

KNOWLEDGE IS POWER!

DISCIPLINARY PROCESS FOR HEALTH CARE PROFESSIONALS

Since you may not be familiar with the operations of your professional licensing Board's Disciplinary Subcommittee, outlined below are some of the procedural events in the administrative process.

The Investigation:

A licensed health care professional becomes aware of a formal complaint, usually, when an investigator from the Bureau of Health Professions calls requesting an interview. The investigator will attempt to elicit information from the licensed individual during that initial contact, in the form of "an admission", to establish the violations of law or rules that are being investigated: e.g. that documentation was not done; that certain care was provided in a negligent manner; that the health care professional did **something** wrong, or violated the employer's policies, and/or was terminated.

Certainly, if an investigator calls and has appropriate authority to investigate a matter, an appointment should be set up to meet, face to face (after the health care professional has had an opportunity to discuss the issues with legal counsel experienced in this area of the law, if desired). Keep in mind that the investigator will attempt to discover as many "wrong doings" as he or she is able during this part of the process.

It is to your advantage to be fully prepared to defend yourself during this phase of the investigation. You need to understand what the precise allegations of fact or violations of law are, and not allow the meeting to turn into a "fishing expedition". Certain documents may assist you, and need to be gathered before this meeting. Sometimes, after an investigation, the matter is dropped because of information produced during that meeting, by the health care professional.

If it is not dropped, all is not lost, as the licensed individual, and his or her attorney, if one is involved, may obtain important information, that will be useful in defense of the allegations at subsequent conferences or hearings.

The Issuance of a Complaint:

Following the investigation, a determination is made by the Board whether or not to issue a formal Administrative Complaint. If it is issued, it will be served on the health care professional. Very importantly, the letter that accompanies, or, the Administrative Complaint will state that a written Answer is required within thirty (30) days, or that the allegations in the Administrative Complaint will be deemed to be true, and admitted. The allegations in the Administrative Complaint may be inaccurate, misleading, patently false, etc. Still, they must be answered in writing within 30 days of receipt of the Administrative Complaint.

Summary Suspension

On occasion, summary suspension of a license occurs, when the investigation reveals information that is determined by the Board to constitute a situation where the public may be endangered by the continuing practice of the health care professional. The licensed individual will receive both a Notice of Summary Suspension and an Administrative Complaint. An answer to the complaint must be filed within 30 days of receipt of the documents. The Summary Suspension will give the date of suspension of the person's license, and will give information about how to get the license reinstated (Petition to Reinstatement), or the licensee may be able to negotiate with the Assistant Attorney General who is handling the case, to have the Summary Suspension set aside. Doing so does not resolve the Administrative Complaint, however.

Compliance Conference:

Soon after the Administrative Complaint is sent, a Compliance Conference Request Form will be mailed, giving options to allow you to attend a Compliance Conference, i.e., an informal meeting with the person handling the Complaint at the Bureau of Health Professions. This conference can be waived, as explained in the accompanying letter, but should generally NOT be waived by the health care professional. Of course, there are exceptions, but if the health care professional can demonstrate compliance with the Public Health Code during the meeting, a request would be submitted to the Board for dismissal of the Complaint. Personal impressions count here, so appear in person, not by phone, if at all possible.

There are many ways to demonstrate compliance, so it is imperative that the health care professional be adequately prepared to fully participate in this conference. Advice of counsel may be sought from attorneys familiar with this area of the law if the licensee has any questions about how best to defend against the allegations and demonstrate compliance.

Settlement Conference:

If the Compliance Conference fails to resolve the case, and the Bureau of Health Professions insists on pursuing the matter, a Settlement Conference may be scheduled, to address specific issues, including ongoing settlement negotiations. If this fails to resolve the case, the matter will proceed to a formal Administrative Hearing.

The health care professional, his or her attorney, an Assistant Attorney General and a Board conferee attend the Settlement Conference, which may result in a recommendation for dismissal. If not, it proceeds to the Administrative Hearing.

Administrative Hearing:

This is the formal procedure where both "sides" present their evidence, including experts, records, and other evidentiary testimony or materials, before an Administrative Law Judge. Sometimes a court reporter will transcribe the testimony, or it will be preserved on audio tape, for later transcription. Witnesses are sworn in, and the rules of evidence generally apply. After all of the evidence is presented,

closing arguments are concluded and briefs are submitted, the Administrative Law Judge prepares a Proposal for Decision (PFD) addressing the issues of fact and law that were raised during the Hearing. The PFD is then sent to the appropriate licensing Board's Disciplinary Subcommittee, for consideration.

Disciplinary Subcommittee Meeting:

The Disciplinary Subcommittee for that Board, after receiving the PFD, discusses and decides whether to accept or reject and/or modify the PFD, during its regularly scheduled monthly or bi-monthly public meeting. Published agendas are available on the Michigan Department of Community Health web site for each of the professional Boards.

If it finds a violation of the Public Health Code in a particular matter up for consideration, the Disciplinary Subcommittee then decides which sanction is appropriate for the health care professional, based upon the specific violations of law or rules that they have determined were committed by the licensee. The Subcommittee applies defined sanctions that, according to the law, may range from a reprimand, a fine, limitations placed on a license, probation, up to and including loss of, suspension or revocation of a license. Following its decision, a final Order is issued, and becomes part of the licensee's permanent record maintained by the Board and the State of Michigan. The discipline is permanent, and never is expunged from the licensee's Michigan record. Depending on the sanction imposed, the matter may be submitted to the National Practitioner Data Bank. Further, if probation of a licensee has been ordered, the licensee may be excluded from certain state or federally funded provider programs for a period of time, or even permanently.

That Order governs that individual's further practice for the time and conditions specified in the Order, unless a successful appeal is made. The PFD and Order are available for all to see on the internet or by request. Further, the licensee is required to show a copy of the Order to his or her employer, thus providing written documentation of the sanction imposed by the Board(s). This may result in loss of employment, limitation on practice or additional scrutiny by one's current employer.

By law, the Disciplinary Subcommittee is composed of two members of the community at large and three professional members of the Board.

Summary and conclusions

While the playing field is not "level", knowledge of the process is power! Health care professionals work very hard to obtain licensure, and must take appropriate action as they go through the administrative process to protect the privilege of holding that license.

You may obtain additional information about the process, or learn about the Administrative Rules that apply to licensing matters from the Michigan Department of Community Health: www.michigan.gov/mdch. The Administrative Rules are found at www.michigan.gov/orr.