

**Department of Licensing & Regulatory Affairs**  
**Bureau of Construction Codes**  
**Keith E. Lambert, P.S., Director**  
**Instructor #2183**

***Complaint Documentation***  
***BCC Course #CP-17-00065***

***April 26, 2017***  
***2 Hour - Specialty***

# GOALS

---

1. IDENTIFY VIOLATIONS OF ACT AND CODE
2. DISCUSS EXAMPLES OF VIOLATIONS
3. DOCUMENT VIOLATIONS
4. CERTIFY VIOLATIONS WITH DETAILS
5. UNDERSTAND LIMITS OF AUTHORITY
6. Q & A
7. PRESENTATION & CONTACT INFO



# IDENTIFYING VIOLATIONS

---

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations
  - (a) Practices fraud or deceit in obtaining a license.
  - (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
  - (c) Violates a rule of conduct of an occupation.
  - (d) Demonstrates a lack of good moral character.
  - (e) Commits an act of gross negligence in practicing an occupation.
  - (f) Practices false advertising.



# IDENTIFYING VIOLATIONS

---

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (g) Commits an act that demonstrates incompetence.
  - (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
  - (i) Fails to comply with a subpoena issued under this act.
  - (j) Fails to respond to a citation under section 539.
  - (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
  - (l) Aids or abets another person in the unlicensed practice of an occupation.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (a) Practices fraud or deceit in obtaining a license.
    - Example: Act requires 4,000 hours performing work in the trade for licensure. Person certifies application meeting this requirement and passes examination thus obtaining a license. It is later determined with valid documentation that person only drove a work vehicle to job sites.
  - (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
    - Example: Unlicensed handyman performs work which requires licensure and permit to be issued for the work. It is later determined with valid documentation that handyman performed work without proper licensure and a permit being issued.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (c) Violates a rule of conduct of an occupation.
    - Example: Licensee performs work which requires licensure and permit to be issued for the work. It is later determined with valid documentation that licensee performed work without permit being issued. (This can apply to other violations.)
  - (d) Demonstrates a lack of good moral character.
    - Example: Licensee performs work at a residential home, and the work meets all applicable requirements (code). It is later determined with valid documentation that licensee stole from the homeowner valuables and work supplies for future jobs.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (e) Commits an act of gross negligence in practicing an occupation.
    - Example: Licensee performs work which requires licensure and obtains proper permit. It is later determined with valid documentation that work performed by licensee caused physical harm to individuals.
  - (f) Practices false advertising.
    - Example: Unlicensed handyman posts on work vehicle, in yellow pages, Angi's List & Craigslist he maintains a specific license number issued under 2016 PA 407. It is later determined with valid documentation that specific license number was issued to another individual, and that individual has no association with the handyman.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (g) Commits an act that demonstrates incompetence.
    - Incompetence means a departure from, or failure to conform to, minimal standards of acceptable practice for an occupation defined as in [MCL 339.5105](#) of 2016 PA 407.
      - Example: Licensee performs work which requires licensure and obtains proper permit. Work performed does not meet applicable code requirements and written violations are issued to licensee. Licensee appeals the violations to the local board of appeals and the violations are upheld and determined valid. It is later determined with valid documentation that licensee refuses to correct violations.





# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed. (This is catch all language for all violations.)
    - Example: Licensee performs work which requires licensure and permit to be issued for the work. It is later determined with valid documentation that licensee performed work without permit being issued. (This can apply to other violations.)



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (i) Fails to comply with a subpoena issued under this act.
    - Example: Subpoena issued to a person to produce documentation pertaining to a complaint investigation. It is later determined with valid documentation that person possesses the requested documentation and refuses to provide requested documentation.
  - (j) Fails to respond to a citation under section 539.
    - Example: Respondent is issued citation for violations of act. It is later determined with valid documentation that respondent received the citation; however, the respondent did not respond in the 30-day timeframe allowed by [MCL 339.5539](#) of 2016 PA 407.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
    - Example: Licensee (Respondent) enters into settlement agreement with department to correct code violations and provide restitution to complainant in a specified timeframe. It is later determined with valid documentation that licensee did not comply with settlement agreement.



# IDENTIFYING VIOLATIONS (EXAMPLES)

- [MCL 339.5607](#) of the Skilled Trades Act, 2016 PA 407 lists violations (continued)
  - (l) Aids or abets another person in the unlicensed practice of an occupation.
    - Example: Licensee posts on Angi's List & Craigslist he will obtain permits for unlicensed individuals to perform work requiring licensure. It is later determined with valid documentation that licensee obtained permits for unlicensed individuals, and licensee did not perform any work under the permits obtained.



# **DOCUMENTING VIOLATIONS (1<sup>ST</sup> STEP)**

---

- In order to document violations properly for preparing a complaint, the first focus must be on gathering the facts. This means asking questions and getting answers.
  - 1) Who?
  - 2) What?
  - 3) When?
  - 4) Where?
  - 5) Why?
  - 6) How?



# DOCUMENTING VIOLATIONS (1<sup>ST</sup> STEP)

---

- Who is the complaint against?
  - 1) Name
  - 2) Address
  - 3) Phone Number
  - 4) Website
  - 5) License or Registration Number
- Who performed the work?



# DOCUMENTING VIOLATIONS (1<sup>ST</sup> STEP)

---

- What occurred?
- What work was to be performed?
- What proof/documentation exists?
  - 1) Checks/credit card receipts
  - 2) Customer statements/affidavits
  - 3) Inspection reports
  - 4) Pictures
  - 5) Record certifications
  - 6) Written contracts



# **DOCUMENTING VIOLATIONS (1<sup>ST</sup> STEP)**

---

- When did the events occur?
- When was the work performed?
- Where did the events occur?
- Where was the work performed?
- Where was the licensee when the work was performed?
- Where was the owner when the work was performed?





# DOCUMENTING VIOLATIONS (1<sup>ST</sup> STEP)

---

- Why is there a complaint?
- Why is there a violation?
- How can we document?
  - 1) Complaint
  - 2) Events that occurred
  - 3) Violations that exist



# DOCUMENTING VIOLATIONS (2<sup>nd</sup> STEP)

---

- After gathering the facts, the next focus is on analyzing the data and determining whether a violation exists or not?
  - 1) Does the data contain valid facts?
  - 2) Is the data sufficient or is more needed?
  - 3) Is the data in writing or verbally communicated?
  - 4) Would a site inspection/investigation help clarify/confirm the data? (Enforcing agency responsibility)
  - 5) Does the data confirm a violation?
    - 1) If not, final action is to close complaint and notify complainant.
    - 2) If so, what authority has jurisdiction over the violation?



# DOCUMENTING VIOLATIONS (3<sup>rd</sup> STEP)

---

- After determining all facts and data have been gathered and analyzed, the next focus is on what the specific issue is?
  - 1) Is it a license issue? (Licensing authority responsibility, 2016 PA 407)
  - 2) Is it a code enforcement issue? (Enforcing agency responsibility, 1972 PA 230)
  - 3) Is it a contractual issue? (Consumer protection matter – outside the scope of a licensing authority & enforcing agency)



# DOCUMENTING VIOLATIONS (3<sup>rd</sup> STEP)

---

- After determining all facts and data have been gathered and analyzed, the next focus is on what the specific issue is?
  - 4) Is it a matter involving the internal affairs of a business entity? (Business corporation matter – outside the scope of a licensing authority & enforcing agency)
  - 5) Is it a legal issue? (Complainant needs private legal counsel)



# **DOCUMENTING VIOLATIONS (4<sup>th</sup> STEP)**

---

- After determining the specific issue at hand, the next focus is on action that must transpire?
  - 1) License matters must be filed with the licensing authority
  - 2) Code matters must be filed with the enforcing agency
  - 3) Contractual matters must be closed, and complainant notified issue falls outside scope of authority
  - 4) Business operational matters must be closed, and complainant notified issue falls outside scope of authority



# **DOCUMENTING VIOLATIONS (4<sup>th</sup> STEP)**

---

- After determining the specific issue at hand, the next focus is on action that must transpire?
  - 5) Legal matters must be closed, and complainant notified  
issue involves legal matters that may be addressed by private legal counsel

# DOCUMENTING VIOLATIONS (EXAMPLES)

---

- Pictures are one of the most efficient ways of documenting violations. They can document:
  - 1) Non-compliance with code
  - 2) The before and after of work performed
  - 3) The specific time work was being performed
  - 4) Individuals performing the work
  - 5) Proof a contractor or business entity was overseeing a construction project



# DOCUMENTING VIOLATIONS (EXAMPLES)

---

- Electrical work performed on a work site
  - 1) [Picture 1](#)
  - 2) [Picture 2](#)
  - 3) [Picture 3](#)
  - 4) [Picture 4](#)
  - 5) [Picture 5](#)
  - 6) [Picture 6](#)
  - 7) [Picture 7](#)
  - 8) [Picture 8](#)



# DOCUMENTING VIOLATIONS (EXAMPLES)

---

- Plumbing work performed at a state building
  - 1) [Picture 1](#)
  - 2) [Picture 2](#)
  - 3) [Picture 3](#)

# DOCUMENTING VIOLATIONS (EXAMPLES)

---

- Certification of Records is an effective way to document existing records or a lack thereof
  - 1) [Clickner Certification](#) – this record was produced for prosecution of an individual that performed electrical work which required licensure ([Water mark](#))
  - 2) [Hoskins Certification](#) – this record was produced to assist the local enforcing agency with addressing non-compliant ratios of electrical apprentices on job sites
  - 3) [Hamann Certification](#) – this record was produced for prosecution of an individual that was practicing as an electrical journeyman



# DOCUMENTING VIOLATIONS (EXAMPLES)

---

- An Affidavit can be produced in lieu of personal testimony in a court of law
  - 1) [Klug Affidavit](#) – this record was produced for a contractual dispute between the general contractor and a sub contractor

# COMPLAINT PROCESSING

- Article 5 of 2016 PA 407 addresses the complaint process
  - MCL 339.5507(2)
    - If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the department shall close the complaint. The department shall forward the reasons for closing the complaint to the **respondent and complainant**, who then may provide additional information to reopen the complaint.



# COMPLAINT PROCESSING

- Article 5 of 2016 PA 407 addresses the complaint process
  - MCL 339.5507(3)
- If the report of the investigative unit made under subsection (1) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:
  - (a) A formal complaint.
  - (b) A cease and desist order.
  - (c) A notice of summary suspension.
  - (d) A citation.



# COMPLAINT PROCESSING

---

- [Article 5](#) of 2016 PA 407 addresses the complaint process
- When a complaint is filed, the department is responsible for communicating with both the complainant and respondent throughout the process.
- At any time during an investigation or administrative process under this article, the department may bring the parties together for an informal conference to attempt to resolve the issues raised in the complaint.
  - [MCL 339.5515\(3\)](#)



# UNLICENSED ACTIVITY AUTHORITY

---

- [MCL 339.5601](#) of 2016 PA 407 addresses engaging in an occupation without a license
  - Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license issued by the department for the occupation.
  - (2) Subject to section 411, a person whose license is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed.



# UNLICENSED ACTIVITY AUTHORITY

---

- [MCL 339.5601](#) of 2016 PA 407 addresses penalties of unlicensed activity
  - (3) A person that violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both.
  - (4) A person that violates subsection (1) a second time is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both.
  - (5) A person that violates subsection (1) a third or subsequent time is guilty of a felony punishable by a fine of not more than \$25,000.00 or imprisonment for not more than 5 years, or both.





# UNLICENSED ACTIVITY AUTHORITY

---

- [MCL 339.5601](#) of 2016 PA 407 addresses remedies for unlicensed activity
  - (6) The remedies or penalties imposed for a violation of subsection (1) may include a requirement that restitution be made, based on proofs submitted to and findings made by the trier of fact as provided by law.



# UNLICENSED ACTIVITY AUTHORITY

---

- [MCL 339.5601](#) of 2016 PA 407 addresses remedies for unlicensed activity
  - (7) Notwithstanding the existence and pursuit of any other remedy or penalty, an affected person may pursue an action for injunctive relief to restrain or prevent a person from violating subsection (1). If successful in obtaining injunctive relief, the affected person is entitled to actual costs and attorney fees. As used in this subsection, "affected person" means a person that is directly affected by the actions of another person that is suspected of violating subsection (1) and includes, but is not limited to, a [licensee](#), a board, the department, a person that has utilized the services of the person suspected of violating subsection (1), or [a private association that is composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without a license under this act.](#)



# INFORMATION

---

- Presentation & material available on request
- Contact Information:
  - [lambertk@michigan.gov](mailto:lambertk@michigan.gov)
  - Bureau (517) 241-9375
    - 1<sup>st</sup> Floor Ottawa Building
    - 611 W. Ottawa St.
    - Lansing, MI 48933

