

**FAUSONE BOHN, LLP**

**ATTORNEYS AT LAW**

# Defending Your License

**The How-To for Michigan  
Health Care Professionals**



**[WWW.FB-FIRM.COM](http://WWW.FB-FIRM.COM)**

# About the Author:

## Tariq S. Hafeez



Mr. Hafeez practices in the areas of business/corporate law, healthcare law, and commercial/civil litigation. As a result of his entrepreneur background, Mr. Hafeez enjoys advising business owners on a variety of matters including corporate formation, governance, sale/purchase of assets, and acquisitions. Tariq is increasingly focused on providing legal counsel to health care related businesses including physicians' practices and home health care providers.

Over the past 10 years, Mr. Hafeez has worked at a large corporate law firm based in Detroit and has also served as a prosecutor with the Michigan Attorney General's Office handling hundreds of cases, pretrials and trials in courts throughout the State. He received his undergraduate and law degrees from the University of Michigan.

Contact Tariq:  
Northville, MI  
Phone:  
248-468-4536  
Email:  
THafeez@fb-firm.com

Tariq is married and is the proud father of three beautiful girls. He serves on the board of Crescent Academy International, a private school located in Canton Michigan.

# About the Author:

## Breeda K. O'Leary-Holder



Ms. O'Leary-Holder practices in the areas of criminal defense, municipal law, civil litigation, family law, and probate. She has worked in the Federal Defender's Office assisting in the representation of federal criminal defendants. She has also worked in the State Appellate Defender's Office assisting in the representation of criminal defendants at the appellate level.

Ms. O'Leary-Holder graduated in the top five percent of her class from Thomas M. Cooley Law School in 2011. While in law school, she was a Senior Associate Editor for the Thomas M. Cooley Law Review. She also served as a member of the Grade Appeals Board and the Criminal Law Society. Ms. O'Leary-Holder earned her undergraduate degree from James Madison College at Michigan State University in Political Theory and Constitutional Democracy.

Contact Breeda:  
Northville, MI

Phone:

248-468-4536

Email:

[Boleary@fb-firm.com](mailto:Boleary@fb-firm.com)

# Table Of Contents:

Chapter 1: LARA & The Bureau of Health Professions .....	1
Chapter 2: Conduct that may lead to an Investigation .....	2
Chapter 3: The Disciplinary Process of an Administrative Complaint .....	3
Chapter 4: Frequently Asked Questions .....	8
Chapter 5: Additional Guidance .....	10
Fausone Bohn, LLP About the Firm .....	13

# Chapter 1:

## INTRODUCTION TO LARA & THE BUREAU OF HEALTH PROFESSIONS



Whether you are a doctor, nurse, dentist, physical therapist or other health care professional– you have worked hard to obtain and maintain your professional license and reputation. Complaints from patients or colleagues about your work can be a source of great pain and anxiety, especially when unwarranted. Moreover, these complaints can trigger an investigation and filing of an administrative complaint by the State agency in charge of regulating health care professionals in Michigan.

This e-book will provide you with basic information about what to expect if a complaint is filed against you , grounds for a complaint being filed, and how to defend against allegations that could ultimately affect your ability to work as a health care professional in Michigan.

The Department of Licensing and Regulatory Affairs (LARA), through the Bureau of Health Professions (Bureau), regulates over 40,000 licensed health care professionals in Michigan.

The Bureau is charged with investigating violations and enforcing the Michigan Public Health Code MCL 333.1101 et seq.

An investigation initiated by the Bureau may lead to the filing of an administrative complaint against a health care professional whose license is governed by the Public Health Code.



# Chapter 2:

## CONDUCT THAT MAY RESULT IN AN INVESTIGATION & ADMINISTRATIVE COMPLAINT



An investigation of a health care professional by the Bureau may be initiated as a result of a complaint made by a patient, a colleague, or other complainant. Typical allegations by patients or colleagues involve issues of competency, negligence and/or quality of care (sometimes referred to as “due care”). Examples include a health care professionals’ negligent performance of a medical procedure; claims of medical malpractice; inappropriate sexual relationship between a health care professional and a patient and falsification and/or alteration of medical records.

The Bureau may also investigate a health care professional and ultimately file an administrative complaint based on external factors which the Bureau is made privy to in accordance with State and/or Federal statutes requiring notice to be given to the Bureau. Examples include a health care professionals’ conviction of a misdemeanor punishable by imprisonment for a maximum of two years or involving the illegal delivery, possession or use of a controlled substance; conviction of a felony; conviction of a misdemeanor or felony involving fraud; conviction of Medicare fraud; a licensee’s ineligibility to participate in a federally funded health insurance program; a disciplinary action by a licensing board in a different state, failure to report an out of state licensing board’s rejection of an application for a professional license, and more.

# Chapter 3:

## THE DISCIPLINARY PROCESS OF AN ADMINISTRATIVE COMPLAINT

### Step 1:

### Review the administrative complaint.

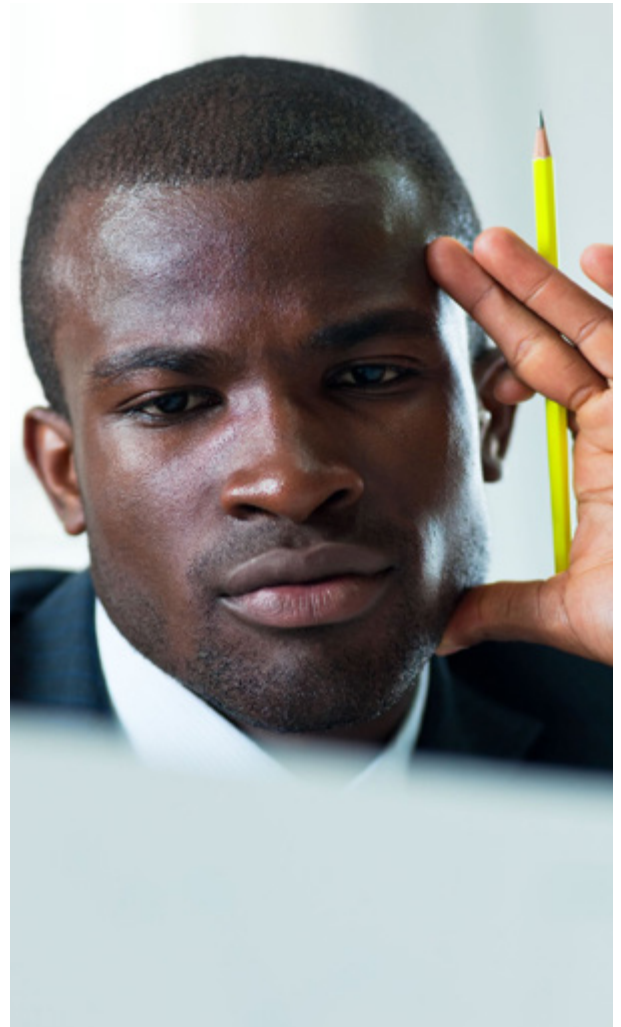
You will receive a letter. Or you could get a phone call. One way or another you will be notified that someone is investigating your license as a result of some type of informal or formal complaint that's been made. It is at this point that you need to be prepared to defend yourself.

#### WHAT IF AN ADMINISTRATIVE COMPLAINT HAS NOT BEEN FILED YET?

If you have been made aware that you are under investigation, but an administrative complaint has not yet been filed, you and your attorney may contact the Bureau to meet with a representative to discuss the allegations and investigation.

#### WHAT IF AN ADMINISTRATIVE COMPLAINT HAS ALREADY BEEN FILED?

If an administrative complaint has been filed, you must first review it carefully with an attorney. MCL 333.16221 lists all the grounds for disciplinary actions against health care professional licensees. Your experience working within your particular health care field will be valuable to your attorney in the evaluation of the allegations.



## Step 2:

### Answer the administrative complaint.

The administrative complaint must be answered within 30 days after you receive it. If you fail to answer the complaint, you will be deemed to have admitted all of the allegations and the Department will refer the matter to the Disciplinary Subcommittee (DSC) to determine the appropriate sanctions. Never let that happen.

“THE ADMINISTRATIVE COMPLAINT MUST BE ANSWERED WITHIN 30 DAYS OF BEING RECEIVED OR YOU WILL BE DEEMED TO HAVE ADMITTED ALL OF THE ALLEGATIONS.”

## Step 3:

### The compliance conference.

The compliance conference is an informal opportunity to meet with a representative of LARA or the Bureau to present evidence demonstrating your compliance with the Public Health Code or to present mitigating information for the purpose of settlement. The best preparation for the compliance conference is to work with your attorney to prepare a thorough answer to the administrative complaint. You can also bring up other facts that may help mitigate your actions for the purpose of obtaining a dismissal or other settlement that you may not have otherwise included in the answer.



## Step 4:

Discuss entering into a consent order.



At the conclusion of the compliance conference, you may be offered a settlement agreement to resolve the claims against you in the administrative complaint. Examine the full ramifications of entering into any consent order. The DSC must approve any settlement. The implications of agreeing to a consent order may include making it difficult for you to seek licensure from other states or to continue your education

and may adversely affect your employment situation. **Once the DSC adopts a consent order, it is final and permanent and cannot be expunged at a later date.** Moreover, the consent order will also be reported to the National Practitioner Data Bank (NPDB), an electronic repository of all adverse actions against licenses, clinical privileges, and professional society memberships of health care practitioners.

## Step 5:

### Prepare for the administrative hearing.

If you are unhappy with, or not offered a proposed settlement of the allegations in the administrative complaint, you will need to request a formal administrative hearing before a hearing officer. The Michigan Department of Attorney General represents LARA in administrative proceedings. Before the administrative hearing, your attorney can attempt to contact the assistant attorney general in charge of handling the case to discuss resolution. However, the DSC must approve any settlement agreements. If no resolution is reached, the administrative hearing will be conducted.



## Step 6:

# Request reconsideration of Sanctions & file an appeal.

Under Michigan law, only a DSC has the authority to sanction a licensee. Sanctions can be severe, including a revocation or a suspension of a healthcare license. Sanctions may also include a period of probation and payment of fines. Sanctions are publicly reported by the Bureau and are also entered into the NPDB. Sanctions against licensed health care professionals, no matter the severity of the sanctions, may result in the termination of employment or affect a licensee's ability to receive licensure in other states.



If the DSC ultimately sanctions your license, and you believe that the sanction imposed was excessive or otherwise inappropriate, your attorney can file a request for reconsideration with the DSC on your behalf asking the DSC to reconsider and reevaluate the sanction (or sanctions). If granted, the DSC will modify the order accordingly.

If the DSC denies the request for reconsideration, you can choose to file for judicial review at the circuit court level.

# Chapter 4:

## FREQUENTLY ASKED QUESTIONS

**Q.** HOW IS AN INVESTIGATION INITIATED?

**A.** The Bureau's investigation is initiated by its determination that a reasonable basis exists to believe that the licensee violated the Public Health Code. Within 90 days after an investigation is initiated, the Bureau may issue a formal administrative complaint.

**Q.** WHO IS ON THE DISCIPLINARY SUBCOMMITTEE (DSC)?

**A.** A DSC is comprised of two public members and three professional members of the board established by the Public Health Code to govern each health profession. For example, if the Bureau were investigating a nurse for a possible violation of the Public Health Code, the DSC would include members of the Board of Nursing.

**Q.** WHAT HAPPENS IF I MISS MY HEARING?

**A.** Unless a continuance has been granted, a licensee's failure to appear or to be represented at a scheduled hearing is treated as a default and an admission of the allegations in the complaint. The hearing officer must notify the DSC of the individual's failure to appear and forward a copy of the complaint and any other relevant records to the DSC, which may then impose an appropriate sanction.

# FAQs CONTINUED

## Q. WHAT ARE GROUNDS FOR SANCTIONS?

A. Below are some of the grounds that, if investigated by the Bureau and determined to have occurred, could result in sanctions, including the revocation of a health care professional's license:

- 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 practice the health profession
- Conviction of a misdemeanor punishable by imprisonment for a maximum term of two years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony (i.e. Medicare or Medicaid Fraud) (A certified copy of the court record is conclusive evidence of the conviction.)
- Conviction of a misdemeanor or a 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.)
- 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.)
- 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 (A certified copy of the court record is conclusive evidence of the conviction.)
- Violation of federal anti-kickback or Stark laws

# Chapter 5:

## ADDITIONAL GUIDANCE

### **I.** How to answer a formal complaint:

The administrative complaint should be answered point by point in a similar fashion to answering a civil complaint. Any allegations that are true should be admitted, those false, denied, and any that cannot be answered, due to the lack of sufficient information, should be answered to reflect that fact. The answer should be clear and easy to read even for a non-attorney.

Do not just answer the administrative complaint with legal jargon. Your attorney should make a case to the Bureau that you are a competent health care professional. In the answer include any documents such as affidavits, letters of recommendation, employee evaluations, awards, positive evaluations, thank-you notes from patients, diplomas, and other supporting materials that mitigate or otherwise call into question the allegations made in the administrative complaint.

At the time of filing the answer, your attorney may also take the following actions on your behalf:

- Request that a board conferee be contacted for a proposed settlement in resolution of the matter,
- Ask to attend a compliance conference, or
- Proceed to a formal administrative hearing before an administrative law judge.

## II. The compliance conference:

Before referring the matter to a DSC, the Bureau can hold a compliance conference with the licensee. The compliance conference provides the licensee with an opportunity to discuss the allegations with a Bureau representative and to show compliance with the Public Health Code. This



is your chance to get a recommendation by the Bureau to dismiss the administrative complaint.

The LARA representative that you will meet at the compliance conference will not have the authority to make the final decision to dismiss or otherwise settle the matter with your client. Any such final decision needs to be made by the DSC. However the LARA representative can help achieve a proposed settlement or dismissal. The LARA

representative is not typically an attorney, and accordingly, arguments in your support should not be limited to legal arguments. Bring up your good works within your profession, your professional accomplishments, resume, degrees, and other factors that may cast you in a favorable light or mitigate or counter the allegations.



### III. The administrative hearing:



If no agreement is reached at the compliance conference, or if the DSC rejects the agreement, the matter proceeds to a formal hearing before a hearing officer. LARA may hold hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted under the Administrative Procedures Act of 1969.



At the administrative hearing, LARA is represented by an assistant attorney general. You will need a skilled attorney.

The hearing officer must conduct the hearing within 60 days after the compliance conference, at which an agreement is not reached or after the agreement is rejected by the DSC, unless a new agreement is reached and approved by the DSC.

At the conclusion of the hearing, the DSC will meet within 60 days after the receipt of the recommended findings of fact and conclusions of law from a hearings examiner to impose a penalty. If the DSC finds that a preponderance of the evidence supports the recommended findings of fact and conclusions of the hearings examiner, the DSC will impose an appropriate sanction. These sanctions can range from revocation of a licensee's license to probation, fines, and community service and restitution.



# FAUSONE BOHN, LLP

## ATTORNEYS AT LAW

### About the Firm:

At the Northville, Michigan, law firm of Fausone Bohn, LLP, our lawyers take care of legal needs that small to mid-sized businesses, individuals and families require. We assist with everything from business formation, to divorces, to criminal defense.

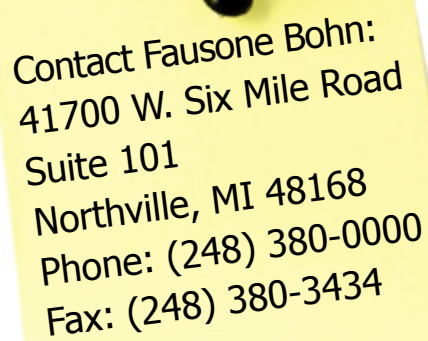
Our current client base includes Michigan families; Fortune 500 companies; municipal governments; industrial, commercial and residential developers and individuals needing legal assistance. To find out how we can help you, contact our Michigan attorneys for a consultation.

When you hire Fausone Bohn, LLP, you will receive legal counsel from lawyers who understand that an innovative and progressive approach is necessary to fully resolve your legal matter. We help develop solutions that are tailored to your individual needs and that solve problems in creative and effective ways.

Our firm is respected by its peers for providing quality advice and service to clients. We have individual attorneys included in this years Michigan Super Lawyers list. Both the firm and individual attorneys are included in the Best Lawyers in America list and rated "AV®" by Martindale-Hubbell

Law Directory\*. This is the highest rating awarded by Martindale-Hubbell, the most respected, peer-review authority in the country.

Our firm started more than 15 years ago. Over the years we have grown to provide any and all counsel you may need.



Contact Fausone Bohn:  
41700 W. Six Mile Road  
Suite 101  
Northville, MI 48168  
Phone: (248) 380-0000  
Fax: (248) 380-3434