



Medical Boards: Part 2

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The probability that you will receive a certified letter from your medical board informing you about an investigation is relatively low. But one day, you may be one of the unlucky souls who receives such a letter. What do you do?

Different boards have different rules about what gets reviewed or investigated and what does not. Some boards are mandated to investigate, at least to some degree, every complaint received. Others look at the veracity of the complaint and make a determination about whether to investigate. Because many complaints are dismissed early on, you might not ever know that a complaint was filed against you.

All boards derive their authority from a state legislature and are mandated by their charter to protect the public. Thus, when you receive a letter requesting medical records or a response, understand that the board represents the public, not you.

Do these things before you ever receive notice of any board investigation:

- 1. Review your malpractice policy to ensure that it includes “cost of defense” coverage** and that it covers investigations and actions by medical boards and other contracting or credentialing entities.
- 2. Review policies and procedures with your staff regarding how your practice is handling patient complaints and requests for records.** Many board complaints are initiated by patients who for one reason or another are upset. Thus, ensure that things like complaints about customer service, billing issues, and medical record requests are handled in a timely fashion and with the appropriate amount of sensitivity and kindness.

Do these things to prevent a board investigation:

- 1. Be kind to patients and their families.** Patients complain when they are upset. Do not let the situation get to this point. Make sure your staff members are always



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pleasant to patients, no matter how difficult some patients may be. It is simply not worth drawing lines in the sand when it comes to interactions with patients. No matter how difficult the patient or the conversation, remember that you are a professional and must always come from a perspective of advocacy and caring.

- 2. Document thoroughly and at the proper time.** Nothing protects you as well as a medical record that is documented meticulously and contemporaneously and not retrospectively.
- 3. Get consults for and refer out as necessary any patients whose health issues are complex or are otherwise difficult to deal with.** Consulting the appropriate specialists is a good way to mitigate claims of negligence if the path you were on with the patient turns out to be incorrect.
- 4. Avoid breaching patient confidentiality and avoid responding inappropriately to negative online reviews of your care provision.** Writing a response on such sites as Yelp like “This patient suffers from a mental illness” is a sure way to find yourself in front of your board.

Do these things when you receive a board complaint:

- 1. Take the complaint seriously.** Your license is a privilege, not a right. Like any privilege, it can be taken away. You have worked very hard to achieve your license, so work just as hard to keep it. Respond to inquiries within the allotted time and be exceedingly professional. Do not ignore a request for a response, no matter how unjust or ridiculous you believe it to be.

2. Hire an experienced attorney. Do not represent yourself. Boards have attorneys, so you should too. Most medical malpractice insurance has a provision that covers representation in front of a medical board. If yours does, take advantage of it. Also, it is likely that your carrier knows who the best attorneys are for handling board complaints. Too often providers start off representing themselves and then hire an attorney after the damage has been done.

3. Avoid contacting the patient and the patient’s family. Once a complaint is filed, you must switch roles, from physician to litigant. Board members are your adversaries, and they are simply doing their job. Nothing good can come from contacting the patient. Any contact will be construed as trying to manipulate or cajole the patient into withdrawing the complaint. Even if the patient does withdraw the complaint, it is likely that the board will at least continue to investigate. So once the complaint is filed, do not contact the patient to plead your case or to correct what you believe is a misunderstanding. Likewise, do not attempt or threaten to sue the patient for libel or slander.

4. Avoid turning over medical records to the board until you consult an attorney. That said, you cannot delay responding or submitting records, so it is important to find representation immediately upon receipt of a complaint. Submit a timeline of events along with the records and be judicious about what records you send. Provide only relevant medical records after discussing them with your attorney.

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5. Avoid meeting with the board or attending a formal or informal hearing without representation. Having an attorney does not imply guilt; it implies intelligence. The attorney’s job is to protect you from incriminating yourself. Even if you think the complaint is a simple misunderstanding that can be easily explained away, one mistake can cost you your license.

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6. Avoid altering your records. In the age of digital records, alterations are very easy to discover. Even with handwritten notes, it is usually obvious what has been charted contemporaneously and what has been documented after the complaint was filed.

7. Respond professionally. I once witnessed a physician unload a verbal tirade at board members, ending with “And I do not recognize or submit to your authority!” Shortly afterward, his license was no longer his. No matter how brutal the discussion, do not lose your cool before the board. If you do not know or do not remember particular information, then say so. Do not make up anything or guess at the right answer. Answer the questions asked and nothing more. Do not do board members’ job for them, however. Be direct, calm, and honest.

8. Avoid talking indiscriminately to others about the case. Such conversations are discoverable and despite your good intentions can get you in deeper. You can speak candidly to your spouse and attorney regarding your feelings about the case, but there is a caveat: I know of two cases in which the providers’ former or soon-to-be-former spouses informed on them to the medical board.

9. Be active in your defense—disclose everything to your attorney. They can better assist you if they are provided all of the facts. I have had a couple of experiences where the facts were disclosed to me by the board during the hearing. When I asked the providers about these new revelations, the best they could do was give me a look like someone had “shot their puppy.” One more thing: help your attorney identify experts who may be necessary to support your case.

Provided that you are direct, forthright, and forthcoming, most board complaints are survivable. The cases in which I have seen providers get into the most trouble and lose their licenses involved lying or record alteration by the providers. If you follow the advice here about preventing complaints and responding appropriately to them, you stand a good chance of retaining your license and providing care another day. ■