

## Frequently Asked Questions

### The Complaint Process

➤ **How long does the investigation process take from the time I file a complaint with the Board?**

The investigation timeline can vary anywhere from three months to one year based on the volume of complaints received and complexity of the particular investigation. Every case investigated must go before the full Board for review and decision. The Board only meets quarterly.

➤ **Will the licensee know who filed the complaint against him/her?**

Yes. Because the licensee will be under formal investigation by the Board, they have the right to defend themselves against the allegations being made, and that would be impossible to do without knowing who it is making the allegations. The Board requires the licensee to provide a detailed response to the complaint.

➤ **What will happen to the licensee once the Board reviews the case and makes a determination?**

The Board is responsible for implementing the Medical Practice Act, which is very specific about what a licensee can be disciplined for. The Board may find that your case does not rise to the level of a violation of the law, and simply close the case. If the Board is concerned about the conduct or competency of a licensee, but it does not rise to the level of a violation, they may issue an advisory letter. If there is evidence of a violation of the law, the Board may take action against the physician's license, which can range from a reprimand for minor violations, to assessing a fine, suspending the license, or even revoking a license.

Even if your case does not rise to the level of a violation of the law, the Medical Board believes it is beneficial to investigate most complaints – in part, because even if we take no action on your case the information will be saved in our database where we can use it in the future to determine if any sort of pattern of problems develop with a specific licensee. In addition, just being formally investigated by the Board is enough to provide incentive for many licensees to address whatever the problem is themselves. They may change some office policy, or talk to their staff, or gain a better understanding of how they should communicate with their patients.

➤ **Can a Physician stop treating a patient because the patient has made a complaint against the Physician?**

Yes. The fact that there has been a complaint suggests that the physician-patient relationship may no longer be viable. However, the Physician must follow the AMA Code of Medical Ethics recommendation for discharging a patient from the practice. Section 8.115 of the Code of Medical Ethics states, “**Termination of the Physician-Patient Relationship.** Physicians have an obligation to support continuity of care for their patients. While Physicians have the option of withdrawing from a case, they cannot do so without giving notice to the patient, the relatives, or responsible friends sufficiently long in advance of withdrawal to permit another medical attendant to be secured.” The Board considers thirty (30) days a sufficient amount of time for notification of dismissal. Notice of dismissal shall be given in writing via the United States Postal Service (the letter may be certified), electronically, or by facsimile.

➤ **How can I find out if a complaint has been filed against a Physician?**

Although the Board maintains a record of all complaints filed, complaint records are confidential. See NMSA 1978, § 61-6-34(B). However, any *licensure action* the Board has taken against a Physician is public information and may be found on our website.

➤ **Can the Board help me resolve billing issues I have with my doctor?**

No. The investigation of billing disputes, costs of services, and referrals by doctors of patients to collection agencies is not within the jurisdiction of the Board. The Board may investigate its licensees who are obtaining a fee by fraud or misrepresentation or employing abusive billing practices.

➤ **Can I file a medical malpractice claim against a Physician with the Board?**

No. The Board is an administrative agency and its jurisdiction is limited to the licensing and discipline of Physicians, Physician Assistants, Anesthesiologist Assistants, Genetic Counselors, Naprapaths and Polysomnographic (Sleep Study) Technologists. The Board can only impose disciplinary measures against a practitioner’s license if there is a violation of the Medical Practice Act, Board Regulations, or Rules of Professional Conduct.

➤ **Who “owns” my medical records? How do I get them?**

Medical records are in the “custody” of the Physician or the Hospital or the Clinic providing service. A patient does not “own” the record, either. Medical records are confidential material, and are protected under strict laws, including HIPAA (Health Insurance Portability and Accountability Act). A patient may request *a copy* of the record and must sign a release, either to have a copy of that record, or to have that copy sent

to another Physician or facility. Special releases may be required for psychotherapy notes and may be withheld from the patient. Drug and alcohol, and HIV/AIDS records also require special releases.

According to the NMMB Rule 16.10.17.8, medical records may not be withheld because an account is overdue or a bill for treatment or other services is owed. Also, medical records may not be withheld awaiting payment for the cost of copying the medical records. A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is not more than \$30.00 for the first 15 pages, and \$0.25 per page thereafter. The records must be provided in a ‘timely manner.’ The Board considers 2 weeks a ‘timely manner’ to provide records unless stored in an offsite location and/or volume of records to be copied. Providing records should not take more than 30 days as continuity of patient care is paramount.

➤ **Who can obtain a copy of my medical record?**

Anyone with a valid release. This includes *attorneys; insurance companies; government agencies; you as the patient; your appointed representative; and an appropriate agency by subpoena*. You need to make sure that your signature is on the release. Just because someone is a spouse he or she is not automatically entitled to the records of a spouse or a deceased spouse. With a proper authorization, all the records can be released.

➤ **Scope of practice: “Is my doctor allowed to do \_\_\_\_\_ (specific procedure, treatment, etc.)?”**

The Medical Board does not license by specialty – physicians are permitted to practice within their own scope of practice, which is defined by their education, training and experience. The Board would only become involved if there were an instance where a physician was practicing in an area in which he or she has no appropriate training, and that would be determined on a case-by-case basis.

➤ **HIPAA**

HIPAA is a federal law that guarantees the privacy of patient medical information by establishing rules for how that information can be collected, stored and transmitted. It also establishes the circumstances under which a physician does, and does not, need the patient’s permission to release information and guarantees patients the right to access their own medical records.

➤ For information about HIPAA, go to their web site: [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)

- Complaints about HIPAA violations should be directed to the US Department of Health and Human Services Office of Civil Rights:

**Region VI - AR, LA, NM, OK, TX**

Office for Civil Rights

U.S. Department of Health & Human Services

1301 Young Street - Suite 1169

Dallas, TX 75202

(214) 767-4056; (214) 767-8940 (TDD)

(214) 767-0432 FAX