

Is Your License on the Line?

(Or 50 ways to lose your license)

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Objectives

At the conclusion of this presentation:

- The attendee will list three ways a license could be put in jeopardy.
- The attendee will state one method by which a license in jeopardy can be successfully retained.
- The attendee will state the purpose of the Healthcare Provider Recovery Program.

Background on Licensure of RTs

2004-PA-0003

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Act No. 3

Public Acts of 2004

Approved by the Governor

February 17, 2004

Filed with the Secretary of State

February 18, 2004

EFFECTIVE DATE: July 1, 2004

STATE OF MICHIGAN

92ND LEGISLATURE

REGULAR SESSION OF 2004

Introduced by Rep. Ehardt

ENROLLED HOUSE BILL No. 4236

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services; to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16131, 16186, and 16263 (MCL 333.16131, 333.16186, and 333.16263), sections 16131 and 16263 as amended by 2001 PA 139 and section 16186 as amended by 2002 PA 643, and by adding section 16344 and part 187.

The People of the State of Michigan enact:

Sec. 16131. The terms of office of individual members of the boards and task forces, except those appointed to fill vacancies, expire 4 years after appointment as follows:

Nursing June 30

Nursing home administrator June 30

Optometry June 30

What the License Means

- Amends Public Health Code
 - “Protect and promote the public health”
- Restricts use of title
 - Respiratory Therapist
 - Respiratory Therapy Practitioner
 - Licensed Respiratory Therapist
 - Licensed Respiratory Care Practitioner
 - R.T., R.C.P., L.R.T., L.R.C.P.
- Defines the “Practice of Respiratory Care” and “Respiratory Care Services”
 - Scope of practice
- Effective date: Initially June 1, 2004, however that was amended to December 1, 2005 in proposed Rules & Regulations.

Exclusionary Clause of License

Sec. 18707. (1) An individual shall not engage in the practice of respiratory care or provide or offer to provide respiratory care services unless licensed under this part.

(2) Subsection (1) does not prevent any of the following:

(a) An individual licensed under any other part or act from performing activities that are considered respiratory care services if those activities are within the individual's scope of practice and if the individual does not use the titles protected under section 18703.

(b) An individual not licensed under this part from performing activities that are considered respiratory care services while under the supervision of an individual who is licensed under this part as a respiratory therapist or respiratory care practitioner, if the individual does not use the titles protected under section 18703.

(c) An individual not licensed under this part from performing activities that are considered diagnostic services if the individual possesses a level of training approved by the board, has successfully passed a credentialing examination approved by the board, and if the individual does not use the titles protected under section 18703.

(d) The practice of respiratory care which is an integral part of a program of study by students enrolled in an accredited respiratory therapist educational program approved by the board, provided that they are identified as a student and provide respiratory care services only while under the supervision of a licensed respiratory therapist or respiratory care practitioner.

(e) Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a licensed respiratory therapist or respiratory care practitioner.

These individuals (except "a" & "e") can perform RT procedures, but ONLY under the supervision of a licensed respiratory therapist.

50 Ways to Lose Your License.

- Fortunately...not 50 ways.
 - Or maybe!

Have you ever been convicted of a felony?

- Intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function that involves the use of force or violence, or that involves the threat of the use of force or violence.
- Cruelty or torture.
- Intentional or reckless harm to a vulnerable adult by a caregiver or person with authority over a vulnerable adult.
- Criminal sexual conduct (First, Second, or Third Degree)
- Abuse or neglect.
- Use of a firearm or dangerous weapon.
- Diversion or adulteration of a prescription drug or other medications.
- An attempt or conspiracy to commit any of the felonies listed above.
- Shoplifting products valued at greater than \$1,000.
- Felony DUI. (3rd offense in 7 years or involving an accident that led to bodily harm or death.

Have you been convicted of a misdemeanor punishable by imprisonment for a maximum term of 2 years?

- Assault and Battery.
- Criminal Sexual Conduct (4th degree).
- Disturbing the Peace.
- Embezzlement of property or money valued at less than \$200.00.
- Shoplifting of goods valued at less than \$200.00.
- Indecent Exposure.
- Negligent Homicide.
- Misdemeanor DUI (1st or 2nd offense)
 - Includes more than alcohol.

Have you ever been convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance (including motor vehicle violations)?

Have you been treated for substance abuse in the past two years?

Have you had 3 or more malpractice settlements, awards, or judgments in any consecutive five-year period?

Have you had one or more malpractice settlements, awards, or judgments totaling \$200,000 or more in any consecutive five-year period?

Some facts about Michigan

- 5000 license holders.
- There are limited instances of a therapist's license being questioned, but it is a real problem for them.
 - First quarter of 2016 – 1 individual.
- Punishment can range from reprimands, fines imposed, probation, suspensions, or revocation.
- Two most common reasons (for RTs) are:
 - Negligence or incompetence; practice outside of scope of practice.
 - Substance abuse/Mental health.

Types of Complaints

- Negligence
- Incompetence
- Practice outside scope
- Poor moral character
- Substance abuse
- Mental Incompetence
- Criminal convictions
- Other Acts per the PHC

Range of Sanctions

- Reprimand
- Fine/Restitution
- Probation
- Community Service
- Limitation
- Suspension
- Surrender
- Revocation

Sources of Allegations

- Citizens
- Complaint & Allegation Division
- Licensing Division
- Colleague/Peer
- Sister State Actions
- Hospitals/Employer Reporting
- Attorney General
- Law Enforcement Agencies
- HPRP
- Other Sources

Scope of Practice

- “Respiratory care services” means preventative services, diagnostic services, therapeutic services, and rehabilitative services under the written, verbal, or telecommunicated order of a physician to an individual with a disorder, disease, or abnormality of the cardiopulmonary system as diagnosed by a physician.

Scope of Practice

- Respiratory care services involve, but are not limited to, observing, assessing, and monitoring signs and symptoms, reactions, general behavior, and general physical response of individuals to respiratory care services, including determination of whether those signs, symptoms, reactions, behaviors, or general physical response exhibit abnormal characteristics; (cont.)

Scope of Practice

- the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care services; the collection of blood specimens and other bodily fluids and tissues for, and the performance of, cardiopulmonary diagnostic testing procedures including, but not limited to, blood gas analysis; (cont.)

Scope of Practice

- development, implementation, and modification of respiratory care treatment plans based on assessed abnormalities of the cardiopulmonary system, respiratory care protocols, clinical pathways, referrals, and written, verbal, or telecommunicated orders of a physician; application, operation, and management of mechanical ventilatory support and other means of life support; and the initiation of emergency procedures under the rules promulgated by the board.

Negligent Practice

- Health care facilities are required to report dismissals for cause to the respective board.
- The board initiates an investigation into the incident(s).
- Administrative resolution:
 - Consent Order and Stipulation (Informal agreement between board and licensee with LARA assistance).
 - Administrative Hearing.
- Review and disposition – Final actions by Board.
- Appeal – Ability of licensee to ask for second review.

Legal Assistance

- Administrative Hearings are not like a regular courtroom.
- Legal counsel, although costly, may preempt the loss/suspension of a license.

Health Professionals Recovery Program (HPRP)

- Created in 1994 under majority regulatory reform legislation and endorsed by licensing boards, professional societies and associations.
- Monitoring Program for Health Professionals with substance abuse and mental health issues.
- Includes both Non-Regulatory and Regulatory participants:
 - Confidential-not subject to discovery subpoena or FOIA for Non-Regulatory .
 - Evaluation, treatment and monitoring.
 - Costs are responsibility of licensee:
 - EAP' s or private insurance may assist.
- Evaluates new applicants upon request.

HPRP Program Oversight

- Program operated by private contractor to maintain confidentiality.
- Under the authority of the Health Professional Recovery Committee (HPRC) with contract funding and administrative services provided by LARA.
- Statewide committee with members representing health professions regulated under the PHC, with 2 public members appointed by LARA.
- Authority to develop P&P for the program and oversee the performance of the contractor operating the program.
- Sources of referral same as for disciplinary actions.

Reasons for Referral to HPRP

- **Emotional or Behavioral changes.**
 - Includes behaviors affecting work performance, mental health stability.
- **Change in Work Habits.**
 - Time/attendance, work incompleteness or error issues.
- **Physical Changes.**
 - Deterioration in personal hygiene, change in sleep or eating patterns (weight gain/loss) .
- **Substance Abuse/Addiction.**
 - Documented diversion of controlled substances, observed intoxicated behaviors in workplace, positive drug screens, documented convictions/legal issues related to alcohol or other drugs.

What Do I Watch For?

Sign & Symptoms

- ✓ Absences from the unit for extended periods.
- ✓ Frequent trips to the bathroom.
- ✓ Arriving late or leaving early.
- ✓ Making an excessive number of mistakes, including medication errors.

Physical changes

- ✓ Subtle alterations in appearance that escalate over time.
- ✓ Increasing isolation from colleagues.
- ✓ Inappropriate verbal or emotional responses.
- ✓ Diminished alertness, confusion or memory lapses.

Diversion Behaviors

- ✓ Incorrect controlled substance counts.
- ✓ Large amounts of controlled substance wastage.
- ✓ Numerous corrections of med records.
- ✓ Frequent reports of ineffective pain relief from patients.
- ✓ Offers to medicate co-workers patients for pain.
- ✓ Altered verbal or phone medication orders.
- ✓ Variations in controlled substance discrepancies among shifts or days of the week.

Never sign for any drug waste you did not directly witness!

Benefits of the HPRP

- Protects the public's health & safety while encouraging and supporting the health care professional's recovery.
- Substance use and/or mental health disorders are treatable conditions:
 - ✧ Early identification and intervention lead to more positive outcomes.
 - ✧ Careers will be saved.
 - ✧ No licensing actions (if complaint, i.e., no loss of license).
 - ✧ Able to work while addressing issues.
 - ✧ Participant involvement and records are not subject to public disclosure.
 - ✧ Fair consequences for unhealthy behaviors.

- Questions about Licensure?
 - http://www.michigan.gov/lara/0,4601,7-154-72600_72603_27529_29413---,00.html.
- Contact HPRP?

800-453-3784

www.hprp.org