

Responding to an Investigation of the North Carolina Medical Board

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There are few things as critical to a physician as his or her medical license.

The North Carolina Medical Board ("Board") is mandated by the legislature to regulate the practice of medicine for the benefit and protection of the people of North Carolina. Thus, Board investigations are serious matters, and practitioners should take them as such. This article will provide important information and guidance beneficial to navigating an investigation of the Board.

Complaint vs. Investigation

The Board receives information from various sources, including complaints from others, self-reports (mandatory or voluntary) from licensees, reports from malpractice insurers, hospitals, and other licensing boards, media reports, and data mining. Essentially, any information brought to the Board's attention by any means could give rise to an inquiry. As long as it is sufficiently specific (for example, "my doctor is unethical" is not enough) and arguably alleges a violation of the Medical Practice Act (the state law governing the Board and its regulated community), the Board will likely initiate an inquiry.

The Board employs two primary methods of inquiring of its licensee: a complaint or an investigation. Neither "complaint" nor "investigation" is specifically defined by the Medical Practice Act. Generally, Board complaints are handled by an exchange of written correspondence between the licensee and the Board's complaint section. In contrast, investigations are conducted by personal contact between the licensee and a Board investigator. This article primarily addresses responding to investigations. [A prior article addressed responding to complaints.](#)

Frequently, healthcare professionals react to a complaint or an investigation as simply an annoyance, and devote little attention to it.

Meanwhile, the inquiry continues, often with the healthcare professional unknowingly forfeiting the opportunity to affect its course. A potential outcome of a disciplinary inquiry is losing your right to practice. Therefore, it is critically important that you take a time-out to focus on this matter as soon

as you become aware of the potential for a complaint. Delaying your response or simply ignoring the inquiry will only make the potential outcome worse, sometimes much worse than the sanction the allegation would have brought by itself.

Responding to the Investigation

Full cooperation with the Board yields the best results. This approach demonstrates professionalism, often the most important issue from the Board's perspective. In most cases, openness and simple explanations will suffice. The best strategy is to show the Board it has no reason to be concerned. If you know something went wrong, it is usually best to acknowledge that and outline steps taken to remediate the issue.

Prompt action is required. Board rules (21 NCAC 32N.0107(d)) require "[a] licensee [to] submit to an interview within 30 days from the date of an oral or written request from Board staff. The Board may grant up to an additional 15 days for the interview where the licensee demonstrates good cause for the extension of time."

The practitioner almost always benefits from having an experienced attorney involved.

Sometimes, representation is not necessary. More often, though, practitioners regret not hiring an attorney with experience in healthcare disciplinary matters. Like many medical conditions, early treatment of a legal problem can be the least expensive approach and often leads to the best possible result under the circumstances.

If an Investigator arrives:

Ask Questions

Even though the agency's investigators and their demands arrive unannounced or wanting attention on short notice, being courteous and convenient to the agency and its staff usually gets reciprocated. If an investigator shows up, greet them, even if busy with a patient (unless to do so would be unsafe for the patient). Be polite. Make sure that you identify them, whether by examining their credentials or by calling the agency's office. Ask them about the target and scope of their investigation - they may not tell you, but they might.

If there is any doubt in your mind whether you might be or become a target of the investigation, or if you have the least bit of discomfort about complying with the investigator's requests, call your lawyer right away. Do not delegate dealing with the investigator to one of your staff; do it yourself. You can have someone make copies for you, but you talk to the investigator. Help them obtain records if they are lawfully compelling you to, but do not let them interview you without your lawyer; politely ask them to wait until your lawyer can be present.

Comply with Lawful Demands

Frequently agency investigators will show up with some sort of search warrant, subpoena, order, or other demand for the production of documents or other things. It will be important to work with counsel to determine whether the board has the authority to compel production of the item and to negotiate a mutually acceptable plan for compliance with lawful demands.

For example, the investigator may request a medical record. The investigator may be entitled to record, compliance with the request might be optional, or you might be compelled to refuse. If in doubt, seek the advice of counsel. If permitted, it usually is better to provide a copy of a medical record rather than the original.

Allow the Execution of Search Warrants

Search warrants are different. Licensing boards do not commonly use search warrants; usually this is a sign of a criminal investigation. If an investigator arrives with a search warrant, call your lawyer immediately. Do not obstruct the investigator. Let them take what they want, but inventory what they take. Request, politely, to retain a copy of any vital information (a medical record, for example) they take.

The Interview

Board investigators are not members of the profession, but they are experienced investigator, usually retired from law enforcement. Nevertheless, speak to them using professional, not lay, language. They will ask for explanations or written statements as needed. Express concern but never anger. Always remember this is not an occasion for debate of scientific ideas. It is always best to have experienced counsel help you prepare for and be present during interviews.

Insurance

Malpractice insurance often covers the defense of Board inquiries. Coverage under malpractice policies varies: some offer coverage for most Board inquiries; some cover only patient complaints or allegations about patient care; some cover only inquiries that could give rise to malpractice liability, and some offer no coverage.

Many policies include a duty to notify the insurance company of a Board inquiry. Even if the policy does not contain a duty to notify of the inquiry, there is usually a question on annual renewal. Failure to notify or truthfully answer an application question can cause a denial of coverage or even policy cancellation. You should promptly notify your insurer so a coverage determination can be made.

Many policies providing coverage let you choose your counsel. Some pay counsel directly; others reimburse you some or all of what you pay.

Conclusion

While responding to an investigation may be one of the more stressful occurrences in a professional's career, you can get through it. Understand that the process may span many months before a resolution is obtained.

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