

Surviving a Medical Board Investigation

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A Tighter Crackdown on Doctors

Any physician can become the target of a state medical board investigation. By law, these licensing bodies are required to evaluate *all* complaints—serious and silly, and whether filed by a patient, colleague, or hospital.

The charges can range from the ridiculous ("I'm a space alien and the doctor broke his promise to help return me to my home planet"—a real complaint!) to allegations of negligence that resulted in a patient's injury or death.



Medical boards wield enormous power over doctors' careers and livelihoods. They can impose penalties that range from reprimands and fines to suspensions or revocations of medical licenses. In 2012, a total of 4479 physicians were disciplined, according to the Federation of State Medical Boards (FSMB), which represents 70 medical and osteopathic boards in the United States and its territories.

Attorneys who specialize in defending doctors say the boards have become more aggressive than ever. "The truth is, some of these boards like to eat their young," says Ronald W. Chapman, a healthcare attorney who has offices in Florida and Michigan. "That sounds extreme, but the boards can be relentless and their expectations about medical care sometimes exceed reality."

The scope of board inquiries has expanded in recent years. Minor billing errors, a rude bedside manner, poor documentation, and even social media posts are all subject to scrutiny.

"In the boards' view, there's no such thing as a doctor who is off duty and has a private life," says David L. Adelson, a healthcare attorney with Kern Augustine Conroy and Schoppmann in Bridgewater, New Jersey. "Whatever you do in your private life is subject to their authority and could affect your license. A Facebook post, or a YouTube video depicting you acting inappropriately, can lead to an investigation."

It's Wise to Know What Happens

Although every complaint must be investigated, boards don't spend a lot of time on frivolous ones. "Each state has different rules, but generally an investigator is assigned to do an initial review," says Chapman. "He or she can dismiss it without sending it up the line." For example, the doctor in the space alien complaint was never notified at the time and didn't even hear about it until years later.

"The doctor may receive a letter asking for medical records," says Chapman. "Not all such requests turn into full-fledged investigations, but it's the beginning of the process. Physicians should recognize that this is serious and contact a healthcare attorney."

If the investigator wants to meet with you, most attorneys advise against speaking with him or her on your own.

"Doctors think that if they just explain the facts, this can be worked out," says Chapman. "But that's a mistake. The investigator may not even tell the doctor specifically what he or she is looking at. The investigator will take notes of the meeting, which can be used against you. If you hire an attorney, he or she will contact the investigator and try to pin down the specific issue so that you can provide a stronger written response."

David Adelson adds, "Your legal counsel can help identify the areas the board is focusing on. Most boards have the authority to look into things outside of the initial complaint. So if they're looking at records of a particular patient, they may also demand charts for other patients who have had the same procedure or service. By doing a proactive analysis, we attempt to fix things or address them *before* the board demands it. For example, the board may dismiss the initial complaint but find problems with informed consent or documentation in the other charts. A healthcare attorney can help you find witnesses to testify on your behalf."

Once a complaint is officially served, the physician generally has 20-45 days to respond in writing.

The biggest mistake a physician can make is to ignore the complaint or not take it seriously. "Failing to respond to the inquiry can be grounds for discipline in and of itself," says Drew Carlson, the FSMB's director of communications. "Because of the threat of malpractice lawsuits, physicians may be conditioned to be guarded about what they divulge about an incident that prompted a complaint. However, they need to be transparent with the medical board and promptly forward requested records."

What the Boards Are Scrutinizing

Prescriptions of narcotics receive the highest level of scrutiny. Most states have a database that allows physicians to check which medicines a patient is taking, including by quantity and how often they've been prescribed. The rules require doctors to check it to make sure the patient isn't doctor-shopping for painkillers.

"Doctors can get into trouble for not checking it," said Adelson. "It's easy for investigators to see what a doctor prescribes, how often, how many pills, etc. Some doctors are naive, and patients can take advantage," says Adelson. "Word travels that it's easy to get a prescription from a given

doctor. Boards think that primary care physicians shouldn't be long-term prescribers of pain medicine, and they look at that carefully."

FSMB says the most common complaint received by medical boards is an allegation that a physician has deviated from the accepted standard of care. Other common complaints include overprescribing or prescribing the wrong medicine; failure to diagnose a medical problem that is found later; failure to provide a patient with medical test results in a timely manner, which can lead to harm; failure to provide appropriate postoperative care; and failure to respond to a call from a hospital to help a patient in a traumatic situation.

Here are some of the other issues boards focus on:

Impairment. Any activity that could suggest the physician may be impaired will receive aggressive scrutiny. "Let's say a physician is arrested for driving under the influence of alcohol," says Chapman. "He or she may plead no contest, or the court may take it under advisement and then dismiss the charge in 6 months. In most states, that's still considered a conviction and doctors need to report it to their state board."

If the physician is licensed in more than one state, he or she should self-report it to the other states as well. "Even if the criminal charge is dismissed, boards will still investigate. It's a different burden of proof. The board wants to know whether the doctor might have a drinking problem," says Adelson.

Documentation. Physicians are busier than ever, even as reimbursements are falling. Doctors justifiably complain that they don't have the time for extensive documentation. But that argument won't fly with a medical board.

"Since the advent of electronic medical records, boards and insurers are complaining that doctors are simply copying and pasting information into patients' charts," says Adelson. "They call it the 'cloning' of notes. There are plenty of check boxes. We tell our clients they have to affirmatively go into each section and address what happened to the patient. The notes can't all look the same, or the board will find fault."

Wrong-site surgery. Boards have insisted on steps health professionals must take to make sure they're operating on the correct patient and correct site. They may want the patient to be identified by two independent sources, and have time-outs so everyone in the operating room knows who the patient is, what procedure is being performed, and on what side.

"In a case I handled, the surgeon was supposed to operate on the patient's left knee," says Chapman. "However, the right knee was prepped and draped. Before he made the incision, the surgeon realized the error. He was still reprimanded by the board for wrong-site surgery because he had marked the spot on the wrong knee. Even though he never cut on the wrong side, he was fined \$10,000."

More Fodder for the Medical Boards

Other clinicians. David Adelson recalls a doctor who employed a physician assistant (PA) to see his patients, but was rarely in the office to supervise him. That came back to haunt the doctor when the PA, who hadn't renewed his license but was still working, failed to diagnose a serious medical condition. "The doctor lost his license because he should have been supervising and should have made sure the PA was properly credentialed," Adelson says. "When other clinicians work for you, it's essential to know what they're doing."

Conflicts with colleagues. Physician demeanor has become a hot topic with boards. It's a difficult area because some of the complaints may be motivated by politics or turf battles. Ronald Chapman recalls one such encounter, in which a doctor was in the process of separating from his partners. "There was deep conflict among the doctors and nurses in the practice," he says. "One nurse said the doctor made inappropriate sexual comments to her and filed a complaint. We investigated and found the complaint was false and was prompted by the conflict."

"Some people think they can use the board to get back at someone. Luckily, the board agreed with us and cleared the doctor."

Malpractice cases. Physicians with numerous malpractice suits can expect the state board to review their cases, especially if one or more of them resulted in a large settlement. Although the board realizes that many cases are settled for economic reasons, it may still sanction a physician on the basis of its own investigation, says Adelson.

Beware of the Domino Effect

Any form of discipline on your record can create a domino effect that has an impact on which insurers you can participate with, your hospital privileges, and licensure in other states. "If you've been disciplined in one state, you must report it to all other states you're licensed in," says Adelson. "If you don't, you can lose your license in those states. One issue can destroy your livelihood. The state agency that grants you the ability to practice can take that away."

Chapman agrees, citing this memorable incident: "A physician was asked to repeat a semester in a residency program 25 years ago. He later applied for a medical license in another state. A question on the application asked if he had ever been placed on academic probation. He probably forgot about the incident and said 'no.'"

The state board investigated and denied his application, Chapman says. The doctor had to report that to all other states he was licensed in, some of which revoked his license to practice there.

Thankfully, there was a solution. "We went to the first board and convinced it to allow him to withdraw the application," Chapman recalls. "So that quashed the order of denial. Then we went to the second state and explained this. Six months later, he reapplied and was granted a license."

"It's essential that doctors tell the complete truth on any applications," he emphasizes. "The effects of a falsehood, however innocent, can reverberate."