



Vermont Medical Society

April 19, 2017 Webinar:

Responding to Board of Medical Practice Complaints

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What is the Board of Medical Practice ?

An office within Department of Health composed of medical professionals and public members who serve as a neutral and independent body commissioned by the Legislature to oversee the practice of medicine and to protect the public.

It licenses or certifies between 4,000 and 5,000 physicians, physician assistants, podiatrists, anesthesiologist assistants (certification), and radiologist assistants (certification).

Who is the Board of Medical Practice ?

Seventeen (17) Board members appointed by the governor for five year terms for no more than two (2) consecutive full terms.

Nine (9) licensed physicians, one (1) licensed physician assistant, one (1) licensed podiatrist, and six (6) public members not associated with the medical field.

A full time Executive Director, two (2) full time investigators, and three (3) support staff.

Two Assistant Attorney Generals assigned to work with Board to assist in investigations, settle charges of unprofessional conduct, and prosecute matters.

Powers of the Board:

Governed by Vermont statutes and formal rules that have the force of law.

With respect to complaints of unprofessional conduct the Legislature has charged the Board to:

“Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner ... and to hold hearings to determine whether such charges are substantiated or unsubstantiated.” 26 V.S.A. § 1353 (2).

Rules of the State of Vermont Board of Medical Practice:

Govern the details as to how the Board works, including its processes with respect to complaints.

Existing Rules: Effective February 16, 2001:

“Be advised that some of the current rules conflict with the current statutes and, where this occurs, the statutes preempt the rules.”

New Rules: Draft published on January 20, 2017
Public Comment Period ended April 10, 2017

Rules and other information available at:

<http://www.healthvermont.gov/systems/medical-practice-board>

Investigative Committees:

Three investigative committees, North, Central, and South, manage complaints on behalf of the Board.

The Investigative Committees investigate complaints and ultimately makes recommendations to the full Board.

Complaint Process:

1. Receipt of complaint & assignment to an Investigative Committee
2. Investigation & Notice to Licensee
3. Determination of unprofessional conduct
4. Resolution

Receipt of Complaint :

The Board receives a written complaint: patient, family member, other provider, self-report, notice of complaint from another jurisdiction in which provider is licensed.

The Board can also initiate an investigation on its own.

Matter is assigned to one of the three investigative committees to work with one of the Board investigators to investigate the complaint and make recommendations to the full Board.

Investigation:

Investigative Committee works with assigned investigator to manage investigation.
The Executive Director oversees all investigations.

An investigation generally lasts between six (6) and twelve (12) months, but it could be longer.

An investigation can include review of medical records, informal interviews, formal depositions, subpoenaing of documents from third parties, and even visiting a practice.

All investigations remain confidential unless the Board believes a licensee committed unprofessional conduct.

Notice to Licensee:

Opening Letter to licensee informing him or her of a complaint and investigation.

Second letter demanding a written response from licensee within twenty (20) days.

- Often comes with a copy of the written complaint and other information.
- Can get an extension to respond.

Expect at least an informal interview sometime after a written response to the Board.
Sometimes a more formal deposition is taken.

Example of an Opening Letter:

Dear [REDACTED]:

The Vermont Board of Medical Practice has received information pertaining to [REDACTED]. The Board seeks to investigate all such information, and we wanted to notify you that an inquiry has begun.

This letter is *not* a notice of a formal hearing.

This matter will be investigated by a committee of the Board and an Assistant Attorney General to determine whether there has been unprofessional conduct as defined at Title 26, Section 1354, of the Vermont Statutes Annotated, copy enclosed.

The investigative stage is confidential. The Board has assigned the above case number in this matter, and this number will be used when referring to this case in public forums such as Board meetings. The investigative process may take approximately six months from the date the complaint is filed until resolution. When an investigation presents unusually complicated questions, or if independent expert review of medical issues is required, the process may take considerably longer. Enclosed is a brochure which explains the investigative process.

Please let me know if you have any questions.

Example of a Letter Demanding a Written Response:

Case Number: [REDACTED]

Dear [REDACTED]:

As I told you on [REDACTED] this letter is a request for your written response to the Vermont Board of Medical Practice. Please respond within 21 days of the date of this letter.

Please provide the Board with the following information within your response:

- a detailed explanation of the events that [REDACTED] involving patient [REDACTED] which led to [REDACTED] and
- a detailed explanation of the events on [REDACTED] involving patient [REDACTED] which resulted [REDACTED].

If you need further time to respond, please let me know.

What to do in response to a Board Letter:

1. **Remain calm:** Between 2011 and 2015, the Board opened an average 197 investigations, but, on average, only nine (9) cases resulted in discipline and only one (1) resulted in formal charges.
2. Retain counsel & determine whether insurance coverage exists.
3. Cooperate.
4. Consider reporting matter to employer or risk management.
5. Consider whether you should continue to see a particular patient.
6. Work with counsel to draft a written response to the Board.

What NOT to do in response to a Board Letter:

1. Freak out.
2. Discuss the substance of a complaint with anyone beyond what is necessary.
3. Put anything into the medical record about the complaint or investigation.

The Responsive Letter:

Your response is key. It sets the tone for all future interactions with the Board. A good response is essential to moving an investigation to a resolution and getting the Investigative Committee on your side.

Keep In mind you are writing primarily to your peers serving on the Board.

Each case is different and requires its own analysis and approach, but consider the following:

1. Be contrite.
2. Take responsibility.
3. Explain why this was an aberration.
4. Explain steps you have already taken, or will take, to address the issue.
5. Sign the letter yourself instead of counsel.

The Determination of Unprofessional Conduct:

Investigative Committee, with guidance from counsel, determines whether it believes that the facts established by its investigation warrant charges of unprofessional conduct.

Its decision leads to one of three outcomes:

1. Closing the investigation without taking any action. The Committee recommendation goes to the full Board for approval. The complaint and investigation remains confidential and exempt from disclosure.
2. A settlement resolving the matter. Any settlement becomes public.
3. Specification of Charges. Any formal charges become public.

Settlement:

Negotiations conducted with Investigative Committee through an Assistant Attorney General and usually initiated via a proposed Stipulation and Consent Order.

Generally, a Stipulation and Consent Order contains an admission of wrongdoing, terms and conditions, an acknowledgement that the settlement is public and can be used by the Board in the future, and sanctions.

Must be approved by full Board in public hearing. The Licensee may attend.

In addition to posting the Stipulation and Consent Order online, the Board will report any it to the Federation of State Medical Board Action Data Bank and the National Practitioner Data Bank.

Specification of Charges:

Formal complaint detailing alleged unprofessional conduct and citing specific violations of professional conduct standards.

This begins a formal process leading to a hearing before a hearing panel at which the Board and provider (the Respondent) present evidence.

Prior to the hearing, the panel can conduct preliminary hearings and issue orders regulating discovery, depositions, scheduling, motions, and a case timeline.

Hearing panel consists of at least two Board members and a hearing officer. Members must NOT be members of the assigned Investigative Committee.

The full Board must accept and enter any proposed decision of the hearing panel.

Example of Specification of Charges:

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: [REDACTED], M.D.)
) Docket No. [REDACTED]
)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont, by and through Attorney General William H. Sorrell and the undersigned Assistant Attorney General, Jacob A. Humbert, and alleges as follows.

1. [REDACTED] (“Respondent”) of [REDACTED], Vermont holds medical license number [REDACTED] issued by the Vermont Board of Medical Practice on [REDACTED]. Respondent is a [REDACTED] with a private practice medical office in [REDACTED], Vermont.

Discipline:

Discipline can result from a Stipulation and Consent Order or a contested hearing.

1. Order CME course
2. Imposition of conditions of practice
3. Reprimand
4. Administrative Penalty
5. Temporary limitations on practice
6. Revocation or suspension of license.

Miscellaneous:

The Board can suspend a license during an investigation if it believes a grave threat to public health, safety, or welfare exists.

The Board may have some flexibility in some cases to fashion a unique resolution, but do not count on it.

Questions?

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