

Notice of an Investigation

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The practice of therapy is regulated in all states. The simplest regulation has to do with the fact that only licensed therapists can use that term in conjunction with their name. With the license comes oversight to protect the public from unprofessional practices. Remember, the board is not your friend. They are to see that the public is not harmed.

You are considerably more likely to receive a board complaint than be sued. The reason is that in order to bring a suit there has to be a viable (?) cause of action and a lawyer who is willing to take the case. Your state board will investigate based upon a complaint whether it is factual or not. Most complaints arise out of an outcome that makes the complainant mad and has no other recourse but to complain. That does not make them right, only angry.

There can be three levels of a complaint. The opening phase is the investigatory stage. This is usually the first notice of a problem. It usually requires a written response and a copy of the chart being sent to the board. If it is warranted, the next will be a formal inquiry. This can entail testimony and experts to support the complained of care. Depending on the state, this may take place at a board hearing or in front of an Administrative Law Judge. Some states employ another step after the Administrative Law Judge with a formal hearing in front of the board. As you might guess, this process can be time consuming and expensive. This doesn't even include an appeal to the state judicial system.

The receipt of a complaint causes anxiety in the therapist. This is for many reasons. Most significantly is the fact that most practitioners take personally and can't see the motivation of the complainant, only the intent to provide quality care. The main fact is that most complaints are dismissed at the investigatory stage and there is no official record of them even being filed.

As almost all malpractice insurance policies provide some coverage for state board complaints, the first thing a policyholder should do is contact their carrier. They are a source of advice and if needed, a referral to an attorney who is familiar with the complaint process. It is not advisable to try and face the board alone. Even if the complaint is frivolous, the board will take it completely serious. Many a therapist has tried this route and found themselves with some sort of sanction that now has to be explained. Additionally, a lot of boards invite the therapist to sign a consent agreement to put the matter to rest. This may seem innocuous but it means that they have agreed that they have done something wrong. With this agreement, the complainant can now sue and be fairly well assured of winning.

The usual risk management strategies apply. As always, your notes are your main defense. Failure to have any just means you will have another charge. In fact, that is the only way you will survive a board complaint. State boards are consumer protection organizations. They are there to protect the public from allegedly unqualified practitioners. It is important to recognize that a proper defense comes from a clear and documented clinical process. Most states have passed laws that allow regulatory agencies access to patient charts. There is even an exception in HIPPA that allows this. That means your board will be looking at the notes that document your treatment. They will be making decisions about your career based upon what you have documented. This is another example of where the “less is more” theory of note taking breaks down.

As with most aspects of claims against therapists, a lot of board complaints arise out of the destruction of a family unit and the subsequent intervention of a therapist. It is not unusual for a “custody evaluator” to be named in a complaint. There are many reasons but it is the only way to bring an action against a court appointed individual. Immunity from litigation will protect against a lawsuit but it won’t stop a board from investigating.

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