

# The Mission, Organization and Processes of the Board of Medical Practice

For over 100 years the Board of Medical Practice has been tasked with licensing and overseeing the practice of medicine in Vermont. On the licensing side, it is the Board's responsibility to ensure that applicants satisfy all statutory criteria, including those for education, competence, and character. Once a license is granted, the Board has an ongoing obligation to investigate possible unprofessional conduct by its licensees. The Board's powers and duties, and the definition of unprofessional conduct, are all found in Chapter 23 of Title 26 of the Vermont Statutes Annotated (V.S.A.) (accessible online at: <http://www.leg.state.vt.us/statutes/sections.cfm?Title=26&Chapter=023>).

It is universally accepted that the primary reason for having a system to license and oversee physicians is public protection. However, protecting the public is not the only benefit of having a Board to oversee the practice of medicine. Public confidence in the profession is also served by having a neutral and independent body to receive, investigate, and, if appropriate, act on complaints and reports of possible unprofessional conduct. It is inevitable that some patients will have misgivings about the quality of the care received. Absent a Board process to handle complaints from the public, there would be no alternative to the courts. It's unlikely anyone would find that desirable. Patients without access to legal representation would lack a way to address concerns. And, in the end, there might be more civil litigation over healthcare.

The Board understands that for many Respondents (the term used for licensees being investigated), the process itself may be a thoroughly unnerving experience. That is not the Board's intent. The goal is no more and no less than to engage in an objective process to collect the evidence necessary and appropriate for the responsible Board members to arrive at informed conclusions in order to dispose of the matter, whatever the outcome. From time to time, the Board hears from Respondents that they feel disrespected in the process. On the other hand, we sometimes hear from Complainants that they believe the Board is an organization dominated by physicians and overly protective of physicians. The reality is that the Board strives to operate within the "just right" zone – respectful of all parties and committed to making fair decisions based on facts.

It is our hope that by sharing information about the Board and our process, we will be able to improve public understanding of the Board's role and the lengths to which the Board goes to fairly and appropriately resolve the matters that come before it.

## *The Board Members and Staff*

The Board of Medical Practice is created by Vermont statute, [26 V.S.A. § 1351](#). The Board consists of 17 part-time members, of whom nine must be Vermont-licensed physicians, one must be a Vermont physician assistant, one a Vermont-licensed podiatrist, and six public members not associated with the medical field. All members are appointed by the Governor.

The Board has an Executive Director who is appointed by the Commissioner of Health. There are two full-time investigators and three other administrative staff members who work for the Board in its main office. Two Assistant Attorneys General (AAG) prosecute matters before the Board. Another AAG, assigned to the Department of Health, serves as counsel to the Board. The Board is governed by Vermont law and the Board of Medical Practice Rules. The Board licenses and disciplines physicians, physician assistants, podiatrists, radiologist assistants, and anesthesiologist assistants.

## *Why Are Investigations Opened?*

Cases come to be opened via a number of paths. Most cases begin with a complaint. Complaints may be filed by patient family members, other physicians, other healthcare providers, friends, pharmacists, and others, as well as by patients themselves. The Board receives notice of disciplinary actions by other states' licensing boards, actions on privileges by Vermont hospitals and healthcare institutions, and reports of all malpractice settlements for Vermont-licensed providers. Additionally, some licensees self-disclose incidents. Sometimes there are referrals from other Vermont professional licensing boards, or from the entities that oversee hospitals and other healthcare institutions. There are also times when the Board opens a case on its own initiative, such as when it discovers information relevant to a licensee's actions in the course of investigating another licensee. By law, the Board must investigate all complaints filed against any license holder. [26 V.S.A. § 1353\(2\)](#).

## *How Are Complaints Processed?*

The Board is divided into three investigative committees: one that meets in the North, one in the South, and one Central Vermont. These committees meet once a month to review the cases open for investigation. Each committee has a mix of professionals and public members.

When the Board receives a complaint, it is assigned to one of the three committees. Complaints are assigned in a manner to



minimize the potential for conflicts (e.g., a complaint against a northern licensee might be assigned to the south investigative committee). Each case is controlled by the assigned investigative committee. The Board's full-time Executive Director supervises the investigators, but the committees direct the investigators with regard to the gathering of evidence and any focus of concern the committee may have, as the matter proceeds through the investigation.

While every case is unique, some events can be expected. The committee may obtain patient records via a signed release or through a subpoena issued by an AAG. The licensee who is being investigated may be interviewed by an investigator and/or may be asked to appear before the investigative committee to discuss the case. Additionally, the licensee will generally receive an "opening letter" and a copy of the complaint (if there is a written complaint) along with a request that the licensee respond in writing to the allegations.

Given the different circumstances presented by each case, there is no uniform sequence of events to the investigation. In some cases, the investigating committee may gather information first before issuing an opening letter. In other cases, the first step may be the issuance of an opening letter. Tailoring the sequence of events to the particular facts of a case helps ensure that the best possible evidence is presented to the Board, and can also help to assure Complainants of the legitimacy of the investigation process.



Once the appropriate records and other evidence, including interviews and response, have been gathered, the investigating committee reviews the matter to determine

whether unprofessional conduct has occurred, as defined in [26 V.S.A. § 1354](#). In some cases, the Board may consult with an expert.

### ***The Investigative Committee Reaches a Decision – Then What Happens?***

Once the investigative committee reaches a decision, the case is not complete. An investigative committee cannot act on its own. The two basic alternatives are for the case to be closed without action, or for the Board to seek an Order. If the investigating committee determines the case should be closed with no action, this recommendation is made to the full Board in executive session. If the Board approves the recommendation, the case is closed and a "closing letter" is sent to the licensee notifying him/her of the resolution. These closing letters remain in a licensee's file and may be

reviewed during future investigations, but are otherwise confidential.

If the investigating committee determines that a case should not be closed and that findings of unprofessional conduct should be pursued, then by Board rule, the first step is an offer to settle the case. Typically, the AAG will draft a stipulation and consent order that reflects the facts determined by the committee and proposed sanctions. Sanctions vary by case, but might include a reprimand, payment of an administrative penalty, a requirement that a licensee take a continuing medical education ("CME") course, the use of a practice monitor, suspension of a license, or combinations thereof. In some cases, the committee will request that a licensee enter into a Cessation of Practice Agreement.

The AAG will propose the stipulation to the licensee and attempt to negotiate an agreement to be presented to the Board. If the licensee and the AAG (on behalf of the committee) come to terms, the stipulation is signed and submitted to the Board. A hearing officer presents the stipulation to the Board for approval in a public session during a meeting of the full Board. The licensee and AAG may both be present to discuss the stipulation. If the Board members approve the stipulation, it is issued as an Order of the Board, which is posted on the Board's website and is considered a public record. If the Board rejects a stipulation, it goes back to the investigative committee for further discussion of resolution, typically with some suggestions from the Board.

If further negotiations fail to lead to a new agreement on a stipulation, then the investigating committee will ask the AAG to file charges of unprofessional conduct. The AAG is subject to an ethical obligation that prohibits bringing a case that lacks a basis in law or fact. A hearing panel made up of at least three Board members (who are not members of the investigative committee) is appointed. A hearing officer is used to assist with the hearing process. An administrative hearing is held where witnesses and evidence may be presented by both sides. The hearing panel will issue a recommendation with its findings of fact and proposed sanctions, if any. The full Board then takes up the recommendation of the hearing panel and determines whether to adopt the hearing panel's recommendation. The Board makes a final ruling, which becomes an Order of the Board, is posted on the Board's website and becomes a public record. Appeals from the Board's ruling go directly to the Vermont Supreme Court and follow the regular appellate process. [23 V.S.A. §1367](#)

### ***How Long Does The Process Take?***

The investigative process usually ranges from two to twelve months. However, if a case progresses to a contested hearing with multiple witnesses, the process will often take much longer. The minimum of two months reflects time needed for the licensee to receive and respond to the complaint, the committee to review material, and closure at the following full Board meeting. This all takes time, especially in light of the fact that the committees and the Board meet only once each month.

### ***What About the Numbers?***

The number of cases varies from year to year, but at present the number expected number for calendar year 2013 is about 350. In recent years, the number of cases that resulted in actions against a licensee has been about ten to fifteen (there are many more actions, but many of them concern cases that have already been the subject of a disciplinary order). On the whole, the rate of cases in which there is a finding against the licensee is roughly five percent. Also, invariably, in a majority of cases in which there is a finding against the licensee, there is a stipulated agreement.

### ***What Protections Are Afforded to Licensees?***

Given the fact that many cases do not result in action against the licensee, one of the most important protections for the Respondent is statutory confidentiality of Board investigations, which protects the licensee's reputation from any damage that might otherwise result from a case that is not substantiated. Pursuant to [26 V.S.A. § 1318](#), each case remains confidential, unless and until there are charges or a stipulation to discipline. In the event there are charges, it becomes a public process, but the express purpose of the statute, stated in the law itself, is "to protect the reputation of licensees from public disclosure of unwarranted complaints." However, confidentiality has its limits. For instance, a Complainant can tell others that he or she has complained, but the Board will not publicly disclose the investigation absent charges or a stipulated order.

Another important protection is that the licensee is entitled to due process. The Respondent has rights, and the case cannot proceed in a manner that violates either the generally applicable principles of due process that apply to administrative hearings in Vermont, or the rights specified in the Board statute. The Respondent is guaranteed at least 30 days to prepare from the date of service of charges (but typically more time is allowed under an agreed schedule). Respondents also have the right to be notified of the charges, the right to appear, the right to have counsel appear, the right to produce witnesses and evidence in their own behalf, the right to cross-examine witnesses, and the right to examine all documentary evidence. In sum, it is a fair contest, the focus of which is to generate an examination of the evidence in order to allow for a decision based upon the facts as may best be established.

Finally, licensees should remain aware that a *majority* of Board members are peers – M.D.s who well understand the realities of practice, and who will be subject themselves to the rules and precedents that they establish. Furthermore, while the Board's mission is to protect the public, every member understands that protection of the public is not achieved simply by taking actions against licensees. They understand that *warranted* actions to address and deter unprofessional conduct are necessary, but so is it necessary for fit and qualified licensees to be able to practice and to be able to do so without fear of unwarranted actions.

### ***In Closing***

The Board does its best to make the investigation process as smooth as possible for all involved while at the same time being faithful to its duty to protect the public. Anyone with questions or concerns about the Board's investigation process should call or write the Board's Executive Director.



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