

# M S M S



## MICHIGAN STATE MEDICAL SOCIETY

### **Grounds and Sanction:**

The Department of Licensing and Regulatory Affairs investigates activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration, including any allegation that one or more grounds for disciplinary subcommittee action exist. The chair of each health profession board or task force will appoint one or more disciplinary subcommittees consisting of two public members and three professional members from the board or task force. The Department may hold hearings, administer oaths, and order relevant testimony to be taken. After its investigation, the Department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. MCL 333.16221. Based on the Department's findings, the disciplinary subcommittee will determine whether discipline is warranted and, if so, the sanction to be imposed.

### **Investigation:**

A person or governmental entity which believes that a violation has occurred or that grounds for disciplinary action may exist may make an allegation of that fact to the Department in writing. MCL 333.16231(1). A person or entity who, in good faith, makes a report, assists in originating, investigating or preparing a report, or assists a board or task force, or disciplinary subcommittee, a hearings examiner, the committee or the Department in carrying out its duties, is immune from civil or criminal liability. MCL 333.16244.

A licensee who has knowledge that another licensee or registrant has committed a violation must report the conduct and the name of the subject of the report to the Department. Information obtained by the Department is confidential. Failure of a licensee to make a report does not give rise to a civil cause of action for damages

licensee to make a report does not give rise to a civil cause of action for damages against the licensee, but the license is subject to disciplinary action. The reporting requirement does not apply to a licensee or registrant who obtains the knowledge of a violation while providing professional services to the licensee or registrant to whom the knowledge applies, if the information is obtained while serving on a duly constituted ethics or peer review committee of a professional association, or who is serving on a committee assigned a professional review function in a health facility or agency. A licensee or registrant must report to the Department any criminal conviction or a disciplinary action taken by another state against the licensee or registrant within 30 days after the date of the conviction or action. A licensee must notify the Department of any disciplinary licensing action taken by another state against the licensee within 30 days after the date of the action. MCL 333.16222.

If, upon reviewing an application, allegation, or a licensee's file, the Department determines that there is a reasonable basis to believe a disciplinary violation exists, the Department, with the authorization of a panel of at least 3 board members that includes the chair and at least 2 other members of the appropriate board or task force, shall investigate the alleged violation. If the panel fails to grant or deny authorization within seven days after receipt of a request for authorization, the Department will investigate. MCL 333.16231(1) -- (2)

If the Department believes that immediate jeopardy exists, the Director or his or her designee shall authorize an investigation and notify the board chair of that investigation within two business days. The Department will also investigate upon receipt of an allegation in writing indicating one substantiated allegation, or two or more written investigated allegations, from two or more different individuals or entities, received in the preceding four years. Under such circumstances, authorization by the panel is not required for the Department to investigate. MCL 333.16231(2).

The Department will also investigate when it receives information that indicates three or more malpractice settlements, awards or judgments against a licensee in a period of five consecutive years, or one or more malpractice settlements, awards or judgments totaling more than \$200,000 in a period of five consecutive years, whether or not the award is stayed pending appeal. MCL 333.16231(4).

If a person of governmental entity submits a written allegation of a violation more than 4 years after the date of the incident or activity that is the basis of the alleged violation, the Department may, but is not required, to investigate the alleged violation. MCL 333.16231(3)

During any investigation, or following the issuance of a complaint, the Department may schedule a compliance conference which may include the individual involved, his or her attorney, one member of the Department's staff, and any other individuals approved by the Department. One member of the appropriate board or task force who is not a member of the disciplinary subcommittee with jurisdiction over the matter, may also attend the conference and provide any assistance that is needed. At the compliance conference, the Department will attempt to reach a settlement. If an agreement is reached, the Department will submit a written statement outlining the terms of the agreement, or a stipulation and final order, if applicable, or request for dismissal to the appropriate disciplinary subcommittee for approval. If no agreement is reached, or if the disciplinary subcommittee rejects the agreement or stipulation and final order or request for dismissal, the Department will schedule a hearing before an administrative law judge. A transcript of the compliance conference may not be made. All records and documents of a compliance conference are subject to the confidentiality requirements of MCL 333.16238. MCL 333.16231(5).

Generally, unless the person submitting an allegation of a violation otherwise agrees in writing, the Department must keep the identity of the person that submitted the allegation confidential until disciplinary proceedings are initiated against the subject of the allegation and the person making the allegation is required to testify in the proceedings. MCL 333.16231(7).

### **Department Action:**

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;
- Dismiss the allegation;
- Place in the complaint file not more than one written extension of not more than 30 days to take action. MCL 333.16231(6).

An individual ordered to cease and desist is entitled to a hearing before a hearing examiner if the individual files a request for hearing within 30 days after the effective

date of the cease and desist order. The Department must subsequently present the notice, if any, of the individual's failure to respond to a complaint, or attend or be represented at a hearing, or the recommended findings of fact and conclusions of law to the appropriate disciplinary subcommittee to determine whether the order is to remain in effect or be dissolved. Upon a violation of a cease and desist order, the Attorney General may apply in the Circuit Court to restrain and enjoin, temporarily or permanently, an individual from further violation the cease and desist order. MCL 333.16233.

The Department may also summarily suspend a license or registration if the public health, safety or welfare requires emergency action, in accordance with the Administrative Procedures Act of 1969, after consultation with the chair of the appropriate board or task force. If a licensee is convicted of a felony, a misdemeanor punishable by imprisonment for a maximum of 2 years, or a misdemeanor involving the illegal delivery, possession or use of a controlled substance, the Department must find that the public health, safety or welfare requires emergency action and must summarily suspend the licensee's license. If a licensee is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol that adversely affects the licensee's ability to practice in a safe and competent manner, the Department may find that the public health, safety or welfare requires emergency action and may summarily suspend the licensee's license. MCL 333.16233(5).

Generally, an applicant, licensee or registrant has 30 days from the date of receipt of a complaint to respond in writing. The failure to respond within 30 days will be treated by the Department as an admission of the allegations contained in the complaint. The Department will then notify the appropriate disciplinary subcommittee of the failure to respond and forward a copy of the complaint to the disciplinary subcommittee. The disciplinary subcommittee may then impose an appropriate sanction. MCL333.16231(8)(9).

**Hearings:** The Department must provide an opportunity for a hearing in connection with any denial, reclassification, limitation, reinstatement, suspension or revocation of a license or registrant, or a proceeding to reprimand, fine, order restitution, or place a licensee on probation. MCL 333.16232.

A hearing before a hearings examiner must be conducted within 60 days after a compliance conference unless an agreement is reached and approved by the

compliance conference unless an agreement is reached and approved by the disciplinary subcommittee. An applicant, licensee or registrant may be represented at the hearing by legal counsel. Hearing examiners will not recommend or impose penalties, but will determine whether grounds for discipline exist. The hearing examiner will prepare recommended findings of fact and conclusions of law to be transmitted to the appropriate disciplinary subcommittee. MCL

333.16231, 333.16232

Upon application by the Attorney General or a party to a contested case, the circuit court may issue a subpoena requiring a person to appear before a hearing examiner in a contested case or before the Department in an investigation and be examined and to produce books, papers, or documents pertaining to the contested case or investigation. The subpoena may also require the person to produce all books, papers and documents pertaining to all of the licensee's or registrant's patients in a health facility on a particular day if the allegation that gave rise to the disciplinary proceeding was made by or pertains to one or more of those patients. MCL 333.16235.

**Sanctions:** Within 60 days after receipt of the recommended findings of fact and conclusions of law from a hearing examiner, a disciplinary subcommittee will meet to impose sanctions. MCL 333.16232 (3). The disciplinary committee may impose sanctions after finding that any of the following grounds exist:

- A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession.
- Personal disqualifications, consisting of any of the following:
  - Incompetence.
  - Subject to the health professional recovery program, substance abuse.
  - Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
  - Declaration of mental incompetence by a court of competent jurisdiction.
  - Conviction of a misdemeanor punishable by imprisonment for a maximum term of two years, conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, or conviction of a felony.
  - Lack of good moral character.
  - Conviction of a criminal offense under MCL 750.520e or MCL 750.520g (criminal sexual conduct).

- Conviction of a violation of MCL 750.492a (intentional inclusion of misleading information in or destruction of patient medical records).
- Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession.
- Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country.
- Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner.
- Conviction of a violation of MCL 750.430, which prohibits a health care professional from engaging in the practice of his or her health profession with a bodily alcohol content of .05 or more or while he or she is under the influence of a controlled substance which visibly impairs his or her ability to safely engage in the practice of his or her health profession.
- Conviction of assault with intent to commit murder or great bodily harm, or conviction of murder or manslaughter;
- (Effective October 9, 2017) Conviction of a violation of MCL 750.136 or MCL 750.136a (performing female genital mutilation or transporting a person for purposes of conducting female genital mutilation)
- Prohibited acts, consisting of any of the following:
  - Fraud or deceit in obtaining or renewing a license or registration.
  - Permitting the license or registration to be used by an unauthorized person.
  - Practice outside the scope of a license.
  - Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in MCL 333.7104 or a drug as defined in MCL 333.7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.
- Unethical business practices, consisting of any of the following:
  - False or misleading advertising.
  - Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.
  - Fraud or deceit in obtaining or attempting to obtain third party reimbursement.
- Unprofessional conduct, consisting of any of the following:
  - Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.
  - Betrayal of a professional confidence.

- Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.
- Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.
- A referral by a physician for a designated health service in violation of 42 U.S.C. 1395nn (also known as the "Stark Law") or a regulation promulgated thereunder.
- For a physician who makes referrals under the Stark Law or a regulation promulgated thereunder, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicare or Medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest.
- Any conduct by a health professional with a patient while he or she is acting within his or her health profession, including conduct initiated by a patient or to which the patient consents, that is sexual or may reasonably be interpreted as sexual, including, but not limited to, sexual intercourse, kissing in a sexual manner, or touching of a body part for any purpose other than appropriate examination, treatment or comfort.
- Offering to provide practice-related services, such as drugs, in exchange for sexual favors.
- Failure to report any criminal conviction or any disciplinary licensing or registration action taken by another state within 30 days after the date of the conviction or action;
- Failure to report a change of name or mailing address within 30 days after the change occurs.
- A violation, or aiding or abetting in a violation, of Article 15 of the Public Health Code (occupations) or of rules promulgated under Article 15.
- Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under Article 15 or Article 7 (controlled substances), failure to appear at a compliance conference or an administrative hearing, or failure to report under MCL 333.16222 (disciplinary violations) or MCL 333.16223 (impaired health professionals).
- Failure to pay an installment of an assessment levied under the Michigan Insurance Code within 60 days after notice by the appropriate board.
- A violation of MCL 333.17013 or MCL 333.17513 (breast cancer treatment).
- Failure to meet one or more of the requirements for licensure or registration under MCL 333.16174.
- A violation of MCL 333.17015, MCL 333.17015a, MCL 333.17017, MCL 333.17515, or

- A VIOLATION OF MCL 333.17015, MCL 333.17015a, MCL 333.17017, MCL 333.17515 OR MCL 333.17517 (abortions).
- A violation of MCL 333.17016 or MCL 333.17516 (partial birth abortions)
- Failure to comply with the reporting requirements for child immunizations under MCL 333.9206(3).
- A violation of MCL 333.5654 or MCL 333.5654 (medical treatment for advance illness).
- A violation of MCL 333.16274 (human cloning).
- A violation of MCL 333.17020 or MCL 333.17520 (genetic testing without informed consent).
- A violation of the Medical Records Access Act, MCL 333.26261 to 333.26271.
- A violation of MCL 333.17764(2) (Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or device knowing or intending that the drug or device be used, or selling, offering for sale, possessing for sale, causing to be sold, or manufacturing for sale an adulterated or misbranded drug.
- Failure to comply with the terms of a practice agreement between a physician and a physician's assistant described in MCL 333.17047(2)(a) or (b), MCL 333.17547(2)(a) or (b), or MCL 333.18047(2)(a) or (b).

After finding the existence of one or more grounds for disciplinary action, the disciplinary subcommittee will impose one or more of the following sanctions for each violation: probation, limitation, denial, suspension, revocation, permanent revocation, reprimand, restitution, or a fine. MCL 333.16226.

A fine of up to \$250,000 may be imposed for violations of subsections (a) or (b) above. A disciplinary subcommittee must impose a fine of at least \$25,000 if the violation of subsections (a) or (b) results in the death of one or more patients. A licensee or registrant may also be required to complete educational, training program, a treatment program, submit to mental, physical or professional examinations, or a combination of such programs and examinations. MCL 333.16226.

**Appellate Review:** Generally, a final decision of a disciplinary subcommittee may be appealed by right to the Court of Appeals. MCL 333.16237(6).

**Patient Notification:** A licensee or registrant whose license is revoked or suspended must give notice of the revocation or suspension to each patient who contacts the licensee or registrant for professional services during the term of the revocation or suspension. The licensee or registrant may give the required notice

orally and must give the notice at the time of contact.

Within 30 days after the date of the final notice, a licensee whose license is revoked or suspended for more than 60 days shall notify in writing each patient to whom the licensee rendered professional services in the licensee's private practice during the 120 days immediately preceding the date of the final order imposing the revocation and suspension, and to each individual who is already scheduled for professional services during the first 120 days after the date of the final order imposing the revocation or suspension. The notice must be on a form provided by the licensee's board or task force and state, at a minimum, the name, address, and license number of the licensee, the fact that his or her license has been revoked or suspended, the effective date of the revocation or suspension, and the term of the revocation or suspension. A copy of the notice must be simultaneously sent to the Department. The licensee must also provide a copy of the notice within ten days after the date of the final order imposing sanctions to his or her employer, if any, and to each hospital, if any, in which the licensee is admitted to practice. MCL 333.16241(6).

Notice to employers and hospitals must be provided by a licensee who is reprimanded, fined, placed on probation or ordered to pay restitution, or of an applicant whose application for licensure or registration is denied. Such notice must be sent within ten days of the date a final order is issued. MCL 333.16241(7).

**Post-disciplinary Action Matters:** After an administrative disciplinary action is final, the Department will publish a list of the names and addresses of disciplined individuals. The Department will indicate on the list that final administrative disciplinary action is subject to judicial review. Disciplinary actions will be reported to the Michigan Department of Community Health, the Michigan Department of Insurance and financial services, the Michigan and federal agencies responsible for fiscal administration of federal health care programs, the National Practitioner Data Bank, if applicable, and the appropriate professional association. Once each calendar year, the Department will transmit a compilation of the list for the immediately preceding 3 calendar years to each county clerk in Michigan and the Library of Michigan, which will distribute the compilation to each depository library in the state.

The Department must annually report to the legislature and to each board and task force on disciplinary actions taken. The report must contain, at a minimum, all of the following information:

Investigations conducted, complaints issued, and settlements reached by the Department, separated out by type of complaint and health profession;  
Investigations and complaints closed or dismissed;  
Actions taken by each disciplinary subcommittee; separated out by type of complaint, health profession, and final order issued.  
Recommendations by boards and task forces;  
The number of extensions and delays granted by the Department that were in excess of time limits provided by statute for each phase of the disciplinary process, and the types of cases for which the extensions and delays were granted.  
MCL 333.16241

Public Information Requirement: Each licensee or registrant in private practice must make available upon request of a patient a pamphlet provided by the Department outlining the procedure for filing an allegation with the Department. MCL 333.16239.

Reinstatement: Generally, in the case of a revoked license or registration, an application may not apply for reinstatement before the expiration of 3 years after the effective date of revocation. In the case of a license that was revoked due to certain felony convictions, an applicant may not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The Department will provide an opportunity for a hearing before final rejection of an application for reinstatement unless the application is returned because the applicant is ineligible for reinstatement (e.g., if the individual's license is permanently revoked). MCL 333.16245.

An individual seeking reinstatement or reclassification must pay an application processing fee. If approved for reinstatement or reclassification, the individual must pay the per year license fee for the applicable license period. The individual must also have a criminal history check and submit a copy of the results to the Board with his or her application for reinstatement or reclassification. MCL 333.16245.

A board or task force may reinstate a license or issue a limited license to an individual whose license has been suspended or revoked if after a hearing the board or task force is satisfied by clear and convincing evidence that the applicant is of good moral character, is mentally and physically able to practice the profession with reasonable skill and safety to patients, has met the criteria guidelines for reinstatement, and should be permitted in the public interest to practice. As a condition of reinstatement, a disciplinary subcommittee, upon the recommendation of a board or task force, may impose a disciplinary or corrective measure and require that the licensee attend a

school or program selected by the board or task force to take designated courses or training to become competent or proficient in those areas of practice in which the board or task force finds the licensee to be deficient. The board or task force may require a statement on an approved form from the chief administrator of the school or program attended or the person responsible for the training certifying that the licensee has achieved the required competency or proficiency. Also as a condition of reinstatement, a board or task force shall place the licensee on probation for 1 year under conditions set by the board or task force. If a licensee whose license has been revoked cannot apply for reinstatement for 5 years after the date of revocation, then, as a condition of reinstatement, the board or task force shall require the licensee to take and pass the current licensure examination. MCL 333.16247.

**Health Professional Recovery Program:** The Health Professional Recovery Program is a non-disciplinary treatment-oriented program for health professionals with an "impairment" or inability to practice his or her health profession in a manner that conforms to the minimum standards of acceptable and prevailing practice for that health profession due to the health professional's substance abuse, chemical dependency, or mental illness or the health professional's use of drugs or alcohol that does not constitute substance abuse or chemical dependency. MCL 333.16105a; 16106a.

The Health Professional Recovery Committee, which is part of the Department of Licensing and Regulatory Affairs, consists of one member from each professional board and the Physicians Assistant's Task Force, each of whom have education, training and clinical expertise in the treatment of individuals with addictive behavior or mental illness, or both, two public members, one of whom has specialized training or experience or both in the treatment of individuals with addictive behavior, and a director. The Committee shall establish the general components of the health professional recovery program and a mechanism for monitoring health professionals who may be impaired. MCL 333.16165; 333.16167.

The Department must contract with a private entity to act as a consultant to the Committee in program administration. The contract with the private entity/consultant must require the consultant to report immediately to the Department any known circumstances indicating that an impaired health care professional may be a threat to public health, safety or welfare. MCL 333.16168.

If the consultant has reasonable cause to believe that a health care professional may

... if the consultant has reasonable cause to believe that a health care professional may be impaired, the consultant must transmit the information to the Committee either orally or in writing. The Committee will request that the consultant determine whether or not the health professional may be impaired. If the Department determines that the health professional may be a threat to the public health, safety or welfare and has violated the controlled substance, medical marihuana, or medical occupation laws, or the rules promulgated thereunder, the Department may take disciplinary action. MCL 333.16169.

If the consultant determines the health professional may be impaired, the Committee may accept the person into the Health Professional Recovery Program so long as the professional acknowledges the impairment, voluntarily agrees to withdraw or limit the scope of his or her practice as determined necessary by the Committee, and agrees to participate in a treatment plan that meets the criteria developed by the Committee. The Committee must report to the Department any health care professional who does not satisfactorily participate in the treatment plan. A health professional who falsely represents that the health professional has successfully completed the treatment plan is guilty of a felony. MCL 333.16170.

The identity of an individual submitting information to the Committee is confidential, as is the identity of the health care professional who participates in the program, unless the professional fails to satisfactorily participate in and complete a treatment plan as prescribed. If a health professional successfully participates in and completes a treatment plan, the Department shall destroy all records pertaining to the impairment of the health professional, including records pertaining to the health professional's participation in the treatment plan, upon the expiration of five years after the date of the Committee's determination. MCL 333.16170a.