

## Licenses and the Law Series, Part II: Receiving a Complaint



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As we explained in our [first article](#), most licensing boards follow a similar process when it comes to investigating complaints against one of their licensees. First, the licensing board receives a complaint. Then, the licensing board may review the complaint and evaluate its authority to act, assuming the allegations are true. The licensing board may lack jurisdiction, or the allegations, even if true, may not amount to a violation of any laws. If either of these are true, the licensing board may dismiss the complaint without ever notifying the licensee that there was a complaint.

However, other licensing boards review their authority and a claim's validity only *after* first launching a formal investigation into the complaint. In these circumstances, the board will “serve” the licensee with a copy of the complaint and request a prompt response.<sup>[1]</sup>

***But before you do anything in response***—contact your liability insurance carrier. Likely, your policy includes coverage for defending your license. However, most policies require that you **promptly notify** the insurer in order for you to be entitled to coverage.

You are permitted to be represented by counsel at every step of this process, including responding to the initial inquiry. See Administrative Procedure Act, 5 U.S.C. § 555. Even if you do not have coverage, serious consideration should be given to hiring an attorney to represent you at the first stage of this process. This is because your initial response to the board sets the tone for the rest of the investigation; your response can make the difference between the board concluding in your favor or taking away your license.

After receiving the complaint, consider the following:

- **Do not contact the complainant.** Maybe you want to understand the allegations better or explain to the complainant why the allegations are untrue or incorrect. Either way, doing so can harm your position before the investigation even starts. First, this response makes you look guilty. Second, the board may perceive this as an attempt by you to harass the complainant. If helpful, your attorney can contact the complainant on your behalf, but you should never directly contact the complainant.
- **Do not contact the board.** Unless for a procedural question (i.e., a request for an extension, etc.), you should not contact the board.<sup>[2]</sup> If you have an attorney to represent you, all communications with the board should go through your attorney. Anything you say to the board could be used against you in the investigation against you. Even if you know the board members personally, you should steer clear of the appearance of impropriety in the handling of your complaint.
- **Do not alter and/or destroy any applicable records.** No matter how bad the records look, destroying those records looks worse. Destroying records will, in turn, destroy your defense. Similarly,

licensees should never make new entries into records—even to simply clarify or supplement them. If necessary, an additional explanation can be given in your response to the board.

- Stay off of social media. Period. This is the number one place investigators will look for information about you and the allegations against you.
- Collect evidence. Start to collect supporting documentation and/or evidence that supports your defense of the allegations. This can be an arduous process and, therefore, needs to be started immediately. Affidavits of possible witnesses can also be helpful and persuasive to the Board.
- Respond timely, but with extreme care.

Most of the time, a licensing board will wait until a licensee responds to the initial complaint allegations before sending an investigator to interview the licensee about the allegations, but not always. As stated above, you are allowed to have an attorney present with you at every step of this process. If the investigator shows up at your office or calls you to schedule an interview, you do not have to talk to them before you have a lawyer present.

Remember that licensing board investigations are different than malpractice lawsuits. Unlike in malpractice cases, the board or complainant does not have to show that someone was injured or suffered damages in order to find against you. Whereas a malpractice case without damages would be dismissed in court, the same is not true of licensing investigations.

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[1] This article outlines things that licensees should consider immediately upon receiving a complaint and request for response. A forthcoming article will further detail what the substance of a licensee's response should include.

[2] Of course, this does not mean that you should not provide the board with an initial response after it has demanded one.

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*This is the second article of the Mitchell Williams "Licenses and the Law" Series, which explains the process of when a licensed professional receives a complaint against his/her license. The series will be published bi-monthly for a total of 10 articles. The third article will publish on March 29, 2022.*

View the first article of the series: [Licenses and the Law Series, Part I: Overview of the Process](#)

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View the third article of the series: [Licenses and the Law Series, Part III: Who Can File a Complaint](#)

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