



## **Track 3 – Session 5**

# **Responding to Misconduct Investigations by Health Care Licensing Agencies**

## About the Presenters...

**Tamara B. Packard**, a Partner in Cullen Weston Pines & Bach LLP, has been practicing law since 1994, primarily in the areas of litigation and appeals, emphasizing employee rights. She is rated "AV Preeminent®" by Martindale-Hubbell, and also appears in other top lawyer listings. She serves as the Chair of CWPB's Litigation Practice Group. Ms. Packard regularly represents licensed health-care professionals in misconduct investigations and proceedings before various boards in the Wisconsin Department of Safety and Professional Services, including the Nursing, Veterinary Examining and Medical Examining Boards. She also assists recent law graduates and attorneys in securing admission (and readmission) to the Wisconsin Bar. Ms. Packard is a Fellow of the Litigation Counsel of America, a Master in the James E. Doyle Chapter of the American Inns of Court, and a participating member of the National Employment Lawyers Association and the Wisconsin Employment Lawyers Association. She is admitted to practice in the state courts of Wisconsin and Michigan, the Federal District Courts for the Eastern and Western Districts of Wisconsin, the Eastern District of Michigan and before the Seventh Circuit Court of Appeals. She also regularly appears on behalf of clients at the Wisconsin Equal Rights Division (ERD), the Federal Equal Employment Opportunities Commission (EEOC), and other administrative agencies.

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## **RESPONDING TO MISCONDUCT INVESTIGATIONS BY WISCONSIN'S HEALTH CARE LICENSING AGENCY**

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### **I. OVERVIEW OF WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES (“DSPS”) REGULATION OF HEALTH PROFESSIONAL LICENSES.**

- a. Formerly (more commonly) known as “Department of Regulation and Licensing.”
- b. Who they regulate: most health care professionals. *See* <http://dsps.wi.gov/Licenses-Permits/Credentialing/Health-Professions>.
- c. Authority derives from Wis. Stat. Ch. 440.03.
- d. DSPS responsible for ensuring safe and competent practice of licensed professionals.
- e. DSPS organized into five divisions: (1) Legal Services & Compliance, (2) Policy Development, (3) Management Services, (4) Credential Processing, and (5) Industry Services.
- f. The Wisconsin Department of Health Services (“DHS”) regulates a few others who work in the health care field, as well as many health care facilities. *See* Wis. Stat. Ch. 256, Wis. Admin. Code Ch. DHS 110; Wis. Stat. Chs. 50, 51 and 146, Wis. Admin. Code Ch. DHS 13.
- g. Overview of DSPS’s Investigatory Process.
  - Third party (informal) complaint (Wis. Admin. Code § SPS 2.035)
  - Open/screening panel/refer to another agency/close
  - Investigation (*See, e.g.,* Wis. Stat. 440.03(3m), (3q), (5))
  - Proposed settlement: discipline/administrative warning/education
  - Formal Complaint, Notice, Answer & Discovery (Wis. Admin. Code §§ SPS 2.06-2.09, 2.13)
  - Hearing before ALJ from Department of Administration, Division of Hearings and Appeals (Wis. Admin. Code §§ SPS 2.10, 2.15)
  - Proposed Decision by ALJ (Wis. Admin. Code § SPS 2.10(a))
  - Adoption or Modification by DSPS of ALJ’s Proposed Decision

- Appeal to Circuit Court—review of agency decision (Wis. Stat. 227.52, et seq.)
- Appeal to Court of Appeals, Supreme Court—review of agency decision (*See Zip Sort, Inc. v. DOR*, 2001 WI App 185, ¶ 11, 247 Wis. 2d 295, 634 N.W.2d 99)

#### **h. Exception: Summary Suspension**

- Third party (informal) complaint (Wis. Admin. Code § SPS 2.035) or DSPS discovery of an arrest or criminal charges
- Petition for Summary Suspension (Wis. Admin. Code § SPS 6.04)
- Notice to Licensee (Wis. Admin. Code § SPS 6.05)
- Probable cause finding => summary suspension (Wis. Admin. Code § SPS 6.06); Not an evidentiary hearing
- Formal disciplinary proceedings must be brought within 10 days of summary suspension, entitling licensee to full discovery and due process rights above (Wis. Admin. Code § SPS 6.10)
- Following summary suspension, licensee may request a hearing to show cause, which is a due process hearing (Wis. Admin. Code § SPS 6.09), generally held before an ALJ at Division of Hearings & Appeals
- If DSPS does not show — by a preponderance of the evidence — that suspension should be continued, license is restored immediately. (Wis. Admin. Code § SPS 6.09(4) and (5))

#### **i. Statistics**

- Approximately 2500 complaints received per year
- In 2013 (most recent data available), 542 of those complaints were within the Medical Examining Board's jurisdiction.
- Half of those 542 were closed without investigation
- 120 were closed following investigation with no discipline (including 23 Administrative Warnings), average time: 6.38 months
- Average time to “formal” closure: 9.59 months
- Most common discipline from MEB: reprimands and license limitations

- j. Forms of disciplinary actions by DSPS: reprimand, suspension (with or without stay and conditions), revocation, all with or without limitations
- k. Forms of non-disciplinary actions DSPS may take in lieu of discipline: administrative warning, remedial education order, PAP, surrender
- l. Purpose of discipline: **NOT PUNISHMENT.** (1) Rehabilitation of licensee; (2) Protection of public from future conduct by licensee; (3) Deter other licensees from similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976); *Galang v. State Medical Examining Board*, 168 Wis. 2d 695, 484 N.W.2d 375 (Ct. App. 1992).
- m. DSPS publishes Reports of its decisions in a searchable online database at <https://online.drl.wi.gov/orders/searchorders.aspx>

**II. HYPOTHETICAL A: Medical clinic receives a report from a patient that a physician touched patient in an “inappropriate” way. Physician is well-respected, no previous complaints, long-term relationship with clinic, well-known member of community.**

- a. Clinic options to address this internal complaint
  - Investigate using own HR
  - Investigate with assistance from outside counsel
  - Do nothing

Continue Hypothetical A: Clinic’s own investigation results in no finding of wrongdoing, no discipline. Patient is told of result. Patient is not satisfied, makes a similar complaint to DSPS. DSPS determines issue is within their jurisdiction and the complaint merits investigation. To investigate, it asks the clinic by letter to provide patient records for the complaining patient as well as other patients with same medical condition treated by physician.

- b. What should/must the clinic do?
  - HIPPA, state law patient privacy issues
  - Patient authorization
  - Subpoena

Continue Hypothetical A: DSPS also sends a letter to the physician generally describing the complaint, asks the physician to provide the same medical records it has asked the clinic for, and to be interviewed by DSPS investigator.

c. What should/must the physician do?

- Hire a lawyer immediately
- Refer DSPS to clinic for patient records
- Communicate with DSPS either alone or through counsel (Wis. Stat. § 440.20(5)—all licensees may be disciplined for failing to respond “to the satisfaction of” the investigating board, within 30 days of request for information in connection with an investigation *of himself or herself*. **But see** Wis. Admin. Code § Med 10.03(3)(g), imposing duty on physicians to timely cooperate with an investigation of *any licensee*.)
- Communicate with clinic administration

Continue Hypothetical A: DSPS contacts other licensed professionals employed by the clinic—such as nurses and doctors—directly, asking for interviews.

d. What should/must the employees do?

- Rules of each licensed profession govern cooperation with respect to own investigation/investigation of others
- Communicate with clinic administration
- Remain cognizant of workplace rules, policies, protocols, privacy rules

e. What options do the clinic and physician have?

- advising employees how to handle
- clinic and physician’s counsel coordination, joint defense agreement (potential liability of clinic for negligence or other tort, potential license action against physician, common interests)

Continue Hypothetical A: Physician and DSPS negotiate reprimand for “communication issues,” license limitations include required continuing education, 5 years of quarterly reports from HR, 5 years of offering chaperone to all patients.

f. How might clinic react?

- Employment relationship (did physician hold any leadership positions?)
- Cost of chaperone (scheduling exams requiring chaperones on certain days or at certain times?)

- Burden of quarterly reports
- Reputation of clinic (by association)
- g. Collateral consequences for physician
  - NPDB report (permanent report)
  - Disciplinary report by DSPS publicly available with DSPS online license look-up
  - MEB newsletter to all Wisconsin physicians (and publicly available online)
  - Google searches / Reviews on social media
- Employability
  - Health care insurers
  - Malpractice insurers

**III. HYPOTHETICAL B: Nurse in a surgery center develops an opioid addiction, takes old pain pills left over from a dental surgery, then begins diverting patient medications for her own use. Employer discovers, terminates the nurse.**

- a. What must/should the surgery center do?
  - Report to DSPS?
  - Report to law enforcement?
  - Joint defense and coordination with nurse and nurse's counsel?
- b. What must/should the employee and her counsel do?
  - Report to DSPS—PAP (Wis. Admin. Code Ch. SPS 7)?
  - Treatment
  - Involve criminal defense counsel

Continue Hypothetical B: Nurse fails to communicate with own counsel/DSPS. Nurse is charged with theft of controlled substances (felony) and a criminal complaint is filed. DSPS petitions for Summary Suspension.

- c. Process of hearing on petition, granting petition, formal complaint, availability of discovery.
- d. Opportunity to conduct discovery in administrative proceedings that will also assist with defense on criminal charges

- Discovery from victims (hospital, patients), victim rights issues
- Discovery from physician and 5<sup>th</sup> Amendment issues/Stay of proceedings while criminal charges pending

Continue Hypothetical B: Nurse goes into treatment, reestablishes communication with counsel and DSPS, negotiates discipline of suspension with stay after 3 months. License limitations include direct supervision; no access to controlled substances; DSPS drug monitoring program (which is NOT PAP); pre-approval by DSPS of employment and no home health care, hospice, private duty nursing; quarterly reports from employer.

e. What does this mean for employee?

- Drug monitoring: call every day, at least 48 tests/year, reduced after 1 yr, nurse bears the cost of testing
- Employability
- Direct supervision
- Giving patients meds

f. What does it mean for the employer?

- Willing to take a risk?
- Employee who is highly motivated to meet and exceed expectations
- Direct supervision
- Teamwork
- Staffing concerns? Is it possible to arrange for safe and competent patient care given size of staff and patients' needs?



# Wisconsin Department of Safety and Professional Services

## Web Applications

### Reports of Decisions

Monitoring Forms have moved: [Current Monitoring Reports and Forms](#)

Use the [license look up](#) function to search by individual

Reports of Decisions are published on an ongoing basis following official Agency/Board action and contain orders issued by the professional regulatory boards and by the Department.

**Cautionary Note:** While every effort has been made to provide complete and accurate information, there may be discrepancies between the online copies and the original document. The original document should be consulted as the definitive representation of the order's content. Copies of the original order may be obtained by contacting the department.

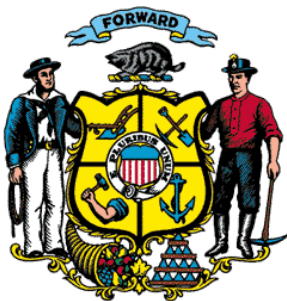
Search By :	<input type="radio"/> Board	<input checked="" type="radio"/> Profession	Sort By:	<div>Order Date</div>
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<small>*Note: Selecting certain boards with joint board relationships will automatically include orders from related boards</small>				
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[Send Questions or Comments to dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)

This brochure entitled *Information About Your Hearing, Class 2 – Disciplinary Proceeding* has been prepared by the Department of Safety and Professional Services (Department) to assist credential holders who have been named as respondents in disciplinary complaints filed against them by the Division of Legal Services and Compliance of the Department. It provides information to common questions regarding the Class 2 – Disciplinary Proceeding process. **However, it is not intended to substitute for the legal advice and assistance of an attorney.**

# Information About Your Hearing

## Class 2 – Disciplinary Proceeding



Wisconsin Department of  
Safety and Professional Services

## **Information About Your Hearing**

### **Class 2 - Disciplinary Proceeding**

A disciplinary complaint has been filed naming you as the respondent. This informational brochure has been prepared by the department to assist you by answering some common questions. **It is not intended to substitute for the legal advice and assistance of an attorney.**

#### **Topics**

- The Complaint
- Your Right to be Represented
- The Answer
- Prehearing Conferences
- Discovery and Documentary Evidence
- Witnesses and Subpoenas
- An Interpreter or other Accommodation
- Settlement
- The Hearing
- Rescheduling, Continuing, Adjourning
- The Decision
- Chapter SPS 1

#### **The Complaint**

The complaint charges you with a violation of a rule or a statute governing professional conduct, and it lists the specific acts which you are alleged to have committed which justify disciplinary action. In legal terms, the complaint is the formal document which gives you notice of what you must be prepared to defend or answer. You are now a "party" to this disciplinary proceeding called the "respondent". The Division of Legal Services and Compliance within the Department of Safety and Professional Services (Department) is the other party called the "complainant" or "division". The hearing will be conducted by an administrative law judge (ALJ) who presides as judge (ruling on procedure, evidence, and objections) and as fact-finder. The mailing addresses for both the Division of Legal Services and Compliance attorney and the ALJ are provided in the Notice of Hearing.

#### **Your Right to be Represented**

You may be represented prior to and at the hearing by an attorney, but you are not required to have one. You must make this decision, and if you decide to be represented in order to protect your legal rights, you must choose your own attorney. A disciplinary proceeding may result in revocation, suspension, or limitation of your professional credential. Neither the Division of Legal Services and Compliance attorney nor the ALJ is allowed to recommend an attorney. The State Bar of Wisconsin offers a lawyer referral service that you may call at 800-362-9082. The ALJ cannot help you prepare or present your case.

#### **The Answer**

As the Notice of Hearing provides, you are required by the rules of procedure to file a written Answer within twenty days of the day the complaint was mailed. Filing requires you to send the original Answer to the ALJ assigned to hear your case along with a copy to the Division of Legal Services and Compliance attorney whose name appears on the Notice. If meeting the 20-day deadline poses a problem for you, you should request an extension of time from the ALJ.

If you choose to prepare your own Answer, then it is important to respond in writing to every numbered paragraph of the Complaint and to sign it. You may "admit" the facts in a paragraph; you may "deny" the facts in a paragraph, adding any explanation that you think appropriate; or you may state that you have no basis for admitting or denying the facts, essentially saying that you do not know. You may also raise one or more issues which constitute a legal defense to the charges.

If you do not file an Answer, you will likely be found "in default" which means you have admitted all of the allegations contained in the complaint. If you only respond to selected allegations, the others will be treated as if you admitted them.

### **Prehearing Conference(s)**

The ALJ will usually conduct at least one prehearing conference which may be held by telephone. The purposes are to clear away any misunderstandings, to reach agreement on as many of the facts as possible, to identify the real issues to be addressed, to review the exchange of documents and the identification of witnesses, and to set a realistic schedule for the hearing. In addition, if you and the Division of Legal Services and Compliance attorney have not already discussed the possibility of settling the case without a hearing, you may be encouraged to do that.

Even though you may contact the ALJ in certain circumstances, you should avoid what is called an *ex parte* communication. As the person who must listen impartially to the evidence, the ALJ must only consider facts and arguments which are presented to him or her at a time when both sides are present. Therefore, you may contact the ALJ with a procedural question, but any discussion of the "merits" of the case can only occur during a conference in which both parties participate.

### **Discovery and Documentary Evidence**

You may want to use documents or other physical evidence to support your position. Under the rules of procedure for cases like this, each party has a right (with certain exceptions) to know what evidence the other party has. This is called "discovery". You may receive requests to provide documents or other information, and you may make similar requests of the Division of Legal Services and Compliance attorney. If you need help understanding this, or if you encounter any difficulty obtaining information which you think you are entitled to, you may contact an attorney or the ALJ who can arrange a prehearing conference.

### **Witnesses and Subpoenas**

You may want to call one or more witnesses to offer testimony to support your position or to identify and explain other documents. If so, you are responsible for having them appear. You may arrange for such witnesses to appear voluntarily at the hearing, or if a person will not agree to appear voluntarily, you may order him or her to appear for you by a subpoena. An attorney who you have hired to represent you can prepare a subpoena on your behalf, or you may contact the ALJ. If the ALJ issues a subpoena on your behalf, you must then arrange to have the subpoena served on the witness; you can do this yourself as long as you prepare an affidavit of service or you can have it done by the sheriff's office or a private process-server. Along with a subpoena, you must include payment to the witness of \$5/day and 20¢/mile round trip for appearing. It is also a good idea to attach a map, such as the one attached to this brochure. A witness may be allowed to testify by phone; ask the ALJ about this well before the hearing date.

Just as each party may conduct discovery to find out what evidence will be used and introduced by the other party, the parties may be asked to disclose who they intend to call as witnesses. This may arise in a prehearing conference, or the ALJ may issue a specific order to exchange witness lists.

### **An Interpreter or other Accommodation**

If you need an interpreter to help you understand the English language or if some accommodation would assist you to deal with a disability, please contact the ALJ, and he or she will attempt to arrange the hearing so that you can participate fully.

### **Settlement**

Some cases are settled by an agreement between the parties called a "stipulation". You are free to respond to, or to contact, the attorney listed in the notice of hearing to discuss the possibility of compromise or other settlement. The rules encourage settlement negotiations by prohibiting their disclosure to the ALJ if the case eventually goes to a hearing.

### **The Hearing**

Unless your case settles or is rescheduled, it will be heard on the date specified in the notice of hearing. You are not required to appear at the hearing. However, if you do not appear, the hearing will proceed without you, and the rules of procedure allow the ALJ to interpret your absence as your admission that all of the allegations of the complaint are true.

Assuming you appear, the hearing will be conducted much like a trial without a jury. The ALJ will preside as judge (ruling on procedure, evidence and objections) and as fact-finder.

Just as in a trial, each side gets a chance to start with an opening statement (a short summary explaining what its general position is) and then to present evidence. The Division of Legal Services and Compliance attorney first presents his or her witnesses and other evidence, and then you may do the same. Each witness can be questioned by both parties: first the party who calls the witness asks questions (direct examination), then the other party asks questions (cross examination), then each party gets an opportunity to ask follow-up questions (re-direct and re-cross examination).

The evidence may be in documents or in testimony from witnesses. You may testify for yourself, and you may be called as a witness by the attorney for the Division of Legal Services and Compliance. (Although the Fifth Amendment protection against self-incrimination applies to the disclosure of facts which would subject you to criminal prosecution, please be aware that if you do refuse to testify, the ALJ in a disciplinary hearing is permitted to draw a negative inference from that refusal.) Some rules of evidence may limit what can be introduced, but no attempt will be made to explain all the rules here. If you anticipate any problem, such as whether a certain document will be admitted or certain testimony allowed, you or your attorney should contact the ALJ so that the issue can be discussed in a prehearing conference.

After all the evidence has been presented, each side may make a closing argument, which is an opportunity to comment on the evidence that has been presented, such as explaining how much credit should be given to certain testimony, or explaining otherwise confusing evidence. It is also each side's opportunity to argue what discipline, if any, would be appropriate.

You do not have to "prove your case". The Division of Legal Services and Compliance has the burden of proving that the allegations in the complaint are true, and it cannot add other charges against you which were not in the complaint, unless the complaint is formally amended. The hearing will be recorded and you will be able to purchase a copy of the transcript from the court reporting service if you wish.

### **Rescheduling, Continuing, Adjourning**

If a good reason is shown by either party, the ALJ can reschedule the hearing, and a telephone conference may be held to set a new date.

Once a hearing has started, the ALJ may continue it on another day if more time is necessary.

If your case settles, the ALJ will usually adjourn the hearing, not canceling it entirely, but taking it off the calendar until the settlement is approved by the Department or board.

### **The Decision**

The final decision-maker in your case is the Department or board (depending on the profession). Once the hearing is completed, the ALJ is responsible for preparing a Proposed Decision which sets out all the facts of the case, which recites the laws (statutes and administrative rules) that govern the case, and which applies those laws to the facts. The ultimate questions to be answered are whether the facts alleged in the complaint were proven, whether those facts constitute violations of the statute or rule in question, and, if so, what discipline would be appropriate. The discipline available varies by profession, but typically includes a public reprimand, a suspension of your credential for a period of time, limitations on your practice, or revocation of the credential. Certain boards are authorized to impose money forfeitures, and the cost of the disciplinary proceeding may also be imposed on the respondent.

The proposed decision must be in writing for the Department or board to review, and the ALJ often waits until the transcript of the hearing is prepared before writing it. This means that the proposed decision may not be completed until a month or more after the hearing.

Once the proposed decision is filed, it will be sent to you and the Division of Legal Services and Compliance attorney, and you will be notified of a time (no less than ten days) in which you may file written objections to be considered by the Department or board before it makes its final decision. You will then receive a copy of the Final Decision, and you will have the right to appeal through the court system any decision that is not in your favor.

## CHAPTER SPS 2

### PROCEDURES FOR PLEADING AND HEARINGS

- SPS 2.01 Authority.
- SPS 2.02 Scope; kinds of proceedings.
- SPS 2.03 Definitions.
- SPS 2.035 Receiving informal complaints.
- SPS 2.036 Procedure for settlement conferences.
- SPS 2.037 Parties to a disciplinary proceeding.
- SPS 2.04 Commencement of disciplinary proceedings.
- SPS 2.05 Pleadings to be captioned.
- SPS 2.06 Complaint.
- SPS 2.07 Notice of hearing.
- SPS 2.08 Service and filing of complaint, notice of hearing and other papers.
- SPS 2.09 Answer.
- SPS 2.10 Administrative law judge.
- SPS 2.11 Prehearing conference.
- SPS 2.12 Settlements.
- SPS 2.13 Discovery.
- SPS 2.14 Default.
- SPS 2.15 Conduct of hearing.
- SPS 2.16 Witness fees and costs.
- SPS 2.17 Transcription fees.
- SPS 2.18 Assessment of costs.
- SPS 2.20 Extension of time limits in disciplinary actions against physicians.

SPS 2.01 Authority. The rules in ch. SPS 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

SPS 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. SPS 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

SPS 2.03 Definitions. In this chapter:

- (1) Complainant" means the person who signs a complaint.
- (2) Complaint" means a document which meets the requirements of ss. SPS 2.05 and 2.06.
- (3) Department" means the Department of Safety and Professional Services.
- (4) Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.
- (5) Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.
- (6) Division" means the Division of Legal Services and Compliance in the department.
- (7) Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.
- (8) Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.
- (9) Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.
- (10) Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. SPS 2.036, in which a conference with one or more licensee is

held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

SPS 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

- (1) Whether the person complained against is licensed;
- (2) Whether the violation alleged is a fee dispute;
- (3) Whether the matter alleged, if taken as a whole, is trivial; and
- (4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

SPS 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

- (1) **SELECTION OF INFORMAL COMPLAINTS.** The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:
  - (a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and
  - (b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.
- (2) **PROCEDURES.** When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in advance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.
- (3) **ORAL STATEMENTS AT SETTLEMENT CONFERENCE.** Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

SPS 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

SPS 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

SPS 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE \_\_\_\_\_" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST \_\_\_\_\_, RESPONDENT."

SPS 2.06 Complaint. A complaint may be made on information and belief and shall contain:

- (1) The name and address of the licensee complained against and the name and address of the complainant;
- (2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises



- and specifying the statute, rule or other standard alleged to have been violated;
- (3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,
  - (4) The signature of the complainant.

SPS 2.07 Notice of hearing.

- (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.
- (2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix 1 and signed by a disciplinary authority member or an attorney in the division.

SPS 2.08 Service and filing of complaint, notice of hearing and other papers.

- (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.
- (2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. SPS 2.09, and motions under s. SPS 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

SPS 2.09 Answer.

- (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.
- (2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.
- (3) Allegations in a complaint are admitted when not denied in the answer.
- (4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

SPS 2.10 Administrative law judge.

- (1) **DESIGNATION.** Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.
- (2) **AUTHORITY.** An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed

decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

- (3) **SERVICE OF PROPOSED DECISION.** Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

**SPS 2.11 Prehearing conference.** In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

**SPS 2.12 Settlements.** No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

**SPS 2.13 Discovery.** The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

**SPS 2.14 Default.** If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

**SPS 2.15 Conduct of hearing.**

- (1) **PRESIDING OFFICER.** The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. SPS 2.10.
- (2) **RECORD.** A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.
- (3) **EVIDENCE.** The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.
- (4) **BRIEFS.** The presiding officer may require the filing of briefs.
- (5) **MOTIONS.** All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.
- (6) **ADJOURNMENTS.** The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.
- (7) **SUBPOENAS.**
  - (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.
  - (b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

- (8) LOCATION OF HEARING. All hearings shall be held at the offices of the Department of Safety and Professional Services in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

SPS 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

SPS 2.17 Transcription fees.

- (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:
  - (a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.
  - (b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.
- (2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

SPS 2.18 Assessment of costs.

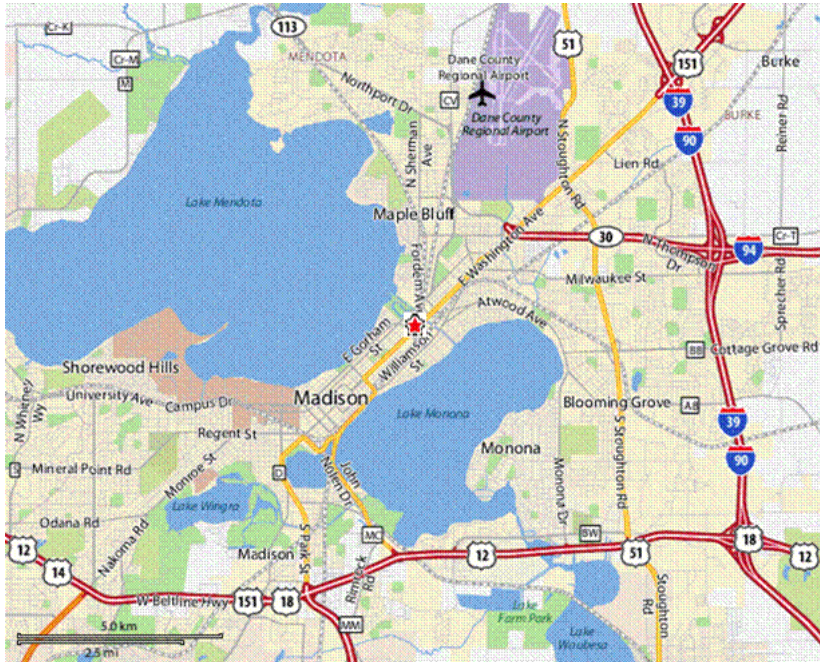
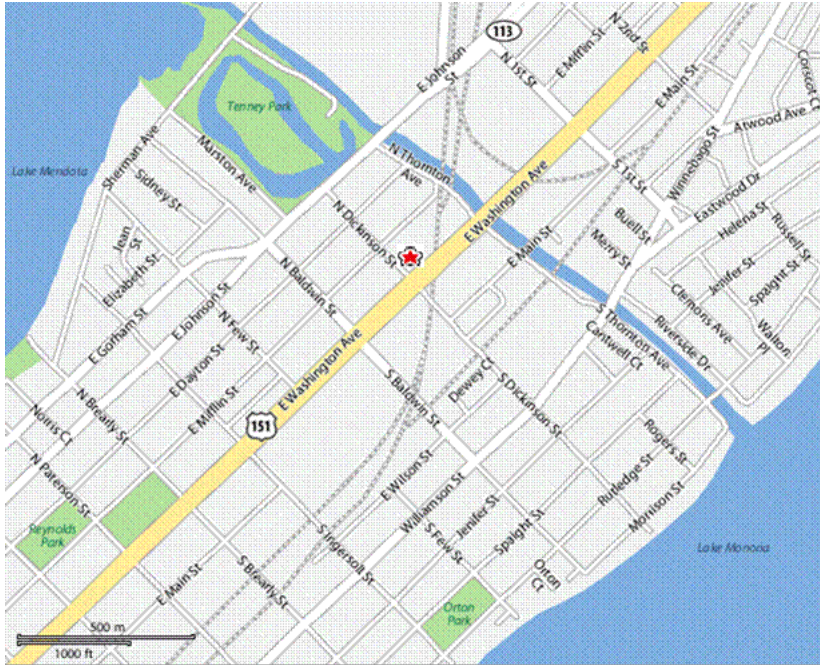
- (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.
- (2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.
- (3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.
- (4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

SPS 2.20 Extension of time limits in disciplinary actions against physicians.

- (1) AUTHORITY AND PURPOSE. The rules in this section are adopted under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.02 (3) (cm), Stats., to govern the extension of time limits in disciplinary actions against physicians.
- (2) COMPUTING TIME LIMITS. In computing time limits under s. 448.02 (3) (cm), Stats., the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. SPS 2.035, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the medical examining board initiates a disciplinary action shall be the date that a disciplinary proceeding is commenced under s. SPS 2.04.
- (3) PROCEDURE FOR REQUESTING AN EXTENSION OF TIME. The medical examining

board or the division on behalf of the medical examining board shall make a written request for an extension of time under s. 448.02 (3) (cm), Stats., to the secretary of the Department of Safety and Professional Services and shall state all of the following:

- (a) The nature of the investigation and the date of initiating the investigation.
  - (b) The number of days the medical examining board requires as an extension in order to determine whether a physician is guilty of unprofessional conduct or negligence in treatment and to initiate disciplinary action.
  - (c) The reasons why the medical examining board has not made a decision within the time specified under s. 448.02 (3) (cm), Stats.
- (4) **FACTORS TO BE CONSIDERED.** In deciding whether to grant or deny a specified extension of time for the medical examining board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment, the secretary of the Department of Safety and Professional Services shall consider the information set forth in the request and at least the following factors:
- (a) The nature and complexity of the investigation including the cause of any delays encountered during the investigation.
  - (b) Whether delays encountered during the screening of the complaint or the complaint handling process were caused in whole or part by the fact that record custodians, witnesses, or persons investigated did not make a timely response to requests for records or other evidence.
  - (c) Whether civil or criminal litigation relating to the matter investigated caused any delay in the investigation.
  - (d) The quality and complexity of evidence available to the medical examining board.
  - (e) The extent to which the physician will be prejudiced by an extension of time.
  - (f) The potential harm to the public if the investigation is terminated without a determination of whether the physician complained about is guilty of unprofessional conduct or negligence in treatment.
- (5) **APPROVE OR DENY AN EXTENSION.** The secretary of the Department of Safety and Professional Services shall approve or deny a request for an extension within 20 days of receipt. A request not approved within 20 days shall be deemed denied.

MAPS

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State of Wisconsin  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708  
(608) 266-2112  
<http://dsps.wi.gov>  
[dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)



[Boards and Councils](#) | [Licenses/Permits/Registrations](#) | [Online Services](#) | [Plan Review](#) | [Complaints & Inspections](#) | [Other Services](#)

## BOARDS AND COUNCILS

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### [Accounting Examining Board](#)

### [Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors](#)

- [Architect Section](#)
- [Designer Section](#)
- [Engineer Section](#)
- [Professional Land Surveyor Section](#)
- [Landscape Architect Section](#)

### [Auctioneer Board](#)

### [Automatic Fire Sprinkler System Contractors and Journeymen Council](#)

### [Barbering Advisory Committee](#)

### [Building Inspector Review Board](#)

### [Cemetery Board](#)

### [Chiropractic Examining Board](#)

### [Commercial Building Code Council](#)

### [Contractor Certification Council](#)

### [Controlled Substances Board](#)

### [Conveyances Safety Code Council](#)

### [Cosmetology Examining Board](#)

### [Dentistry Examining Board](#)

### [Funeral Directors Examining Board](#)

### [Hearing and Speech Examining Board](#)

### [Manufactured Housing Code Council](#)

### [Marriage and Family Therapy, Professional Counseling and Social Work Examining Board](#)

- [Marriage and Family Therapy Section](#)
- [Professional Counselor Section](#)
- [Social Worker Section](#)

### [Medical Examining Board \(MEB\)](#)

#### *MEB Affiliated Credentialing Boards:*

- [Athletic Trainers](#)
- [Dietitians](#)
- [Massage Therapy and Bodywork Therapy](#)
- [Occupational Therapists](#)
- [Podiatry](#)

#### *MEB Affiliates - Councils:*

- [Anesthesiologist Assistants, Council on](#)
- [Perfusionists Examining Council](#)
- [Physician Assistants, Council on](#)
- [Respiratory Care Practitioners Examining Council](#)
- [Nursing, Board of](#)
- [Nursing Home Administrators Examining Board](#)
- [Optometry Examining Board](#)
- [Pharmacy Examining Board](#)
- [Physical Therapy Examining Board](#)
- [Examining Board of Professional Geologists, Hydrologists and Soil Scientists](#)
- [Geologists Section](#)
- [Hydrologists Section](#)
- [Soil Scientists Section](#)
- [Plumbers Council](#)
- [Private Onsite Wastewater Treatment Systems Code Advisory Committee](#)
- [Psychology Examining Board](#)
- [Radiography Examining Board](#)
- [Real Estate Appraisers Board](#)
- [Real Estate Appraisers Application Advisory Committee](#)
- [Real Estate Examining Board](#)
- [Real Estate Contractual Forms Advisory Council](#)
- [Real Estate Curriculum and Examinations Council](#)
- [Sign Language Interpreters Council](#)
- [SPS 314 - Fire Prevention Advisory Code Council](#)
- [SPS 316 - Electrical Code Advisory Committee](#)
- [SPS 330 Code Advisory Committee](#)
- [Substance Abuse Counselors Certification Review Committee](#)
- [Uniform Dwelling Code Council](#)
- [Veterinary Examining Board](#)







Boards and Councils | Licenses/Permits/Registrations | Online Services | Plan Review | Complaints & Inspections | Other Services

## CASE HANDLING PROCESS

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### INTAKE

The Intake Stage is the first stage in the case handling process. Complaints are received in the Division of Legal Services and Compliance (DLSC) and processed.

Copies of the complaint and related information are then screened by Board Screening Panels and DLSC staff to determine if an investigation is warranted. Complaints that do not warrant investigation are closed. Complaints that appear to have merit, or require further investigation, are identified for investigative action and a case is opened.

### INVESTIGATION

The Investigation Stage is the next stage in the case handling process. The assigned DLSC investigator and attorney develop an investigative plan. Investigative staff gather necessary evidence and make contacts with witnesses as needed. The case advisor is consulted on issues requiring professional expertise. The results of the investigation are provided to and discussed with the case advisor. Cases that do not warrant professional discipline are closed. Cases with violations proceed to the next stage for legal action.

### LEGAL ACTION

The third stage is the Legal Action Stage. In this stage, DLSC compliance attorneys review the results of the investigation and pursue disciplinary action when appropriate. Cases may resolve by means of stipulated agreements, informal settlement conferences or administrative warnings. The case advisor will be asked for assistance on matters involving professional expertise and for their opinion on appropriate case resolution.

### HEARING

The fourth stage is the Hearing Stage. This is a formal legal process and results if no satisfactory resolution is available at the Legal Action Stage. The DLSC attorney litigates the case before an administrative law judge (ALJ). The ALJ issues a proposed decision which is reviewed by the credentialing board. If a violation is found, discipline may be imposed. Disciplinary orders may include reprimand, limitation, suspension and revocation.

### MONITORING

Orders are monitored for compliance by DLSC monitoring staff.



# Chapter E: Reports

## Overview

The NPDB is a confidential information clearinghouse created by Congress with the primary goals of improving health care quality, protecting the public, and reducing health care fraud and abuse in the United States. Acting primarily as a national flagging system, the NPDB provides information that permits queriers to perform comprehensive reviews of the credentials of health care practitioners, entities, providers, and suppliers. The NPDB collects information on medical malpractice payments and certain adverse actions and discloses that information to eligible entities. These payments and actions are required to be reported to the NPDB under Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986 (Title IV); Section 1921 of the Social Security Act (Section 1921); Section 1128E of the Social Security Act (Section 1128E); and their implementing regulations found at 45 CFR Part 60.

*The information required to be reported to the NPDB concerns health care practitioners, entities, providers, and suppliers.*

Entities that are required to report to the NPDB include medical malpractice payers, hospitals and other health care entities, professional societies, health plans, peer review organizations, private accreditation organizations, Federal Government agencies, State law enforcement agencies, State Medicaid fraud control units, State agencies administering or supervising the administration of a State health care program, and State licensing and certification authorities (including State medical and dental boards). The information required to be reported to the NPDB concerns health care practitioners, entities, providers, and suppliers.

The NPDB is meant to be used as one of many tools available to health care entities of all types as they make licensing, certification, hiring, credentialing, contracting, and similar decisions. The NPDB can provide valuable background information, but health care entities should use the NPDB in conjunction with other resources when making personnel and contracting decisions.

## Reporting Requirements

Eligible entities are responsible for meeting specific querying and/or reporting requirements and must [register with the NPDB](#) in order to query or report to the NPDB. Entities may qualify as more than one type of eligible entity. In such cases, the entity must comply with all associated querying and reporting responsibilities.

 **Table E-1: Summary of Reporting Requirements** ▼

Law	Who Reports?	What is Reported?	Who is Reported?
	Medical malpractice payers, including hospitals and other health care entities that are self-insured	Medical malpractice payments resulting from a written claim or judgment	Practitioners
	State medical and dental boards	Certain adverse licensure actions related to professional competence or conduct  (Medical and dental boards that meet their	Physicians and dentists

Title IV		reporting requirements for Section 1921, described in Part 2 of this table, will also meet their requirements to report under Title IV)	
	Hospitals Other health care entities with formal peer review	Certain adverse clinical privileges actions related to professional competence or conduct	Physicians and dentists Other practitioners (optional)
	Professional societies with formal peer review	Certain adverse professional society membership actions related to professional competence or conduct	Physicians and dentists Other practitioners (optional)
	DEA	DEA controlled-substance registration actions*	Practitioners
	OIG	Exclusions from participation in Medicare, Medicaid, and other Federal health care programs*	Practitioners

\* This information is reported to the NPDB under Title IV based on a memorandum of understanding.

Table E-1: Summary of Reporting Requirements, Part 2

Law	Who Reports?	What is Reported?	Who is Reported?
Section 1921	Peer review organizations	Negative actions or findings by peer review organizations	Practitioners
	Private accreditation organizations	Negative actions or findings by private accreditation organizations	Entities, providers, and suppliers
	State licensing and certification authorities	State licensure and certification actions	Practitioners, entities, providers, and suppliers
	State law enforcement agencies* State Medicaid fraud control units* State agencies administering or supervising the administration of a State health care program* State prosecutors	Exclusions from participation in a State health care program Health care-related civil judgments in State court Health care-related State criminal convictions Other adjudicated actions or decisions	Practitioners, providers, and suppliers
		Federal licensure and certification actions** Health care-related civil judgments in Federal or State	

Section 1128E		court	
	Federal agencies	Health care-related criminal convictions in Federal or State court**	Practitioners, providers, and suppliers
	Federal prosecutors		
	Health plans	Exclusions from participation in a Federal health care program**	
		Other adjudicated actions or decisions	

\* NPDB regulations define "state law or fraud enforcement agency" as including but not limited to these entities.

\*\* Reported only by Federal agencies.

The reporting requirements summarized in Table E-1 are described in greater detail in this chapter. As shown in the table, each of the three major statutes governing NPDB operations has its own reporting requirements. In some instances, actions must be reported based on memorandums of understanding. In certain cases, requirements may exist under more than one statute, or under both a statute and a memorandum of understanding. For example, as discussed in [Chapter B: Eligible Entities](#), the Drug Enforcement Administration's (DEA's) controlled-substance registration actions are reported to the NPDB under Title IV based on a memorandum of understanding; the Department of Health and Human Services (HHS) Office of Inspector General's (OIG's) exclusions from Medicare, Medicaid, and other Federal health care programs are reported to the NPDB under Title IV based on an interagency agreement. Both DEA and OIG actions also must be reported to the NPDB under Section 1128E.

### Terminology Differences

An action must be reported to the NPDB based on whether it satisfies NPDB reporting requirements and not based on the name affixed to the action by a reporting entity. For example, whether an [administrative fine](#) is reportable to the NPDB depends upon whether the fine meets NPDB reporting requirements, not on the name affixed to the fine. A [suspension](#) or restriction of clinical privileges is reportable if it meets reporting criteria, whether the suspension or restriction is called summary, immediate, emergency, precautionary, or any other term.

### Time Frame for Reporting

Eligible entities must report medical malpractice payments and other required actions to the NPDB within 30 calendar days of the date the action was taken or the payment was made.

The time frame for reporting each type of action described in Table E-1 is summarized in Table E-2.

 **Table E-2: Time Frame for Reporting** ▼

Types of Actions that Must Be Reported	When Information Must be Reported
Medical malpractice payments	

<p>Certain adverse licensure actions related to professional competence or conduct (reported under Title IV)</p> <p>Certain adverse clinical privileges actions related to professional competence or conduct</p> <p>Certain adverse professional society membership actions related to professional competence or conduct</p> <p>DEA controlled-substance registration actions on practitioners (reported under Title IV)</p> <p>Exclusions from participation in Medicare, Medicaid, and other Federal health care programs (reported under Title IV)</p>	<p>Within 30 days of the date the action was taken or the payment was issued, beginning with actions occurring on or after September 1, 1990</p>
<p>Negative actions or findings taken by peer review organizations</p> <p>Negative actions or findings taken by private accreditation organizations</p>	<p>Within 30 days of the date the action was taken, beginning with actions occurring on or after January 1, 1992</p>
<p>State licensure and certification actions</p> <p>Federal licensure and certification actions</p> <p>Health care-related criminal convictions in Federal or State court</p> <p>Health care-related civil judgments in Federal or State court</p> <p>Exclusions from participation in a Federal or State health care program.</p> <p>Other adjudicated actions or decisions</p>	<p>Within 30 days of the date the action was taken, beginning with actions occurring on or after August 21, 1996</p>

The NPDB cannot accept reports with a date of payment or a date of action prior to September 1, 1990, with the exception of Medicare and Medicaid exclusions submitted by the OIG.

If an eligible entity discovers documentation of medical malpractice payments, adverse actions, or judgments or convictions that the eligible entity had not reported to the NPDB, the entity must promptly submit the related report(s). All required reports must be filed with the NPDB regardless of whether they are late.

Entities are not excused from reporting simply because they missed a reporting deadline. The Secretary of HHS will conduct an investigation if there is reason to believe an entity substantially failed to report required medical malpractice payments or adverse actions. Entities have the opportunity to correct the noncompliance (see Sanctions for Failing to Report to the NPDB in the sections discussing the reporting requirement for each type of action).

## Deceased Practitioners

One of the principal objectives of the NPDB is to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without the disclosure or discovery of their previous damaging or incompetent performance. Reports concerning deceased practitioners must be submitted to the NPDB because a fraudulent practitioner could assume the identity of a deceased practitioner. When submitting a report on a deceased practitioner, indicate that the practitioner is deceased in the appropriate data field.

## Report Retention

Information reported to the NPDB is maintained permanently in the NPDB, unless it is corrected or voided from the NPDB by the reporting entity or by the NPDB as a result of the [Dispute Resolution](#) process.

## Civil Liability Protection

The immunity provisions in Title IV, Section 1921, and Section 1128E protect individuals, entities, and their authorized agents from being held liable in civil actions for reports made to the NPDB unless they have actual knowledge of falsity of the information contained in the report. These provisions provide the same immunity to HHS in maintaining the NPDB.

## Official Language

The NPDB's official language is English. All reports must be submitted in English. Files submitted in any other language or containing non-alphanumeric characters (e.g., tildes, accents, umlauts) are not accepted.