

Transcript for Ep. 2: The NCMB Complaint Process

Intro music: 0:00

Podcast Introduction: 0:10

Hello and thank you for listening. I'm your host, Jean Fisher Brinkley.

In this episode of MedBoard Matters we are going to really dig in to one of the main services that the North Carolina Medical Board provides to patients and that is the complaint process.

The complaint process is an important part of the medical board's public protection mandate because it is one of the main ways, we learn about possible misconduct among the medical professionals we license. In a given year, the Medical Board investigates about 2,500 matters and more than half of these cases start with a complaint submitted by a patient, family member, concerned citizen or other member of the public. So, complaints are a big part of the Medical Board's efforts to protect patients from poor medical care and unethical or unprofessional conduct by a physician or a PA.

On the other hand, we also know from working with literally thousands of North Carolinians who file complaints that people really don't know much about the medical board complaint process. And, a lot of the time, what they think they know isn't accurate.

People file a complaint because they think the Medical Board can help them get a financial settlement.

People file a complaint because they think we can force their prescriber to give them a certain medicine.

Some people think we can help resolve billing disputes.

In fact, the Medical Board can't do any of those things, but a lot of people think that it can. And because of that, unfortunately, we have a lot of unhappy customers who aren't happy when the complaint they file doesn't result in the outcome they were hoping for.

That, in a nutshell, is why we are doing this episode.

After listening to this episode, you should have a clear understanding of what a medical board complaint can and cannot achieve. You'll know what types of issues the Board can address, what kind of providers NCMB has authority over and, most important, how patient complaints help NCMB protect the public.

I've asked some of my colleagues, Brian Blankenship, who is Deputy General Counsel for the Board and also Shikha Sinha, who is the Board's Complaint Manager to help me out in explaining the process.

Hopefully you'll get a lot out of it.

Brian Segment: 2:24

JFB: I'm here with Brian Blankenship. Brian, would you say a few words about what you do here at the Board?

BB: So, I am the Deputy General Counsel of the North Carolina Medical Board. What that means is I am an attorney for the Board. I've been here about 19 years and I supervise three other attorneys who've been here a number of years themselves. We serve a number of functions, but I think most relevant to the discussion today is we review complaints that come into the board, we make recommendations and

ultimately if the board determines that we need to take public disciplinary action, we are the prosecuting attorneys. With the assistance of our paralegals, we draft the documents, we negotiate with the physician or his counsel. And if the case goes to hearing, we are the attorney that represents the Board in the hearing.

JFB: Great, thank you. And that in a nutshell is why I asked you to be here, because I thought that you pretty much would be the perfect person to explain how things works. And I, I am going to just jump right to one of the hardest questions we get. One of the things we often hear from members of the public is, "Why should I bother to file a complaint? The Medical Board isn't going to do anything."

BB: I get that questions a lot as well as an attorney for the Board. My first response is, don't take my word for it. We are a transparent organization and when anybody says the medical board is not going to do anything, I immediately point them to our website. Our Communications department has done a great job of developing a user-friendly website and anything you need to learn about the Board or see what we are doing it is on our website. So, I would point our listeners to our *Forum*. I would point our listeners to our annual report, and that would show you what the Board does.

For example, last year the medical Board took 135 public adverse actions. And I'll talk about what that means in just a second. We took 135 public adverse actions. We took 32 non-public adverse actions. And we issued 277 private letters of concern. Those adverse public actions which are published on our website, include license revocations, license suspensions, conditions or limitations on a practitioner's license, reprimands and public letters of concern. So, if any of our listeners thinks that the Board doesn't do anything, you can go to our website and see exactly what we do.

JFB: I think many patients think that the medical board have absolute power over the medical professionals it licenses, but of course, that's just not the case. Where does the Medical Board get its authority?

BB: We get our authority from the law. The North Carolina Medical Board is a creation and creature of statute. So, the North Carolina General Assembly and ah for the legal nerds out there, in Chapter 90, Article 1 of North Carolina General Statute, creates the Board and gives us our authority and tells us who we can license and regulate and discipline. I think that it's important that we, that our listeners know that we don't have jurisdiction over a number of healthcare professionals. So, we do not license them, and we can not discipline them. For example, nurses, dentists, optometrists, psychologists just to name a few. Those are healthcare professionals who may have been involved in the care that is the subject of the complaint, and there are other occupational licensing boards that license and regulate and discipline if necessary, those professions. Moreover, we don't have jurisdiction, again, we don't license, we can't discipline. We do not have jurisdiction over healthcare facilities. For example, nursing homes and hospitals. We regulate certain healthcare professionals who work in the hospitals or nursing homes, but we don't have authority over the facilities themselves. So, the law that creates us gives us our authority, but it also prescribes the limitations that we operate under. And very frequently, when we receive complaints, it is either against an entity that we do not regulate, or it involves a licensee we do not regulate.

JFB: Ok, great. And what is that law called?

BB: So, we refer to it as the Medical Practice Act. You won't see that in the statute books, but if you hear one of us here on staff talk about the Medical Practice Act, what we are referring to is the law that creates us and the law that gives us jurisdiction over our licensees and lays out the basis for us to take disciplinary action.

JFB: And what are some examples of violations of the Medical Practice Act?

BB: So the Medical Practice Act give us or lists 17 different basis for disciplinary actions and I won't go through all of those, but they include um, for example, a licensee not getting the required amount of continuing education, continuing medical education as a basis for discipline. If one of our licensees is licensed in say Virginia or Tennessee, and the Tennessee Board or the Virginia Board, takes action, we can take what is called reciprocal action, meaning we can take action against our licensee based on what another state did. One that is kind of a catch all that you'll see frequently in our disciplinary actions is unprofessional conduct. And unprofessional conduct under our statute includes a lot of things. It includes departures from standards of acceptable and prevailing medical practice. You'll hear us refer in short term as a violation of the standard of care. It includes failing to conform to the ethics of the medical profession. An example of unethical conduct that we would take disciplinary action against a doctor is having a sexual relationship with a patient. In addition to the statute, another good place to look for guidance on conduct that the Board may consider unprofessional conduct are our position statements. Which you can also find on our website, and they provide good guidance to our licensees. They also provide guidance to a patient who may be concerned that the conduct of one of our licensees may be something that needs to be reported to the Board. So, you can go to our website and look at the position statements. You'll see a position statement titled, "Sexual Exploitation of Patients" and that deals with the subject I just talked about. You'll also see position statements on topics such as Professional Use of Social Media, Sale of Goods from Physician Offices and Departures or Closing a Medical Practice. And those are just some of the areas where we rather frequently see complaints, or we just get calls. And we get questions about the appropriateness of what a licensee of the Board did.

JFB: So, let's...let's say a patient file a complaint about a physician or PA, which are our licensees as you mentioned. How does the Board determine if the licensee involved violated the law or the ethics of the profession? Does the Board just take the patient's word for it?

BB: So, the first thing we do, really the first inquiry is do we have jurisdiction over the healthcare professional. As I mentioned, we don't license or regulate chiropractors or nurses or dentists. So, the first question is, the first hurdle is it one of our licenses, do we have jurisdiction. If we have jurisdiction, then we look at the allegation. And the question is, the allegation, if true, does it fall within one of the 17 categories mentioned in 90.14.A, that gives us the basis to take disciplinary action. Assuming the answer to those questions is yes, we have jurisdiction over the healthcare professional, and it's an allegation, if true, would give us a basis for disciplinary action, well then, we start digging into the meat of the complaint. We ask the doctor or the physician assistant to respond to the complaint. So, we get the health care practitioner's side of the story. We do not just take the complainant's word for it. If the allegation is that the doctor violated the standard of care, we're going to get the patient's medical records and we're going to have those records reviewed by a physician. If we get an allegation that the physician is abusing controlled substances, could be alcohol or another drug, we may refer the physician to the North Carolina Professionals Health Program. If we receive an allegation involving the physician's competence to safely practice medicine, we may order them for a comprehensive competency

assessment. And depending on the allegation, we could refer the case to our field investigations department who interview witnesses and collect additional evidence.

JFB: Ok, great. So, um, what happens after the Board investigation is completed? How does NCMB decide how to resolve the case?

BB: So, the first step is that every complaint is reviewed by a multi-disciplinary team of staff members here at the board including physicians, attorneys, and investigators. That group makes a recommendation to the Disciplinary Committee of the Board. The Disciplinary Committee of the Board is 5 to 7 Board members from various backgrounds including a least one of our public members. Staff discusses the case with the Disciplinary Committee and ultimately the Disciplinary Committee makes a recommendation to Board. And when I say that we discuss cases with the Disciplinary Committee, we do that in our regularly scheduled meetings in a closed session where we discuss the investigations and cases. The Disciplinary Committee makes a recommendation to the full Board and quite often there's another good discussion between all of the Board members and staff about the case. And ultimately, the Board votes and determines what if anything we do regarding a case.

JFB: Now, let's say that there is a case where the Board has evidence of a violation, decides that it wants to prosecute the case, what are some of the tools in the toolbox, if you will, that the Board has to address licensee conduct or care?

BB: Good question and we have...we have a good toolbox. We have a lot of tools in our toolbox. Thankfully, we got the law changed in, I believe 2007, that gave us more options to more appropriately resolve various complaints and investigations. So, if we determine that there is sufficient evidence, that a doctor or a PA violated the medical practice act, in the most serious cases we can suspend or revoke a physician's license. We can also place limitations on a physician's license. For example, we can limit the physician's ability to prescribe controlled substances. We can require the physician to complete a remediation program administered by a trusted third-party agent of the Board. And in a number of cases, we can request and require the physician to complete a medical education course or CME.

JFB: And what about cases where the Board does not find evidence of a violation, or let's say they think there might be a violation, but there is insufficient, excuse me, evidence of a violation to go ahead and prosecute that case?

BB: So, in the circumstance where we've investigated and we find that the physician did not violate the Medical Practice Act, that there is no basis for us to take action, we do what we call, "Accept as Information". Meaning we accept it, we take no action, and we let the physician know who's aware that a complaint has been filed against him or her, and has had the opportunity to respond, we let them know that we found no basis under the Medical Practice Act to take action. There are also circumstances where after investigating, we were just not able to determine whether the physician violated the Medical Practice Act. We simply did not have sufficient evidence to make a determination. And in that case, we would also "Accept as Information". There's another option we have where we can communicate to the physician where we think there are areas for improvement or areas of concern and that's called a Private Letter of Concern. And that is as the name implies, a private letter. So, it is not on our website. It's not made public. It is a private communication from the Board to the licensee. And in those cases, we, when we would send a letter like that, typically two circumstances; one, that circumstance that I told you where there is just not enough evidence to take disciplinary action. We

think something might have occurred, ah, but we can not prove it. We just don't have the evidence, but the facts and circumstances that we are aware of concern the Board. So, we send a letter of concern to the licensee expressing our concern, expressing why we are concerned. Very often we offer advice so that they can avoid getting a similar complaint. We also advise the physician, put them on notice, that if we receive similar complaints in the future, we will consider the Private Letter of Concern as we investigate the new allegation. We also send Private Letter of Concerns when we find a violation of the Medical Practice Act but based on the facts and circumstances, the Board determines that it doesn't warrant public disciplinary action, but we do send a letter, again expressing our concern, offering advice on how to avoid the circumstances that led to the complaint in the future.

JFB: Ok, so, Private Actions and Accept as Information actually account for about 90% of the cases that the Board investigates, and I think that may be frankly why so many members of the public would say, "Oh, well the Board didn't do anything." Even though as you just explained, that's actually not the case. Can you say in your experience, how seriously does a licensee take a Private Letter of Concern? Or even, just named in a Board complaint at all.

BB: My experience is that the vast majority of physicians and physician assistants who are contacted by their licensing agency and are told that a complaint has been filed against them and that they have a certain number of days to respond, take it very seriously. Most licensees do not receive that kind of letter from the medical board. Most licensees, and I think we have now 37,000 physicians licensed by the board, the majority, their only interaction with the medical board is renewing their license every year. So, getting a letter from their licensing board which controls their ability to practice medicine is a big event in physician's lives. And I'll just tell you anecdotally, recently I was having a conversation with a person who I found out was a physician, and then he found out I worked for the medical board. And he mentioned that early in his career, he had received that letter from the Board alerting him to the fact that a complaint had been filed against him. And requesting that he respond to that complaint to the Board. Ultimately the Board determined in his case, that he had done nothing wrong, he had not committed a violation against the Medical Practice Act, and we sent him an "Accept as Information" letter. But he went on to say how it was a sentinel event in his career. At that time, his early career, and how it required him to re-evaluate his practice, how he interacted with his patients, and he believes that that complaint, having received it early in his career, saved him from getting additional complaints. Upon reflection, he realized that the impetus for the complaint was poor communication with his patient that may have been interpreted as a lack of empathy or a lack of concern and he realized the importance of communicating with his patients and establishing a relationship whether that relationship lasts for 30 seconds, or 3 minutes or 3 months, that every patient really deserves the respect of the physician's time and how communication is important. So, that's the kind of feedback I get from licensees that I talk to who've had an interaction with the Board. Quite often, I don't know about it until they tell me, and they talk about how it was a really big deal to put it just frankly. It was a big deal, as it should be. And that very often, they take...they take the comments of the Board or just the fact that a complaint was filed, as a moment to hit the pause button and really think about what they are doing. Now, to the small percentage of physicians who don't take it seriously, I would say that we at the Board, do. And if we have received a complaint against a physician or physician assistant, if we have issued a Private Letter of Concern, even if we've accepted it as information, and we continue to get the same type of complaint against that physician, obviously we're going to escalate how we respond. That may include having the physician come in for an interview with several Board members during a Board

meeting and it's a closed private interview, and ask the doctor to explain why it is that we continue to get similar complaints and why it is despite having these interactions with the Board, they have not been able to change their practice or behavior, such that we keep getting complaints. So, if the physician doesn't take it seriously, the Board does, but again, I go back to I think...I think most physicians take it very seriously. I am a licensee of the state bar, and I can tell you...I take...if the state bar were to contact me about a complaint, I would take it very seriously because they control my ability to practice my profession.

JFB: I think those are really important insights for members of public to have because so much of the work that does happen is confidential and there is just no way for them to know. It's important, I think, to know that there really is meaningful activity going on behind the surface. Brian, you've covered a lot of pretty weighty material in a short period of time. What do you most want listeners to take away from our conversation?

BB: Thanks. Like you said, I've covered a lot of weighty material. I gave a lot of statutory references in case anybody wants to nerd out on the law that governs us and look up the statutes, but ultimately for our listeners who aren't lawyers, this is what I want them to take away. First, the Board takes every complaint seriously. The best...the best way I can demonstrate that we take every complaint seriously, is that we investigate, one way or the other, every complaint that is filed by the Board. Ultimately, as an attorney for the Board, who advises staff and advises the Board members, ultimately what the board does or does not do is based on the evidence. We are an evidence-based quasi legal organization, that means for me to take action, for this Board to take action against a doctor, there has to be evidence to substantiate the allegation. And I know that that can be frustrating for patients and for family members of patients and members of the public. Um, but I would go back to please look at our website. You will see that when we have evidence, we take action. There may be times based on any number of circumstances that we are just not able to meet our burden of proof. Which at a hearing, and that is another podcast, if we go to a hearing, it's preponderance of evidence. So, this is not a kangaroo court. We don't just take action because we don't like what the doctor did. We have to have the evidence and I know it can be especially frustrating and confusing in quality of care cases where the patient strongly believes that there was something missed...or something was done wrong. In those cases, I have to rely on the medical evidence. I have to rely on the medical records. And quite often, is an objective third-party outside reviewer going to opine that it was below the standard of care, and if I do not have that expert opinion, I can't take action on those cases. It doesn't mean we didn't look into it. It doesn't mean we didn't take it seriously. It just means that we did not have the evidence to take action.

JFB: I think that's really important for people to understand. Ah...thank you very much and thank you so much for your time.

BB: Thank you.

Complaints FAQ Drill: 25:18

Let's get some basics out of the way. In this two-minute drill, I am going to answer five of the most frequently asked questions about the complaint process. [Whistle blow]

1. Who can file a complaint? – Well, pretty much anyone. Patients, family members, concerned citizens. Also, other medical providers and pharmacists also submit complaints.

2. Who can I complain about? Any medical professional licensed by the medical board. The main ones are physicians and PAs, but we also license anesthesiology assistants and licensed perfusionists. If you have a problem with any other type of licensed medical professional, you'll have to go to their licensing board.
3. Can I submit a complaint over the phone? Generally, no. The only exception would be if the person submitting the complaint is unable to submit an electronic or paper complaint form due to disability.
4. Can NCMB call my medical practice to help me resolve my problem? A lot of people want this, but No. NCMB does not intervene directly in your situation and it is not a mediation service. Calling a licensee could be perceived as intimidation and, frankly, abuse of NCMB's regulatory authority.
5. Will filing a complaint resolve or improve the problem I have with my medical provider? This is a really important question, and the answer is key to having realistic expectations about the medical board complaint process. The answer is no, a complaint is not going to resolve the problem that led you to submit your complaint. The medical board's role is to protect the public by holding the licensee accountable for any misconduct, and to prevent repeat occurrences.

So, how'd I do on time? One minute, forty-five seconds. Not too bad. [Cheering]

Shikha Segment: 27:12

JFB: Up until this point we've been talking mostly about the law and the rules, and what the medical board can and can't do through its complaint process. Now we're going to get into the nuts and bolts of how someone files a complaint. I'm here with Shikha Sinha, the medical board's complaint manager. Shikha, can you help our listeners understand what they need to do to get started with a complaint?

SS: Thank you Jean for having me and I'll do my best.

JFB: How does someone who wants to file a complaint get their information to the board?

SS: Well, we have a complaint form and the vast majority of complaints are submitted through the medical board website, which is ncmedboard.org. So, they use our online complaint form. People also have the option to print a paper form if they prefer, or if they can contact the Board and request that a paper form be mailed to them.

JFB: Um, let's say a patient has decided they want to submit a complaint against their doctor or PA. What information do they have to provide so that NCMB can investigate?

SS: First we are going to need the patient's full name and date of birth. We're going to need a valid email for the person submitting the complaint. The full name of the licensee you are complaining about. Many times, we'll get a patient who will just say "Dr. Smith" and we are unable to identify that licensee. The

location where the care was provided, or where the incident occurred. Also, the date when the incident occurred. And if you don't have the exact date, if you have the month or even the year, that will help us in order for us to obtain medical records. Finally, and this is very important. We need the patient to provide a clear and brief description of the reason for their complaint. A lot of patients just want to start at the very beginning and tell the whole story but really, we need is a short statement.

JFB: Right, OK. Now, um...how soon after a problem occurs should someone file a complaint? Is there a statute of limitations?

SS: No, there is no statute of limitations, but in general, you should file a complaint as soon the incident occurs. This helps us to obtain medical records. It also helps us get accurate witness statements, if needed. And, um, the more time the passes, it is harder to get good information.

JFB: So, the sooner the better. Ok...um, here's a question we get a lot: Will the provider know that I have submitted a complaint about them?

SS: Yes, that is a frequent concern of patients. It is possible to complain anonymously on some things, but patients should understand that it is usually not feasible in any case that involves quality of care. The physician or PA is going to be asked to explain their decisions and will need to know who the patient is so they can review those records and provide a response. Even if medical care is not involved, many situations are very specific so that the licensee may be able to guess the identity of the person who complained. So, in general, we tell people that the licensee will most likely know they are the ones complained. And patients should also be aware that it's very common for licensees to dismiss a patient who files a complaint about them. And they have that right.

JFB: When I speak with people who are considering a complaint, I usually ask them whether they want to continue seeing that provider, and if the answer is yes, then filing a complaint may not be in their best interest.

SS: That is true. Anyone has the right to file a complaint, but it may have consequences, of being dismissed by the practice. Also, a better strategy might be is to speak with the practice manager.

JFB: Ok, um, so what are the most common reasons for delays in the complaint process?

SS: The main one is we don't get complete information, and so we will have to contact the complainant to get that. So, that does cause a delay. Also...we...also will get issues where the complainant has not...they don't feel like they've wrote the complete issue on the complaint, so they start sending additional information. And every time we get additional information, we have to update their case, so that also delays the review of the case. That's why, again it's very important, up front to have all of your information that you want the Board to have, in able to review your case.

JFB: That's...I am really noticing a theme here, that being organized and spending time thinking about what you are doing and why you are doing it is really, really important. Um, so how long does it take the Board to make a decision?

SS: It really depends on the circumstances of the case. On average, last year it took about 100 days from receipt of the complaint to final resolution. If the case involves quality of care it will likely take quite a bit of time, because we have to obtain the medical records and sometimes, we have to send the case out for an outside expert review. We tell complainants to expect the process to take at least six months, but it's not uncommon for it to take longer depending on the situation.

JFB: Ok, and how does the Board communicate the outcome of the case to the person who filed the complaint?

SS: In each case, we send a closure letter to the complainant. If the Board takes public action, we tell the complainant what that action was. If the Board took a private action, we tell the complainant that appropriate action was taken, but under the law, we can't disclose that. And also, if the case is closed with no formal action, we let the person know who submitted the complaint.

JFB: Is there anything else you would like to add about the complaint process?

SS: Well, Jean just as you might imagine, many complainants are unhappy if their case does not result in any action being taken. When people reach out to us for explanations, we try to convey that their complaint was taken seriously, every complaint has gone through a thorough investigation, but at the end of the day the Board just didn't have sufficient evidence that a violation occurred.

JFB: Yes, I'd imagine those are difficult conversations to have.

SS: Yes, they are.

JFB: Well, Shikha, thank you so much for taking the time to go over all of this with me. And I really hope that our listeners have found it helpful.

SS: Thank you for having me. Happy to do it.

Closing Thoughts: 33:34

Well, there you have it. I hope we have given you a good overview of the medical board complaint process. But if you have additional questions, you can find more information online at nameboard.org.

There, you can watch our three-minute complaint tutorial, browse our complaint FAQs, and read our complaint brochure.

You can also email us at complaints@ncmedboard.org or call from within North Carolina toll free at 1-800-953-9653 and ask to speak to a complaint representative.

As always, if you have comments or questions about this broadcast, you can email us at podcast@ncmedboard.org.

Thanks for listening and I hope you'll join us again.

Outro: 34:17

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The North Carolina Medical Board exists for the benefit and protection of the people of North Carolina.