



Investigation and Prosecution of Misconduct in Medical Licensing Cases

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Question 1

- ▶ What is the purpose of the Medical Licensing Section of the Office of the Indiana Attorney General?
 - ▶ A) To punish licensees who have committed a licensing violation.
 - ▶ B) To protect the public from unsafe licensees.
 - ▶ C) To obtain as many fines as possible.
 - ▶ D) To protect licensees from unfounded grievances.
 - ▶ E) A and B.
 - ▶ F) B and D.
 - ▶ G) None of the above.

Statutes and Rules

- **I.C. 25-1-7** - Investigating and Prosecuting Complaints
- **I.C. 4-21.5** - AOPA
- **I.C. 25-1-9** - Medical Licensing Standards of Practice (charge statute)
 - ▶ **I.C. 25** - profession specific
 - ▶ **IAC - 800s**, profession specific
 - ▶ **HIPAA, communicable disease, sterile compounding, sterile injections, etc.**

Investigation Of Complaints

I.C. 25-1-7

- ▶ AG's office receives complaint
 - ▶ Form on Website
 - ▶ Must be:
 - ▶ Written
 - ▶ Signed
 - ▶ Filed with Director of Consumer Protection Division
 - ▶ Consumer complaint form is an agency form used for the entire Consumer Protection Division
 - ▶ May be filed by anyone
 - ▶ Including the Board
 - ▶ Including IPLA
 - ▶ Including a non-patient consumer

Investigation Of Complaints

I.C. 25-1-7

- ▶ AG is responsible for investigation
- ▶ Please be nice to the case analysts/investigators doing the investigation.
- ▶ AG notifies licensee
 - ▶ Copy of Complaint
 - ▶ Cover letter

Investigation Of Complaints

I.C. 25-1-7

- ▶ Sometimes close right away
 - ▶ Lack of jurisdiction
 - ▶ Not a licensing issue
 - ▶ Complaint doesn't state an issue which could be a licensing violation
- ▶ Still send notification, but different cover letter

Investigation Of Complaints

I.C. 25-1-7

- ▶ If not closed right away:
 - ▶ Send complaint and cover letter requesting a response
- ▶ Investigation
 - ▶ Limited to areas where there could be a violation of statutes that govern the profession
 - ▶ If we discover an issue not raised in complaint, then notify licensee:
 - ▶ To allow them opportunity to respond to that issue.
 - ▶ For instance, a licensee is terminated from employment for drug diversion, and the OAG discovers in the course of the investigation that the individual was terminated from her next employer for the same issue.

Investigation Of Complaints

I.C. 25-1-7

- ▶ How we investigate
 - ▶ Talking to witnesses
 - ▶ Obtaining records
 - ▶ Consulting experts in the relevant field
 - ▶ Some licensees send a response to complainant
- ▶ AG can subpoena witnesses and documents in the course of the investigation.

Question 2

- ▶ How many active investigations does the Medical Licensing Section currently have?
 - ▶ A) 0 - 400
 - ▶ B) 401 - 800
 - ▶ C) 801 - 1200
 - ▶ D) More than 1200

Board Summaries

- ▶ At the end of the investigation, a summary of the investigation is prepared for review by the DAG, assistant section chief, and the board liaison.
- ▶ Sometimes these summaries are reviewed further.
- ▶ Summary makes a recommendation on what to do with the file, and includes opinions and interpretations of the OAG.
- ▶ OAG closes about 85% of cases at this stage.

Investigation Of Complaints

I.C. 25-1-7

- ▶ May be closed after investigation
 - ▶ If no merit found
 - ▶ If not equitable
 - ▶ If license renewed since complaint filed and board was aware of substance of complaint
- ▶ Closure Options
 - ▶ Closure
 - ▶ Close with Warning Letter
 - ▶ Close with Warning Letter with Conditions (Deferral)

Investigation Of Complaints

I.C. 25-1-7

- ▶ If AG staff is unsure, seek liaison input.
 - ▶ Usually standard of care issues
 - ▶ Technical issues
- ▶ If AG believes the cause could have merit, but we cannot prove the substance, then cause should be dismissed.
- ▶ Meritorious → Discipline Warranted → Can prove



File Administrative Complaint

Prosecution Of Complaints

I.C. 25-1-7

- ▶ Administrative Complaint Filed:
 - ▶ With the Governing Board
 - ▶ Governing Board has jurisdiction
- ▶ 1st time the complaint (grievance) is public record
- ▶ Licensee notified of:
 - ▶ Nature of complaint
 - ▶ Ramifications of complaint

Prosecution Of Complaints

I.C. 4-21.5-2

- Procedure
 - Administrative Order and Procedures Act (IC 4-21.5-2)
 - Proceeds like other trials
 - Licensee or AG may request a settlement conference
 - Presided over by Hearing Officer
 - Board Member (normally the Liaison)
 - May be held at time of Board meeting
 - May be held at another convenient time

Prosecution Of Complaints

I.C. 4-21.5-2

- ▶ Proceeds like other trials
 - ▶ May file Settlement Agreement
 - ▶ Admit facts
 - ▶ Agreed Sanction
 - ▶ May or may not be accepted by board
- ▶ No Settlement → Trial

Prosecution Of Complaints

I.C. 4-21.5-2

- ▶ Trial
 - ▶ Licensee has right to counsel
 - ▶ At own expense
 - ▶ Burden is on State to prove misconduct
 - ▶ Opening Statements
 - ▶ Presentation of Evidence
 - ▶ Documentary
 - ▶ Testimonial
 - ▶ Evidence Rules followed, loosely
 - ▶ Closing Argument

Prosecution Of Complaints

- ▶ Board deliberates publicly, but not on record
- ▶ Hearing is not bifurcated
 - ▶ Sanction evidence is presented simultaneously with misconduct evidence
 - ▶ Sanction is deliberated at same time
- ▶ Finding of misconduct and sanction decided at that time.
- ▶ Order written and mailed
- ▶ Public document

Possible Discipline (IC 25-1-9)

- ▶ Permanent revocation of license
- ▶ Suspension
- ▶ Probation
- ▶ Letter of reprimand
- ▶ Censure
- ▶ Fines (up to \$1,000 per violation)

Possible Discipline

- ▶ Probation (terms differ)
 - ▶ Regular reports re: matters that were basis of probation
 - ▶ Limit practice
 - ▶ CEU's
 - ▶ Restitution or community service
 - ▶ Peer review of records or practice monitor
 - ▶ Personal appearances before Board
 - ▶ Fines
 - ▶ Costs
 - ▶ Statutory \$5 Records Fee

Possible Discipline

- ▶ Modification or Withdrawal of Probation, if
 - ▶ After a hearing
 - ▶ Board determines
 - ▶ Deficiency leading to discipline has been remedied (withdrawal); or
 - ▶ Circumstances have changes warranting modification.

Possible Discipline

- ▶ Violations of Probation:
 - ▶ Board files Order to Show Cause
 - ▶ Burden on Licensee to show why probation should not be revoked or license further disciplined (IC 25-1-9-4(a)(10))
 - ▶ Evidentiary hearing
 - ▶ Licensee has right to counsel (at own expense)
- ▶ Indefinite probation in Indiana
 - ▶ Onus on licensee to seek withdrawal after conditions have been met

Reinstatement

- Board must be satisfied
 - After a hearing
 - Evidentiary
 - Applicant is able to practice with
 - Reasonable skill,
 - Safety, and
 - Competency
 - Often reinstate on probation
- After Revocation
 - Individual no longer has a license
 - Must apply for NEW license
 - not eligible to apply until 7 years after discipline imposed

Emergency Suspensions

- ▶ Board has capacity to summarily suspend a licensee if they determine the licensee is a clear and immediate danger to public
- ▶ High standard to meet
- ▶ Burden is on the State
- ▶ Notice requirements relaxed
- ▶ Common example would be licensee has been charged with a violent crime against the person, including violent or sexually based crimes

Miscellaneous

- ▶ Can be denied license if property taxes not paid
- ▶ Shall be suspended if child support court finds willful non-payment.

Question 3

- ▶ What is the most common reason for licensees to be disciplined?
 - ▶ A) Malpractice.
 - ▶ B) Renewal fraud
 - ▶ C) Substance abuse/diversion for personal use
 - ▶ D) Inappropriate prescribing

Imposing Discipline

- ▶ IC 25-1-9-4
 - ▶ This is the charge statute
 - ▶ All Administrative Complaints should reference one or more provisions
 - ▶ Findings under 25-1-9-4 allows the Board to impose discipline

Imposing Discipline

IC 25-1-9-4(a)(1)

- ▶ Discipline imposed if Board finds:
 - ▶ Fraud:
 - ▶ In obtaining license
 - ▶ In delivering services
 - ▶ False/misleading advertising
 - ▶ Convicted of crime, or assessed civil penalty, involving fraudulent billing

Imposing Discipline

IC 25-1-9-4(a)(2)

- ▶ Discipline imposed if Board finds:
 - ▶ Licensee has been **convicted** of a crime that
 - ▶ Directly bears upon practitioner's ability to continue practicing competently; or
 - ▶ Is harmful to public.

Imposing Discipline

IC 25-1-9-4(a)(3)

- ▶ Knowing violation of state or federal statute or rule regulating the profession
- ▶ This would include violation of IC and IAC that are specific to the licensee's profession
- ▶ Would also include laws not specific to the profession, like HIPAA or communicable disease regulations

Imposing Discipline

IC 25-1-9-4(a)(4)

- ▶ Discipline imposed if Board finds:
 - ▶ **Continued to practice, though unfit due to:**
 - ▶ Professional incompetence, including undertaking activities not qualified to performed
 - ▶ Failure to keep abreast of current theory or practice
 - ▶ Physical or mental disability
 - ▶ Drug or alcohol abuse, addiction, or severe dependency

Imposing Discipline

IC 25-1-9-4(a)(5) and (6)

- ▶ Discipline imposed if Board finds:
 - ▶ Lewd or immoral conduct in delivery of services
 - ▶ Allowing use of name to be used by someone beyond scope of that person's training, experience, or competence

Imposing Discipline

IC 25-1-9-4(a)(7) and (8)

- ▶ Discipline imposed if Board finds:
 - ▶ Disciplinary action taken against licensee in other state on grounds similar to Indiana law
 - ▶ Diversion of drugs
 - ▶ Diversion is transfer of any legally prescribed controlled substance from the individual for whom it was prescribed to another person for any illicit use
 - ▶ Please complete and document a full investigation if you are a risk manager/loss prevention specialist/employer.

Imposing Discipline

IC 25-1-9-4(a)(9) - (13)

- ▶ Discipline imposed if Board finds:
 - ▶ Knowingly prescribed to addict
 - ▶ Failed to comply with order imposing discipline (probation)
 - ▶ Engaged in sexual contact with patient or used patient-provider relationship to solicit sexual contact with patient
 - ▶ Practitioner who is a participating provider of a health maintenance organization has knowingly collected or attempted to collect from a subscriber or enrollee of the health maintenance organization any sums that are owed by the health maintenance organization
 - ▶ Assisted another person in committing an act that would be grounds for discipline

Question 4

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Thank you

Questions?

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