4 Common Questions About Medical License Investigations and 3 Defense Strategies

OBERHEIDEN, P.C.

Article By
Dr. Nick Oberheiden
Oberheiden P.C.
Our Insights

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If you are a medical provider and your medical license is under threat, you are bound to have questions about the process and what you can do to protect your livelihood and your future.

4 Frequently Asked Questions About Medical License Investigations

Here are answers to four of the most frequently asked questions.

1. Who is Behind the Investigation?

Generally, it will be your state’s Board of Medicine, or whatever is the name of the state agency that is responsible for issuing your medical license. However, that
does not necessarily mean that the Board is acting alone. Depending on what triggered your particular investigation, your state’s Board of Medicine may be acting on information that was gathered by a third-party investigator, like a:

- Recovery Audit Contractor (RAC)
- Unified Program Integrity Contractor (UPIC)
- Medicare Administrative Contractor (MAC)

In some other cases, the Board of Medicine or the state medical boards may be acting on the results of an investigation by a law enforcement agency, like the:

- Department of Justice (DOJ)
- Drug Enforcement Agency (DEA)
- Department of Health and Human Services (HHS)
- Office of Inspector General (OIG)
- Centers for Medicare and Medicaid Services (CMS)

If this is the case, you may also be about to face a civil claim or a criminal charge in addition to potential license revocation.

2. Why Am I Being Investigated?

There are numerous reasons for a medical license investigation. Generally, they fall into three categories:

1. You did something that violated the Board’s code of conduct for healthcare professionals
2. There are concerns over patient safety
3. The state Medical Board is trying to distance itself from you for other reasons

The first is likely the most common. All licensed medical professionals, but especially medical doctors and surgeons, are held to the highest expectations for their conduct, both on the job and off of it. If you break this code of conduct or violate the medical practice act, the Board can take action against your license.

However, even if you did not break the code of conduct, or if it is unclear whether you did or not, the Board may still take action against your physician's license. In some cases, they want to make it look like they are doing something to prevent bad press. In others, they may be trying to preserve the reputation of their other members. In either case, the Board may be willing to strip away your license without cause to protect itself. Having a medical license defense lawyer on hand to stop them is paramount.

3. What Can Trigger These Investigations?
Generally, investigations by the Board of Medicine are triggered when another entity refers information to the Board, or if the Board learns of a potentially revocable offense. Some common triggers include:

- A civil lawsuit for medical malpractice cases that alleges grievous violations of safety protocols
- Criminal charges for something that would amount to a breach of your code of conduct
- An audit uncovering evidence of healthcare fraud

The fact that any of these legal issues can also lead to a medical license investigation is yet another reason to vigorously defend yourself during them.

4. Can Medical License Investigations Turn Into Criminal Cases?

Yes, though it is likely more common for criminal cases to turn into medical license issues. If the Board of Medicine investigates potential wrongdoing and ends up uncovering evidence of a crime, it will forward that information to law enforcement for follow-up.

While this is possible, it usually happens the other way around. A criminal charge is filed and the Board of Medicine watches to see how it plays out. If you get convicted or plead guilty, the Board will likely take action against your license to practice.

3 Potential Defense Strategies in a Medical License Investigation

Every case is unique, so the best defense strategy for you may be a bad one for someone else. Not only do the specific facts of the case matter, but so do your interests: If nothing short of an outright acquittal is acceptable, then any compromising is out of the question.

1. The License Investigation is Too Far Removed from Your Wrongdoing

When the Board of Medicine is coming for your medical license after learning of off-the-job misconduct or mistakes, a common defense that a medical license defense lawyer will make is that the wrongdoing does not affect your ability to practice, so there is no reason to take away your license.

A great example is if a doctor gets arrested and charged with driving under the influence (DUI). This offense may break your code of conduct and trigger an investigation and action against your medical license. Even if your code of conduct explicitly lists DUIs as a breach of the code, the reality is that they are hardly connected to your ability to do your job, especially if the DUI was your first offense.

Some other situations where this can be a strong defense to a medical license investigation or revocation action include:

- Drug abuse
2. Prevent the Investigation from Turning into a Criminal Charge

If it is the license investigation that may lead to a criminal charge, rather than vice versa, it is critically important for your medical or professional license defense attorney to take a proactive approach and produce exculpatory evidence to persuade the Board and any law enforcement agency that is already involved that the evidence is not as incriminating as it looks. This is often the case when the Board hears about potential healthcare fraud and conducts an investigation that produces what appears to be incriminating evidence. Getting ahead of these allegations is essential.

3. Never Trust Your Employer’s Legal Defense Team

One mistake that lots of medical professionals – especially those in hospitals and practice medicine – make when facing a medical license investigation is to rely on their employer’s in-house lawyer for their defense. The in-house counsel at your medical institution has one job: Protect the institution. The only time they may be relied upon is if your case does not imperil your employer. If it does, and if your employer may face liability for your conduct, you will likely find that you will be used as a scapegoat and that the in-house lawyer will be the one doing it. Having your own independent defense lawyer is critical.