




Practicing Preventative Medicine

Anything you say (or do) During State Licensing Investigations WILL be Used Against you!

Presented by
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Today's Presenters



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Introduction

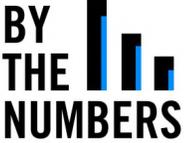
- The system of licensing medical practitioners was designed to protect public from physicians who are inadequately trained or incompetent or whose conduct is illegal or abusive towards patients.
- Medical practice laws in all states mandate that medical boards, as a part of their important function of responsibly licensing physicians, have the legal obligation to take necessary, appropriate disciplinary actions against licensees known to have injured, endangered or behaved inappropriately or illegally towards patients.

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Michigan Investigations

- Michigan is in the upper range of states in terms of the size of its physician population, having 35,506 physicians and ranking 13th in number of physicians.
- Michigan had the highest rate in the country with an average of 1.74 serious disciplinary actions per 1,000 physicians per year.



BY THE NUMBERS

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Timing

- Investigation Authorized to Complaint Filed
 - This is a 90-day time-period set forth in MCL 333.16231(6). Within 90 days after an investigation is initiated, the Department must do one or more of the following: issue a formal complaint, conduct a compliance conference, issue a summary suspension, issue a cease and-desist order, or dismiss the complaint.
 - One 30-day extension, making a total of 120 days, is allowed during this period.

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Timing

- Investigation Authorized to Disciplinary Subcommittee Rendered Decision:
 - Pursuant to MCL 333.16237(5), the entire disciplinary process, from the initiation of an investigation to the final decision by the disciplinary subcommittee, must be completed within **one year**.



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Bureau of Professional Licensing

- Per March 2023 report, Bureau received and processed a total of:
 - 5,313 new complaints or “allegations” – adding to the approximately 3,825 cases opened prior to Oct. 1, 2021.
 - Conducted 1,468 investigations
 - Issued 910 administrative complaints
 - Dismissed or withdrew 148 administrative complaints
 - Summarily suspended 108 licensees



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Boards & Disciplinary Subcommittees

- Per March 2023 Report, the Board’s DSCs issued a total of 936 final disciplinary orders that included 1,998 sanctions and 2,177 violations of the Public Health Code.
 - Imposed 819 fines – 87.5% of all disciplinary orders included a fine
 - Imposed 1,179 other sanctions on 936 disciplinary orders, including but not limited to:

▪ 62 reprimands	▪ 4 revocations
▪ 467 probations	▪ 2 permanent revocations
▪ 48 limitations/restriction	▪ 68 voluntarily surrendered licenses
▪ 272 suspensions	

Continued



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Boards & Disciplinary Subcommittees

- The 936 final orders (consent orders and stipulations and final orders) issued by the DSCs represented 2,177 violations of the Public Health Code, including but not limited to:
 - 503 violations of negligence or negligence including impaired conduct, practice or condition (23%),
 - 417 violations of incompetence (19%),
 - 241 violations of lack of good moral character, (11%)
 - 114 violations of drug diversion, (5%)
 - 78 violations related to continuing education, (4%)
 - 16 violations of sexual misconduct and three (3) violations of criminal sexual misconduct (<1%)



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Licensure Investigations Process

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    graph TD
      A[Complaints] --> B[Investigation]
      B --> C[Informal Interview]
      C --> D[Administrative Complaint]
      D --> E[Compliance Conference]
      E --> F[Continued]
  
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Complaints
↓
Investigation
↓
Informal Interview
↓
Administrative Complaint
↓
Compliance Conference
↓
Continued

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Licensure Investigations Process

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    graph TD
      A[Hearing Before ALJ] --> B[Findings of Fact and Decision Proposed to Board]
      B --> C[Board decides whether to accept ALJ's decision]
      C --> D[Board imposes discipline]
      D --> E[Appeals heard by Michigan Court of Appeals]
  
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Hearing Before ALJ
↓
Findings of Fact and Decision Proposed to Board
↓
Board decides whether to accept ALJ's decision
↓
Board imposes discipline
↓
Appeals heard by Michigan Court of Appeals

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Informal Interview

- Usually with an investigator, rather than an AAG
- Different than the compliance conference with a conferee
- Investigator is a person and usually has an agenda. (not necessarily negative)
- Investigators usually don't have deep knowledge of the area of medicine but may benefit from an internal expert review.
- They usually aren't long.
- Widely varying strategies are dictated by the facts of the case.

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Example: Sideline Physician



“Ok buddy, you took a pretty good knock there, so I’m going to ask you a few questions...”

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Anything you say can & Will be Used Against you...



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Anything you say can & Will be Used Against you...

5. During the 2020 and 2021 football seasons for ██████ High School in ██████ Michigan, Respondent performed adjustments on multiple high school football players who were minors without receiving proper consent from the minor football players’ parents or legal guardians. Further, Respondent failed to maintain any records regarding his treatment of the minors and never confirmed that proper consent was obtained for treatment.

6. On January 25, 2022, in an interview with the Department’s investigator, Respondent admitted that during the 2020 and 2021 football seasons he treated approximately 20 high school football players at ██████ High School. Further, Respondent stated that he never observed signed waivers/consent forms and he did not retain them for his records.

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What went wrong?

- Defendant's (or licensee's) reflex
- Didn't know what he didn't know
 - He didn't know where the complaint came from.
 - He didn't know the specific allegations.
 - He didn't know what patients were involved.
 - He didn't know what the state investigator already knew about the allegations.
- Licensee can't have the same conversations that the lawyer can.



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Overview of the Process

- Remember—in Michigan, anyone can file a complaint against a medical or mental health care provider with the Department of Licensing and Regulatory Affairs (LARA).
- LARA will assign an investigator to investigate the allegations documented in the patient's complaint.
- The investigator likely has already conducted an interview with the complainant, so they will have heard that individual's rendition of the facts.

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Overview of the Process

- This is where you will likely have your first encounter with the state.
- The investigator will contact the health care provider, who is the subject of the complaint, requesting an interview.
- The contact is typically by telephone or email and he/she might begin to ask questions during the initial conversation.
- IT IS AT THIS POINT WHEN YOU SHOULD EXERCISE YOUR RIGHT TO HAVE AN ATTORNEY PRESENT.



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The Investigator is Not Your Friend

- When contacted by the state without warning, decline the informal interview and request the opportunity to speak with an attorney.
- The inclination may be to attempt to resolve the matter with the investigator yourself, however, this often only leads to more problems down the road.
- Health care providers can make matters worse by divulging information to the investigator that he/she did not have and that is later used against the health care provider in a formal administrative complaint.



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Retaining an Attorney

- Your attorney will facilitate the informal interview with the state investigator once retained.
- Your attorney will coordinate a meeting with you to discuss the allegations and to prepare you for the interview process.



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The "Prep" before the Prep

- Before meeting with your attorney, you should do the following:
 - Review the patient file.
 - Identify any staff members who were involved in the at-issue treatment.
 - DO NOT AMEND, SUPPLEMENT OR OTHERWISE CHANGE THE RECORDS IN ANY FASHION.
 - Advise staff not to amend patient records or speak with state investigator without first speaking with attorney.
- *Statements made by staff could be as harmful to your defense as statements you make yourself.*



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Meeting With Your Attorney

- Your attorney will request the state's entire file (either formally or informally).
- Be ready to discuss the at-issue treatment openly with your attorney.
- Your attorney will prep you for questions the state will ask, mistakes to avoid, and how to best prevent an informal complaint from escalating to a formal administrative complaint.
- A determination will be made whether to retain an expert to opine on your behalf.



Continued



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Meeting With Your Attorney

- Your attorney will assist in determining exactly what to discuss and what documentation to produce.
- The Michigan Public Health Code provides that the physician-patient privilege does not apply in an investigation by LARA acting within the scope of its authorization.



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The “Informal” Interview

- Remember, the interview is anything but “informal.”
- Your attorney will be present with you during the interview.
- Often, the investigator will give the health care provider the option to give a narrative of what occurred during the at-issue treatment.
- The narrative option should only be selected if you feel comfortable speaking concisely and succinctly (and with proper preparation with your attorney).

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The “Informal” Interview

- If you are worried you may “overshare,” then let your attorney know ahead of time and he/she will ask the investigator to conduct the interview in a question/answer format.
- Listen to the question. Only answer the question that is asked.
- Your attorney will have the opportunity to ask you questions to add to the whole picture.
- For this reason, do not “overshare” in response to the investigator’s questions.
- Your attorney will know what questions to ask you to elicit favorable responses.



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After the Interview

- The investigator may request additional materials or interview additional witnesses.
- Once the investigation is completed, the investigator will prepare a written report which will be submitted to the Board of Medicine which will then be used to determine whether there has been a violation of the Michigan Public Health Code.
- The time required for LARA to complete its investigation and for the board to make its decision may take up to four to six months after your meeting with the investigator.



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How to Avoid Options 2 and 3

- The investigator's written report could recommend:
 - That the file be closed if their investigation failed to substantiate the allegation.
 - Referral for expert review to determine if the alleged conduct was below the minimal standards for the profession
 - Recommend that the file be transferred for drafting of an administrative complaint (the formal charging document)



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Case Example – Lawyer Retained

- Patient filed complaint against nurse based upon nurse's decision to place patient into EMS vestibule on restraints for approximately two hours.
- State investigator contacted nurse asking for interview.
- Nurse declined interview at that time and requested opportunity to speak with attorney.
- Nurse met with attorney and discussed decision making process which would not have otherwise been clear from the records.
- A clear, concise statement of his care was prepared ahead of the informal interview.
- Nurse presented exceptionally during the informal interview.



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Case Examples

Dear [REDACTED]

Following review and investigation of the complaint filed against you, the Bureau of Professional Licensing has determined that a violation of the Public Health Code cannot be substantiated. Accordingly, the referenced file regarding this matter has been closed.

Sincerely, |

Jon Campbell
 Jon Campbell, Director
 Investigations & Inspections Division
 Bureau of Professional Licensing
 BPL-Complaints@michigan.gov



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Case Example – No Lawyer

- Lawyer was not retained prior to informal interview:
 - Former patient of Social Worker (SW) filed complaint alleging that SW had engaged in romantic relationship with her while she was a patient.
 - SW elected to speak with investigator without first speaking with counsel.
 - SW denied the allegations, claiming that the provider-patient relationship had been terminated before a romantic relationship began.

Continued



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Case Example – No Lawyer

- SW was not aware that investigator had text messages between the SW and the complainant.
- Text messages clearly showed a romantic relationship existed while the provider-patient relationship was ongoing.
- A formal administrative complaint followed.

Continued



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Case Example – No Lawyer

- After the formal administrative complaint was filed, the SW retained counsel.
- Unfortunately, the administrative complaint cited the SW's misrepresentations to the investigator as a basis for an additional violation of the Public Health Code.



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You Might Ask...

Does my insurance cover state investigations?

- Typically, yes. If your insurance is through a hospital system, you are also typically covered under the hospital's policy. Be sure to alert your legal department if you are contacted by the state about an investigation.
- Remember, an informal complaint can be filed by anyone for any reason. Reporting this to the legal department will not be viewed negatively towards you as a provider. Failing to report the contact and trying to handle the matter yourself could lead to much bigger issues.



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You Might Ask...

Do I have the right to remain silent?

- Yes—but you should also expect to practice under a restricted license moving forward.
- The best approach is to cooperate with the interview process with the assistance of counsel.



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Questions?



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Please Answer our Survey



We want to hear from you!

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Today's Recording

Events

Register Now - Physician Licensing Investigation Webinar

Practicing Preventative Medicine - Anything you say for (or) During State Licensing Investigations WILL be Used Against you

ATTENDERS
 Justin J. Hobbs
 Eric T. Ramer
 Clara D. Veigas

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 Medical Ligation
 State Medical Investigations

REGISTER



PRACTICING PREVENTATIVE MEDICINE
 Anything you say for (or) During State Licensing Investigations WILL be Used Against you.

March 21, Physician Licensing Webinar • Host • 1.5 hr.

Date: March 21, 2024
 Time: Noon to 1 pm.
 Cost: Complimentary

Whether a licensing investigation is prompted by a patient complaint, a National Practitioner Databank entry or something else, the first thing state investigators do is request an "informal" interview.

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Thank you for Attending!

Have a Great Day!

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