



MICHIGAN OSTEOPATHIC ASSOCIATION

SPRING CONFERENCE MAY 17, 2026

ANATOMY OF A LICENSING CASE

Daniel J. Schulte
Kerr, Russell and Weber, PLC
www.kerr-russell.com
500 Woodward, Suite 2500
Detroit, MI 48226
(313) 961-0200
dschulte@kerr-russell.com

Legal Counsel to the Michigan Osteopathic Association

HOW IT STARTS (BEHIND THE SCENES)

- An Allegation is filed.
 - Must allege that one or more grounds for discipline exist (MCL 33.16221).
 - Allegations are made via the LARA website and can come from anyone.
 - You are required to make available upon request LARA's pamphlet on how to file an allegation (MCL 333.16239).
 - State may be looking into anything and may make an Allegation at will (e.g. MAPS queries, NPDB Report, police report/conviction).

GROUNDS FOR DISCIPLINE

- MCL 333.16221 lists grounds for discipline:
 - 26 categories (e.g. general duties, personal disqualifications, prohibited acts, unethical business practices, etc.).
- Other sections of Michigan's Public Health Code also provide a basis for disciplining a licensee.

HOW IT STARTS (BEHIND THE SCENES)

- LARA reviews the Allegation. If it finds there is a “there is a reasonable basis to believe that a violation” of Michigan’s Public Health Code exists:
 - The Allegation is forwarded to the applicable board (e.g., Michigan Board of Osteopathic Medicine and Surgery) with a request for authorization to investigate the Allegation.
 - The board chair and 2 or more other board members designated by the chair must authorize LARA to investigate the Allegation.
 - There are conflict of interest rules.

HOW IT STARTS (BEHIND THE SCENES)

- Exceptions:
 - Frequent Flyers – LARA must investigate if the licensee has one substantiated allegation or 2 or more investigated allegations from more than one source within the previous 4 years.
 - Stale Incident or Activity – If the facts are more than 4 years old LARA is not required to investigate.
 - Malpractice – LARA must investigate a Licensee with 3 or more judgements or settlements in 5 years or 1 or more totaling more than \$200,000 in 5 years.
 - Inaction - LARA must investigate if the board does not act within 7 days of the request for authorization.

HOW IT STARTS (BEHIND THE SCENES)

- LARA reports that most Allegations (approximately 75%) are:
 - LARA does not find there is a reasonable basis to believe that a violation of the public health code exists; or
 - The board does not authorize LARA to investigate.

THE INVESTIGATION PHASE (BEHIND THE SCENES)

- When the board authorizes an investigation of an Allegation or LARA conducts an investigation pursuant to an exception, LARA has 90 days from when the investigation is initiated to either:
 - Issue an Administrative Complaint.
 - Conduct a Compliance Conference.
 - Issue a Summary Suspension.
 - Issue a Cease-and-Desist Order.
 - Dismiss the Allegation.
 - Extend the 90-day deadline once for no more than 30 days.

THE INVESTIGATION PHASE (RECOGNITION)

- The first time you will likely know an Allegation has been filed against you is when you:
 - Receive a letter or subpoena requesting medical records.
 - Receive a letter or a call requesting a statement or interview.

You should engage an attorney at this point.

THE INVESTIGATION PHASE (RECOGNITION)

- After you engage an attorney:
 - Comply with a request (letter or subpoena) for records.
 - If asked for an interview or to give a statement prepare with your attorney and arrange to do so with the investigator.
 - Make time to review the records with your attorney.
 - Engage in critical self analysis of your performance in the case(s).
 - Review your records in detail, are they complete, legible, cookie-cutter, or otherwise problematic?
 - If you are being honest with yourself, you will likely be able to identify the issue(s) ahead of time.

THE INVESTIGATION PHASE (WAITING)

- You do not know how long it will be until:
 - You are served with an Administrative Complaint.
 - A Compliance Conference is conducted (see below).
 - Your license is summarily suspended.
 - You receive a Cease-and-Desist Order.
 - The Allegation is dismissed.
 - The 90-day deadline is extended for 30 days.

CONSIDER A COMPLIANCE CONFERENCE

THE INVESTIGATION PHASE (ACKNOWLEDGE/MAKE A DEAL)

- A compliance conference is an informal dispute resolution process.
 - Only you/your attorney and representatives of LARA and maybe the board and attorney general are present.
 - A chance for you to explain yourself, show your professionalism/positive demeanor, to point out things about yourself, the patient(s), the circumstances involved in a case(s) that may not be evident or easily discerned from the record.
 - A chance to explain the applicable standard of care or alternatives available when acting within the standard of care including putting forth professional literature supporting your clinical actions/decisions.
 - **A chance to acknowledge issues with your performance, commit to do better and make a deal you can live with (although hard to swallow).**

THE INVESTIGATION PHASE (ACKNOWLEDGE/MAKE A DEAL)

- If an agreement is reached it is documented in a Consent Order and Stipulation.
- The Consent Order and Stipulation is transmitted to the disciplinary subcommittee of the board for approval.
- Once final, a Consent Order and Stipulation is made public (i.e. it can be found on the LARA website).

THE COMPLAINT PHASE

- Administrative Complaints are served the same as other civil complaints.
- Without an extension, you will have 30 days to answer.
- Administrative Complaints come with a request for a compliance conference (another opportunity to acknowledge/make a deal).

THE COMPLAINT PHASE

- Less confidentiality protections are applicable after an Administrative Complaint is filed.
 - Your attorney will know to send a FOIA request to obtain the investigative file. This file will contain:
 - The documents obtained by the investigator.
 - The Allegation.
 - Expert statements, if any.
 - Testimony of other witnesses, if any.

THE COMPLAINT PHASE

- Decisions to make following a review of the investigative file:
 - Hire an expert to review case(s)?
 - Compliance Conference?
 - Consent Order and Stipulation?
 - Administrative Hearing?

HEARING PHASE

- Like a civil trial.
 - Before a hearings examiner.
 - Experts and other witnesses are called to testify.
 - Documents and other evidence may be introduced.
 - Result is the hearings examiner’s recommended “Findings of Fact and Conclusions of Law”.

HEARING PHASE

- At the conclusion of the hearing, the hearings examiner will determine if grounds for discipline exist and prepare “recommended findings of fact and conclusions of law”.
 - The hearings examiner does not recommend or impose sanctions.
- The recommended findings of fact and conclusions of law are given to the disciplinary subcommittee of the board for approval and determination of sanction(s), if any.

SANCTIONS

- Probation, Limitation, Denial, Suspension, Revocation, Restitution, and a Fine are the possibilities.
- MCL 333.16226 limits the discretion of the disciplinary subcommittee.
 - Each ground for discipline has an assigned subset of possible sanctions.

**APPROVAL/SANCTION SETTING BY THE DISCIPLINARY
SUBCOMMITTEE**

- The board's disciplinary subcommittee must:
 - Approve or recommend changes to a consent order and stipulation (which includes an agreed upon sanction).
 - Review the recommended findings of fact and conclusions of law (which does not include an agreed/recommended sanction) and impose a sanction.
- Your only opportunity to negotiate/have direct input on the possible sanction(s) is via a compliance conference.

LARA HAS FINAL WORD BEFORE APPEAL

- If LARA determines that the action approved by a disciplinary subcommittee does not protect the health, safety, and welfare of the public, LARA, with the approval of the board chair, may set aside the action and issue a different final action.
- A final decision by a disciplinary subcommittee or LARA/board chair may be appealed by right to the Court of Appeals.
 - High standard to meet in these appeals (e.g. serious procedural flaws, refusal to admit clearly admissible evidence, failure to follow conflict of interest statutes, etc.).

Questions