

## **PLEADING YOUR LICENSE AWAY**

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File this scenario under “Just when you think your troubles are over.”

You “accidentally” place a bunch of socks in your pockets as you clear the check-out line at the local department store. A few moments later out in the parking lot, you tell store security you were observing their system to see if you could install something like that in your small liquor store. Store security personnel do not laugh, but they do call the police. Several months later, in order to avoid the cost of trial, you plead guilty to Petty Theft and pay a nominal fine as arranged by your criminal lawyer. Petty Theft is a crime involving moral turpitude, so here comes the ABC after your license. Or....

You have just pled no contest to felony driving under the influence of alcohol. This is the third or even fourth DUI plea in seven years, but your criminal lawyer got you the minimum fine and jail. A little rest at the government facility and you can get back to your office and run that corporate machine that has ten or twelve ABC licensed premises. You are the major shareholder and the corporate president, and life will be back to normal in no time. Right? Not so fast there. What your criminal lawyer

didn't tell you because he didn't know was that felony DUI with three or more priors in seven years constitutes a crime involving moral turpitude (see People v. Forster, 1994). Since the ABC is empowered to revoke a liquor license based on a licensee's plea to a crime involving moral turpitude, now the ABC will begin its task of revoking all the licenses issued to your corporation. Or....

How about this one: Your business partner who is also your co-licensee is out for an evening on the town and engages in some extra-curricular activity that results in the District Attorney filing felony charges of kidnapping and rape as well as the lesser charge of misdemeanor sexual battery. The details will not be discussed here, but after a long and heated trial, your business partner and co-licensee is convicted by the jury only of the misdemeanor. Although the more serious charges resulted in a verdict of acquittal, the jury did find that your partner engaged in activity that constituted misdemeanor sexual battery. Your partner celebrates a near complete victory. The ABC files an accusation to revoke your license since misdemeanor sexual battery is a crime involving moral turpitude.

By Constitutional mandate, the Department of Alcoholic Beverage Control has the power to deny, suspend or revoke a license where the licensee or applicant has "violated any law involving moral turpitude." By

statute the Department may suspend or revoke a license where a licensee has sustained “a plea, verdict, or judgment of guilty or the plea of nolo contendere to any public offense involving moral turpitude.”

Exactly what is a crime involving moral turpitude? The Court of Appeal in People v. Chavez (2000) advised:

“The California Supreme Court has divided crimes of moral turpitude in to two groups. The first group includes crimes in which dishonesty is an element (i.e. fraud, perjury, etc.). The second group includes crimes that indicate a general readiness to do evil...Crimes in the latter group are acts of ‘baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general...’(citation omitted).”

The Department has revoked licenses where the licensees were convicted of issuing checks with insufficient funds. The Department has revoked licenses where the licensees were convicted of filing false income tax returns. Certainly pleas or convictions for trafficking in, or manufacturing, or selling supplies to manufacture narcotics will result in Department revocation proceedings. Any crime where fraud is an underlying element will constitute a crime involving moral turpitude (See Kirby v. Alcoholic Beverage Control 1969).

Let’s go back to the criminal court for a moment. After that plea to a crime involving moral turpitude, misdemeanor petty theft for example, you

are sentenced to 30 days in the county jail with the sentence suspended (that is, no jail time) on condition that you pay a fine, and you are placed on one year informal probation and ordered to obey all laws. The year passes, and you complete probation. Your lawyer files a petition under Penal Code Section 1203.4 to release you “from all penalties and disabilities resulting from the offense or crime for which [you have] been convicted.” Your record expunged, now you can’t lose your ABC license, right? Wrong. In Copeland v. Department of Alcoholic Beverage Control (1966) the Court of Appeal specifically answered this question, stating:

“As used in section 1203.4 of the Penal Code, the words ‘penalties and disabilities’ have reference to criminal penalties and disabilities or to matters of a kindred nature. But the disciplining of licensees...is for the protection of the public in the exercise of police power and not for the purpose of punishing any licensee (Citations omitted). It is settled that proceedings to suspend or revoke business or professional licenses are not included among the penalties and disabilities that are released by a dismissal pursuant to section 1203.4”

Just how close does the average licensee get to a crime involving moral turpitude in the normal course of doing business? The answer is: too close and too often. Filling out an ABC application under penalty of perjury; submitting tax (including sales tax) statements; making representations of material fact to the State Board of Equalization or the Department of Alcoholic Beverage Control; if these statements are knowingly incorrect, their submission over your signature may be perjury. Getting someone else

to knowingly submit false information to one of these state agencies or to federal agencies under oath may be subornation of perjury.

Perjury in and of itself involves moral turpitude. The California Supreme Court in Martin v. Appeals Board (Haley) (1959) upheld the Department's right to revoke a license where a licensee's application contained a misrepresentation of a material fact. The courts have consistently determined that perjury is a crime involving moral turpitude.

Penal Code Section 118 states, in part, every person who testifies under oath, willfully and contrary to the oath, states as true any material matter which he or she knows to be false is guilty of perjury.

Penal Code Section 118a states, in part, any person who, in any affidavit taken before any person authorized to administer oaths, swears, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury.

One last nightmare: The District Attorney files a perjury case against you based on the form you signed and submitted to the ABC two years ago when you were applying for the license you now have.

Knowing that a plea of guilty can endanger your license, you insist on a trial. You are charged with perjury because the application contained false

information about, for example, who really owns the business that was to be and is now licensed. In trial you testify that you couldn't read the information on the form, because the room was dark when you signed it. You tell the jury that you assumed all information was correct, but it was too dark to see. Your lawyer argues to the jury: "If the words aren't lit, you must acquit." And they do. Not guilty.

Are you off the hook? No, because the Department can still file an accusation alleging the underlying charge. Then the Department must prove the facts of the offense in order to sustain that accusation. Obviously this is a more difficult burden on the Department.

Where there is a guilty or no contest plea to a crime of moral turpitude, the Department files its accusation and the ABC attorney typically just brings to the administrative hearing a certified copy of the docket sheet and sentencing documents showing the charge and plea and then enters the court papers into evidence and rests.

You haven't lost yet. The Department has presented its case in five minutes and argues for revocation. But now it's your turn. Skilled experienced counsel can still save your license. There's myriad defenses and procedural issues that can be pursued, and the propriety of the penalty is

always in question. Regardless of what the Department believes, pleading guilty is not the same as just turning in your license.

**"Solomon, Saltsman & Jamieson are attorneys practicing in the areas of ABC law, ABC Appeals Board cases, and all related Land Use Matters such as City and County Conditional Use Permits, Variances, Police and Fire permits, Entertainment law, and Gambling Law; as well as Business and Personal Injury litigation. Solomon, Saltsman & Jamieson can be reached at 800 405 4222."**