

Investigations by the State Medical Board of Ohio

Answers to frequently-asked questions

In order to provide answers to questions often asked by physicians concerning the State Medical Board of Ohio and its investigators, the Ohio State Medical Association's Legal Services Group has developed this brochure that explains the board's investigative authority and offers practical information to help physicians when a state medical board investigator calls. Although the following information is applicable to most situations, it is not intended to be legal advice, and should not be construed as an official position issued by the Ohio State Medical Association or the State Medical Board of Ohio. Physicians who wish to have individualized legal advice should contact their own private legal counsel.

Q. Will a medical board investigator normally schedule an appointment to see a physician, or just arrive unannounced? Should the investigator schedule an appointment to see the physician?

A. According to the State Medical Board of Ohio, due to the nature of the investigator's work, he or she is not usually able to schedule an appointment to see a physician prior to arriving at the office. However, the investigator should wait a reasonable period of time in order to speak with the physician or often will return at a mutually convenient time.

Q. When a medical board investigator presents him or herself at a physician's office, will he/she present identification?

A. The investigator will first present a business card from the state medical board which identifies him or her as an investigator. The investigator will leave this card with the physician in order to identify him or herself if questions arise later, or if the physician wishes to later contact the investigator. All investigators also carry state medical board photo I.D.s and investigator badges. These additional forms of identification should be requested if the physician is unfamiliar with the investigator.

Q. Under what circumstances must a physician stop seeing a patient in order to see an investigator immediately?

A. Never. In circumstances where the investigator wishes to discuss a particular matter, the investigator will normally ask to see the physician. Although the physician need not immediately stop what he or she is doing, arrangements should be made to see the investigator at the earliest convenient moment. As noted in the response to question #1, the investigator will normally wait in the waiting room for a reasonable period of time, or will return at a more convenient time. However, there may be circumstances when the investigator must insist on waiting to see the physician and will make the fact known to the office staff. For example, the investigator may wait to see if the physician is actually on the premises at the time of his or her visit.

Q. Under what circumstances should a physician talk with, visit with, or answer questions from the medical board investigator?

A. Under most circumstances, the physician may discuss individual cases with the investigator without breaching the confidentiality of the physician-patient relationship. By law, the board and its investigators are required to handle investigations in a confidential manner.

A physician can often resolve an investigator's concerns about minor matters in their first meeting. **Nevertheless, physicians should carefully consider the answers they provide to investigators, and are encouraged to contact legal counsel about doubtful areas before responding to the medical board investigator.** Discussions with the medical board investigator can, and will, be used in some circumstances for disciplinary action against the physician when the investigation or discussions uncover violations of the Medical Practice Act.

Q. What will happen if a physician declines to be interviewed by a medical board investigator?

A. If a physician declines to be interviewed by a medical board investigator he/she may be requested to meet with board representatives or be required to appear for an investigative deposition. In these and other instances, the physician may wish to contact either private legal counsel or, with respect to general legal matters, the Legal Services Group of the OSMA. Physicians appearing before the medical board are usually represented by legal counsel.

Q. Under what circumstances should a physician's office staff talk with, visit with, and answer questions from a medical board investigator?

A. Normally, the physician's staff is not approached by the investigator to answer questions concerning the care or treatment of that physicians' patients. The staff may answer questions without breaching the confidentiality of the physician-patient relationship in discussions with the medical board investigator.

Q. Under what authority does the medical board hold investigative office conferences?

A. Investigative office conferences are held under the board's basic investigative power set forth in the Ohio Revised Code. Office conferences are an extension of the board's authority to investigate the actions of a physician. The board's goal at these conferences is to gather information. Some complaints brought to an office conference are resolved at that time.

A physician who is requested to attend an office conference has the right to be accompanied by an attorney. The office conference will normally be held before the medical board secretary and/or the supervising member. Board staff members, such as the executive director, assistant director and a stenographer will also be present. Notes will be taken at the conference and conferences are routinely tape recorded. These notes are considered to be a confidential investigative report and, as such, may not be released to anyone, including the physician and his or her legal counsel.

Q. What is the board's Quality Intervention Program (QIP)?

A. The QIP handles complaints that do not appear to warrant initiation of a formal disciplinary action. Most cases that go through the QIP program are resolved through remediation such as focused education. Some cases are referred back to the secretary and supervising member for consideration of formal action.

Q. Will the investigator divulge the name of the complainant to the physician? Will the investigator inform the physician if he/she is not the subject of the investigation?

A. All information related to board investigations is required by law to be kept confidential. The investigator will not release the name of the person who brought a complaint against a physician, unless that person has given consent. The physician may ask if he/she is the subject of the complaint. However, the nature of the complaint may preclude the investigator from providing that information to the physician.

Q. May a physician make patient records available to a medical board investigator without a subpoena?

A. If a medical board investigator presents at a physician's office with neither a signed patient authorization permitting the release of medical records to the board nor a subpoena, it is the OSMA's recommendation that the physician should not release the information. The physician may take one of the following courses of action in this situation:

-Obtain the patient's authorization to release the requested information to the medical board (*note that HIPAA privacy rules set forth specific requirements for authorizations to use/disclose protected health information*).

-Request that the investigator present the physician with an appropriate subpoena from the medical board.

The Health Insurance Portability and Accountability Act (HIPAA) privacy rules permit a physician to disclose protected health information to a health oversight agency, in this case the medical board, for oversight activities authorized by law. ORC§4731.22 (F) authorizes the board to investigate violations of the Medical Practice Act and to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents related to medical board investigations. If the board determines that patient medical records are necessary to conduct an investigation of a possible violation of Ohio law, it may issue a subpoena and/or compel production of those records. In this instance a physician must respond to the medical board subpoena or order compelling production of records. This disclosure is a permissible disclosure without a patient's consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Q. Should a physician discuss anything with an investigator who has a subpoena?

A. Generally a subpoena requests records only. The subpoena does not require the physician to discuss any of the information contained in the requested records with the investigator at that time.

Q. What procedure should a physician undertake in order to challenge a subpoena?

A. A subpoena must be challenged in court. If a physician refuses to comply with a subpoena, the board may seek a contempt order to compel the physician to release the subpoenaed records. Physicians are encouraged to speak to private legal counsel concerning opportunities and procedures for challenging a subpoena when necessary. The board may also discipline a physician for failure to comply with a subpoena that has not been quashed.

Q. What violations of the Medical Practice Act must be reported to the state medical board?

A. While physicians are required to report any violations of the Medical Practices Act, the board looks for information concerning violations of minimal standards of care by physicians, fraud by physicians committed within the course of practice, impairment issues, violations involving boundary issues such as improper touching or engaging in a sexual relationship with a patient and improper prescribing or administration of drugs. Ethical violations are often channeled to the medical board through the county medical societies. Physicians are not required to report impaired practitioners who voluntarily enter into treatment programs, continue to comply with the treatment program and have no other violations of the Medical Practices Act. Although, impaired physicians who relapse are reportable. Physicians who report questionable practices to their hospital peer review committees are not exempt from reporting to the board.

Q. Does the board investigate all complaints? Will the board respond to the complaint when the investigation is closed?

A. The medical board is required to investigate all complaints concerning violations of the Medical Practices Act. The board will send a letter to the complainant when the investigation is closed. The physician who was the subject of the investigation will also receive a letter if he or she was contacted during the investigation.

Q. What are the penalties for not cooperating with a board investigation?

A. ORC §4731.22(B)(35) makes failure to cooperate with a board investigation a basis for disciplinary action. Failure to cooperate with an investigation does not constitute grounds for discipline if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue.

Q. Who can file a complaint against a physician?

A. *Anyone* can file a complaint against a physician. Typically, a complaint is filed by a patient, a patient's family, a member of the physician's staff or another physician. (UPDATED MARCH 2004)

**Questions? Contact the OSMA
at 1-800-766-OSMA or
www.osma.org**

