

ALLEGATIONS

Two most commonly pled allegations:

333.16221 (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 that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession;

and

333.16221 (b) ... personal disqualifications, consisting of ... incompetence.

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

333.16221 Investigation of licensee, registrant, or applicant for licensure or registration; hearings, oaths, and testimony; complaint; grounds for proceeding under MCL 333.16226.

Sec. 16221.

Subject to section 16221b, the department shall investigate any allegation that 1 or more of the grounds for disciplinary subcommittee action under this section exist, and may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, the department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

- (a) Except as otherwise specifically provided in this section, 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 that impairs, or may impair, the ability

to safely and skillfully engage in the practice of the health profession.

- (b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance use disorder as that term is defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee's or registrant's ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or

TOP 5 TIPS FOR DEALING WITH A STATE INVESTIGATION

- #1 Never meet with a state investigator without counsel!
- #2 Check with your insurance company if you have coverage for LARA complaints.
- #3 If you receive a request for records from the state (Board of Medicine), notify your insurance company.
- #4 When copying records, make a complete copy (patient information sheet, which often contains important history, lab results, correspondence from other doctors, etc.).
- #5 Understand that investigators look for violations of the Public Health Code, not a breach of the standard of care.

- conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.
- (vi) Lack of good moral character.
 - (vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.
 - (viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.
 - (ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.
 - (x) 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. A certified copy of the record of the board is conclusive evidence of the final action.
 - (xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's or registrant's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.
 - (xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.
 - (xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.
- (xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.
 - (xv) Conviction of a violation of section 90 of the Michigan penal code, 1931 PA 328, MCL 750.90, or a violation of a state or federal crime that is substantially similar to the violation described in this subparagraph. A certified copy of the court record is conclusive evidence of the conviction.
- (c) Prohibited acts, consisting of 1 or more of the following:
 - (i) Fraud or deceit in obtaining or renewing a license or registration.
 - (ii) Permitting a license or registration to be used by an unauthorized person.
 - (iii) Practice outside the scope of a license.
 - (iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance or a drug as that term is defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.
 - (d) Except as otherwise specifically provided in this section, unethical business practices, consisting of 1 or more of the following:
 - (i) False or misleading advertising.
 - (ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.
 - (iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.
 - (e) Except as otherwise specifically provided in this section, unprofessional conduct, consisting of 1 or more of the following:
 - (i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.
 - (ii) Betrayal of a professional confidence.
 - (iii) Promotion for personal gain of an

- unnecessary drug, device, treatment, procedure, or service.
- (iv) Either of the following:
- (A) A requirement by a licensee other than a physician or a registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest.
- (B) A referral by a physician for a designated health service that violates 42 USC 1395nn or a regulation promulgated under that section. For purposes of this subdivision, 42 USC 1395nn and the regulations promulgated under that section as they exist on June 3, 2002 are incorporated by reference. A disciplinary subcommittee shall apply 42 USC 1395nn and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If 42 USC 1395nn or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, "designated health service" means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.
- (v) For a physician who makes referrals under 42 USC 1395nn or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicaid 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. A physician who owns all or part of a facility in which the physician provides surgical services is not subject to this subparagraph if a referred surgical procedure the physician performs in the facility is not reimbursed at a minimum of the appropriate Medicaid or Medicare outpatient fee schedule, including the combined technical and professional components.
- (vi) Any conduct by a licensee or registrant with a patient while the licensee or registrant is acting within the health profession for which the licensee or registrant is licensed or registered, 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.
- (vii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors.
- (viii) A violation of section 16655(4) by a dental therapist.
- (f) Failure to notify under section 16222(3) or (4).
- (g) Failure to report a change of name or mailing address as required in section 16192.
- (h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.
- (i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article, article 7, or article 8, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222(1) or 16223.
- (j) Failure to pay an installment of an assessment levied under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

- (k) A violation of section 17013 or 17513.
- (l) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.
- (m) A violation of section 17015, 17015a, or 17515.
- (n) Failure to comply with section 9206(3).
- (o) A violation of section 5654 or 5655.
- (p) A violation of section 16274.
- (q) A violation of section 17020 or 17520.
- (r) A violation of the medical records access act, 2004 PA 47, MCL 333.26261 to 333.26271.
- (s) A violation of section 17764(2).
- (t) Failure to comply with the terms of a practice agreement described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or 18047(2)(a) or (b).
- (u) A violation of section 7303a(2).
- (v) A violation of section 7303a(4) or (5).
- (w) A violation of section 7303b.
- (x) A violation of section 17754a.
- (y) Beginning January 1, 2021, a violation of section 24507 or 24509.

333.16221b Violation of MCL 333.7303a(4) or (5) or 333.17754a; reasonable basis; issuance of letter.

Sec. 16221b.

- (1) If the department has a reasonable basis to believe that a licensee has violated any of the following, the department is not required to investigate under section 16221 or 16231 and may issue a letter to the licensee notifying the licensee that he or she may be in violation of the applicable section:
 - (a) Section 7303a(4).
 - (b) Section 7303a(5).
 - (c) Section 17754a.
- (2) A letter that is issued under this section is not considered discipline.

PLUNKETT  COONEY

ATTORNEYS & COUNSELORS AT LAW

**PLUNKETT COONEY'S
MEDICAL LITIGATION PRACTICE GROUP**

Justin J. Hakala, Practice Group Co-leader
(248) 594-4281
jhakala@plunkettcooney.com

Eric T. Ramar, Practice Group Co-leader
(313) 983-4313
eramar@plunkettcooney.com

Jenny Andreou
(313) 983-4802
jandreou@plunkettcooney.com

Hilary Ballentine
(313) 983-4419
hballentine@plunkettcooney.com

Jack Deegan
(231) 348-6435
jdeegan@plunkettcooney.com

Audrey Forbush
(810) 342-7014
aforbush@plunkettcooney.com

Nadine Hessi
(248) 433-7162
nhessi@plunkettcooney.com

Alyssa Kennedy
(231) 348-6427
akennedy@plunkettcooney.com

Claire Vergara
(313) 983-4321
cvergara@plunkettcooney.com

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