

## **EVEN A ‘GOOD SAMARITAN’ IS NOT IMMUNE: NAVIGATING THE BOARD COMPLAINT PROCESS AND THE IMPACT OF COVID-19**

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A board complaint can directly impact a provider’s ability to practice, obtain credentialing, and damage their reputation. An adverse finding, in addition to any discipline ordered, can trigger a duty to report to the National Practitioner Data Bank. Understanding the process and the impact of the current pandemic is important to help manage a provider’s expectations and facilitate efficient, favorable resolution.

### **Impact of COVID-19**

After Arizona’s Governor Ducey declared a public health state of emergency in March, he issued an Executive Order entitled “The Good Samaritan Order.” That Order provides qualified immunity from civil liability for frontline healthcare workers responding to the COVID-19 pandemic. Qualified immunity from civil liability means that a healthcare provider may be protected from lawsuits related to care rendered in response to this public health emergency. Such protection from civil liability does not extend to administrative regulation. In other words, the Good Samaritan Order might protect against litigation seeking monetary damages, but it does not protect against board complaints or administrative action endangering a practitioner’s license. While the Order should inevitably result in less litigation thanks to civil immunity, it might have the unintended consequence of increasing board complaints and administrative regulation, as that might be an aggrieved patient’s or family’s only recourse. A dissatisfied patient tends to be a determined one, and with the possibility of judicial action extinguished, a board complaint serves as the next best forum for airing grievances.

Not only is there a possibility of complaints increasing, but the time from filing to resolution is likely to increase as well, due to the medical boards’ increased responsibility in responding to the pandemic. Following the State’s declaration of emergency, the Department of Health Services executed an Administrative Order[1] permitting each health care profession regulatory board to temporarily waive some professional licensure requirements. These include temporary practice with pending licenses and allowing out-of-state licensees to practice in Arizona.

Other COVID-19 changes — like the exemption of CRNA’s from physician supervision[2] and the expansion of telemedicine[3] — have increased each board’s oversight responsibility. With the focus on combating this pandemic and mitigating the spread of COVID-19, combined with a likely greater number of complaints lodged, providers should expect increased delays in obtaining formal resolution and adopt a long-haul mentality.

### **What to Expect from the Complaint Process**

The Arizona Legislature has established state administrative boards which regulate all licensed healthcare providers with the goal of protecting the public. For example, the Arizona Medical Board regulates allopathic physicians under the Arizona Medical Practice Act, A.R.S. § 32-1401 et seq. Each board has an official process by which disgruntled patients can report complaints alleging unprofessional conduct, endangerment to patient/public safety, and medical incompetence. A board’s disciplinary authority is limited by the provisions of its governing legislative act.

While each board’s process is slightly different, they generally follow a common framework. Once a complaint is filed, an investigator is assigned to collect more information about the incident. The investigator will send written notice to the healthcare provider that a complaint has been filed but no further action is required at that time. It is possible, but rare, for a complaint to be dismissed outright.

An overwhelming majority of complaints proceed to the investigation phase. The investigator will subpoena relevant medical records from the proper custodian. The board will also request that the provider submit a written response to the allegations in the complaint and specific acts of unprofessional conduct identified by the investigator. The investigator might also request interviews with the healthcare provider, witnesses to the event(s), or other

healthcare providers involved in the patient's care. Once the investigator gathers all requisite information, a consultant or committee will review the materials and make a recommendation to the board.

Typically, a board will address the matter during a monthly meeting and formally vote on whether to take disciplinary action and, if so, what action is appropriate. The provider has the opportunity to attend the meeting and personally address the board members. Final resolution of a matter may include dismissal of the complaint, a non-disciplinary advisory letter, imposition of continuing education requirements, or formal reprimand. More serious disciplinary actions may involve license suspension and/or revocation. A provider has the right to appeal a board decision.

### **Considerations When Responding to a Complaint**

Patients and/or their loved ones tend to file board complaints when they have had negative experiences or bad outcomes, which often occur completely independently of the provider's actual care. Once notified of the complaint, it is crucial that the healthcare provider immediately notify his or her insurer, legal advisor, and/or employer. Counsel will likely be assigned to ensure a proper and timely response is filed.

With counsel involved, the board complaint process should not and need not overwhelm the provider's other professional responsibilities. A request for a response does not signal the board's intent to discipline, nor does it imply the complaint's validity. Rather, it is an exercise of the board's duty to protect the public. A response is the provider's opportunity to provide a complete and objective narrative of the treatment and care given. Depending on the board, final resolution of administrative complaints may take several months to a year.

[1] AZDHS Administrative Order, 2020-01, executed March 20, 2020.

[2] Executive Order, issued by D. Ducey to S. Verma, Centers for Medicare and Medicaid Services, dated March 23, 2020.

[3] Executive Order, 2020-15, executed March 25, 2020.

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[Anne Holmgren](#) focuses her practice in claims involving alleged medical malpractice, wrongful death, medical negligence, and vicarious liability in state and federal court. She represents physicians, hospitals, clinics, nursing homes, and other healthcare professionals, including emergency medicine, critical care, orthopedic surgery, anesthesiology, pharmacology, obstetrics and gynecology, internal medicine, radiology, and nursing.

In addition to these complex litigation matters, Anne regularly represents physicians and other healthcare professionals in administrative hearings before state licensing boards. In her product liability practice, Anne represents national product manufacturers in the healthcare industry.

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