

THE HEALTHCARE PROFESSIONALS LEGAL CHECK-UP

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Issue No. 2

How an attorney can assist the healthcare practitioner who receives a letter of inquiry from a professional board.

*Part Two – Continued from Previous Issue**

The healthcare provider who receives an investigation letter from his or her professional board typically has little or no experience in preparing a comprehensive response. On the other hand, attorneys with experience in this field have done hundreds of such letters and know generally what the Board is looking to accomplish. These attorneys also have a relationship with the Board attorneys and can often obtain information on the Board's intent which would not otherwise be available to the doctor dealing directly with the Board. An attorney can meet with you and assist you in preparing a comprehensive response to the investigation letter. The aim is to convince the Board that the investigation should be closed with no discipline being imposed.

While a comprehensive response to an investigation letter may often end the inquiry, on matters which are more serious or of more concern with the Board, the Board may still seek to file a complaint or impose some form of discipline. In most cases, an attorney can help guide the provider through the process and work to try to minimize the discipline and impact on your practice. To effectively do that, it is important that the attorney get involved at the very beginning, when you first receive the investigation letter. The attorney can often obtain extensions to respond to the letters to give you time to provide a complete and convincing response.

If a patient's complaint cannot be resolved informally with the Board, the next step is often a formal

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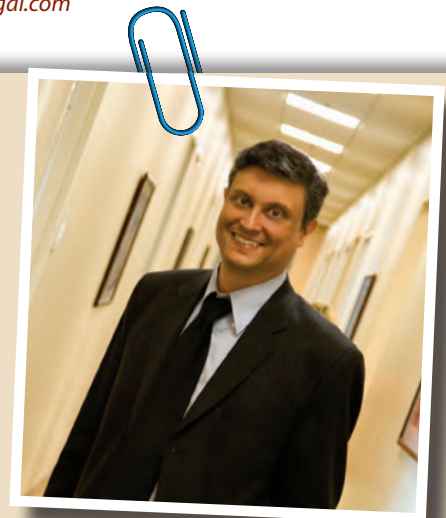
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**Previous issue available online at hutchlegal.com under the client resources tab.*

L. KRISTOPHER RATH / PARTNER

We'd like to introduce you to the law firm of Hutchison & Steffen and the attorneys within our Healthcare Professionals Advocacy Group. L. Kristopher Rath is a Firm partner who practices primarily in medical malpractice, healthcare professionals advocacy, administrative law, commercial and business litigation, insurance coverage, and insurance defense. Kristopher and other attorneys at the Firm work closely with healthcare professionals (including physicians, chiropractors, dentists, and nurses) and healthcare organizations on a range of legal issues, from practice formation and compliance and employee relations, to practitioner licensing and board representation, to collections, creditor rights, and asset protection.

This newsletter provides highlights topics of interest for healthcare professionals. We invite you to contact the Firm to learn more.



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hearing with the Board. These are essentially trials before the Board in which each side presents witnesses and evidence. Unfortunately, unlike a jury trial, discovery is limited, or non-existent, and the jury is the Board who brought the complaint against you. Boards who prevail at hearings are typically allowed all of their attorney's fees and investigation cost. After a full hearing, these can range as high as \$25,000.00 to \$50,000.00. A Board's decision may be overturned on appeal to the District Court. However, the standard for appeal is extremely high (abuse of discretion) and it is often very difficult to overturn the Board's final decision.

An attorney can also assist a healthcare provider with determining whether there is any insurance coverage for Board actions. Often professional liability policies will provide coverage for Board actions (though sometimes this requires an additional premium). However, this is typically limited. The limitations on this coverage can range from \$5,000.00



to \$100,000.00. Typical coverage is usually in the \$25,000.00 range. It must be remembered, though, that this coverage usually only provides for your attorney's fees and costs. Any fines, investigation fees and cost, and any other penalties, are typically not covered under insurance and the provider must pay these amounts out of his or her own pockets.

Lastly, a board investigation or imposition of discipline will likely have future ramifications for a healthcare provider's hospital privileges and/or credentialing with other licensing bodies and health insurers. An attorney can guide the practitioner through this process and help to take pre-emptive measures to try to prevent any problems in these areas.

In sum, it is important for all healthcare providers to immediately contact an attorney on receipt of any type of investigation letter from a Professional Board. It is critical that the attorney be involved early in the matter. This helps to ensure a more speedy resolution and, more often, a favorable resolution.

AREAS OF PRACTICE

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