

UNDERSTANDING THE BOARD'S INVESTIGATIVE PROCESS



THE BOARD'S PURPOSE

The North Carolina Medical Board was established in 1859 to protect the people of North Carolina. One important way that the Board fulfills its mission is by determining when a licensee's professional conduct or ability to practice medicine falls below accepted standards and may warrant remedial and/or disciplinary action. The Board is authorized to take remedial and/or disciplinary action by the Medical Practice Act (NCGS 90-14.) This brochure is intended as a guide to help licensees understand the Board's investigative processes.

INVESTIGATIVE PROCESS

Sources of information The Board reviews complaints reported to it from a variety of sources, including patients, family members and others advocating on behalf of patients, NCMB licensees, other health care professionals such as nurses or pharmacists, and, at times, law enforcement. The Board also receives anonymous complaints, which may be investigated. In addition, the Board investigates certain reports that are made to the NCMB by hospitals or other health care institutions (which report changes in staff privileges,) malpractice insurance carriers (which report professional liability payments) and other insurance companies, federal and state agencies, the National Practitioner Data Bank, and the Office of the Medical Examiner. The term "complaint" is used broadly to describe any or all of the above sources of information.



COMPLAINT REVIEW PROCESS

All complaints undergo a rigorous, [multistep process](#) of review that determines the ultimate action taken by the Board. The complaint review process may take six months or more to complete.

STEP ONE

When a complaint is received, the licensee is provided with a written notice (back panel) that advises him or her of the existence of a complaint or other information forming the basis for the Board's investigation. Notices are not provided in those cases where doing so would jeopardize the Board's investigation.

STEP TWO

The Board contacts the licensee to obtain a response to the complaint. The licensee may be sent a copy of the complaint information received by the Board and asked to respond in writing, or he or she may be interviewed by a Board investigator. The Board expects licensees to provide a complete and accurate account of their involvement in the matter under review within the time permitted under 21 NCAC 32N .0107(b). In many cases, the written response is the licensee's primary opportunity to explain his or her perspective and to bring any mitigating factors to the Board's attention. Most often, a clear and thorough response from the licensee, along with supporting medical records or other documentation, provides the Board with all the information it needs to complete a review. In other cases, additional information is needed and a Board investigator is assigned to facilitate the case.

STEP THREE

Once licensee responses are received, cases are thoroughly evaluated by the Board staff. All matters that involve quality of care are forwarded to the Office of the Medical Director (OMD), which is currently staffed by two physicians and a physician assistant. Cases are assessed by a member of the OMD or, depending on the specialty area of the care involved, may be forwarded to an independent reviewer who is a practitioner in the same area of practice as the licensee.

Once care has been assessed, the OMD makes recommendations for Board actions for each case. Non-quality of care matters (such as boundary violations, substance abuse, misdemeanor or felony arrests or convictions) are reviewed by Board attorneys, who are charged with preparing recommendations for Board action in those cases.

STEP FOUR

All cases and their accompanying recommendations receive an additional round of review by a committee of the Board's senior staff. This committee is made up of the directors of the Complaints, Investigations, Legal departments and the head of the Office of the Medical Director. The Senior Staff Review Committee examines each case and makes a recommendation for Board action by consensus agreement. The SSRC recommendation may or may not differ from the preliminary staff recommendation prepared by either the OMD or NCMB Legal Department.

STEP FIVE

For cases where some type of Board action (either public or private) is recommended, the final round of review occurs at the Board level. Each case and all recommendations are sent either to the Board's Disciplinary Committee or to the Review Committee. In general, the Disciplinary Committee reviews cases of a more serious nature while the Review Committee evaluates cases that involve misconduct of a lesser degree. These Board committees have the opportunity to examine and discuss each assigned case. At the end of their deliberations, the committees make final recommendations for action for each case. The committee recommendations may or may not differ from the Board staff recommendations.

STEP SIX

The final step is evaluation by the full Board. Sometimes, the Board accepts the committee recommendation and votes to carry out the action. Sometimes the Board may determine that additional information is needed. In these situations, the Board may obtain additional information directly from a licensee by requesting that he or she attend a confidential interview with a panel of Board members. In some cases, the Board may request that a licensee obtain some type of assessment (neurologic, substance abuse, clinical competence, etc.) The Board makes its final determination about a case only when its members are satisfied they have all the information they need to make a reasoned decision.

CONFIDENTIALITY

All information and records obtained during the investigation of a case, including medical records, staff reports and investigative reports, are confidential and are not available to the public unless the matter proceeds to a formal hearing. Cases that are closed with no Board action remain nonpublic. Investigations may need to be disclosed to other licensing authorities and credentialing bodies.

POSSIBLE OUTCOMES OF INVESTIGATIONS

Cases are resolved in three main ways: The Board may decide to take no formal action (Accept as Information or AAI); the Board may vote to take private action (such as issuing a private letter of concern); or, the Board may vote to take public action to resolve the case. Complainants are notified when a case is closed and are provided with general information about how it was resolved.

The outcome of an individual case depends on the unique circumstances of that case, as well as any mitigating or aggravating factors (such as a prior disciplinary history with the Board) that may be present. The descriptions below are intended to provide a general guide to the factors that are present when the Board votes to resolve a case in the following ways:

Accept as Information (AAI): The Board finds no violation of the Medical Practice Act (NCGS 90-14.) The case is closed and kept on file in the licensee's confidential permanent file. On average, 65 percent of matters investigated are accepted as information (AAI.)

Private Board Action: The Board does not find a violation of the Medical Practice Act that warrants public action, but it is nonetheless concerned about some aspect of the licensee's conduct or performance. Private action is taken, such as a confidential letter of concern to the licensee or a request that the licensee attend a private meeting to discuss their conduct with members of

the Board. On average, about 25 percent of matters investigated result in private actions.

Public Board Action: The Board determines there was a violation of the Medical Practice Act that requires remedial and/or disciplinary action. For example, the licensee may have engaged in conduct that was illegal or unethical, or may have issues with clinical competence, posing a potential threat to patient safety or welfare. Wherever possible, the Board develops corrective action for a violation that provides adequate patient protection without placing undue restrictions on the licensee. On average, 10 percent of investigations result in public actions.

What's a 'public action'? Public actions range from a public letter of concern, which the Board considers to be non-disciplinary, to suspension or revocation of the license, with many options in between. For example, the Board may issue a fine, reprimand the licensee or impose limitations on his or her scope of practice. All public actions of the Board are posted on the NCMB's public website, www.ncmedboard.org. Actions against an individual's license may be viewed online by the public via that individual's Licensee Information page.

If the Board's review determines that some type of public action may be warranted, it is possible the outcome of the case will be determined through a public hearing. However, most cases that result in public action are resolved through negotiated settlements known as consent orders.

THANK YOU

The Board understands that being the subject of an investigation is both disconcerting and inconvenient, and we appreciate your cooperation over the course of the investigation. Complaints to the Board are an important avenue for members of the public to air their concerns. In addition, complaints can provide a valuable opportunity for licensees to view their practices from a different perspective and, when appropriate, modify and improve certain aspects of conduct or care.

NOTICE TO LICENSEE

(Investigation/complaint)

The North Carolina Medical Board has received a complaint against you or your self-reported statement. With the primary goal of patient protection, the Board must evaluate the significance and validity of the information presented in the complaint. Your cooperation is essential to ensure a thorough examination of this issue. All investigative matters coming before the Board are judged on their individual merits.

Listed below is information regarding the Board's process:

- The licensee is required to respond to the Board's inquiry within the time permitted under 21 NCAC 32N .0107(b).
- The licensee may retain counsel.
- The Board should be notified in writing as to the name and address of counsel if retained.
- If counsel is retained, the Board will communicate through that counsel, except that certain documents will be sent to both licensee and counsel.
- All information provided to the Board and its staff will be considered in the Board's review of the matter.
- The Board's inquiry should be completed within 6 months of initial contact; if not, the licensee will be provided an explanation as to why the inquiry was extended.
- If the Board makes a decision to initiate public action, the licensee may request, in writing, an informal, non-public, pre-charge conference.

Have questions or need more information?
Contact the Board:

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NORTH CAROLINA MEDICAL BOARD
Investigative Process

