Episode 15 – Urgent need for outside medical reviewers

Intro music: 0:00

Podcast introduction: 0:09

Hello and thank you for joining me. I'm your host, Jean Fisher Brinkley, Communications Director for the North Carolina Medical Board, and this is MedBoard Matters.

On today's episode we are talking about one of NCMB's core responsibilities - regulating the practice of medicine. Specifically, we are going to zoom in on just how the Board decides how to resolve a complaint about quality of care.

Now, sometimes the facts of a case are so straightforward the staff of the medical Board can determine pretty easily what needs to happen. The Board has medical professionals on its staff who review the medical records in quality of care cases and give their assessment of the care provided. After this review, each case is then thoroughly discussed by a group of senior NCMB staff that includes representatives from the Board's medical, legal, and investigations departments.

And, in most cases this process is enough. The senior staff are able to decide if there's just not enough evidence that a violation occurred or, alternatively, that there are indeed concerns with medical care that need a closer look.

If the senior staff agree that there's no basis for action the matter ends there – case closed.

All the other cases – the ones where concerns are identified – those are referred to the Board's Disciplinary Committee and ultimately decided by the full Board. Any case sent up for Board review has at least the potential to result in either private or public regulatory action.

And because there is a chance of action, up to and including loss of license, the Board must make sure it has clear evidence in each case that care was below acceptable standards.

And for that, the Board has to look beyond its Board Members and staff. Even though most members of the Board are medical professionals, NCMB doesn't always have the right medical expertise in house to know whether care was up to the mark.

To get this expertise, the Board regularly calls on licensed medical professionals who are familiar with standards of care in North Carolina. These individuals are called outside expert medical reviewers and they are critical to the Board's efforts to resolve quality of care cases.

I've asked NCMB's Chief Legal Officer Thom Mansfield and Deputy Jeanral Counsel Brian Blankenship to discuss how the Board uses outside reviewers and why they're so important.

Interview with Thom Mansfield and Brian Blankenship: 2:30

JFB: Thom, Brian, thank you for being here. Brian, I'm going to start by asking you, why does the Board need outside expert reviewers?

BB: Thanks, Jean, and thanks for having us on the podcast. I think to get to the question of why does the Board need experts, we need to back up and look at what the mission of the of the Board is. So, the North Carolina General Assembly, which established the North Carolina Medical Board, says specifically that our statutory mandate is to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina. And then our mission statement says the medical Board is to protect the people of North Carolina and the integrity of the medical profession through just individual licensing and regulation. Not surprisingly, quality of care cases are a big part of what we do. In 2020, we received 648 complaints involving quality of care, and that's more than double the next allegation. And if you go to our annual reports on our website, it lists the primary allegations of the complaints we received in the annual report. To give you an idea of the type of things we investigate. Again, I don't think it should come as any surprise that the number one complaint we receive is quality of care complaints, and the number one source of our complaints are from patients and members of the public. So, understanding our mission and the type of complaints we receive and then comes to the question of how does the Board investigate quality of care cases and expert reviewers outside reviewers are an integral part of our investigation. One, there's a statute that requires, whenever practical, that the Board consult with an outside physician who is familiar with or utilizes the same modalities or has an understanding of the standards of practice for their modality administered. And then secondly, even before that statute existed. Recognizing the full spectrum of specialties we regulate, I mean, we have 13 Board members, the majority of whom are physicians. We have staff physicians, but we certainly don't have the in-house or requisite expertise to examine all specialties. So, the Board relies on physicians in the community who are familiar with standard of care and always has. We rely on them to tell us what the standard of care is in North Carolina regarding that area of practice. So, I think the key point here, the medical Board is not just independently and arbitrarily deciding yes, care was up to standard or no, it was not.

JFB: Thom, did you have anything to add to that?

TM: Thank you, Jean. And again, thank you for the opportunity to be here today and to talk about this important thing that's right at the heart of what the medical Board does. And picking up on what you just said Jean, the medical Board does not set the standards of care and medical practice in North Carolina. It identifies those and then applies those standards to the cases that it's reviewing. And I appreciate that Brian started to talk about the mission of the Board, and I wanted to add a couple of comments that you have a little bit of history and context about how this process has evolved over the years. When Brian and I came to the Board as attorneys about 20 years ago, we came here and understanding the law with the intention of advising and assisting the Board and enforcing the law. For me personally, it took a few years to realize that the regulation of medicine is very much a collaborative process. The Board cannot effectively regulate medicine without collaborating with its licensees, and that can happen in a variety of ways. And what we're talking about today is one of those. So, the Board wants to collaborate with its licensees in the way required by the statute that Brian referred to. And we ask our licensees, collaborate with the Board in this process. And in doing so, each of you physician and physician assistant listener out there who signs up to review cases and provide information to the Board about standard of care, you are helping preserve the self-regulation of medicine. Brian and I are regulated by a Board as attorneys at the state bar and we very much appreciate self-regulation in law and my experience over the last several decades working with physicians, physicians very much believe

in self-regulation. Collaborating with the Board in this process will help preserve regulations. Of course, what we need from our licensees by way of collaboration now is more help. We don't have enough licensees to look at all the cases we need reviewed, as would benefit the Board, the patients and the physicians who want to preserve self-regulation. I want the Board to act when it sees poor care. So today we are asking our physician and physician assistant leaders to please consider participating as outside expert reviewers for the Board.

JFB: Well, just to be clear, if the medical Board can't find North Carolina physicians to serve as experts, what are the options? What does the Board do?

BB: That's a good question. And you know, the bottom line is we will have to find a physician somewhere who is willing to review the case. And I think the question I would ask our physician, physician assistant licensee listeners is if a complaint is filed against you with the North Carolina Medical Board alleging that you provided poor care to a patient, who do you want determining whether your care met the standard of care? Do you want a colleague who is practicing or has recently practiced in North Carolina reviewing that care? Or do you want a physician from somewhere else who we've done our best to determine the person's qualifications, and we can talk more than a minute about what we look for? But do you…do you want a colleague in North Carolina reviewing your care? Or do you want someone else? But if…if we can't get a North Carolina license position that does not negate our need for a review, we still will need that review to help the Board determine whether standard of care was met. So, I go back to that question who do you want determining your standard of care?

JFB: So just to clarify when you say, do you want a colleague in North Carolina reviewing care or someone else when you say someone else? Are we talking about a professional expert reviewer, somebody who does not really necessarily practice medicine for a living but gives expert reviews as a living?

BB: Well, you know, that's certainly on the list of options. Up till now, we have not used what some may refer to as professional expert witnesses who…who make a living doing that. Obviously, people who are in the business of providing expert reviews are willing to provide the right use. So, I don't want to say that that's where we would go. But going back to my point that we will have to get an expert review if we're not able to get North Carolina practicing licensed physicians, we will have to explore all options.

JFB: Gotcha. Thom, did you have anything to add on that point?

TM: Yeah, I'd like to add on just a little bit there. first of all, picking up what Brian was talking about in terms of our licensees, who do you want judging your care or the care of other physicians in North Carolina? Obviously, I think we're all going to agree that it's best if a physician in North Carolina who is actively practicing or recently practicing doing the thing that's the subject of a review of the Board, provide that information to the Board about what standard of care is as opposed to others. Over my several decades as an attorney working with physicians, I'm pretty clear that physicians are often sick and tired of having folks tell them what they can do. Can't do, must do, you must not do who are similarly situated to them. And that occurs in a few different arenas that could occur with a professional expert witness that could occur with someone who's in an administrative position in an organization who might not even be a health care practitioner or doesn't have similar training and experience. And so

I think as our licensee listeners contemplate this, you know, think about the times that you were impaired in some way from doing what you thought was right for a patient. I think you would have the same feeling about someone not similarly situated as your judge in your care or the care of your colleagues. The other point I wanted to make is that why it's important and why we need you and why are you the listener, physician, physician assistant want to be part of this process? Think about the times in your work, usually as part of the team caring for a patient. When you saw something that you thought was suboptimal, inappropriate, not up to the standard you expect and the standard that you understand to be the minimum standard of care with regard to your particular area of medical surgical practice by participating in this outside expert review process. That's your opportunity to actually have a positive impact on care for patients.

JFB: OK, so let's get down to specifics. Brian mentioned that quality of care is the number one reason for cases to be opened, a number one complaint allegation. In recent years, it has averaged between about 608 hundred quality of care cases per year. Does the Board need a review for every one of those cases? I'd like to ask you to address, you know, how often the Board actually uses experts and how many are needed in a given year?

BB: Sure. Another good question. We do not obtain an expert review or an outside review. Again, I want to keep using the word expert and concern that people may hear that term and self-select so we could talk about qualifications and what that means later. The quality of care complaints, one that's a very broad spectrum and it's not always necessary based on our in-house expertise and the expertise of the Board. It's not always necessary to obtain an outside review. Between March of 2020 and July of 2021, we conducted 109 roughly…109 outside reviews. So, in a bit more than a year, we sent 109 cases roughly for outside review and just some of the common cases that we sent out for outside review. Just so listeners can understand what kind of cases where we're sending out and also where we have some difficulty getting people to review the cases outside reviewers specialized surgery like vascular surgery, neurosurgery, cardiovascular oncology, cardiology cases, gyn radiology, ophthalmology, skilled nursing facility, medical directors, medication management of opioids. Again, for our listeners, should come as no surprise with we don't hear about it as much anymore with the current pandemic. But before this pandemic, you know, we had an opioid epidemic, so we received information from a variety of sources. Still, to this day about poor prescribing practices with opioids, and that's a specialty area where we had to go to the, well, quite a bit with our outside reviewers to the extent some of our outside reviewers had to really back off and we had fewer outside reviewers than we had the number of cases coming in. Gotcha. So, with medication management, that's a big area. So that gives you some idea of the specialties that we routinely and those roughly 109 cases over the last year plus have had to reach out to physicians and ask for outside reviews.

JFB: Great. Thank you, Brian. So, you've just said that we have more cases coming in that need reviews than we have reviewers available, which gets back to Thom's point. We need more help. Talk with me about how NCMB finds and selects experts.

BB: Thanks for asking that, because that's…that's really what I wanted to touch on today in this podcast. And my first message to our licensing listeners is, don't self-select when we use the word expert. Don't assume you were not qualified. There are a variety of ways we recruit. We routinely in either the *Forum*

or at our website working with specialty societies. We ask people to submit information and there's information on our website that directs you to various points of contact if you want to serve as an expert. Right now, we maintain a list of potential reviewers. They reach out to the Board, they provide their CV and relevant information, and we contact those reviewers to determine if they have sufficient expertise or experience to review the case. And we also talk to them to identify any potential conflicts of interest. What does it take in terms of expertise? What we want is our reviewers to have a full and unrestricted North Carolina license. We like to see current ABMS or AOA Board certification. We like to see no recent North Carolina Medical Board actions or investigations, and we want to see the physician or physician assistant to have been engaged in the clinical practice for the last two to three years prior to reviewing the case. The most important thing is that the reviewer be familiar with the standard of care for that particular treatment and that the reviewer have some experience in practicing the modality as. It's referred to in the statute as the care of the physician that we're reviewing.

JFB: Mm…hmm.

BB: So there's the basic qualifications. You know, I want to slap the table a little bit on the, you know, having been working in that area of practice for the last two to three years. That includes recently retired physicians or physicians who are who are thinking about retiring. Again, I don't want our recently retired or about to be retired physicians to self-select out. I think this is a great way if you've recently retired to continue to serve the medical profession to be part of that collaborative effort that Thomas talked about in a great way to protect patients. You know, one thing that we haven't mentioned and I don't want to lose this important point is all of us want to protect patients and provide the best care available. That's everybody's goal. The Board has a mission to protect patients, and all of our licensees want to protect patients, and they want to ensure that our patients receive the best care possible. Again, goes to that collaborative effort. So, you know, we're not asking our experts to be hired guns to help us to prosecute physicians in a number of cases where we send for outside review, the care comes back and the reviewer has determined that care was within standard. So, we don't go into these cases looking to get a review that is negative. We are not trying to build a case to prosecute doctors. We're just ensuring that North Carolina patients are receiving the standard of care that we should all expect and that we that we all want. So, I just want to take a minute to specifically reach out to recently retired physicians and ask them to consider. Even though you may have stepped away from clinical practice, this may be a great way to continue to serve the medical profession and continue to protect patients.

JFB: Absolutely. Thank you. I have one final question for you. We've been talking about how much the Board needs the expert reviewers, but I wondered if you could address what do reviewers get out of this process?

BB: Yeah, it's a great point, and I don't think it can be overstated the value I hear from our expert reviewers that they receive the educational value that they receive. Reviewing another physician's care of a patient again based on our selection process. These are physicians who practice in the same area, practice the same modality. And I have personally heard in my, you know, 20 years at the Board when I talked to a reviewer that them giving an objective review of another physician's care. They can't help but reflect on how they have treated a patient in similar circumstances or how they might treat a patient in similar circumstances. You know, we ask our reviewers to look at everything from the medical records to

the diagnosis and treatment of the patient. And I've heard from reviewers who've worked with me that reviewing another physician's medical records has forced them to reflect on whether their medical records are adequate in similar circumstances. When looking at the diagnosis, they reflect on "What have I done previously"? What can I learn from this doctor's event that would help me in the future, perhaps make a better diagnosis or use additional tools? Again, very often outside reviews find the care to be within standard. And our reviewer will comment, you know, this doctor really went above and beyond, and I haven't done in the past with the position I reviewed did in this case. Going forward, that's another tool in my toolkit. So, I think it does provide educational value where our reviewers can see what has worked in other cases with other physicians and perhaps what didn't work , and they're able to reflect and…and improve their own care.

JFB: That's very interesting. Thom, any final points to add things to do with regard to what does the physician or physician's assistant who reviews cases for the Board get out of it?

TM: There is a small amount of money. It's a modest hourly rate compared to what expert witnesses get paid and other contact, but this is probably a much more enjoyable context in which to do it. So, there is some money. But more importantly, in addition to the things that Brian mentioned, I hope the folks will understand that what the Board is about and what the outside expert reviewer's role would be is assisting in the pursuit of justice. The Board is not looking for an outcome. The Board's staff is not looking for an outcome and a case we just want to know the answer to, whether the physician who's being investigated met the standard of care and took good care of that patient. When we've asked for one of these reviews, like Brian said, we're not looking to get a yes answer that it was below the standard of care. Brian and I, sitting in our staff committees, frequently talk about getting an outside review in order to rule out substandard care. And then finally, I'll just circle back to and double down on the preservation of regulation. You know, the tried and true old phrase and professional regulation is the majority want the regulator to remove the few bad apples and order that the rest of the practitioners and the practice of medicine can go on peacefully in their profession, taking good care of their patients. And so, participating in the process allows the Board to regulate the practice medicine effectively, fairly and permit the great majority physicians who are never going to be subject to some disciplinary action by the Board to continue in their profession peacefully.

JFB: Excellent. Thanks again to you both.

Outside Medical Reviewers Q&A: 23:41

I know the licensees listening are probably wondering how they can throw their hats into the ring to serve as outside medical reviewers. And we'll get to that in a moment. But first, I'm going to go over some of the fine print.

Q: What is the specific service outside medical reviewers provide to the Board?

A: The reviewer's role is to determine whether accepted standards of care were met at the time of treatment. Did the licensee whose care is the subject of the complaint do the things a prudent, competent medical provider faced with similar circumstances should do?

To help them answer this question, outside reviewers are provided with bookmarked electronic copies of medical records, which they read and evaluate. Reviewers also receive a worksheet that provides a framework for the case review and they use this to provide his or her opinions to the Board in the form of a written report.

Q: Are outside medical reviewers compensated?

A: Yes. Reviewers are compensated at a rate of $175 per hour for the time spent reviewing records and writing the report. As Thom and Brian mentioned, it is also a wonderful way for clinicians to serve patients and the medical profession, by ensuring that appropriate standards of care are upheld in North Carolina.

Q: May outside medical reviewers remain anonymous or will the clinician under investigation know who reviewed his or her care?

A: In most cases, reviewers are able to remain anonymous. However, it is important to understand that, on rare occasions, when a case proceeds to a public hearing, reviewers may be asked to provide testimony. This is not needed in a significant majority of cases where outside reviews are sought.

Q: Can I be sued for serving as a medical reviewer or testifying at a hearing for the Board?

A: I'm happy to be able to put this worry to rest. No, reviewers for the Board are provided statutory immunity from civil liability and will not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice.

If you would like to offer your services as an outside expert reviewer, send an email to reviewers@ncmedBoard.org.

Podcast wrap-up: 25:59

Well, that brings us to the end of this up close look at how NCMB decides quality of care cases. I hope you found it illuminating. And, if you are a North Carolina medical professional, I hope we've piqued your interest in serving the medical profession in this unique and critically important way.

As always, if you have comments or questions, we'd love to hear them. Email them to podcast@ncmedboard.org.