

## **Episode 32 – Ensuring compliance with Board actions**

**Intro music: 0:00**

### **Podcast introduction: 0:09**

The North Carolina Medical Board’s disciplinary process is actually pretty simple when you boil it down to the essentials. First, information is received by the Board. Next, there is an investigation. Then, the staff of the medical board reviews the evidence. Finally, if the staff think there’s something there, the case goes up for Board review and final resolution. Done. Except, not really. I’m Jean Fisher Brinkley, Communications Director for the North Carolina Medical Board and this is MedBoard Matters. On this episode we are talking about what comes after the medical board takes action in an enforcement case. You see, in many cases that result in regulatory action, the Board may require the licensed medical professional involved to do – or not do – certain things. If a case finds fault with the quality of the medical care a physician provides, then the Board might require that physician to complete continuing medical education. If a male licensee has a pattern of complaints from female patients about inappropriate behavior, the Board might require a chaperone or even order that licensee not to see female patients. In the most serious cases, the Board may even order the licensee to stop practicing medicine altogether. Today on MedBoard Matters we are taking a look at how the North Carolina Medical Board makes sure that licensees actually do what they have been ordered to do. And, as is often the case when I peel back the curtain on medical board process, I have some help. I am delighted to welcome Carren Mackiewicz, who is Director of Legal Operations. Carren is a paralegal by training who has spent the better part of the past year expanding and improving the North Carolina Medical Board’s Compliance and Monitoring Program.

### **Interview with Carren Mackiewicz: 2:02**

JFB: Carren, thank you so much for joining me. I really appreciate it.

CM: Thanks, Jean. I'm happy to be here.

JFB: Well, I have to say, I've been looking forward to having this conversation with you because compliance is a topic that even after having been with the medical board for 15 years, I have never really had a whole lot of insight into. So, I thought we could maybe start with the basics. What do we mean when we talk about compliance in the context of medical regulation?

CM: Sure. So, when we're talking about compliance, we are talking about protecting the public by ensuring any requirement, restriction, or condition that's been imposed by the Board is carried out.

JFB: Right. So, the licensee is doing what the Board told them to do.

CM: Exactly.

JFB: All right. I think it would probably be helpful for us to talk about the different types of things the Board asks licensees to comply with. So, you mentioned a few of them, but I'm thinking...when I think of this, I'm like limitations are things that the licensee can't do. Conditions are things that they have to do or should do...the Board wants them to do and then there's other things like assessments come to mind. Does somebody have a substance use problem? How is their mental health? How is their competency? So, let's talk about the different types of things that the compliance program is watching out for.

CM: Sure. So, we break it down into essentially three categories. We take it in terms of compliance, which is when the Board tracks compliance of an order or an interim action. So that would be something like you were talking about with our orders for examination, when somebody needs to go have an

examination or an assessment for things like mental health or substance abuse. Those types of actions are usually more short term. So, we move those along in their what we call interim, and then the Board will take that information and determine if additional steps need to be taken. Our next phase is monitoring, which is when the Board monitors the requirements, restrictions or conditions in a final action. So those could be consent orders, public letters of concern, a final order after a hearing. And these actions are usually more long term. So those may be things like a physician having to have a chaperon when they examine patients, having to have a practice site approved and only be able to practice at a certain location. Things like that. And then our third section is our investigation of our compliance, and that is when the Board actually conducts an investigation to determine compliance with any one of those actions, either an interim or a final action. And that is when we actually have an investigator conduct research to determine if our licensees are complying with our final or interim actions by doing things like phone calls, Internet research, social media research, things of that nature. JFB: Okay. Now, the Medical Board has had a compliance program for some time, but recently you have led the process of expanding and improving it. And I think it's actually now referred to, the program, as compliance and monitoring as opposed to just compliance, probably to reflect some of the things that you just described.

CM: Yes, that's correct. So, we broke out the compliance and monitoring for that exact reason. We determined, first of all, I think the actions coming from the Board have increased. I think our annual reports would show that our numbers have increased, which

JFB: Yes.

CM: Has trickled down to the actions that the Board is taking. And so, we had to find a way to kind of filter out that workflow as it came down to the compliance and monitoring section. And we needed to have adequate staff to handle this type of work. And then we found that the best way to handle that was to break it up between interim actions and final actions, because that just made the best sense. So, the compliance ended up being things that were interim versus monitoring being something that was more long term.

JFB: Okay. Now, let's go back to basics, I guess. How does a compliance case start? And who's the subject of one? We're sort of talking around it, but I think I just want to make sure that our listeners really understand the process. So, who has a compliance case?

CM: Sure. So that would be someone who was the subject of a disciplinary case with the Board. So that case would work its way through the process at the Board. That could have either been through some sort of an investigation or complaint. So that case works its way through. And if it's an interim action, then during the process of the investigation, we may determine that the Board needs some additional information, either through an examination, which we do through an order, or at the end of their case, they may reach a settlement agreement or have a hearing and have those requirements, restrictions or conditions that we were talking about formalized into a settlement agreement, a consent order or a public letter of concern. And then that document and their case is then moved into the monitoring phase and those conditions are monitored through our monitoring program to ensure that those conditions or restrictions or requirements are carried out.

JFB: Right. And we talked about the fact that there's been a large increase in enforcement case volume. I was looking at the numbers in preparation for this conversation. The Board actually closed 3,660 cases last year, which just for context, that's almost additional thousand cases year to year, between 2021 and 2022. So huge, huge increase, definitely. How many compliance cases is the Board handling?

CM: The Board is roughly handling around 200 compliance cases at any given time.

JFB: Now, I would hope that most licensees do whatever it is that the Board has ordered them to do, but obviously some don't. How often do you find that licensees fail to comply?

CM: It's a very small percentage of our licensees who don't comply.

JFB: And what happens when a licensee is found to be non-compliant? I mean, what can the Board do to get them into compliance?

CM: Sure. So, when this happens, the Board will conduct a further investigation regarding that issue of noncompliance and will gather additional evidence and then bring that additional evidence to the Board. And based on that additional evidence, additional charges can be issued, and ultimately further requirements, restrictions or conditions can be imposed on that licensee based on the noncompliance.

JFB: Okay. Now, is there anything in between that like if someone's not in compliance? Is there some process or mechanism for the Board to approach them and say, hey, you haven't done what you're supposed to do, you have 60 days to do what the Board has ordered you to do, or you could face additional discipline?

CM: Sure. You know, every case is different. Every circumstance is different. You know, we always want to, first of all, ensure that the licensee understands that this is a condition or a restriction or limitation that they have to comply with. There are also in our interim actions, sometimes they're asked to take additional CME kind of as a remedial measure. And so, we want to ensure that they are able to find additional CME in the categories that we're asking. And so, if they need additional time to do that, they can ask for an extension in order to get that done. So, we attempt to work with our licensees as best we can, but obviously we have to do that in the confines of attempting to protect the public because that is our first mission. So, if it really depends on what the licensee is being asked to do, obviously if we have a final action in which the licensee is being asked to refrain from things revolving around substance use or abuse, and then we find out that they are non-compliant with that, that rises to a different level.

JFB: Sure.

CM: And, you know, we may have to take additional steps based on that because our ultimate goal is to ensure that we are protecting the public.

JFB: Right. So, if there is a patient safety issue, then there might be a need for a more swift response.

CM: Yes, absolutely.

JFB: That makes perfect sense. So, I'm hoping that you'll go into a little bit more detail about some of the methods the staff in the compliance and monitoring program use, because you drew the distinction between compliance, monitoring, and investigation. I imagine there are different techniques that the staff use. Could you give me just a little insight into compliance? What does that look like?

CM: Sure. So, from the compliance aspect, in terms of the orders, they are working with the examination centers to ensure that the licensees are scheduling their examinations. And then we are working to receive those examination reports and that that is being done in the timeframe that is spelled out in the order. For the interim actions, their case specific, but some examples, those can be asking for remedial measures such as continuing medical education. And so, they are usually given a number of hours and they have to do it within a specific period of time, and it's usually on a topic. So, we will be working to ensure that that has been approved for what the courses that they want to take and then that they provide the Board with the certificates of those courses in the time frame that they've been asked to do that. When we move into the monitoring category, you know, there's a lot of things that they can be asked to do in terms of the requirements of, say, consent orders and final orders.

But it's very similar to how we carry those out, although we may engage other staff at the Board to help us in that regard. So sometimes we engage our field investigators to conduct site checks to ensure that things going on in the practice are appropriate in terms of what's in the final order or the settlement agreement. So, an investigator would go out, do a site check. They may pull some medical records while they're there. If we have an issue that we need to have medical records pulled to have our Office of Medical Director review to ensure compliance. So, there's times when we do have to tap into our other resources at the Board to help us. Or it may be things where it is something as simple as they are emailing. If they have a practice monitor, we may be emailing to just get quarterly reports and we're ensuring that those are coming in in the time period that they're supposed to be. So, it just depends on, you know, whatever their restriction or condition is, what action our monitoring staff needs to take in order to ensure compliance with that action.

JFB: So, with monitoring, then that sounds like if someone has been ordered not to see female patients or if they have been required to have a chaperon when seeing patients, then that would be the kind of thing that potentially would require site visits to make sure...

CM: Correct.

JFB: ...that they were doing what they're supposed to do. Okay, great. All right. And now I think you were about ready to go into talking about the investigation phase.

CM: Yeah. Yeah. So, our investigation phase is actually something that's new. And we were pretty excited about it because I don't think that a lot of Boards around the country actually have this type of staff. And so, this is a staff person for the Board that was pretty innovative, and we were pretty excited about them. So, the position itself is called a Desktop Investigator and the purpose of this position is an investigator that unlike what we were just talking about with the field investigators, where they actually go out to the field to conduct additional investigation that we might need. And also those same field investigators conduct the actual investigation during the enforcement case phase. This investigator conducts their investigations at their desktop on a computer. So, it is social media based. They may be making phone calls. They're doing Internet-based background research, and they're doing all of this to ensure compliance with our Board's final actions. So, if we have a physician who had a consent order or a final order in which they were suspended indefinitely or revoked and are otherwise suspended, such that they can no longer practice medicine, this person is doing this type of research that I just discussed to ensure that that person is not doing the thing that we have asked them not to do. So, in this instance, it would be not practicing medicine because, you know, we can ask someone not to do something, but we also want to ensure that if we've taken their license away, that they're not out noncomplying with that final order.

JFB: Yeah.

CM: And kind of going behind the Board's back and, and practicing medicine anyway.

JFB: Absolutely. I mean that would be obviously one of the more serious actions. The Board really does not do that lightly. So, if...if someone's been told you can't practice medicine, the Board certainly wants to make sure that they are not.

CM: Right. So, we see this position as really important. And so, he is digging for that type of information. We're looking to see, you know, is there comments on social media about someone complaining about going to him and not getting a good result or going to someone and getting medications when he's not supposed to have a license or seeing that person, you know, somewhere and getting treatment or them advertising themselves somewhere, you know, when they're not supposed to be. So, we think that this

position is really important for that to help us ensure those particular aspects of those types of settlement agreements where someone's not supposed to be doing something. And then the other aspect of this, too, would be for licensees who are restricted to practice only at certain locations. So again, we're looking to ensure that any information that we are finding tends to indicate that this person is only practicing where they say they're practicing. So, do we find a website that has them advertising themselves practicing somewhere else? You know, do we have patients saying again that they're, you know, seeing them somewhere else? So, this person's job is to help the Board ensure that if they have that type of a restriction that they are complying.

JFB: That's great. That does sound like an advancement and definitely a helpful addition. We've been talking about people who are under active orders, who have various limitations and restrictions to comply with. What happens, though, when somebody has done what they're supposed to do? They have met all of the terms of their consent order or their Board order, and they are no longer under any ongoing obligations to the Board. How can they signal to the public? Because one of the things that we've talked about and on the podcast before is just the public nature of Board actions. Usually if somebody has some type of limitation or restriction, there's going to be a public order. The public knows about it, employers know about it, their colleagues know about it. Most people are eager to tell the world, "I've done what I was supposed to do, and I'm not under any ongoing obligations to the Medical Board". So how do we let people know that people have done what they're supposed to do?

CM: Sure. So, they would have to contact our compliance and monitoring staff and submit a request to be relieved of their obligations or whatever it is, their requirement, their restriction, their condition, and depending on what their action was, they can request to be relieved of that in whole. So, if they had multiple conditions and they had complied with all of those, they could ask to be relieved of all of them, or if they had a more complex action. And they have complied partially with that. So, with certain restrictions or conditions or limitations, but still had some to go. They could also request just to be relieved, partially of the things that they had complied with at that time. And that request will be taken to the Board and the Board will make a decision on that. And if they are relieved of those obligations, then that will become a public document that we will put on the website.

JFB: Right. But you do have to request it. It's not something that happens automatically.

CM: That's correct.

JFB: Yep. Okay. Yeah. I can't tell you how many calls over the years I have taken either from licensees themselves or employers credentialing bodies, insurance companies, you name it, who want to know, did doctor so-and-so meet the terms of his or her order? And usually, it's difficult to come up with a good answer to that question except by saying we do have a compliance program. So, I think that will be useful information for people out there who do have orders that if they need to request something that says that they have complied, that that is something that the Board can help them with. So that's great. Well, thank you for taking the time to walk me through all of this. I've learned a lot. I hope our listeners will as well. And is there anything else? I always like to give my guest the chance to add anything or underscore something that they might have said before we end the conversation.

CM: I just think it's great to have the public have a better understanding that once we issue actions like this, that's not the end. That our...our mission is to protect the public and that's what we do. So, we carry these through. We ensure that you know what the Board asks our licensees to do is being done. Or if we ask the licensee not to do something, that that's being done as well. And I think we now have a

very robust compliance and monitoring program in order to carry that out and carry out our mission. And I'm very proud of the Board's dedication to our efforts in that regard.

JFB: Yes. Same here. It is great to know that when the Board takes action that we have such a robust program in place to make sure that people are doing what they're supposed to. Well, Carren, thank you again for taking the time to speak with me. And I really enjoyed learning about the compliance and monitoring program.

CM: Thank you, Jean. I appreciate it.

**Episode closing: 21:31**

Well, that brings us to the end of this episode of MedBoard Matters. Have we piqued your curiosity about all of the tools the medical board can bring to bear when resolving a disciplinary case? Yes? Well head on over to the show page at [www.ncmedboard.org/podcast](http://www.ncmedboard.org/podcast) to find a glossary of disciplinary terms and actions. And if you'd like to see some recent actions, you can always find them at [www.ncmedboard.org/boardactions](http://www.ncmedboard.org/boardactions). That takes you to a handy chronological listing of all public actions. And last but not least, if you have questions, comments, concerns, or a recipe for a killer limeade to help break this North Carolina heat, send an email to [podcast@ncmedboard.org](mailto:podcast@ncmedboard.org). This is your host Jean Fisher Brinkley signing off. Thanks for listening and I hope you will join me again.