Publication of MEDICAL MUTUAL/Professionals Advocate®

DOCTORS RX

Volume 32, No. 1

Spring/Summer 2024

Navigating a Medical Board Complaint

find out...

- Why you should never ignore a state medical board complaint
- What steps are involved in the complaint investigation process
- When to contact MEDICAL MUTUAL/ Professionals Advocate for support

A LETTER FROM THE CHAIR OF THE BOARD

Dear Colleague:

State medical boards play an important role in ensuring the delivery of quality health care. Although Physicians routinely go above and beyond for their patients, occasionally a patient is dissatisfied with the care they receive and files a complaint with the board. In this issue of *Doctors RX*, we will discuss what you should do if you receive a board complaint and how you can minimize the risk of receiving a complaint in the first place.

George S. Malouf, Jr., M.D., FACS
Chair of the Board
MEDICAL MUTUAL Liability Insurance Society of Maryland
Professionals Advocate Insurance Company

ISSUE HIGHLIGHTS

DOCTORS RX

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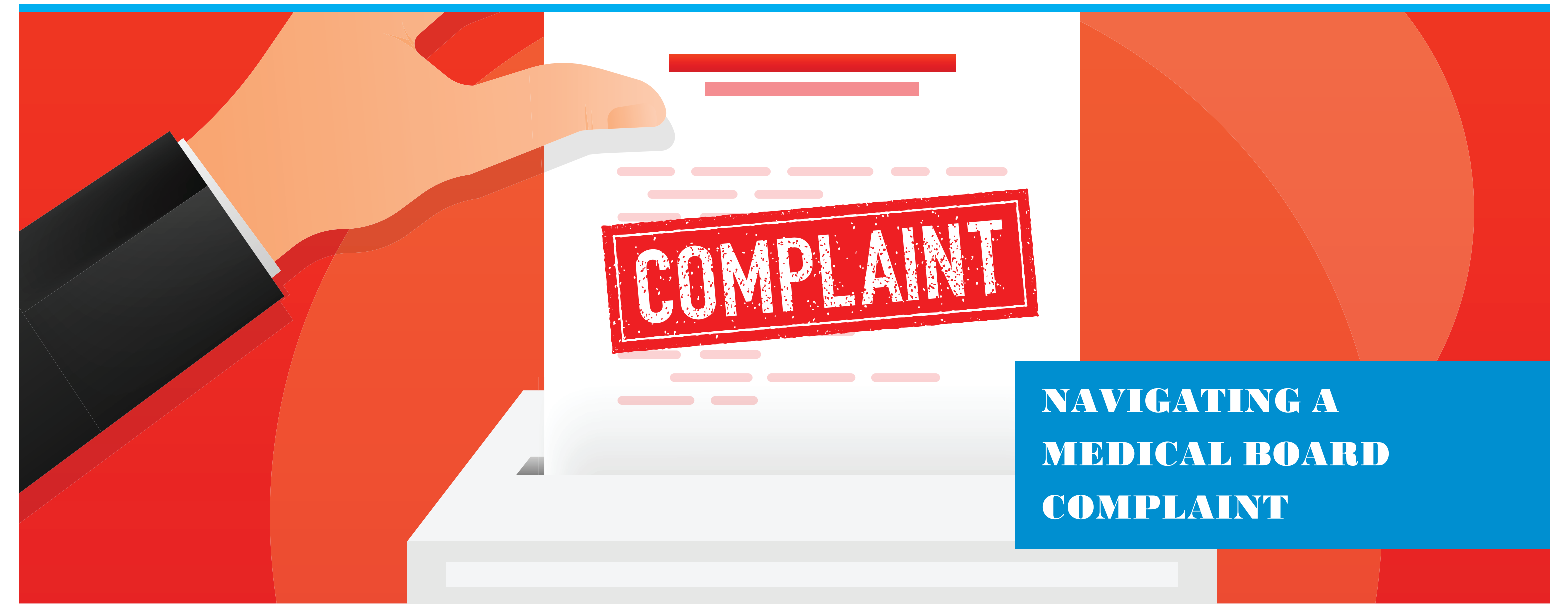

NAVIGATING A MEDICAL BOARD COMPLAINT

Consider this:

You arrive at the office early one morning and your Practice Manager tells you that you've received a letter in the mail that looks important. You open it and learn that a patient has filed a complaint against you with the state medical board. The patient alleges that you came into the exam room 38 minutes late and rushed through the visit. The patient is upset, wants his co-pay refunded, and doesn't want his insurance company billed for the visit. The board has given you ten days to respond to the complaint with a narrative describing your position. You also must provide a copy of the patient's medical records.

You ask yourself: What do I do now? Should I just respond to the complaint, send the records, and be done with it? But I don't have enough time. Can I ask the board for an extension? Should I call MEDICAL MUTUAL/Professionals Advocate? Was this avoidable?

THE MEDICAL BOARD

State medical boards are responsible for ensuring quality health care through licensure and discipline of health care providers under their jurisdiction. The boards protect patients by enforcing their respective state laws.

The Maryland Board of Physicians is comprised of 22 members, including practicing Physicians, a Physician Assistant, a public member knowledgeable in risk management or quality assurance matters, at least two members with a background in academic medicine, and five consumer members. The Virginia Board of Medicine includes eighteen members with diverse backgrounds, including Physicians, an Osteopathic Physician, a Podiatrist, a Chiropractor, and several citizen members.

THE MARYLAND BOARD

22 MEMBERS

INCLUDING: *Practicing Physicians and consumers*

Scan the QR code to learn more about the MD board[1]

THE VIRGINIA BOARD

18 MEMBERS

INCLUDING: *Physicians and citizens*

Scan the QR code to learn more about the VA board[2]

Michael Doll is Director of Risk Management for MEDICAL MUTUAL/ Professionals Advocate.

Consider

Most board investigations are covered under your medical professional liability policy as part of your MedGuard coverage.

THE COMPLAINT – WHAT DOES IT LOOK LIKE AND WHAT DOES IT MEAN?

The Maryland and Virginia medical boards have mechanisms in place for patients and other members of the public to lodge complaints against Physicians. In both states, the board will investigate all complaints they receive. With that in mind, *if you ever receive a complaint—even if it seems frivolous—you must not ignore it.*

The board typically will forward a complaint with a cover letter addressed to you or your practice. The letter will outline what action must be taken in response to the complaint. Although these letters may vary slightly, most will include the following:

- Notification that a complaint has been filed against you with the board (a copy of the complaint is usually attached)
- A request for a written response to the complaint within ten days of the letter's date
- A request for a copy of the patient's medical record

It is important to comply with the board's directives, as failure to do so could result in additional disciplinary action.

The board employs investigators who gather relevant documents and conduct interviews to present an investigative report. If the board concludes there is a reasonable basis to believe misconduct has occurred, charges are brought against the Physician. The Physician may then defend against the charges at an informal conference or a formal hearing. If there is a finding of misconduct, the board may impose an appropriate penalty, which may include a fine, retraining, ethics coursework, psychiatric treatment, community service, or even license suspension or revocation. If the board decides to take disciplinary action, a public order will be issued detailing the Physician's name, the investigative findings, and the sanctions imposed.

COMMON MISSTEPS AND HOW TO AVOID THEM

If you receive a complaint from the board, you might feel compelled to respond without the assistance of an attorney. You might think "this is frivolous," or "the patient just doesn't understand the medicine," and then decide that you can respond to the complaint and supply the board with any materials required to resolve the matter. Even if you think a complaint can easily be resolved, we encourage you to call MEDICAL MUTUAL/Professionals Advocate for assistance.

From frustration to fear, facing a board complaint can be an emotional experience. The following are a few common missteps to avoid when considering your response to a board complaint.

> *"This isn't a malpractice claim, so I don't need to involve MEDICAL MUTUAL/Professionals Advocate..."*

If you receive a board complaint, you might believe you can handle it on your own because it doesn't involve the courts. A board complaint is not a lawsuit; however, it may have serious repercussions on your ability to practice medicine. Moreover, if you find yourself involved in a malpractice lawsuit, the board also may elect to open its own investigation. MEDICAL MUTUAL/Professionals Advocate has attorneys who are experienced in defending Doctors before medical boards, and most board investigations are covered under your medical professional liability policy as part of your MedGuard coverage.

Once coverage is confirmed, an attorney will be assigned to help draft your response, gather information related to the complaint, and represent you before the board if you are called for a hearing. You should rely on the experience and expertise of your assigned attorney to guide you through the process.

> *"I'm busy seeing patients. I'll get to this when I can. There are no real time constraints..."*

Any failure to respond to a board complaint could result in a "summary suspension" of a Physician's license. After ten days, the board may view the lack of response as an admission of a violation and could impose a fine, license suspension, or other sanction. If you receive a board complaint, contact MEDICAL MUTUAL/Professionals Advocate right away. If you forward the complaint to MEDICAL MUTUAL/Professionals Advocate when you receive it, your assigned attorney can request an extension from the board if additional time is needed to respond to the complaint.

> *"I know this patient well. I can just call him and explain what happened..."*

Faced with the opening scenario, you may be inclined to contact the patient to "clear the air." But you should not do so, as any conversation you have with the patient about the complaint could be used against you during the board proceedings. Consult with the attorney assigned to you by MEDICAL MUTUAL/Professionals Advocate. He or she will advise you on how to appropriately address the matter. If you happen to see the patient in your practice, do not discuss the ongoing board investigation. If the patient confronts you regarding the investigation, avoid being drawn into a discussion or argument about the allegations that are the subject of the board complaint. If necessary, depending

Note

After ten days, the board may view a lack of response as an admission of a violation.

Consider

With colleagues, it is best to limit discussion concerning malpractice issues and board complaints, as any such conversation may be admissible in court or at a board hearing.

on the nature of the board complaint, it might be prudent to discharge the patient. However, before deciding whether to take such action, you should consult with your assigned attorney to discuss your options.

> *"The medical record isn't reflective of what I told the patient. I'll just go in and correct it."*

Resist the urge to correct the medical record. Indeed, any alterations to the record may void your coverage. Further, any response to the board complaint that could be regarded as self-serving likely will make the board question your care, treatment and, ultimately, your credibility. Therefore, it is best to leave the record "as is" and follow your attorney's advice. Keep in mind that the medical record is the only contemporaneous written documentation of the patient encounter, so accurate and thorough documentation is essential.

> *"Looking back on this matter, I should have let the patient know I was running behind. I'll just write to the board and admit that I am wrong."*

As the phrase goes, "hindsight is 20/20." Do not let a poor patient response to an interaction negatively impact how you think about the care you delivered to the patient. You may be eager for the complaint to be resolved and think that a direct discussion with the board will resolve the matter. Nonetheless, before you contact the board, you should always consult with MEDICAL MUTUAL/Professionals Advocate or your assigned attorney to discuss a plan of action.

> *"My colleague has gone through this before. I'll discuss this with her to get her impression of the case and what I should do next."*

Physicians are accustomed to leaning on their colleagues for advice and support. However, it is best to limit any discussion concerning malpractice issues and board complaints, as any such conversation may be admissible in court or at a board hearing. For the duration of a board investigation and any proceedings, conversations about the matter should be kept among you, your assigned attorney, and your MEDICAL MUTUAL/Professionals Advocate representative. If you feel the need to speak with someone else about the matter, consult with your attorney first. In most cases, your attorney will advise you to wait until the investigation and any proceedings have concluded.

> *"Can I lose my license because of this?"*

The short answer is, "maybe." Depending on the allegations in the complaint and how you respond, you may face restrictions on your ability to practice. Therefore, it is essential to immediately notify MEDICAL MUTUAL/Professionals Advocate of the complaint. The attorney we assign to you will work in your best interest to minimize or eliminate any potential impact the complaint may have on your ability to practice medicine.

TAKE-HOME POINTS

State medical boards ensure that patients are afforded the best possible care. A board complaint may be unavoidable, but taking proactive measures can minimize your risk and position you for a favorable outcome if a complaint is filed. Important steps include:

- Documenting each patient encounter thoroughly and contemporaneously in the patient's medical record
- Communicating effectively with all necessary parties—including the patient and consultants—and documenting the communications
- Having thorough discussions with the patient that include each of the five elements of informed consent (consult the breakout box, page 6)
- Using pamphlets or other handouts and, if possible, giving the patient time to consider and ask questions about their treatment options

Note

Immediately notify MEDICAL MUTUAL/ Professionals Advocate of a board complaint.

BE PROACTIVE

HOW YOU CAN MINIMIZE THE RISK OF RECEIVING A BOARD COMPLAINT AND STRENGTHEN YOUR RESPONSE SHOULD ONE BE FILED

We recommend that you consider the following key points when you are charting and interacting with patients:

DOCUMENTATION

Make sure you thoroughly document your discussions and thought processes in the patient's medical record. Charting the steps you took to make a diagnosis or recommend a treatment plan could prevent a board complaint or make the process of responding to the complaint much easier. Documenting patient interactions is also essential. For example, if the patient is non-compliant, document the reasons for non-compliance and what you did to address the issue with the patient.

COMMUNICATION

Part of being a caring and compassionate Physician is educating patients on their diagnosis and treatment options. Therefore, it is important to clearly and effectively communicate with patients and the specialists to whom you make referrals. Consider the patient's concerns and address them in a timely manner. In addition, clearly communicate your decision-making to the patient, and document it in the medical record. For example, if the patient receives a concerning lab result, be sure to communicate the result to the patient in a timely manner and contemporaneously document the communication in the medical record.

INFORMED CONSENT

Informed consent is a patient-focused two-way conversation intended to educate patients. When discussing potential treatment with the patient, it is important to explain the indications for the treatment and describe, in detail, what is involved. It is essential to also provide the patient with probable risks and benefits of the treatment and any alternatives to treatment (and the alternative treatment's risks and benefits). In addition, you should include a detailed note in the patient's medical record summarizing any encounter with the patient during which potential treatment was discussed.

ADDITIONAL INFORMATION CONCERNING INFORMED CONSENT CAN BE FOUND AT MMLIS.COM/RESOURCE/DETAIL/570[3] OR VIMEO.COM/MMLIS/INFORMEDCONSENT

Remember

Depending on the allegations in the complaint and how you respond, you may face restrictions on your ability to practice.

If you receive a board complaint, remember to:

1. *Contact MEDICAL MUTUAL/ Professionals Advocate immediately.*
2. *Refrain from responding to the complaint before consulting with your assigned attorney. Following the advice of an attorney who has experience responding to board complaints provides you with the best chance of a successful outcome.*
3. *Cooperate with the board throughout the investigation and rely on your attorney to guide you through the process.*

If you are faced with a board complaint, MEDICAL MUTUAL/Professionals Advocate can help. With our guidance throughout the process, you will be in the best position to continue doing what you do best: ***providing quality patient care.***

5 Elements of Informed Consent[4]

Informed consent for medical treatment generally involves ensuring that a patient is adequately informed about various aspects of their treatment. The five essential elements of informed consent are:

DISCLOSURE

The health care provider must disclose all relevant information to the patient. This includes details about the diagnosis, the nature and purpose of the proposed treatment, the risks and benefits of the treatment, any alternatives (including the option of no treatment), and the risks and benefits of the alternatives.

UNDERSTANDING

The patient must understand the information provided. This means the health care provider must communicate in a manner that the patient can comprehend, taking into account factors such as language barriers, literacy levels, and cognitive abilities.

COMPETENCE

The patient must be competent to make the decision. Competence refers to the patient's ability to understand the information and make an informed choice. This can be influenced by age, mental status, and overall capacity to make decisions.

VOLUNTARINESS

The patient's decision must be made voluntarily, without coercion or undue influence from health care providers, family members, or others.

CONSENT

The patient must give their consent. This can be done verbally, in writing, or by other means depending on the situation. The consent should be documented in the patient's medical record.

references

[1] "Board Members." Maryland Board of Physicians. https://www.mbp.state.md.us/board_members.aspx

[2] "Full Board." Virginia Department of Health Professions. https://www.dhp.virginia.gov/Boards/Medicine/AbouttheBoard/Board-Members/

[3] "Risk Management Two-Minute Drill: Informed Consent." Medical Mutual Liability Insurance Society of Maryland. https://www.mmlis.com/resource/detail/570

[4] *Sard v. Hardy*, 281 Md. 432, 379 A.2d 1014 (1977).

CME TEST QUESTIONS

1. A medical board is responsible for protecting patients through licensure and effective discipline of health care professionals under its jurisdiction.

   A. True B. False

2. If a complaint seems frivolous, the board is not required to investigate it.

   A. True B. False

3. Most medical boards will allow you to respond to a complaint within 20 days after receiving it.

   A. True B. False

4. Effective communication with your patients and consultants will help protect you from a board complaint.

   A. True B. False

5. There could be coverage under your policy for a board action; therefore, it is best to contact MEDICAL MUTUAL/ Professionals Advocate right away if you receive one.

   A. True B. False

6. If you know the patient well, you should call her and explain the situation.

   A. True B. False

7. If you receive a board complaint, it is best to review the patient's chart and correct any inaccuracies in the chart.

   A. True B. False

8. It is best not to discuss the complaint with any of your colleagues.

   A. True B. False

9. If you do not want to deal with the complaint, it is best to contact the board and just admit you were wrong.

   A. True B. False

10. It is best to cooperate with both the board and your assigned attorney throughout the life of the investigation.

    A. True B. False

Instructions – to receive credit, please follow these steps:

Read the articles contained in the newsletter and then answer the test questions.

1. Mail or fax your completed answers for grading:
   Med•Lantic Management Services, Inc. | Fax: 443-689-0261
   P.O. Box 8016 | 225 International Circle | Hunt Valley, Maryland 21030
   Attention: Risk Management Services Dept.
2. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of *Doctors RX*. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
3. Completion Deadline: October 31, 2024
4. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you.

CME Accreditation Statement

MEDICAL MUTUAL Liability Insurance Society of Maryland is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for Physicians.

CME Designation Statement

MEDICAL MUTUAL Liability Insurance Society of Maryland designates this enduring material for a maximum of one (1) *AMA PRA Category 1 Credit.*™ Physicians should claim only the credit commensurate with the extent of their participation in the activity.

CME EVALUATION FORM

Statement of Educational Purpose

Doctors RX is a newsletter sent twice each year to the insured Physicians of MEDICAL MUTUAL/Professionals Advocate.® Its mission and educational purpose is to identify current health care-related risk management issues and provide Physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to meet the following educational objectives:
1) Gain information on topics of particular importance to them as Physicians.
2) Assess the newsletter's value to them as practicing Physicians.
3) Assess how this information may influence their own practices.

CME Objectives for "Navigating A Medical Board Complaint"

Educational Objectives: Upon completion of this enduring material, participants will be better able to:
1) Understand what a board complaint looks like.
2) Avoid a possible complaint and assist in making the outcome more favorable.
3) Understand what to do after receiving a complaint.

	Strongly Agree				Strongly Disagree
Part 1. Educational Value:	5	4	3	2	1
I learned something new that was important.	❑	❑	❑	❑	❑
I verified some important information.	❑	❑	❑	❑	❑
I plan to seek more information on this topic.	❑	❑	❑	❑	❑
This information is likely to have an impact on my practice.	❑	❑	❑	❑	❑

Part 2. Commitment to Change: What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

____

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Part 3. Statement of Completion: I attest to having completed the CME activity.

Signature:______________________________ Date:______________________

Part 4. Identifying Information: Please PRINT legibly or type the following:

Name:______________________________ Telephone Number:______________

Address:______________________________________

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RISK MANAGEMENT NEWS CENTER

REGISTER FOR A NEW RISK MANAGEMENT EDUCATION PROGRAM TODAY

Risk Management Education Programs are open for registration online; browse programs and register at *MMLIS.com* or *ProfessionalsAdvocate.com*

Programs are offered in multiple modalities, and Physicians who complete a program will earn continuing medical education (CME) credits and a premium credit on their next renewal policy.

If you would like to discuss program options, please call 443-689-0215 or 443-689-0204 to speak with a Risk Management specialist (Monday through Friday, 8:00 a.m. – 4:30 p.m.).

IS PROTOCOL LEAVING YOUR PRACTICE VULNERABLE?

MEDICAL MUTUAL/Professionals Advocate provides a short self-assessment designed to help you determine which areas within the non-clinical aspects of your practice may be leaving you open to risk. Examples include medical record documentation, patient scheduling, prescriptions, and patient communications. Take our quick, two-part survey to learn what you can do to improve risk prevention. Visit *MMLIS.com* or *ProfessionalsAdvocate.com* to complete the survey today.

WE'RE HERE TO ANSWER YOUR LIABILITY QUESTIONS

Call the MEDICAL MUTUAL/Professionals Advocate Risk Management Department to ask about any liability concerns you have. Our Risk Management specialists are ready to answer your medicolegal questions Monday through Friday, 8:00 a.m. – 4:30 p.m. Contact the Risk Management Department at 410-785-0050 or toll free at 800-492-0193. (Please note that any advice given should not be construed as legal advice.)

MEDICAL MUTUAL and Professionals Advocate offer a variety of online tools and resources that are specially designed to help Doctors identify and address preventable issues before they escalate into potentially serious legal action.

MEDICAL MUTUAL Liability Insurance Society of Maryland
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DOCTORS RX
Publication of MEDICAL MUTUAL/Professionals Advocate®

ARTIFICIAL INTELLIGENCE RISK EDUCATION SERIES

To inform Insureds about the emerging risks associated with Artificial Intelligence (AI) in medicine, MEDICAL MUTUAL/Professionals Advocate will release a series of new materials for 2024. Each part of this new education series will cover a unique topic related to AI and will have an accompanying quiz to provide 0.5 hours of CME credit.

Educational materials will be available to all Insureds at no cost and will be accessible to download on our secure websites. The first installment of the series is the podcast, "Artificial Intelligence: Do's and Don'ts During a Deposition."

Scan a QR code below to listen to the podcast and access new resources that will be added throughout 2024.

(MEDICAL MUTUAL)

(ProAd)