

WHAT TO DO IF YOU GET A BOARD OF MEDICINE COMPLAINT



BY DORINDA P. BURTON

Unfortunately, the number of complaints received by the Board of Medicine ("BOM" or the "Board") appears to be on the rise. This means that there is an increased likelihood that you, as a physician, may receive one. Should you have the misfortune to receive such a complaint, it is natural that you may feel that your skill and reputation are being called into question. As a result, you feel anxious, disheartened and angry. Breathe. This article is designed to aid in your understanding of the process by which a BOM complaint is initiated, investigated and resolved. Unfortunately, the number of complaints received by the Board of Medicine ("BOM" or the "Board") appears to be on the rise. This means that there is an increased likelihood that you, as a physician, may receive one. Should you have the misfortune to receive such a complaint, it is natural that you may feel that your skill and reputation are being called into question. As a result, you feel anxious, disheartened and angry. Breathe. This article is designed to aid in your understanding of the process by which a BOM complaint is initiated, investigated and resolved.

Anyone, including an anonymous complainant, may file a complaint against a physician. It is the Department of Health Professions (the "Department") that has the statutory authority to investigate possible violations of the BOM's acts and regulations. The Department provides each Health Regulatory Board including the BOM, with the authority to enforce its acts and regulations by hearing charges of misconduct and administering the appropriate sanctions. The BOM is comprised of 18 members—one medical physician from each congressional district, one osteopathic physician, one

podiatrist, one chiropractor, and four citizen members.



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When the Department receives a complaint, the matter is assigned to an intake analyst whose primary job is to identify if the complaint implicates a violation of a law or regulation. If not, the Department is without jurisdiction to proceed and the matter is dismissed. If it does, the case is docketed for investigation and assigned to an investigator.

At this stage of the process, you will receive correspondence from your investigator enclosing the complaint made against you, along with any additional documentation submitted by the complainant. You will likely be asked to respond in writing in regards to your care and treatment that is the subject of the complaint. You may be asked to provide medical records or other relevant documents. The investigator also has the authority to request an in-person or telephone interview in lieu of, or in addition to, your written response. This portion of the investigation is critical. It is your opportunity to explain your care and treatment in your own words before a decision is made as to whether probable cause exists that a law or regulation has been violated, which would then warrant further proceedings or disciplinary action. You have the right to be represented by counsel to assist you throughout the investigative phase of the process. In fact, your insurance may provide coverage and pay for your legal expenses. It is also advisable that you consult with risk management prior to responding.

At the conclusion of the investigation, your investigator will compile a report summarizing the alleged violation, the investigation, the interviews, and documentary evidence. This report will then be submitted for a probable cause determination. The question at issue is: based on the results of the investigation, does probable cause exist that you violated a law or regulation? The BOM has developed a policy wherein the Executive Director, who is a physician, makes the preliminary probable cause determination. The case is then reviewed with a Board member, for a second opinion.

The following is a list of the potential outcomes based on the probable cause determination:

- It may dismiss the matter.
 - It may impose a sanction, i.e. reprimand, license limitations, probation, suspension, revocation and/or monetary penalty.
 - It may refer the matter to a formal conference.
- Of note, a sanctioning matrix has been developed and implemented to ensure that predictable decisions are made by the Board, and to neutralize sanctioning inconsistencies. The tool is merely a recommendation and does not have to be followed. The case decision and sanction ordered are final unless appealed, or forwarded to a formal conference if you do not agree with the outcome. Should you proceed further to the formal conference, it will be conducted before a quorum or panel of the Board. It is conducted similar to a trial, and again, you may be (and should be) represented by counsel. You and/or your counsel have the right to subpoena witnesses and documents, to submit evidence, conduct cross examination, make an opening statement, preliminary motions, and a closing argument. The Board has similar rights. In fact, the BOM routinely consults experts to review its investigative file, write expert opinions, and, if necessary, testify on its behalf in such proceedings.
- The Board may find that no probable cause exists and dismiss the case.
 - The Board may be concerned with your practice but choose not to institute disciplinary action. It would therefore issue a confidential advisory letter suggesting that you examine certain aspects of your practice.
 - The Board may find probable cause of minor misconduct and offer that you enter into a Confidential Consent Agreement ("CCA"), which is considered a disciplinary action.
 - The Board may find probable cause exists and forward the case for legal review and preparation of a notice of informal conference.

- The Board may initiate or agree to engage in negotiations with you or your counsel to enter into a pre-hearing consent order in an effort to settle the case without having to conduct an informal conference.

Should the Board find probable cause and you do not enter into a consent order, you will proceed to an informal conference that will be held before a Committee of the Board (the "Committee"). The informal conference is intended to obtain any additional information needed to aid in case resolution. To that end, the complainant is invited to attend, and may be asked to testify. You may also discuss the allegations and the evidence in the investigative file with the Committee. It is important to note that, just as with the investigatory stage of the process, you have a right to be (and should be) represented by counsel.

At the conclusion of the informal conference, the Committee may take any of the following actions:

The Board will announce its findings of fact, conclusions of law and sanctions. The array of sanctions that may be issued are similar to those that may be issued after the informal conference; however, sanctions rendered after the formal conference do not require your consent. Final orders, whether resulting from a formal or informal conference or from a consent order, are matters of public record. Both the informal and the formal conference proceedings are open to the public. However, the investigative reports, records and evidence obtained throughout the course of the investigation and disciplinary proceeding(s) remain confidential.

Receiving a BOM complaint is a serious matter with the potential to impact your medical license. The above overview was drafted with the intention of taking the mystery out of an otherwise confusing and stressful situation. I am hopeful that it will assist you in how you respond to the Board, whether you seek representation or act on your own behalf.