
The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

When the State Comes Knocking: License Defense

You receive a visit from an investigator from the State Board of Dentistry stating a patient has filed a complaint against you. He hands you a subpoena that orders you to handover copies of the patient's chart.

What do you? Do you give him the chart? Should you reach out to the patient? Who do you call?

In this article we'll discuss the role of the State Board, their powers, how complaints can be initiated and by whom. We'll also address the steps you need to take should your State Board initiate an investigation against you or your employees.

Who is the State Board of Dentistry?

Unfortunately, the State Board is not your friend. They are not advocates for the dental profession. Their mission is to protect the public and ensure that dental professionals are in compliance with State law.

They do this by issuing, suspending and revoking licenses and certificates of dentists, dental hygienists and others. They investigate complaints against dentists, conduct official proceedings and render binding decisions.

While the composition of state board members may differ by state, this government entity may include some combination of the following representatives:

- Secretary of Health
- Director of Bureau of Consumer Protection
- Office of the Attorney General
- Commissioner of Professional & Occupational Affairs
- Dentists
- Dental Hygienists
- At-large Public Members

Why would the State Board investigate a dentist?

The investigation could be the result of a malpractice lawsuit, but a patient injury is not required. A complaint can be filed against you for virtually anything by anyone. Complaints can be filed by a patient, their family member, another dentist, your employer, a co-worker, dental plans, your own family, or law enforcement.

Typical complaints include, but are not limited to:

- Alcohol on breath while working
- Improper advertising
- Unprofessional conduct
- Infection control
- Fraud
- Incompetence
- Abandonment
- Failure to pay child support
- Failure to meet C.E. requirements

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- Negligence
- Failure to supervise
- Illegal drug use

Complaints are not to be taken lightly and must be dealt with immediately. If not dealt with properly, a Board complaint can affect your reputation in the community, result in fines, a formal reprimand, probation, supervision, additional training, license suspension or the revocation of your license.

Case Study #1

Dr. A had a practice in Louisiana that focused on providing dentures. Based upon 15 patient complaints of Dr. A's assistants performing dental work outside of their scope of practice, the Board investigated.

Once an investigation is initiated, the Board may examine your entire practice, including issues not contained in the original complaint.

In this case, the investigation uncovered that Dr. A had misrepresented his services via ads that led patients to believe a full set of denture was \$125 when in fact the price was \$125 each for the upper and lower denture. If a patient wanted a denture that looked natural, the price ranged as high as \$450. Additionally, Dr. A told his employees, "If you can't make \$3,000 per day, I'll find someone that can."

The Board concluded that Dr. A was guilty of violating 23 counts of the Dental Practice Act and four counts of false and deceptive advertising. Dr. A was ordered to pay \$87,000 in fines and penalties; lost his license to practice dentistry for 10 years, and is facing 10 years of probation when he returns.

How does an investigation progress?

There are generally three triggers to a Board investigation.

- Receipt of a complaint
- Internal audit or review
- A dental malpractice claim

The process often starts with a visit from a Board investigator seeking to collect information. You are obligated to cooperate with the investigator. It is within your rights to request a meeting at a more convenient time so your legal counsel can be present.

Anything you say can and will be held against you. Keep quiet. Resist the urge to clear up the 'misunderstanding' with your version of events.

The investigator may decline to provide you with a copy of the complaint that has been made against you. They may hand you a subpoena requiring you to produce a patient's chart or other documents. Provide them with copies. Never release the originals.

Depending on the state and the circumstances, the investigation may take place entirely through correspondence, or there may be a hearing.

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What to do if the Board contacts you

Your first action should be to contact Dentist's Advantage, or if you have one, your broker. They will help you file a claim with the insurance carrier, who will assign a claim adjuster and provide you with a defense attorney. The attorney will help you craft a written response to the Board and accompany you to any hearings.

- If the investigator gave you a copy of the complaint, send it to your claim adjuster
- If patient records were subpoenaed, provide copies to your claim adjuster
- Do not attempt to edit your records, will look suspicious
- Do not contact the patient
- The carrier's attorney will assist you in crafting a written response
- The response should stick to the facts, nothing personal
- Send via UPS within requested time frame

What coverage is provided by your Professional Liability Insurance?

Your professional liability insurance, or dental malpractice insurance, provides \$25,000 of License Defense coverage. It will pay for a legal defense only. Fines and penalties levied by the Board are not covered.

- A defense is provided for claims that are covered under the policy
- Among the few exclusions are allegations of criminal activity
- Based on a Dentist's Advantage study, the average cost of License Defense claim was under \$5,000
- In .05% of License Defense claims, defense costs reached 5 figures, but rarely exceeded \$25,000

Case Study #2

A 46-year old female patient presented to Dr. B with the following medical history:

- Significant tooth loss
- Half pack a day smoking habit
- Moderate to advanced inflammation of periodontal tissues
- Heavy stain and tartar
- Only #5, #8 and #9 were present in her upper jaw
- #22 and #27 were present in her lower jaw

Dr. B. provided two detailed, written treatment plans; and the patient selected one. The dentist saw the patient over a lengthy treatment period, documenting each in detail.

After 15 months the patient claimed she was dissatisfied with her restorations and told Dr. B she was going elsewhere to finish treatment. Dr. B documented this phone conversation in the patient's chart. The patient filed a complaint with the State Licensing Board alleging:

- Substandard practice
- Abuse
- Poor communication
- Abandonment

An attorney was provided to assist the dentist with the development of a detailed summary of the months of care and communication. Dr. B's careful documentation helped bolster his case by showing he'd acted professionally and within his scope of practice. All complaints were dismissed. Legal defense costs: \$2,695.

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Recommendations that may help reduce your risks

- Document consistently and legibly
- Make sure Policies and Procedures manuals reflect current practice & follow them scrupulously
- Treat patients with respect
- Stay informed on evidence-based standards and incorporate them into practice
- Know the Practice Act in every state in which you practice
- Embrace transparency
- Stay educated
- Recognize fatigue and respect your physical limits
- Have a patient-centered focus
- Monitor the performance of all staff
- Keep copies of performance appraisals, recommendation/reference letters and thank you cards
- Maintain CDE certificates of completion
- Belong to professional organizations
- Subscribe to professional journals
- Learn new equipment and techniques

Don't take a Board investigation lightly. Your ability to practice dentistry could be at stake. The Board has broad powers to investigate and discipline dentists. Remember that your documentation is your best defense.

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