

# Responding to a Complaint to the Medical Board

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**Receiving a letter from the North Carolina Medical Board (the 'Board') that a complaint has been filed against you is distressing.**

It often provokes a mix of emotions, ranging from anger to worry; however, it is a manageable situation if you adopt a proactive approach. Turning prompt and sufficient

attention to the matter will yield the best possible outcome.

## **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 complaints. Another article, coming soon, will address responding to investigations.

**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.

## **Complaint Response**

If a complaint is made, the Board will ask for a written response to the complaint. The Board will accept a letter written on your behalf (by your lawyer, for example), but they prefer a letter from you. We recommend that your response is on your letterhead and over your signature. Our practice is to collaborate with our clients on preparing a response. Either of us can write the first draft, but the final product should be a collaborative effort that is approved by counsel.

The best response to a complaint is first to summarize your background, credentials, and the care of the patient without reference to the complaint -- just the story you would tell a colleague about the interactions with the patient. Then we recommend specifically addressing each issue in the complaint.

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.

The Board rules (21 NCAC 32N.0107(b)) require a response to a complaint within 45 days. The same rule requires the Board's staff to grant up to an additional thirty days for "good cause," at least if asked at least a few days before the deadline. The Board can become less flexible thereafter, and those 45 (or even 75) days can pass quickly, so be diligent and do not delay addressing the complaint.

### **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.

## **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.

### **In all encounters with regulatory bodies, it is important to be clear, concise, cogent, and complete.**

Speak to the Board using professional — not lay — language. Express concern but never anger. This is not an occasion for debate of scientific ideas, but it may be important to explain your thought process.

## **Record-keeping**

The Board is not covered by HIPAA, but you likely are. Any transmission of items containing Protected Health Information should be sent via private courier, mail, fax, or a secure web portal. Send no item containing patient information via unencrypted email.

Establish a file separate from the patient record for correspondence and other documents related to the complaint. Do not place the patient's complaint, your response, or any related matters in the patient's record.

## **Dismissing a Patient**

If you dismiss any of the patients involved, please do so under your practice's regular policies and procedures and under the Board's guidance, which can be found here: [https://www.ncmedboard.org/resources-information/professional-resources/laws-rules-position-statements/position-statements/the\\_licensee-patient\\_relationship](https://www.ncmedboard.org/resources-information/professional-resources/laws-rules-position-statements/position-statements/the_licensee-patient_relationship).

## **Keep a Current License**

It is crucial to renew your license while a complaint is pending. Failing to renew your license while a complaint is pending may prompt a report to the National Practitioner Data Bank.

## **Conclusion**

While responding to a complaint or inquiry 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. The Professional Licensing attorneys at Ward and Smith will help you navigate this process to enable you to obtain the best possible outcome.

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