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What to do when the DEA visits and demands you surrender your registration

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You are busy seeing patients when your receptionist interrupts you to tell you there are two U.S. Drug Enforcement Administration (DEA) agents in the lobby to see you. They show their badges and credentials and tell you they've come to inspect your controlled substance prescriptions and ask some questions.

You ask if they can come back later. They say if you refuse to see them immediately they will be back in an hour with a search warrant. You agree to see them, begrudgingly.

The agents conduct an inspection of your records, ask you and your staff questions and tell you they have evidence you violated federal controlled substance laws and regulations. They hand you a form to sign to surrender your DEA registration. They tell you that if you refuse to sign it, they will get a warrant for your arrest. They insist it will be much better if you cooperate and avoid being arrested and taken out in handcuffs in front of patients and staff.

Aftermath of a DEA visit

Similar scenarios have occurred in Indiana physician offices on a number of occasions recently. Several physicians – intimidated and frightened – signed the form. Only afterwards did they learn the consequences.

The DEA will refer the physician to the Office of the Indiana Attorney General for action against the physician's license before the Medical Licensing Board (MLB) of Indiana. Revocation of the physician's Indiana Controlled Substance Registration (CSR) is almost a certainty.

The physician will lose credentials at hospitals requiring a DEA registration. Private insurance companies are likely to revoke the physician's credentials and network participation. Medicare and Medicaid may do likewise. The physician's ability to earn a living just evaporated in one stroke of the pen.

Realizing the consequences of surrendering the DEA registration and believing the surrender was under duress, the physician asks for it back. The DEA declines and advises the physician to re-apply, but wait at least a year or more to do so.

Advanced plans and protocols

How do you avoid this predicament? Develop a plan of action now.

Talk with an attorney to develop a protocol for how to respond to such requests. Physicians already have algorithms to guide clinical decisions. Many large corporations, hospitals and medical practices have similarly developed legal protocols to react objectively to DEA inspections, searches, subpoenas and other regulatory investigations.

Armed with a protocol developed in advance, a physician may advise DEA representatives that he/she has an attorney and needs to consult with that attorney before making such an important decision. The physician can collect the agents' business cards and agree to have their attorney follow up. If the agents insist on an immediate decision, the physician should contact an attorney immediately to discuss the matter and seek guidance. The attorney will likely be able to talk with the DEA agents while they are in the physician's office.

In some instances, counsel can reach an agreement with the DEA on the physician's behalf that will not involve revocation of DEA registration. Instead, DEA registration might become subject to probationary conditions, such as restricting controlled substance practices, maintaining logs or other supervision requirements. Or, no action may be taken.

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