CHAPTER 12

ENFORCEMENT

Table of Contents

Section 12.1 Scope of This Chapter

Section 12.2 Development of an Enforcement Philosophy

Section 12.3 Investigations

12.3.1 Authority to Conduct Investigations

12.3.2 Noncompulsory Investigative Powers

12.3.3 Compulsory Investigative Powers

12.3.3.1 Required Records and Reports

12.3.3.2 On-site Inspection of Business Premises and Records

12.3.3.3 Subpoenas

12.3.3.4 Agency Ordered Evaluations

12.3.4 Immunity

12.3.5 Drawing Adverse Inferences from the Invocation of the Fifth Amendment Privilege

12.3.6 Other Sources of Information

Section 12.4 Administrative Enforcement

12.4.1 Informal Dispositions

12.4.1.1 Disposition by Correspondence

12.4.1.2 Disposition by Informal Meeting

12.4.1.3 Disposition by Informal Statutory Proceedings

12.4.2 Consent Orders

12.4.3 Sanctions Available in Disciplinary Actions

12.4.3.1 Revocation or Suspension

12.4.3.2 Summary Suspension

12.4.3.3 Denial of Renewal

12.4.3.4 Probation

12.4.3.5 Cease and Desist Orders

12.4.3.6 Administrative and Civil Penalties

12.4.3.7 Censure

12.4.3.8 Non-disciplinary Sanctions

12.4.3.9 Restricted or Conditional Licenses

Section 12.5 Civil Enforcement

12.5.1 Injunctive Actions

Section 12.6 Criminal Enforcement

Section 12.7 Double Jeopardy

Section 12.8 Jurisdiction on Indian Reservations

CHAPTER 12

ENFORCEMENT

12.1 Scope of This Chapter. This Chapter describes the various enforcement powers available to a state agency and the strategies available for implementing those powers.[1] *See also* Chapters 9 (Licensing) and 10 (Administrative Adjudications). The term "license" in this Chapter "includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes." A.R.S. § 41-1001(11). This Chapter also discusses statutory and constitutional limits on agency enforcement efforts, including restrictions on the enforcement of state laws on Indian reservations.

12.2 Development of an Enforcement Philosophy. As used in this Chapter, the term "enforcement" means the steps that may be taken to ensure compliance with regulatory laws, to remedy violations, and to impose sanctions for violations. Agencies should seek to develop an enforcement philosophy that effectively persuades the regulated parties to comply with applicable law with a minimum of formal proceedings. For example, promulgating clear and meaningful rules and substantive policy statements may be more effective in accomplishing enforcement objectives than investigations, complaint proceedings, and disciplinary actions. (*See* section 11.3.1 for a discussion on substantive policy statements).

Traditionally, many administrative agencies have focused their enforcement efforts on reacting to problems called to their attention. Unfortunately, "reactive" enforcement often occurs too late to provide meaningful protection to the public. Another approach is "pro-active" enforcement. A pro-active approach prevents problems from occurring in the first place, identifies problems in their early stages before substantial damage has occurred, and actively searches out violations of the law. These goals may be attained by instituting education programs for consumers and the regulated industries, monitoring business trends that may foretell significant problems, publishing and distributing newsletters, posting disciplinary actions on the agency's website for the education of other regulated persons, and soliciting input from the regulated industries and law enforcement agencies.

12.3 Investigations.

---

[1] Throughout this Chapter, "agency" means "any board, commission, department, officer, or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature." A.R.S. § 41-1001(1).

12.3.1 Authority to Conduct Investigations. An agency's investigative authority is based on the agency's enabling legislation. As a general rule, the Legislature has provided each administrative agency with the authority to conduct investigations to determine whether someone has violated the laws administered by the agency. *See, e.g.*, A.R.S. §§ 32-573(A), -1451(A).

12.3.2 Noncompulsory Investigative Powers. Some complaints or suspected violations are investigated through the use of noncompulsory investigative powers. Noncompulsory investigative powers include oral and written inquiries of victims, witnesses, and those suspected of violating agency laws. For example, an agency may write to a person who is the subject of a complaint and request a response to the complaint. Absent specific statutory authority, the agency may not compel the person to provide a response. *See, e.g.,* A.R.S. § 32-741(A)(15), -1744(B). An initial response to a complaint may resolve the matter without further investigation. If the response, however, does not fully resolve the matter, the agency should initiate an investigation of the complaint which may include an exercise of compulsory powers, such as an investigative subpoena, to obtain information relating to the complaint.

12.3.3 Compulsory Investigative Powers. Compulsory investigative powers include the power to compel a person to give sworn testimony, produce records, file reports, maintain records, or undergo an evaluation to determine safety or competency to practice. *See, e.g.*, A.R.S. §§ 32-703(C), -1264, -1207(B)(6), -1451.01.

12.3.3.1 Required Records and Reports. An agency may require that records and reports be maintained or filed with the agency if authorized to do so by statute or a properly promulgated rule. Such a requirement can be a valuable tool for ascertaining compliance with agency laws. Periodic reports may alert an agency to problems in a regulated business or industry without the agency having to conduct repeated field investigations or inspections. *See, e.g.*, A.R.S. §§ 32-1264, -1964.

12.3.3.2 On-site Inspection of Business Premises and Records. An agency may not enter a business and inspect its premises, operations, books, or records without a specific statutory grant of authority, unless the business consents to the on-site inspection. *See, e.g.*, A.R.S. §§ 4-118, 32-504(B), -1904(A)(4).

An agency inspector conducting an on-site inspection must follow the procedures set forth in A.R.S. § 41-1009. The agency inspector must make certain disclosures and provide certain information to the regulated person. A.R.S. § 41-1009(A)-(J). An agency inspector's failure to comply with these requirements constitutes cause for disciplinary action or dismissal of the agency inspector and shall be considered by the court or administrative law judge as grounds for a reduction of any fine or civil penalty levied against a regulated party. A.R.S. § 41-1009(O). Additionally, evidence gathered in violation of

A.R.S. § 41-1009 may be excluded from a civil or administrative proceeding but not from a criminal proceeding. A.R.S. § 41-1009(N), (Q).

The procedural requirements of A.R.S. § 41-1009 do not apply to all contact between state agencies and regulated persons. This statute applies only to inspections necessary to issue a license or determine compliance with licensure requirements. It should be noted, however, that "license" is very broadly defined by A.R.S. § 41-1001(11) to include all types of permission or approval that an individual needs to lawfully conduct particular activities or regulated activity. The requirements of A.R.S. § 41-1009 do not apply to visits and meetings at a regulated person's premises for a purpose other than inspection. Also exempted from the statute are criminal investigations, undercover investigations, and situations where there is reasonable suspicion that the regulated person may be engaged in criminal activity. A.R.S. § 41-1009(M).

One problem area is an inspection by a state agency that is operating under a delegation of authority to enforce federal law. The application of A.R.S. § 41-1009 must be determined on a case-by-case basis, considering such factors as the delegation agreement, the relevant legal authority, and the possible agency actions that may result from the inspection.

12.3.3.3 Subpoenas. A subpoena compels a person to appear before an agency and answer questions or provide testimony under oath or to produce records. *See, e.g.*, A.R.S. § 32-1451.01(B)(1). The existence and scope of an agency's subpoena power is determined by the language of the authorizing statutes. Generally speaking, a subpoena is valid as long as the inquiry is for a lawfully authorized purpose, the information sought sufficiently relates to that purpose, and reasonable conditions are imposed on the production of records. *United States v. Morton Salt Co.,* 338 U.S. 632, 652 (1950); *Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500, 506, 652 P.2d 1023, 1029 (1982).

Caveat: Agencies that issue subpoenas for complainants' or licensees' confidential health records should be aware of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). HIPAA governs the confidentiality of patients' medical records and regulates the disclosure of the records. As a general rule, HIPAA does not limit a health regulatory agency's ability to subpoena a complainant's confidential medical records. HIPAA, however, may impact an agency's ability to subpoena the medical records of a licensee who is the subject of an agency investigation. Agencies should consult with their legal counsel before subpoenaing confidential medical records.

If a person fails to comply with a subpoena, the agency, through its counsel, may bring an action to enforce the subpoena in the superior court in the county in which the administrative hearing is held. A.R.S. §§ 12-2212(B), 32-1263.02(J). Additionally, some agencies have authority to take disciplinary action against a licensed person who fails to comply with a subpoena. *See, e.g.,* A.R.S. §§ 32-1201(21)(w), -1401(27)(dd).

12.3.3.4 Agency Ordered Evaluations. Some agencies have statutory authority to order licensees to undergo physical, mental, psychological, or competency evaluations as part of an agency investigation if the licensee's ability to safely practice is at issue. *See, e.g.,* A.R.S. §§ 32-1207(B)(6), -1744(H), -2081(E).

12.3.4 Immunity. Sometimes a witness refuses to answer questions on the grounds that the answers may be incriminating. This is commonly referred to as the invocation of the witness's Fifth Amendment privilege. Even though the agency is conducting an administrative hearing or investigation, a witness has a constitutional right to refuse to answer questions and produce private papers that may tend to incriminate him or her in a pending or subsequent criminal proceeding. *See* A.R.S. §§ 41-1066(A), -1092.10(A). An agency must honor the assertion of this right, but may issue a written order to compel the witness to provide the desired testimony or seek a court order to that effect. A.R.S. §§ 41-1066(B), -1092.10(B). Prior written approval of the Attorney General is required before the agency issues the order compelling the witness to testify. *Id.*

Entities such as corporations have no Fifth Amendment privilege. *See Bellis v. United States*, 417 U.S. 85, 89-90 (1974). The agency should confer with its legal counsel if this issue arises.

If the agency or a court issues an order compelling the witness to testify, the testimony and private papers produced in response to the order may not be used in a criminal prosecution of the witness, except a prosecution for perjury, false swearing, tampering with physical evidence, or similar offenses. A.R.S. §§ 41-1066(C), -1092.10(C). Questions about this process should be directed to the agency's legal counsel.

12.3.5 Drawing Adverse Inferences from the Invocation of the Fifth Amendment Privilege. If a party to a civil or administrative enforcement proceeding refuses to answer a question by invoking the Fifth Amendment privilege, the trier of fact may infer that the answer would have been adverse to the witness's interests. This inference, together with other probative evidence, may be used to support findings of misconduct by the party. *Baxter v. Palmigiano,* 425 U.S. 308, 318 (1976).

12.3.6 Other Sources of Information. In addition to information that can be obtained by the methods described above, agencies should take advantage of information available from other governmental agencies. For example, the Department of Public Safety maintains a criminal history information system from which statutorily-authorized agencies may obtain a person's criminal record. For a discussion of the restrictions on the use of criminal history information, see Section 9.9.4. The Department of Public Safety also maintains the "public documents project" which is a database containing investigative and licensing information concerning individuals and corporations in this state. The Corporations Division of the Arizona Corporation Commission maintains information concerning corporations that conduct business in Arizona, particularly the names and addresses of officers, directors, and substantial stockholders of corporations and, in many

cases, legal problems those individuals and corporations have had. Some of this information is available at the Commission's website, www.cc.state.az.us/divisions/corporations. Another source of information is court records of civil or criminal actions.

12.4 Administrative Enforcement. An agency may find it necessary to enforce its statutes in a formal enforcement or disciplinary proceeding. The procedures that an agency must follow to utilize its formal administrative enforcement powers are detailed in Chapter 10. The following describes generally the various methods by which an agency can enforce its laws.

12.4.1 Informal Dispositions. The Administrative Procedure Act authorizes state agencies to informally dispose of any formal enforcement proceeding "by stipulation, agreed settlement, consent order or default." A.R.S. §§ 41-1061(D), -1092.07(F)(5); Section 10.5.5. Thus, many matters brought to an agency's attention may be settled informally by the agency and the licensee without initiating a formal enforcement proceeding. This approach is desirable when the issues are relatively simple because it is more efficient and cost effective than a formal hearing. Even when all the allegations contained in the complaint may not be resolved in an informal manner, some issues may be disposed of informally, thereby narrowing the scope of the formal hearing. Agencies, however, can agree to only those settlement terms that they are otherwise statutorily authorized to order.

12.4.1.1 Disposition by Correspondence. One method of resolving a complaint informally is through correspondence. The agency may write to the holder of the license, permit, or certificate ("licensee"), explain the nature of the complaint received, and request a response. The response may explain the situation to the agency's satisfaction, thereby concluding the matter.

12.4.1.2 Disposition by Informal Meeting. Another method for resolving a complaint informally is for the agency to hold an informal meeting with the licensee. An informal meeting may be held before the agency institutes formal proceedings or after the proceedings have begun. Evidence of conduct or statements made in compromise negotiations is generally not admissible at any subsequent administrative hearing. *See* Ariz. R. Evid. 408.

12.4.1.3 Disposition by Informal Statutory Proceedings. The statutes governing either particular agencies or administrative appeals generally may provide for formal interviews with a licensee in a contested case or informal settlement conferences with the licensee in contested cases and appealable agency actions. *See, e.g.*, A.R.S. §§ 32-1451(H), -1551(F), 41-1092.06.

Formal interviews are quasi-judicial proceedings that do not rise to the level of a formal administrative hearing but which may result in disciplinary sanctions against the licensee (short of suspension or revocation). Accordingly, the agency must provide the

licensee with due process before and during a formal interview. *See, e.g., Gaveck v. Ariz. State Bd. of Podiatry Exam'rs.*, 222 Ariz. 433, 437, 215 P.3d 1114, 1118 (App. 2009).

Informal settlement conferences are available in both contested cases and appealable agency actions. If the respondent in a contested case or the appellant in an appealable agency action requests an informal settlement conference, the agency must hold the conference within fifteen days after receiving the request. A.R.S. § 41-1092.06(A).

A person with the authority to act on behalf of the agency must represent the agency at the informal settlement conference. A.R.S. § 41-1092.06(B). The parties participating in the conference waive their right to object to the participation of the agency representative in the final administrative decision. *Id*. Statements made by the appellant at informal settlement conferences, including documents created solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. A.R.S. § 41-1092.06(B).

12.4.2 Consent Orders. A consent order represents a compromise between the agency and licensee in which each gives up its right to litigate the alleged violation at an administrative hearing. The consent order generally involves a licensee's consent to some form of disciplinary or corrective action and may include the payment of civil penalties, investigative costs, or restitution. *See, e.g.*, A.R.S. §§ 32-1207(C)(4), -1451(F), -2153.01; A.A.C. R4-1-114(A)(3). The consent order must be in writing and signed by the licensee or other affected party.

Consent orders must recite findings of fact and conclusions of law to which the parties agree. A.R.S. §§ 41-1063, -1092.07(F)(7). This ensures that questions will not subsequently arise concerning either the licensee's culpability or the reasons for the issuance of the consent order. Some agencies have specific rules that prohibit an agency from issuing consent orders imposing sanctions if the licensee denies various parts of the initial complaint, order, or notice. *See, e.g.*, A.A.C. R20-4-1220(A). Some agencies have promulgated rules requiring that certain provisions be included in any consent order issued. *See, e.g.*, A.A.C. R4-1-114(A)(3). Consent orders are generally considered to be public records, unless specifically made confidential by statute.

12.4.3 Sanctions Available in Disciplinary Actions. Chapter 10 describes the adjudicatory process for determining whether a violation of the agency's regulatory statutes or rules has occurred. Once such a determination has been made, the agency may impose those sanctions authorized by its governing statutes. Sections 12.4.3.1 to 12.4.3.9 describe sanctions typically available to agencies. *See also* Section 9.5.

12.4.3.1 Revocation or Suspension. An agency may issue an order to revoke or suspend a license as a sanction in a disciplinary action if that agency is authorized by statute to do so. *See, e.g.*, A.R.S. §§ 32-742(A), (B), -924(G), -1367, -2153. The agency must provide the licensee with notice and an opportunity for a hearing before suspending or

revoking his or her license unless the agency determines that emergency action is required. A.R.S. §§ 41-1064(C), -1092.11(B); *see also* Section 12.4.3.2 (Summary Suspension).

12.4.3.2 Summary Suspension. The Administrative Procedure Act provides that a state agency may summarily suspend a license if an agency finds that the public health, safety, or welfare requires such emergency action. A.R.S. §§ 41-1061(A), -1064(C), -1092.03, -1092.11(B). In addition, an agency should consult its own governing statutes to determine if there is an agency-specific summary suspension statute. *See, e.g.*, A.R.S. §§ 32-1451(D), -2157(B). Because the suspension of a license or permit without notice and a hearing may implicate the licensee's due process rights, an agency should impose summary suspension only if a genuine emergency exists and the post-suspension hearing process must be "promptly instituted and determined." A.R.S. §§ 41-1064(C), -1092.11(B); *see also Dahnad v. Buttrick,* 201 Ariz. 394, 399 ¶ 18, 36 P.3d 742, 747 (App. 2001). For a more detailed discussion of summary suspension procedures, *see* Section 10.5.1.2.

12.4.3.3 Denial of Renewal. Agencies are typically authorized to deny renewal of a license. *See, e.g.*, A.R.S. § 32-2153(A). The licensee has a right to request a hearing on the order denying renewal. A.R.S. § 41-1092.03(B). The licensee must request the hearing within the time specified. *Id*. If the licensee submits a timely and sufficient application for renewal, the existing license does not expire until the time in which the licensee has the right to request a hearing has expired or a later date fixed by order of the reviewing court. A.R.S. §§ 41-1064(B), -1092.11(A).

12.4.3.4 Probation. One of the disciplinary options available to some state agencies is placing licensees on probation. The main purpose of imposing probation is to rehabilitate the licensee. *See, e.g.*, A.R.S. §§ 32-128(A)(6), -1744(D)(2). Probation may be for a fixed term or may be tied to the completion of certain requirements. The requirements may be tailored to address specific concerns relating to the licensee, such as requiring continuing or remedial education or supervision. Many agencies may also impose restitution as a condition of probation (*see, e.g.,* A.R.S. §§ 32-352(4), -1263.01(A)(6)), unless that action would be prohibited because, for example, the licensee's "debt" has been discharged through bankruptcy.

Agencies should be as specific as possible in creating the terms and conditions of probation and may consider requiring the licensee to appear regularly before the regulatory board or requiring periodic audits for the purpose of monitoring the licensee's progress with the probationary order. Orders of probation should also contain the written warning that failure to comply with the terms and conditions of probation may lead to more serious disciplinary action.

12.4.3.5 Cease and Desist Orders. Some agencies have been granted statutory authority to issue cease and desist orders. *See, e.g.*, A.R.S. §§ 32-1369(A)(1), -3284(A). A cease and desist order is similar to an injunction and may be used to order persons to

cease activities that violate the law and, in some cases, to take remedial steps to correct the consequences of past violations.

Unless the agency's statutes provide otherwise, cease and desist orders should (1) be in writing and signed by the official authorized to issue the order; (2) specify the reasons for its issuance (including factual findings and legal conclusions); (3) identify the persons affected by the order; and (4) describe in reasonable detail the act or acts to be restrained. The order should not merely refer to the complaint, notice of hearing, or other document, but should fully describe the violations. After identifying the persons restrained under the order, the agency should add, if applicable, the following language: "and their officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them."

An agency may not issue cease and desist orders unless there is an express grant of statutory authority. Agencies without statutory authority to issue cease and desist orders may not order a licensee, by means of "warning" or "compliance" letters, to cease an activity or correct a trade practice without first following the appropriate statutory provisions and regulations governing the agency's disciplinary proceedings. *See Merrick v. Rottman*, 135 Ariz. 594, 597, 663 P.2d 586, 589 (App. 1983). In *Merrick*, the Board of Funeral Directors and Embalmers, which did not have statutory authority to issue cease and desist orders, ordered one of its regulated members to cease certain advertising practices that the board alleged were deceptive. The court of appeals rejected the board's argument that its notice was merely a warning to the licensee before formal disciplinary proceedings were instituted. *Id*. The court noted that the board's order was a formal act directed against the licensee and constituted an unlawful *ex parte* injunction. *Id*. at 599, 663 P.2d at 591. The court also held that, given the specific enforcement powers granted to the board under the Funeral Directors and Embalmers Act, no additional power could be implied. *Id*.

12.4.3.6 Administrative and Civil Penalties. Some administrative agencies are authorized to impose civil penalties for violations of their regulatory laws. *See, e.g.*, A.R.S. §§ 32-924(F)(7), -1263.01(A)(5). An agency may not impose such penalties, however, absent statutory authority.

12.4.3.7 Censure. Agencies may censure licensees who violate regulatory statutes or rules if the agency's statutes authorize them to do so. *See, e.g.*, A.R.S. § 32-1263.01(A)(3). The decree of censure may require the licensee to pay restitution to the aggrieved party. *Id.; see also* A.R.S. § 32-1693(B)(2).

12.4.3.8 Non-disciplinary Sanctions. Some agencies are statutorily authorized to order non-disciplinary sanctions. Examples of non-disciplinary sanctions include letters of concern or advisory letters and non-disciplinary continuing education. *See, e.g.,* A.R.S. §§ 32-128(B), -1263.01(B), -1451(L), -1855(D)(2).

12.4.3.9 Restricted or Conditional Licenses. The legislature has provided authority to some agencies to issue provisional or conditional licenses. *See* A.R.S. §§ 8-505, 28-4364, 32-1027, 32-2153, 36-425, 36-593, 41-2176. Courts have recognized that the powers of administrative agencies are strictly limited by the statutes creating them; accordingly, agencies without statutory authority to issue restricted or conditional licenses may not do so. *Boyce v. City of Scottsdale*, 157 Ariz. 265, 267, 756 P.2d 934, 936 (App. 1988).

12.5 Civil Enforcement.

12.5.1 Injunctive Actions. Under certain circumstances, many agencies are authorized to petition the superior court for an injunction restraining or prohibiting violations of licensing laws or restraining unlicensed activities. *See, e.g.*, A.R.S. §§ 32-1666.01, -1995.

12.6 Criminal Enforcement. Violations of licensing requirements are often also classified as criminal violations. *See, e.g.*, A.R.S. §§ 32-747(E), -1268(A), -1996, -2238(A) and -3286. Moreover, during an agency's regulatory activity, the agency may uncover evidence of conduct that violates general criminal statutes, such as those relating to bribery, embezzlement, schemes to defraud, and falsification of records. *See* Chapter 14. Agencies that identify such criminal conduct should immediately notify the Attorney General's Office.

If a person or enterprise is convicted of any felony, the court may order the forfeiture, suspension, or revocation of any charter, license, permit, or prior approval granted to such person or enterprise by any department or agency of the state. A.R.S. § 13-603(G). Agencies should contact the Attorney General's Office for assistance in coordinating with the appropriate county attorney's office prior to sentencing.

12.7 Double Jeopardy. The double jeopardy clause of the Fifth Amendment to the United State Constitution does not prevent the revocation of a professional license for conduct that also gives rise to a criminal conviction. *Rondberg v. Ariz. Bd. of Chiropractic Exam'rs*, 182 Ariz. 409, 412, 897 P.2d 711, 714 (App. 1995); *Schillerstrom v. State*, 180 Ariz. 468, 470, 885 P.2d 156, 158 (App. 1994). Administrative proceedings generally are not considered prosecutions for purposes of the double jeopardy clause. *Mullet v. Miller*, 168 Ariz. 594, 596, 816 P.2d 251, 253 (App. 1991). A prosecution for double jeopardy purposes is a judicial proceeding in which the State seeks to convict and punish persons alleged to have committed a criminal offense. *State v. Nichols*, 169 Ariz. 409, 411, 819 P.2d 995, 997 (App. 1991). The primary purpose of an administrative license disciplinary proceeding, on the other hand, is to ascertain the moral fitness and professional competency of the licensee and to determine whether the licensee should be disciplined to protect the public. *Schillerstrom*, 180 Ariz. at 471.

Fines imposed administratively or in other civil proceedings generally are not considered to be criminal punishment; accordingly, double jeopardy principles do not necessarily prohibit a criminal prosecution after the imposition of civil penalties for the same conduct. *See Hudson v. United States*, 522 U.S. 93, 98-105 (1997). Despite the legislature's intent to create a civil penalty, however, a nominally civil penalty may be treated as a criminal penalty if it is so "punitive in purpose or effect" that it cannot be considered civil. *See, e.g.*, *Martin v. Reinstein*, 195 Ariz. 293, 303, 987 P.2d 779, 789 (App. 1999). Where the conduct in question might be subject to both civil and criminal penalties, agency enforcement counsel and the relevant prosecutorial authority should consult to ensure that double jeopardy issues are considered before enforcement action is taken.

12.8 Jurisdiction on Indian Reservations. Whether a state agency has jurisdiction to regulate persons or activities on Indian reservations is often a very complex issue and there is no definitive answer that applies to all situations. In general, a state agency has regulatory authority over its own licensees on Indian land. Because of federal policy favoring Indian self-governance, a state agency does not have regulatory authority over non-licensed persons providing services to tribal members on an Indian reservation. Whether a state agency has authority over services provided to non-tribal members on tribal land by unlicensed non-tribal members depends on the facts presented. Agencies should consult with their legal counsel regarding questions of jurisdiction on Indian reservations.

#3597842