



RISK MANAGEMENT

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THE DENTAL BOARD'S FIRST LOOK AT YOUR CASE



LET'S SAY A PATIENT HAS COMPLAINED. YOU'VE RECEIVED A letter from the Board of Registration in Dentistry (BORID). Your lawyer has responded with a complete explanation, and you've kind of forgotten about the whole thing. Then one day, you get this letter telling you that in one week the Board will meet in executive session to consider the complaint.

There's no reason to panic. The letter is not necessarily bad news, and at worst, the Board's new procedure will give you a better understanding of your case.

When the Board gets a complaint, it generally asks the dentist to respond and provide relevant documents. After the dentist replies, it can be months before anything happens. But eventually, the Board has to decide what to do about the complaint, and that's when the letter will come.

In the past, the Board dealt with most complaints in open session. These would be listed on the agenda. But dentists don't always consult the Board's website and might not have known their case was on. The next thing the dentist would hear was either that the case was dismissed or that the Board was taking it further.

Things are different these days. Now, you are more likely to get a letter saying that the Board is going to consider the complaint against you in "executive session"—a closed hearing. You have the right to be present, to speak on your own behalf, and to make a recording or transcript. You may bring a lawyer. The lawyer is not entitled to participate actively. His or her main job is to prepare you, observe the proceedings, and advise you about your rights.

The open meeting law allows the Board to meet in executive session to discuss "the discipline or dismissal of, or complaints or

charges brought against . . . [an] individual." You would think, from this, that the Board is concerned with protecting the reputation of a dentist who may not have done anything wrong. And the closed sessions do serve that purpose. But the main goal is to preserve patient confidentiality.

It's impossible to discuss your treatment of a patient without a risk that protected health information will be disclosed. When a specific patient isn't involved—let's say your dental hygienist forgot to renew her license—the Board will discuss the matter in open session.

What to Expect at the Board Meeting

The meeting opens at 8:30 a.m. at BORID's headquarters at 239 Causeway Street in Boston. Cases are called in the order that people sign in, so get in line early and try to sign up about 15 minutes before the proceedings begin. The Board meets first in open session to discuss general business. After an hour or two, there will be a motion to enter executive session, and the public will leave the room. Depending on when you signed in, you may have an hour or more to wait.

When your case is called, you and your lawyer will sit at a desk near the Board's conference table. You will have discussed in advance what you will say, if anything. The Board investigator will make a presentation about what regulations you may have violated and what evidence there is.

Although you've already received some indication of what your case is about, the investigator may have discovered facts that will come as a surprise to you. The executive sessions are recorded, so if you choose to speak, those words may come back to haunt you. If something surprises you,

it's probably better to remain silent than to blurt out an ill-considered explanation.

Although an appearance before a licensing board can be nerve-wracking—try not to worry. The large majority of cases don't result in public discipline. Dentists frequently are in and out of the boardroom in a few minutes, smiling and shaking hands with their lawyers.

By the Number

Jeffrey Mills, the Board's assistant executive director, was kind enough to provide the following statistics from the Board's files regarding the period between June 1, 2013, and May 31, 2014. The Board closed 170 complaints during that time. Of these:

- 26 were dismissed
- 22 were dismissed with an advisory letter
- 69 resulted in stayed probation (non-disciplinary)
- 10 resulted in a reprimand
- 35 resulted in probation
- 5 resulted in suspension (one was summary suspension)
- 3 resulted in voluntary surrender

Only 32 percent of the complaints resulted in public discipline, which is reportable to the National Practitioner Databank. Fewer than 5 percent of the complaints resulted in the temporary or permanent loss of a license. There was only one summary suspension. That happened to be my case, and it was dismissed after a hearing, so really there were only four suspensions, or a little more than 2 percent of the cases.

Four Reasons to Show Up

With few cases resulting in serious discipline, you may wonder whether you should even bother to show up. I think you should, for four reasons.

First, the complaint you responded to may not have given you all the information about your case. The investigator may have discovered something more troubling than whatever was bothering the patient. So a complaint that seems frivolous may result in a serious charge.

Second, and perhaps most important, the investigator's presentation is your best chance to understand what regulations you may have violated and to hear and see the supporting evidence. This information will help you inform your expert witness and prepare for a hearing. You can also see what the Board thinks of your case. The members may not agree whether there really was a violation and how serious it was. If the Board thinks it's appropriate to impose a sanction, you will hear why they chose the particular discipline they did. You will have a sound basis to discuss with your lawyer whether to accept the discipline offered or ask for a hearing.

Third, even the Board's investigators are capable of making a mistake. If there's an obvious error in the investigator's presentation, this is your chance to correct it before things progress—if your lawyer thinks that's wise.

Fourth, and one of the best reasons to attend, is that you don't have to wait to find out what happened. Many times, the investigator will say a couple of sentences, and the chair will ask, "Does anybody want to open a case?" If no one responds, there will be a motion to dismiss the complaint. It's worth being in the room to hear the words, "The motion carries." ■



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