

Episode 25 – Filing an anonymous complaint

Intro music: 0:00

Podcast introduction: 0:10

Sometimes the answer to a yes or no question isn't so...yes or no. On this episode of MedBoard Matters, we will be discussing one such question, which is, does the North Carolina Medical Board accept anonymous complaints? Now, the short answer is, yes, we do. But the actual answer and by that, I mean the answer that most fully addresses the concerns of the person asking to be anonymous is a lot more nuanced. Let's try it again. Does the North Carolina Medical Board accept anonymous complaints? Yes. But there are some things you should know. I'm Jean Fisher Brinkley, Communications Director for the North Carolina Medical Board. Thank you for joining me. Before I introduce my guest, I want to pause and emphasize how critically important complaints from patients and other members of the public are to the Board's work. They help the North Carolina Medical Board protect the people of North Carolina by alerting the Board to potentially poor care or misconduct. The Board can only investigate, let alone intervene if it knows about a situation. Year after year, complaints are the largest source of information about possible misconduct. Last year, the Board received more than 1,800 complaints from patients and other members of the public. And this year we've already received more than that, according to NCMB's Complaint Manager. But being a whistleblower can be an uncomfortable role. Which is why we regularly get inquiries from people who want to know if they can sound the alarm without giving their name. As I mentioned, the answer is yes. You absolutely can complain about a licensed medical professional without revealing your identity. That said, there are reasons that you might not want to remain anonymous and at the end of the day, the medical board simply cannot guarantee that the physician or PA you're complaining about won't be able to guess who reported them. I've invited NCMB's Complaint Manager Shika Sinha to talk me through the reasons why a complainant might want to remain anonymous, as well as the various circumstances that may make it difficult to keep one's identity under wraps.

Interview with Shikha Sinha: 2:21

JFB: Let's start just by talking about, you know, some of the reasons that a member of the public might have for wanting to submit their complaint anonymously.

SS: There are several reasons. If they work at the facility and they see something that they feel is a concern, they may want to file a complaint anonymously. If they are a patient and they also observe something that they feel is a concern, they may want to...they don't want to have a chance of being dismissed from the practice, so they would file anonymously. But some of those can be tricky when you do file anonymously because you do have to be careful that there's no identifying information to prevent, like if you're working at the facility, to prevent from being terminated or to prevent from being dismissed from the practice.

JFB: Right. So just to sum up you mentioned employees. So, people who work with a licensee who've observed something concerning, you know, that they that they want to report to the Board, or it could be a patient who has had something go wrong but doesn't necessarily want to end their relationship with that provider.

SS: Exactly.

JFB: Okay. Now, I can tell you from the communications perspective. Sometimes we call the communication staff the noncompliant complaint department, because we are the step that people get to before they get to the complaints where they're sort of sorting out whether or not they actually want to file a complaint or not. And I can tell you typically what I say to someone who expresses concern about whether or not they'll be dismissed is, I will say, you know, if this is a provider you want to continue seeing, it's probably not the best idea to file a complaint with the medical board. And I generally, you know, I'll explain to them that if you do pursue a complaint, that dismissal is a likely consequence or at least a possible consequence. And I often will direct them back to the practice manager or practice administrator and say, if something happened that upset you but not to the point where you just don't want anything to do with the provider anymore, it's probably best to say, "Hey, this happened. I wasn't happy about it" and raise the concern that way. Do you think that's reasonable advice?

SS: Yes, that is. That's perfect because that way they can handle the situation with the practice manager and, you know, they can prevent from having a dismissal. Because if the physician feels that the physician patient relationship is compromised, they can dismiss you. And they do not have to have any reason why.

JFB: Right. That is something...I mean, it seems relatively straightforward. You know, if you work in this world. But absolutely. I mean, the clinician patient relationship is built on trust. And from the licensee perspective, they may not feel they can trust the patient any longer. If the patient is essentially, you know, going to report them to their regulator. And there's even a risk there's a risk there's a chance that it could affect their licensure.

SS: Yes, exactly.

JFB: Yeah. So how often do you get the request to file a complaint anonymously?

SS: Not too often. Usually when they do call in and they have questions and they understand there may be a risk of them being identified or the examples that we gave being dismissed, or if they're a staff member being terminated, they in general may or may not file it, you know, or they may follow by giving their name. If they don't care about the risks that might be entailed by filing it. So, I would say we might get about 5 to 10 calls a week, and then it's about a 2 to 3% of our overall complaints.

JFB: Okay. Well, that's interesting. So, I mean, I guess it...it makes sense, you know, if you don't have to use your name, why would you? But I, but I guess, you know, when people walk through the facts with a complaint representative or a member of the communication staff and they understand the reality of the situation, then they change their mind. I want to pause and talk about that. You mentioned identifying information and let's take both scenarios. Let's say we have a patient. They had an experience with a physician or a PA, a licensee of the medical board. They're unhappy about something that happened and they're considering filing a complaint. Why might it be difficult for a patient in those circumstances to remain anonymous? Let's just talk that through.

SS: Okay. So, every complaint in our process has an initial review and we review it to see if there's a potential violation of the North Carolina Medical Practice Act. And if there is, we do request a licensee's response, and if it's patient care, we would request the medical records. So therefore, when it's specific to a visit, then it would be, you know, when we're asking for the records, the licensee would definitely know who the person is because he has to respond to that particular event.

JFB: Right. And I think it's important for our listeners to know that in any case, even if the in cases where the Board does not believe there's a violation, they would still be notified that a complaint had been received and provided with a copy of the complaint. Is that right?

SS: Yes, they will be.

JFB: Okay. So, I think it should be becoming more clear to a listener that if you're a patient, you've had a problem with a provider and you complain, and then the provider is looking at your medical records and responding to an incident that occurred with you, it's pretty hard for them not to know who filed the complaint. I mean, I suppose it could be a family member or a spouse, you know, something like that. But still they're going to be able to identify the family involved.

SS: Yes.

JFB: Probably nine times out of ten. So, it's pretty tough to remain anonymous if you're talking about something that happened to you. And now the other scenario is an employee. So, we have had you know, numerous cases that I can recall where an employee of a licensed physician or PA observes something going on that they don't think is professional or ethical. And in those situations, I guess it's the same thing, right? You know, you have someone who the only way they would know the information that they're reporting would be if they're inside the practice.

SS: Yes. In general, they would. Now, one time we received a complaint about a licensee who had a practice in North Carolina, but he moved to Florida and allowed the nurse on site in his practice in North Carolina to write prescriptions and forge his name. So that might be in general, where it could be multiple staff members who observe that. And maybe, you know, the licensee cannot identify who it is, but still that, you know, if it's just one team member, two team members, and as a his staff, it's pretty obvious, you know, who might have the complaint.

JFB: Right. Okay. Let's assume somebody calls, gets the information. They understand the risk that you can't guarantee anonymity and they still decide, okay, I'm going to go ahead. I'm going to file my complaint anonymously. Let's start by just sort of talking about the typical complaint process and the typical complaint process. Most people go online to our website, they launch the form, they enter their name, email, phone, you know, identifying information about who the person is, submitting the complaint, who they are, as well as information about the licensee that they're complaining about. With an anonymous complaint, how does that work?

SS: They can fill in the blanks, put anonymous, anonymous for first and last name and no other information about their address or phone number or email.

JFB: Since there is no contact information, there's no complainant name and contact, the Board can't reach out, you know, with follow up questions. So, it's really important that somebody filing a complaint

anonymously provide the Board with enough information for the Board to open a case. What is the bare minimum that you have to have in order to be able to open an investigation?

SS: We would need the licensee's full name, first and last name, and then also the dates when the incident occurred. The specifics about the issue, the location. Because if we don't have the full information, then we're unable to follow up with the complaint. We need basic information to open a case and do the investigation. So, if any of that information is missing, we may not be able to pursue it, and we would have to close the case, but the complainant would not know because they're anonymous.

JFB: Right. You can't reach out and tell them, hey, we need more information to pursue this. So, it just ends there. And you would end up closing it administratively?

SS: Yes.

JFB: Okay, great. Now, you bring up a good point, not being able to reach the complainant. In a typical complaint, the complainant, the person who files the complaint, receives a closure letter so that they get information about the outcome of the case. And typically, you know, just breaking it down to the most common ones. Either it is closed with no action, it's closed with a private action, or it can be closed with a public action against the licensee. Those are three main outcomes. So, it's typically a person who has submitted a complaint, gives their name and contact information. They're going to get a letter from you, I guess, from the Board, at least that says, here's what happens and you'll at least know that it was one of those three things that happened.

SS: Yes. That's correct.

JFB: Okay. So, what do you receive? You don't receive anything then if you are an anonymous complainant because you have not provided your name or contact information.

SS: No. And Jean, even if they do provide their contact information and they say they want to remain anonymous, they still will not receive anything.

JFB: Why is that?

SS: Because they decided, they've opted to remain anonymous. We do send the complaint to the licensee to respond to it. So, we would take off any identifying information on there. And that is just one of the things that if you decide to remain anonymous, you give up the right of receiving any updates or any closure letters or anything on the case.

JFB: Right. So, if you're reporting something that you really want to know what happens then filing anonymously is probably not going to work for you. Although I will say if it's a case that is resolved with public action, what you could do is look on the Board's website. You could either look at that licensee by name, looking at their licensee information page or, you know, we have a feature on our website called Recent Board Actions where people can go and just see a chronological listing of public actions taken by the Board. So, if you did file an anonymous complaint, you could monitor in either of those ways, you know, to see if anything came of it. But, you know, the investigative process, as you know, takes weeks, at least often months. If a quality of care is involved and it's a pretty long process, you'd have to be pretty committed, you know. And then, of course, there's the fact that not all cases are resolved with

public action. In fact, that's the least common outcome for the case. It's only about 10% in a busy year are going to be public actions. So, I think we've probably covered that well enough, but that is a pretty important thing to know.

SS: Yes, I think you have and there's one other point that I would like to add, is that if a complainant goes to our regular complaint process, puts their name in detail, and then they decide, oh, I want to stay anonymous, I don't want the licensee to know who I am. Once it's submitted, we have already started that, and it's and we've reviewed it and see that it could be a violation of the Medical Practice Act. We have already asked the licensee to respond. We've requested subpoenas, ordered to produce for medical records. So therefore, it is very unlikely you can stay anonymous once you submit your complaint. And we've had that happen numerous times where, you know, they'll call later. Oh, I wanted to stay anonymous, you know, and we're like, no, you cannot. So, once you submitted with your contact details and you do not say initially that you did not put anonymous, then we are not going to handle it that way. We will handle it like our regular complaint process.

JFB: Right. Right. Very difficult to un-ring the bell, you know? Yeah. Well, let's talk just briefly. We've developed a new resource to try to get this information out to people more effectively about anonymous complaints and the different ways that members of the public engage with the complaint process. We've had a brochure just about the overall complaint process for some time. We are adding in this additional information about anonymous complaints. What are you hoping to achieve by putting this information out there more proactively?

SS: Oh, I definitely think it will be very helpful because once they review our brochure and then they review this added information that we provided, it will give them a perspective of which way they would like to file their complaint and how to go about it.

JFB: Now, I guess I should say I haven't received this question a lot, but I have received it over the years. And that is a concern we haven't discussed, is that sometimes patients are concerned about some sort of legal repercussion, that if they file a complaint against a doctor, is that doctor going to sue them for libel for example? And I think it's worth noting that there is protection under North Carolina state law that basically says that if you submit a complaint in good faith, you know, that is that something happened that you sincerely believe was unprofessional, unethical, below accepted standards of care, and you report it to the regulatory authority that the licensee you're complaining about actually can't come after you in civil court, for example. So, I think it's important for people to know that that although it certainly, I imagine, can be uncomfortable if you're reporting a medical provider who you have had some relationship with, hopefully a good relationship until this point, it can be an awkward thing that it's maybe not as scary. You know, the complaint process, you know, I am not aware of any situations where there's really been an adverse outcome for the complainant to filing the complaint.

SS: No, not in that manner. You know, except the one we discussed is dismissal, you know, but nothing as far as legal action for them, you know, against them for filing a complaint.

JFB: Okay. Shikha, thank you so much for your time. This is a really important topic and I think that your comments are really going to help our listeners.

SS: Thank you for having me.

Final Thoughts: 17:14

I want to sum up with some key takeaways that I hope will help listeners understand the best and most effective use of the medical board complaint process. First and foremost, understand that anyone has the right to file a complaint with the North Carolina Medical Board. We never refuse someone the opportunity to submit a complaint if that's their wish. We do try to help people understand how the process works and help determine whether submitting a complaint will achieve what they hope to achieve. Second, medical board staff are not able to advise someone if they have a good case or attempt to predict the possible outcome of a complaint. We do try to make potential complainants aware of possible consequences of filing a complaint such as dismissal from the medical practice. A medical professional has the right to terminate the clinician patient relationship, and a provider may reasonably conclude that someone who reports them to their regulatory board is not interested in continuing to work with them. What I often tell callers who indicate that they want to continue seeing the provider they're concerned about is that they may be better off raising the issue with the practice administrator or the practice manager. Of course, keep your communications polite and respectful for best results. Next, anytime I'm talking about the complaint process, I like to remind people that filing a complaint will not directly benefit the individual filing it. A complaint won't resolve a dispute with your physician or PA and it won't help you win a financial settlement. You file a complaint to alert the medical board to a potentially unsafe or inappropriate situation, so the Board has the opportunity to prevent similar misconduct from occurring in the future. Finally, there are some situations where patients are disappointed or unhappy with their medical provider, but the clinician's conduct isn't actually unethical or unlawful. In such situations, the best solution may simply be to find a provider who is a better fit. The North Carolina Medical Board does not recommend or refer to physicians or PAs, but you can find licensed providers using our Look up a doctor or PA tool at www.ncmedboard.org.

Episode closing: 19:26

Well, that brings us to the end of this episode of MedBoard Matters. Thank you for listening. If you found this episode helpful. Remember, sharing is caring. Tell a friend or colleague. Find more information about the complaint process and a link to the episode at www.ncmedboard.org/podcast. And we'd love to receive your comments, questions, and even constructive criticisms at podcast@ncmedboard.org. I'm your host, Jean Fisher Brinkley. I hope you'll join me again.