

**CRIMINAL CONVICTION SELF-REPORTING FOR MICHIGAN  
LICENSED HEALTH CARE PROFESSIONALS**

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As a health care attorney, I encounter licensed health care professional clients on a weekly basis who are facing an administrative complaint from the Michigan Department of Licensing and Regulatory Affairs (“LARA”) for failing to self-report a criminal conviction. Inevitably, they claim some variation of “I had no idea I was required to self-report my conviction” or “my attorney did not tell me I was required to self-report.” The resulting economic and professional consequences from a failure to self-report such a criminal conviction can be devastating.

This white paper discusses the mandatory self-reporting requirements of the Michigan Public Health Code; examples of the self-reporting requirements of other states; the consequences for failing to self-report; and certain additional self-reporting requirements under federal law, medical staff bylaws, and other entities separate and distinct from LARA. It is intended as a general guide for attorneys counseling health care professionals licensed in the State of Michigan who are facing the likelihood of a misdemeanor or felony criminal conviction. While licensed health care professionals may find the information in this white paper to be informative, they are strongly encouraged to seek the advice of experienced health care counsel regarding the issues discussed herein.<sup>3</sup>

## 1. Reporting Is Mandatory

The Michigan Public Health Code clearly states that a licensee **shall** notify the department of **any** criminal conviction within 30 days after the date of the conviction.<sup>4</sup> However, it is important to deconstruct this mandatory requirement to determine who must report; where the report must be sent; what must be reported; and most critically, when the report must be sent.

## 2. Who Must Report

In Michigan, the licensed health professionals required to self-report criminal convictions are the following professions:<sup>5</sup>

Acupuncturist  
Allopathic Physician (MD)  
Athletic Trainer  
Audiologist

Optometrist  
Osteopathic Physician (DO)  
Pharmacist  
Physical Therapist, PTA

Chiropractor  
Counselor  
Dentist, Hygienist, RDA  
Dietitian or Nutritionist  
Marriage & Family Therapist  
Massage Therapist  
Nurse (RN or LPN)  
Nursing Home Administrator  
Occupational Therapist, OTA

Physician's Assistant  
Podiatrist  
Psychologist  
Respiratory Therapist  
Sanitarian  
Social Worker  
Speech/Language Pathologist  
Veterinarian

If you are counseling a licensed health professional listed above regarding a criminal proceeding, it is important to advise your client as early as possible of the mandatory reporting requirement of the Public Health Code.

### **3. Where To Send The Report**

The criminal conviction of a Michigan licensed health professional must be reported to the Department of Licensing and Regulatory Affairs.<sup>6</sup> The address, fax number and email address to send the report of conviction are as follows:

State of Michigan  
Department of Licensing and Regulatory Affairs  
Bureau of Professional Licensing  
Legal Affairs Division, Allegations Section  
P.O. Box 30670  
Lansing, MI 48909-8170  
Fax: (517) 241-2389  
[andersonb1@michigan.gov](mailto:andersonb1@michigan.gov)

While LARA encourages self-reporting of convictions by fax, as with any important legal matter, counsel should report via a reliable method of delivery which will provide a method to prove that delivery was made in a timely fashion, whether such method is via fax confirmation log or certified mail with a return receipt requested. In any case, copies of the correspondence and confirmation of its delivery should be retained to document client compliance with the Public Health Code.

In the event that a conviction report must be sent via overnight mail to ensure compliance with the client's self-reporting duties, such overnight mail should be addressed to:

State of Michigan  
Department of Licensing and Regulatory Affairs  
Bureau of Professional Licensing  
Legal Affairs Division, Allegations Section  
611 W. Ottawa St., 1<sup>st</sup> Floor  
Lansing, MI 48933-1070

#### 4. What To Report

While there is no particular format required for the self-report of a criminal conviction under the Michigan Public Health code, the following information should be included in the report:

- a. Licensee's Name
- b. Date of Reporting
- c. Licensee's License Number
- d. Date of Birth
- e. Telephone Contact Number
- f. Email Address
- g. Name of Court Where Conviction Took Place
- h. Court Case Number
- i. Conviction Charge
- j. Date of the Conviction
- k. Name of Police Agency Involved
- l. Police Report Incident No.
- m. Offense Date<sup>7</sup>

There are no distinctions between felonies and misdemeanors, and convictions must be reported whether they occurred in Michigan or out-of-state. Simply put, **any** criminal conviction must be reported under the Public Health Code.<sup>8</sup> However, it is important to remember that only the convicted offense must be reported, not the original offense charged or any other offenses which were dropped or otherwise not included in the actual conviction. For purposes of the Michigan Public Health Code, the term "conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.<sup>9</sup> For reporting purposes, it is critical to only report the offense(s) that the licensee was convicted of and not report offenses that may have been originally charged but subsequently dropped as part of a plea agreement. There is no duty to report the original charges and they should not be included in such a self-report.

There are situations where it may be appropriate for a client to draft a letter of apology and/or provide letters of recommendation attesting to the fact that the client has good moral character and that the offense for which the client was convicted is not rationally related to the client's ability to practice their profession. Example of this may include controlled substance offenses for which the client has undertaken rehabilitation and can offer documented proof of the success of such efforts. These additional steps are designed to demonstrate to LARA that the client has taken action to make certain the behavior resulting in the conviction will not be repeated, and that it is in the State of Michigan's best interests that the client continues to be licensed and practice without any sanctions to their license. These additional steps should put the client in the best light possible and show that they can safely and skillfully continue to practice their profession.

## 5. When to Report

The reporting of the licensed health professional's criminal conviction must be made within 30 days after the date of the conviction.<sup>10</sup> The conviction date is the date the judgment is entered by the court upon a plea or date of a jury verdict or court finding of guilty or guilty but mentally ill. Importantly, **the conviction date is not the sentencing date** and practitioners should take great care to not miss the reporting deadline by waiting until after sentencing to submit the report of conviction.

There is no "substantial compliance" exception for criminal conviction self-reporting under the Public Health Code. LARA will not hesitate to file a complaint for failing to notify LARA of a criminal conviction if the notice is submitted even a single day beyond the 30-day reporting period.

## 6. Unreported Convictions

It is not unusual to encounter clients who have failed to report a criminal conviction within 30 days, and are in violation of the Public Health Code, but who are now faced with having to report the conviction as part of the renewal questioning for their health professional license. In such situations, a decision will need to be made whether to self-report the criminal conviction prior to the client renewing their license. Clients may be reluctant to report criminal convictions late because they believe that LARA may never learn of the conviction and do not wish to voluntarily put LARA on notice of a violation of the Public Health Code if there is a chance LARA might not otherwise learn of the conviction. However, in my experience, the most prudent course of action has been to self-report the conviction first for no other reason than to give the appearance that the client has attempted to comply with his or her duties under the Public Health Code, and to assist in mitigating any subsequent licensing sanctions once the conviction is discovered by LARA. This also allows clients to respond truthfully to the license renewal question that asks if there are any unreported criminal convictions since the licensee's last renewal.

If a client has an unreported criminal conviction that occurred prior to July 1, 2014, there is an argument to be made that such client had no duty to report the conviction so long as it did not occur out of state. This is because the language of the Public Health Code self-reporting statute, as it existed prior to July 1, 2014, stated that a licensee shall notify the department of a criminal conviction or disciplinary licensing or registration action **taken by another state** against the licensee within 30 days after the date of the conviction or action.<sup>11</sup> In *Dept of Consumer Industry Services v Shah*, 236 Mich. App. 381 (1999), a physician was initially charged with failing to report a criminal conviction of his professional corporation for fraudulent billing. The disciplinary subcommittee dismissed the failure to report charge and the Michigan Court of Appeals agreed with this decision and upheld the dismissal on the basis that the statutory language appeared to only require the reporting of out-of-state convictions or disciplinary actions from another state. The self-reporting statute was amended, effective July 1, 2014, to remove the "another state" distinction and it has remained in its current form ever since.

While LARA disagrees with the *Shah* interpretation, there are no subsequent decisions overruling *Shah* or interpreting the prior version of the self-reporting statute. Thus, it is still an effective argument to make if confronted with a client who has failed to report a conviction that was entered prior to July 1, 2014.

## 7. Other States' Reporting Requirements

In representing a client who is a licensed health care professional facing a criminal conviction self-report in Michigan, it is critical to determine if the client is also licensed in other states as well. This inquiry should be made as early as possible, during the client intake process for example, because of the widely varied self-reporting requirements in other states. Self-reporting requirements are not limited to only licenses that are in active status. Therefore, clients with licenses in other states that are inactive or expired should still report their convictions to avoid being in violation of the health code for a given jurisdiction. The following are specific examples of how varied self-reporting requirements can be from state to state.

**Arizona** – A health professional charged with a misdemeanor involving conduct that may affect patient safety or a felony must notify the health professional's regulatory board within 10 days after a criminal charge is filed.<sup>12</sup> There is no subsequent reporting required after a conviction, only within 10 days of being charged with a crime. Failure to comply with the requirement is an act of unprofessional conduct punishable by a fine of up to \$1,000.<sup>13</sup>

**California** – Physicians, podiatrists and physician assistants are required to report a felony indictment or conviction of a misdemeanor or felony their issuing entity within 30 days of the indictment or conviction.<sup>14</sup> Failure to make such report is a public offense punishable by a fine of up to \$5,000.<sup>15</sup>

**Florida** – A health professional must report any guilty plea or adjudication of guilt of any crime to their professional licensing board, or Florida Department of Health if there is no board, within 30 days of the conviction or finding of guilt.<sup>16</sup>

**Indiana** – A licensee must notify their board of any misdemeanor or felony conviction, except traffic related misdemeanors other than operating a motor vehicle under the influence of drug or alcohol, within 90 days after entry of the conviction.<sup>17</sup>

**Pennsylvania** – A nurse must notify the board of pending criminal charges within 30 days of the filing of such criminal charges and must notify the board of a criminal conviction within 30 days as well.<sup>18</sup>

**Wisconsin** – Licensees must report any conviction of a felony or misdemeanor to the department of safety and professional services within 48 hours after entry of the judgment of conviction.<sup>19</sup>

These examples show how widely the self-reporting requirements can differ from state to state and how important it is to establish from the outset of representation whether a licensed health care professional client is licensed in a state or states other than Michigan.

## **8. Consequences For Failing To Self-Report**

Failure to self-report a criminal conviction is a violation of the Public Health Code.<sup>20</sup> There are two main avenues for the discovery of unreported criminal convictions by LARA. First, court clerks are required to notify LARA if a licensed health care professional is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or any felony.<sup>21</sup> Second, many clients unwittingly provide notice to LARA of their violation when they answer affirmatively to criminal conviction questions on their license renewals without knowing they are admitting to violations of the Public Health Code since they failed to provide notice within 30 days of such convictions.

The consequences for failing to self-report is the filing of an administrative complaint alleging a violation of the client's statutory duty to self-report their criminal conviction, in addition to any allegations stemming from the underlying criminal conviction, such as negligence, incompetence, substance use disorder, and/or a lack of good moral character. The specific license sanctions applicable to a violation of a licensee's duty to self-report a criminal conviction are reprimand, denial of licensure, limitation, probation, or fine.<sup>22</sup> The amount of the fine can vary widely between professions with minimum fines of \$250 for licensed practice nurses to a minimum fine of \$5,000 generally applicable to physicians.

While the specific requirements for handling an administrative complaint are outside of the scope of this white paper, sanctions issued by the disciplinary subcommittee for the particular board for a licensed health professional can have far-reaching consequences. Depending upon the severity of the sanctions, which often include not only sanctions for the failure to self-report but sanctions related to the underlying conduct that resulted in the criminal conviction, i.e. drug diversion, fraudulent prescribing, etc., these consequences can include (a) the requirement to notify licensing boards in any other states in which the client is licensed and the resulting administrative sanctions in each other state, (b) suspension or loss of hospital privileges, (c) loss of enrollment in state professional associations, such as the Michigan State Medical Society, (d) loss of participation in Preferred Provider Organizations, (e) loss of enrollment with third-party payors, (f) loss of DEA registration, (g) loss of professional liability insurance coverage (h) exclusion from participation with Medicare, Medicaid, and other federal and state government programs, and (i) loss of board certification.

## **9. Other Self-Reporting Requirements**

Practitioners should be aware that there are other criminal conviction self-reporting requirements which may be applicable to clients who are licensed health

professionals, depending upon the nature of the underlying conviction and/or the profession involved.

**Medicare** – Physicians and non-physician practitioners, such as dentists, podiatrists and/or social workers for example, must report any adverse legal action to their Medicare contractor within 30 days.<sup>23</sup> The convictions included within the definition of adverse legal action are federal or state felony offenses such as (a) felony crimes against persons, such as murder, rape, assault or similar crimes, (b) financial crimes, such as extortion, embezzlement, and insurance fraud, (c) any felony that placed the Medicare program or its beneficiaries at immediate risk, and (d) felonies that would result in mandatory exclusion under Section 1128(a) of the Social Security Act, such as crimes related to Medicare fraud, patient abuse or neglect, health care fraud, or offenses related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.<sup>24</sup> A failure to comply with these reporting requirements can result in revocation of the client’s Medicare privileges.<sup>25</sup>

**Hospital Bylaws** – Physician, dentist and/or podiatrist clients may be members of medical staffs for hospital systems with criminal conviction self-reporting requirements under their bylaws. For example, the Detroit Medical Center’s bylaws require medical staff members to notify the credentialing committee of the filing of criminal charges against the medical staff member within 15 days.<sup>26</sup> By contrast, medical staff members of the Beaumont Health System are required to immediately notify the appropriate physician-in-chief if they are indicted, formally charged or convicted of a felony or misdemeanor other than a traffic citation.<sup>27</sup> Violations of hospital bylaws by medical staff members are punished through corrective actions which can result in suspension and/or revocation of a client’s medical staff privileges.

**Professional Associations/Certification Entities** – Licensed health care professionals may be members of professional associations or board certification entities with accompanying duties to self-report criminal convictions. For example, the National Commission on Certification of Physician Assistants (“NCCPA”), as part of its Code of Conduct, requires members to report any conviction of a crime within 30 days.<sup>28</sup> A failure to report such a conviction can result in disciplinary action.<sup>29</sup> Licensed health care professional clients should be encouraged to list any professional associations or board certification entities in which they are members so that it can be determined if self-reporting requirements exist.

## 10. Conclusion

Licensed health care professionals facing criminal charges need the counsel of an experienced health care attorney to assist them in meeting the myriad of self-reporting requirements following not only a criminal conviction, but being charged with a crime itself in certain circumstances. The stakes are simply too high to fail to perform due diligence in investigating all potential entities requiring the self-reporting of a charge or conviction.



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<sup>3</sup> This publication is intended to serve as a preliminary research tool for attorneys. It is not intended to be used as the sole basis for making critical business or legal decisions. This document does not constitute, and should not be relied upon, as legal advice.

<sup>4</sup> MCL 333.16222(3).

<sup>5</sup> MCL 333.16106(3).

<sup>6</sup> MCL 333.16104(3).

<sup>7</sup> [https://www.michigan.gov/documents/lara/lara\\_ED-206\\_Criminal\\_Sister\\_State\\_Self\\_Reporting\\_2\\_475557\\_7.pdf](https://www.michigan.gov/documents/lara/lara_ED-206_Criminal_Sister_State_Self_Reporting_2_475557_7.pdf).

<sup>8</sup> MCL 333.16222(3).

<sup>9</sup> MCL 333.16103(5).

<sup>10</sup> MCL 333.16222(3).

<sup>11</sup> *Dept of Consumer Industry Services v Shah*, 236 Mich App 381, 392 (1999).

<sup>12</sup> Arizona Revised Statutes § 32-3208.

<sup>13</sup> Arizona Revised Statutes § 32-3208.

<sup>14</sup> California Business and Professions Code § 802.1.

<sup>15</sup> California Business and Professions Code § 802.1.

<sup>16</sup> Florida Statutes § 456.072(1)(x).

<sup>17</sup> Indiana Code 25-1-1.1-1.

<sup>18</sup> 49 Pa. Code Ch. 29.21a.

<sup>19</sup> Wisc. Admin. Code. SPS 4.09(2).

<sup>20</sup> MCL 333.16221(f).

<sup>21</sup> MCL 769.16a(7).

<sup>22</sup> MCL 333.16226(1).

<sup>23</sup> 42 CFR § 424.516(d)(1)(ii).

<sup>24</sup> 42 CFR § 424.535(a)(3)(i); 42 USC 1320a-7.

<sup>25</sup> 42 CFR § 424.535(a)(9).

<sup>26</sup> The Bylaws of the Medical Staff of the Detroit Medical Center, Section 7.F.

<sup>27</sup> Bylaws of the Medical Staffs of the Beaumont Health System, Section 3.14.3.

<sup>28</sup> NCCPA Code of Conduct for Certified and Certifying PAs.

<sup>29</sup> NCCPA Code of Conduct for Certified and Certifying PAs.