PDF

MODEL POLICY GUIDELINES FOR THE APPROPRIATE USE OF SOCIAL MEDIA AND SOCIAL NETWORKING IN MEDICAL PRACTICE

PDF

A NURSE'S GUIDE TO THE USE OF SOCIAL MEDIA

READ ONLINE

SOCIAL MEDIA AND HEALTH CARE PROFESSIONALS: BENEFITS, RISKS, AND BEST PRACTICES

by C. Lee Ventola, Pharmacy and Therapeutics, Copyright © 2014, MediMedia USA, Inc.

READ ONLINE

PROFESSIONAL GUIDELINES FOR SOCIAL MEDIA USE: A STARTING POINT

by Terry Kind, MD, MPH, AMA Journal of Ethics. May 2015, Volume 17, Number 5: 441-447

READ ONLINE

AMERICAN DOCTORS ARE KILLING THEMSELVES AND NO ONE IS TALKING ABOUT IT

by Gabrielle Glaser, The DailyBeast.com, 03.23.15

MY STORY

A TEACHER'S STORY OF RECOVERY

Details in the story below have been altered to protect the author's privacy.

THIS IS THE FIRST IN A SERIES OF PERSONAL STORIES THAT DEMONSTRATE HOW THOSE WHO VIOLATE PROFESSIONAL BOUNDARIES FIND THEIR WAY BACK TO A BETTER LIFE.

In this case, the professional is not a member of the health care community. She is a graduate of PBI, which has expanded over the years to help professionals in a number of fields, including the law, the judiciary and education. The experiences of violators in all these arenas are striking similar, as are their journeys back. Look for additional stories in future issues.

My teaching career was everything to me. It was all consuming and I thought all I needed. I not only taught, I coached, attended every school event, earned advanced degrees in academic administration and counseling, and invested myself totally in my students.

Then I slipped. I was accused of unprofessional behavior, lost my job and then my license. I had three months of back pay coming, so I didn't feel the financial impact right away. But the emotional impact was far worse. Teaching had been my life and now it was gone. Even more painful, I had always thought of myself as a good person, someone who cared more for others, particularly my students, than for myself. Now I was being told that I wasn't fit to be around students. I didn't know who I was anymore or what I was going to do.

I felt so ashamed I stopped going out in public. I had panic attacks. And while I didn't contemplate suicide, I prayed every night that God would take me. And I woke up each morning devastated that even He didn't think I was worth taking.

My family physician prescribed an antidepressant, which offered some relief. I also went to see a counselor, but when the paychecks and health insurance stopped, I was forced to chose between the medication and the counseling. I chose the medication.

I also enrolled in a PBI course, and more importantly, joined weekly conference calls (Maintenance and Accountability Seminars) during which other professionals in trouble, mostly physicians, explained what was happening to them. It was my lifeline to the rest of the world. The others were understanding, supportive and sometimes helpfully challenging. As the weeks and months rolled by, it began to sink in that I was not the only one going through this. I was not alone.

I still had to earn a living so I took a series of low-level jobs. I was a clerk at a clothing store, a secretary for a local non-profit, and a waitress at a local country club—until someone recognized me and complained that I was not fit to work there. "The gift that keeps on taking," is what Dr. Schenthal said when I told him about it.

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I FEEL MORE SECURE KNOWING THAT I CAN FACE JUST ABOUT ANYTHING AND WITH THE HELP OF OTHERS COME OUT ON TOP.

During the holidays I took a job at a call center that paid $8 an hour. I hated the work, but I did it, and began suggesting ways that the company could be more efficient. My supervisor liked my ideas and when he found out that I had teaching experience as well as a masters in administration, he spoke up for me and I was promoted to a training position. It paid a whopping 50 cents an hour more, but it was a valuable addition to my resume and to my self confidence.

I began to take stock of my skills and strengths, including what I had learned by working through my boundary violation. When I was asked why I left teaching, I told the truth, adding that the experience had taught me never to let things slide, to confront problems and to be proactive. I came to realize that I was capable of way more than I had been trained to do. I just had to convince others.

When a medical facility needed someone to train customer service representatives, I used my new-found confidence, improved resume and the familiarity with health care professionals that I had gained through PBI to get myself hired. I did well, learned on the job and on my own, and I am now in charge of training for non-medical staff at a local hospital.

I still miss teaching, but I am proud of the work I'm doing and actually making more money than I ever did before. I feel more secure now, too, knowing that I can face just about anything and with the help of others come out on top. And at last I have a personal life. I give 110% at work, but now I leave my work at the office and take time for myself, my friends and my family. I've met the love of my life and, while I still get a little anxious when I meet people from the old neighborhood, I can honestly say that I am happier than I have ever been. ■

Joseph Conrad's novel, Lord Jim, *is about a good man who succumbs to a moment of weakness and feels terrible guilt and shame. He is told by another character that, a man like him is, "like a man who falls into the sea. If he tries to climb out into the air as inexperienced people endeavor to do, he drowns... No! I tell you! The way is to the destructive element submit yourself, and with the exertions of your hands and feet in the water make the deep, deep sea keep you up."*

10 THE TEN MOST COMMON RISKS ONLINE

A Primer for Health Care Professionals

Frustrated after a difficult encounter with a defiant patient, a nurse blew off some steam when she got home by posting an account of the incident on Facebook. In accordance with the Health Insurance Portability and Accountability Act (HIPAA), the nurse was careful not to include the name of either the patient or the hospital. But it wasn't long before the hospital received an angry call complaining that the nurse was clearly referring to the caller's mother, which meant that there had been a HIPAA violation.

Incidents like this are growing increasingly common in our digital age. "Social media misuse is definitely on the front lines now," notes Karen Holder, an experienced nurse practitioner at North Country Healthcare in Arizona and a member of the PBI faculty. Another faculty member, Jon Porter agrees. Five years ago, he notes, he rarely saw a legal case involving electronic media. Today, the attorney, who defends physicians in licensure cases, says, "Almost every case I'm involved with involves some element of electronic media."

Online violations of all sorts are fast outstripping the ability of laws and regulations to contain them. As far back as 2010, 92% of state medical board directors reported violations of online professionalism in their jurisdiction. And according to the Federation of State Medical Boards (FSMB), 71% of the boards held formal disciplinary proceedings as a result of those infractions.

THE TEN MOST COMMON RISKS.

So the next time you pull out your laptop or reach for your phone to send a text or email, or to visit Facebook or Tumblr, keep in mind the following:

1. WHEN YOU SAY SOMETHING ONLINE, IT'S PUBLIC

One of the most common dangers people face online is that they tend to lose the inhibitions that normally keep them safe. "People don't have a filter, because they're not looking somebody in the eye. People who come across as nice and genteel say things that would make Howard Stern blush," says Porter. "And what people seem to forget is that once it's out there in the ether—whether it's text, emails, or social media—it doesn't go away; it's there forever."

2. THERE'S NO CHANCE TO EDIT OR RETRACT

Even when people think they are taking the necessary precautions they often fail to account for the ways in which life online differs from everyday life. The nurse cited in the above incident didn't realize that the patient's mother might be reading what she wrote. As Holder points out, "De-identifying on paper is very different than on social media." It's not just that the audience is much less circumscribed; it's also that people are in a different frame of mind. "When writing a paper, for example, you can successfully de-identify a patient by tweaking a few details, but on social media, you don't think about that detail, and once it's posted you can't go back and edit it."

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3. YOU DON'T REALLY KNOW WHO YOU'RE REACHING

Another common danger was famously captured by a New Yorker cartoon with the caption, "On the Internet, nobody knows you're a dog." The implications for professionals is less amusing. Stephen M. Boreman, who like Porter has extensive experience both prosecuting and defending medical practitioners (and teaching for PBI), advises clients not to talk about patients when they can't be sure who they are talking to. "Even with general emails and texts, you can't be certain who will see what you've written."

4. OUT OF STATE PATIENTS CAN LEAD TO UNLICENSED PRACTICE

It's fine to post generic health information on a website, as so many do, but says Boreman, "You need to be careful that your website doesn't involve the practice of medicine towards an individual patient." While such patient-specific advice is fraught with problems, Boreman highlights one danger in particular: "If you offer people advice and you're not licensed in the state where they are receiving the advice, arguably you might be accused of practicing medicine in that state."

5. WHAT YOUR STAFF DOES ONLINE IS YOUR BUSINESS

Porter uses the analogy of ship's captain. "When I ask people in my classes who was to blame for the Titanic sinking, they always say it was the captain, even though it was the the third mate who was on duty when the ocean liner hit the iceberg." When a staff member posts a photo or comment that violates the law, says Porter, "the board will go after the doctor for improper supervision."

6. RELEVANT DIGITAL COMMUNICATIONS MUST BE DOCUMENTED

The HIPAA privacy rule gives individuals the right to access and amend protected health information. So if a physician uses texts or emails to make clinical decisions and does not document them in the patient's medical record, the physician is technically in non-compliance.

7. WHAT IF YOU LOSE YOUR PHONE? MOBILE PHONES THEMSELVES REPRESENT A RISK ACCORDING TO THE AMERICAN HEALTH INFORMATION MANAGEMENT ASSOCIATION (AHIMA)

"Text messages may reside on a mobile device indefinitely, where the information can be exposed to unauthorized third parties due to theft, loss, or recycling of the device." To guard against this threat to privacy, a clinician should make sure not only that her phone is password protected but also that any patient information is stored in "a separate secure file," according to Porter.

8. PERSONAL CELL PHONES SHOULD BE FOR PERSONAL USE

Holder notes that when a clinician talks to a patient on a personal cell phone, "It's usually off hours, and people don't think professionally when they're off duty." Which is why it's never a good idea to use a personal phone for professional purposes. Not only are practitioners all too likely to mix personal and professional communications, but answering patient questions on a personal phone, especially outside of regular office hours, can raise expectations that the clinician will always be available at that number. Porter estimates that he's had 20 to 30 cases in which a mental health patient has filed a complaint because a doctor, who had previously gone out of his way to help, was not available when the patient needed help again.

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Facts & Figures

Number of state medical boards in the U.S. **70**

Number of physicians disciplined **4,479***

857 Physicians put on probation

739 Physicians with a license suspension

275 Physicians with a license revocation

ADMINISTRATIVE ACTION: Non-punitive action that does not result in the modification or termination of a physician's license. These actions are generally administrative and may be issued for reasons such as failure to pay a licensing fee.

FINE: In some cases, state boards may levy a monetary penalty against a physician.

CME REQUIRED: Physician is required to complete continuing medical education (CME).

CONDITIONS IMPOSED: Physician must fulfill certain conditions to avoid further sanction by the state board.

LICENSE DENIED: Physician's application for a medical license or renewal of a current license is denied.

LICENSE RESTRICTED: Physician's ability to practice medicine is limited (e.g., loss of prescribing privileges).

LICENSE REVOKED: Physician's license is terminated; individual can no longer practice medicine within the state or territory.

LICENSE SURRENDERED: Physician voluntarily surrenders medical license, sometimes during the course of a disciplinary investigation.

LICENSE SUSPENDED: Physician may not practice medicine for a specified period of time, perhaps due to disciplinary investigation or until other state board requirements are fulfilled.

PROBATION: Physician's license is monitored by a state board for a specified period of time.

REPRIMAND: Physician is issued a warning or letter of concern.

**From the 2014 U.S. Medical Regulatory Trends and Actions Report published by the FSMB (2012 data)*

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9. FRIENDING A PATIENT IS NOT THE SAME AS BEING FRIENDLY

When a physician friends a patient on Facebook—or invites contact through any other social networking site—she is inviting that person to see her outside of her professional role, whether on vacation or at a sporting event. Such casual intimacy can start a dangerous slide down the slippery slope to an inappropriate relationship. Boreman cites the 2011 California case of Roy vs. the Superior Count, which established that physicians who share their personal lives with patients are inviting trouble: "Too much personal information can be taken by a patient as sort of an invitation to get closer than would be professional or appropriate," says Boreman.

10. WHAT YOU SAY ONLINE CAN AND WILL BE USED AGAINST YOU IN COURT

Porter tells clients that the "e" in email stands for evidence. While most of the cases he sees involving social media are directly related to what has happened online, most of the texts and emails that show up in court are not the reason for the case but rather evidence supporting the charges that are being brought. Porter estimates that a third of his cases involve evidence related to emails and/or texts.

ESTABLISHING CLEAR GUIDELINES AND POLICIES IS CRITICAL

It can be challenging to come up with long-term policies in the constantly changing world of digital communications, but that doesn't make it any less essential. More and more hospitals are developing guidelines for their staffs and a few professional groups offer guidelines (see Publications below). Anyone in private practice, says Porter, should have a communication policy that's given to all new patients, clearly stating how and when patients can reach clinicians and what to do in the case of an emergency. The policy should also let patients know what kinds of digital communications are ok—scheduling appointments for instance— and what kinds are not. ■