
Malpractice Lawsuits vs Medical Board Complaints

By Matthew Bauer, JD

The mission of state medical boards is to protect and promote the health, safety, and welfare of the public by licensing physicians and by regulating the practice of medicine. This helps ensure that the public has access to high-quality medical care. As part of fulfilling this mission, state medical boards investigate complaints filed by patients against physicians. A complaint filed with a state medical board is different than a medical malpractice lawsuit filed with a court. In a medical malpractice lawsuit, the plaintiff alleges the physician committed medical negligence and asks the jury to award monetary damages. However, in a medical board complaint, the complainant alleges the physician violated the medical practice act and/or the rules of medical professional ethics of that state and asks the medical board to take action against the physician's license.

SVMIC's policy provides a benefit for state medical board investigations or "licensure proceedings" if the licensure proceeding arises from a medical incident otherwise covered by the policy and meets all other policy terms and conditions. Under this policy benefit, SVMIC selects and retains counsel to represent our insured physician and pays "licensure proceeding costs" as defined by the policy up to a specified amount to defend our insured physician against the allegations in the medical board complaint.

After a state medical board receives a complaint about a physician, typically an investigator will contact the physician to request the patient's medical records and/or schedule an interview with the physician. This step of the investigative process gives the physician an opportunity to tell their side of the story and to bring the relevant medical facts and information to the attention of the investigator. Often, after the physician is able to tell their side of the story, the medical board investigation will be concluded as not meriting further action, as demonstrated by the following closed claims.

The 60 YOM patient with a history of opioid abuse and Naltrexone treatment was seen by orthopedist Dr. Smith for wrist pain secondary to a fall at home. Over the course of multiple office appointments, Dr. Smith performed an appropriate work-up, including performing a physical exam and ordering imaging studies; Dr. Smith diagnosed the patient with wrist sprain; and prescribed conservative treatment including non-narcotic pain medication and physical therapy. However, the patient became upset that Dr. Smith would not prescribe narcotic pain medication; the patient was non-compliant with physical therapy appointments; and Dr. Smith referred the patient to another orthopedist for a second opinion. After the referral, Dr. Smith was contacted by a state medical board

investigator requesting a copy of the patient's medical chart and an interview to investigate a complaint filed by the patient alleging "unprofessional conduct." SVMIC hired an attorney to assist Dr. Smith with producing the medical records and to prepare her for the interview with the investigator. During the interview, Dr. Smith explained her care and treatment of the patient and her medical decision-making regarding the patient's treatment course (conservative medical management of the patient's wrist sprain as opposed to the prescription of narcotic pain medication, which would have been medically inappropriate for a patient with a history of opioid abuse under the circumstances) to the investigator with the assistance of her attorney. After the interview, Dr. Smith received a letter from the state medical board investigator stating the complaint had been closed as not meriting further action.

The 55 YOF patient was seen by PCP Dr. Jones over the course of several years for management of her type II diabetes mellitus. Unfortunately, due to a variety of factors including numerous appointment cancellations and non-compliance with a recommended diabetic diet and prescribed medication, Dr. Jones decided to terminate the physician-patient relationship. Consequently, Dr. Jones sent a letter notifying the patient of the termination of the physician-patient relationship and notifying the patient that he would continue to treat the patient for a reasonable amount of time (30 days) while she transitioned her care to another health care provider. Approximately three months later, Dr. Jones was contacted by a state medical board investigator requesting an interview to investigate a complaint filed by the patient alleging "patient abandonment." SVMIC hired an attorney to assist Dr. Jones and to prepare him for his interview with the medical board investigator. During the interview, Dr. Jones explained his decision to terminate the physician-patient relationship, stating (a) the physician-patient relationship is based on trust; (b) it appeared the patient did not trust Dr. Jones to take care of her type II diabetes mellitus as she was consistently non-compliant with recommended treatment and prescribed medication; and (c) therefore, he believed it would be in the patient's best medical interest to establish care with another health care provider whom she would trust and whose medical advice she would follow. Dr. Jones further explained there was no "patient abandonment" as he gave the patient notice and a reasonable amount of time to transition her care to another health care provider while he continued to see the patient for office appointments if requested during the transition period. After the interview, Dr. Jones received a letter from the state medical board investigator stating the complaint had been closed as not meriting further action.

It can certainly be alarming and upsetting for a physician to receive contact from the state medical board investigating a complaint filed by a patient. However, with assistance and support from experienced counsel and SVMIC, a medical board complaint can often be resolved and disposed of as an initial matter after the physician is afforded an opportunity to tell their side of the story to the medical board investigator and to present the relevant medical facts and documentation supporting their actions.

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