

# Professional Licensing Boards: Whose Interest Are they Really Protecting?

A physical therapist, ("Therapist"), initiates a small claims action against a patient for \$140, the amount due from uncollected co-payments. In retaliation, the patient files a complaint with the State Board of Physical Therapy Examiners, ("Board"), claiming professional misconduct. The Board sends a letter to the Therapist indicating that it has received a complaint about professional misconduct but not disclosing who the complainant is or what the complaint is based upon. Nevertheless, the Board asks for a copy of this particular patient's chart and indicates that it will review the global practice of the Therapist during its investigation into the Therapist's practice. What should this Therapist do? After all, the Board's primary mission is to protect the Therapist, right? In reality, nothing could be further from the truth. A professional licensing board's primary mission is to protect the *consumer!* Without judging the appropriateness of this primary mission, for purposes of this article let it suffice to state that many therapists mistakenly believe that their professional licensing boards are "on their side". This often results in a therapist responding to a professional licensing board's inquiries without consulting a healthcare attorney. In this Therapist's situation, he is making a potentially serious mistake - possibly even jeopardizing his license - if he were to send a copy of the patient's chart to the Board without consulting a healthcare attorney. Whether a therapist wants to acknowledge it or not, a professional licensing board is in an adversarial role with respect to its licensees. Therapists need to understand the following sequence of events once a professional licensing board receives a consumer (oftentimes a current or former patient) if they are to maximize protection of their licenses:

- Once a professional licensing board receives a complaint by a consumer, it initiates an investigation. If the consumer is a patient, the board will request a copy of the chart as part of its evaluation and investigation. The board acts as determiner of whether alleged violations of law have occurred and if so what the appropriate sanction is to be applied. A therapist should, upon receiving a letter from the board asking for a copy of the chart, retain a healthcare attorney. No information should be exchanged between the therapist and the board regarding the patient other than through the healthcare attorney. A healthcare attorney, aided by expert therapists as consultants, needs to come to an understanding about the factual and legal issues that could be implicated in a disciplinary proceeding before the patient's chart is submitted to the board and well before the therapist appears for questioning by the board.
- Sometimes an investigation by the board can be averted if the appropriate response is submitted by the healthcare attorney to the board. Some complaints can be addressed with minimal explanation because the facts clearly speak for themselves. A board must consider all of its investigatory efforts in light of how best to protect the consumer. The consumer is not protected if the board does not make any inquiry of the therapist; however, a rational explanation addressing the

- issue raised in the patient's complaint may satisfy the board that it has adequately addressed the complaint and the investigation can end at this point.
- Other times, however, the conduct under investigation is problematic and a full inquiry is necessary for the board to fulfill its due diligence requirements. In these situations, the healthcare attorney and expert therapist consultants must anticipate the issues of concern preoccupying the board. The board will usually not give any insight into the nature of the complaint by the patient. In fact, the board will usually not give any information as to who filed the complaint. There are, however, typical issues that the board will review at any given time, as well as certain specialized issues that the board is focusing on at one time or another. A thorough, realistic and honest assessment of the therapist's documentation, billing and therapy practices can usually lay bare the issues that will be focused upon by the board. When it is fairly certain that unlawful behavior has been or will be discovered, it is sometimes a reasonable option to openly admit the wrongdoing and present a compliance program that incorporates treatment, counseling, education or other remedial steps. The risk of the therapist having a candid discussion with the board without the assistance of a healthcare attorney is that the therapist may make an admission of unlawful behavior without combining such an admission with a remedial program in exchange for an agreed upon response, (e.g.; minimal or no sanctions), by the board. The goal in negotiations with the board must be the retention of an unrestricted license to practice therapy with minimal or no monetary penalties.
  - At still other times, the best approach is to admit nothing and to put the board to its proofs that misconduct occurred. The therapist must be thoroughly prepared to provide testimony before the board, including explanations for anticipated questions as well as appropriate demeanor while delivering the explanation.

A therapist receiving a letter from the board requesting a patient chart and / or explanation of some incident as part of the board's routine inquiry and investigation, must be viewed in the context in which it is sent: an adversarial party requesting full disclosure to protect a third party - the consumer - and not to protect the licensee who is the target of the board's inquiry. A healthcare attorney, aided by a team of expert therapists, should be engaged to ensure that the therapist's explanation as to the care given a particular patient is presented properly as well as the global practice in which the therapist provides therapy, both of which are routine areas of inquiry by the board.

For additional information contact:

[sfern@barmak.com](mailto:sfern@barmak.com)

609 454 5351

609 454 5361 FAX

[www.barmak.com](http://www.barmak.com)