

State Board Bullies: Lessons Learned

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Most of you probably believe that if you follow the rules and run an ethical practice, you have nothing to fear from your state board. In most cases, that is true. However, if your state board has one or more rogue members who are using their powerful positions to further their own personal agendas, look out! I share the following with you in the hopes that you can make the right decisions if a licensing board action is ever filed against you or someone you know.

As an eight-year member of the Kansas State Board of Healing Arts, which licenses and disciplines medical physicians, osteopathic physicians and doctors of chiropractic, I served on many disciplinary panels that investigated complaints against chiropractic and medical doctors. In that capacity, I rendered my professional opinion relative to a plethora of serious issues that involved everything from sexual misconduct to drug and alcohol impairment to a military MD who refused to deploy, and even to the abortion practices of the late Dr. George Tiller. On each and every one of those disciplinary panels, I used every ounce of my being to try to objectively evaluate the facts, fully knowing that both the doctor's career, and the protection of the public, hung in the balance. I also was elected to serve as the Kansas Delegate to the [Federation of Chiropractic Licensing Boards](#) (FCLB) and attended many of their district and national meetings. At those meetings, I became acquainted with many of the licensing board members from all across the country.

Believe me when I say that the overwhelming majority of state board members are highly principled, public servants who are true pillars of the chiropractic profession. In fact, I have twice written about the debt of gratitude we owe to state board members who are willing to sacrifice their time and energy on behalf of the public, with little to no reimbursement for the many hours they are out of their offices.¹⁻²

However, here is the bad news. I've also met a few rogue state board members who were unquestionably using their powerful state board positions to further their own personal agendas, often at the expense of good doctors of chiropractic who had the misfortune of appearing before them in disciplinary investigations. Yes, just because a state governor appoints a doctor to a state licensing board does not guarantee that they are capable or have the right intent or motives.

A Case in Point

Nevertheless, I have almost always sided with licensing board decisions in regard to disciplinary actions against doctors of chiropractic, for two reasons. First, I truly believed that state boards and their staff had properly investigated the matter. Second, I truly believed that protecting the public was the full board's sole motivation for disciplinary action that was taken against the doctor.

Well, based on my recent personal experience and my observation of other cases, I no longer hold that position because I have learned that just one or two renegade state board members can seriously, and permanently, damage a doctor's license, practice and reputation. At the same time, they can destroy the integrity of the entire process.

A former patient filed a frivolous complaint with the Texas Board of Chiropractic Examiners against

our associate doctor alleging an injury as a result of a spinal adjustment. For lack of a better term, the patient also filed a "ricochet" complaint against me. After submitting a detailed, written response to the patient's complaint against both our associate doctor and myself, the staff of the Texas Board Enforcement Committee recommended dismissal of both complaints. For that reason, I was surprised to be "invited" (but not required) to appear before the three-member enforcement committee.

Once my informal hearing began, I was stunned when the DC members of the committee began a full inquisition into anything and everything in my patient file, well beyond the allegations of the complaint, and did so in what I considered to be an extremely aggressive, rude and disrespectful manner. Far from being "presumed innocent until proven guilty," this lack of respect demonstrated to me that certain committee members were determined to find some basis to find me "guilty" of something.

While this type of inappropriate behavior would intimidate the average practicing doctor, my state board experience allowed me to respectfully, yet forcefully, defend against their unfounded accusations. At the end of the 90-minute grilling, and after having fully addressed all their questions, I left the hearing very confident that the complaint against me would finally be dismissed.

Well, I was wrong. While the enforcement committee did indeed dismiss the complaint against our associate doctor, I was sent a "Proposed Agreed Order" in which I would pay a \$250 administrative fine, and the disciplinary action would become part of my permanent record. Even though this would have been an easy way to get the matter behind me, I rejected their offer because I will never admit guilt when none exists. Since I strongly disagreed with the committee's ad-hoc and arbitrary standard, I then filed to have the matter decided by an administrative law judge.

Fortunately, the enforcement committee ultimately closed my case. Perhaps seeking a way out of the mess it had created and surely realizing their baseless accusations would not withstand the scrutiny of an administrative law judge, the matter finally ended.

What If This Happens to You?

Every doctor of chiropractic is entitled to a courteous and professional proceeding and to fair notice of the allegations against them. By publicizing what I went through during the ordeal, it is my hope that the process can be improved and good doctors will not have to endure the same type of treatment. The following comments are based on my case and my observations of other cases:

- Enforcement committee members should not be allowed to sit in judgment of a doctor of chiropractic with whom they have had a dispute, particularly one involving the corporate names of their practices in the same city.
- The enforcement committee should stick to documentation standards that have been published, giving all doctors fair notice of conduct proscribed. For example, the *CMS Trailblazer Medicare Manual* should not be touted as the "Bible" for clinical documentation for a non-Medicare patient. Absent a published board standard, the enforcement committee should use an accepted standard, like the American Chiropractic Association's *Clinical Documentation Manual*, instead of making up a higher documentation standard in an attempt to make a case against the doctor.
- The enforcement committee should stick to examination standards that have been published, giving all doctors fair notice of conduct proscribed. Absent a published board standard, an examination that meets the necessary components under Current Procedural Terminology

(CPT) for reporting a particular E/M service is sufficient.

- The enforcement committee should stick to X-ray release standards that have been published, giving all doctors fair notice of conduct proscribed. Absent a published board standard, it is inappropriate to attempt to discipline a doctor on that basis and especially when the X-ray release form contains language that has been in widespread usage throughout the profession for years.
- The enforcement committee should respect and trust the board's investigative staff's recommendation to dismiss a complaint, unless there is a compelling reason for not doing so.
- Finally, the standard should be the same, regardless of who the doctor of chiropractic is. The enforcement committee should not declare that some doctors are held to a higher standard because they have been a state and/or national leader in the profession.

This leaves us with two important questions, one or both of which you may be asking yourself right now: First, "Why in the world would Edwards publicize such a negative event?" Second, "By making this matter public, is he not subjecting himself and his practice to a 'magnifying glass' and inviting board retaliation if they can go out and find some other type of violation?" In regard to the first question and as previously stated, I do not want any DC to have to endure my same treatment. In regard to the second question, if retaliation follows, I am prepared to defend against it.

To Fight or Not to Fight

So, should you always fight a licensing board action? Based on my experience as a member of the Kansas Board of Healing Arts, the answer is: heck no! If you realize that you were materially deficient in some manner or were indeed guilty of a violation, I advise that your attorney attempt to negotiate the best settlement possible, pay the fine, correct the deficiencies, and move on.

However, if you truly did nothing wrong and are being treated unfairly by one or more board members, then fight back. Based on my experience, here is my advice about how to protect yourself from a renegade enforcement committee and/or renegade board members who may have a personal agenda or a vendetta against you.

First and foremost, make sure your malpractice insurance policy affords coverage for licensing board disciplinary actions. In that regard, I can tell you that my malpractice policy covers up to \$25,000 in defense legal fees for state board disciplinary cases. I cannot overemphasize the importance of having this coverage. In my opinion, this coverage is not a luxury, but an absolute necessity. If you do not have it, don't wait until tomorrow to get it. If your malpractice insurance company does not provide it, switch carriers.

Second, if and when you receive a notification from your state board about a possible disciplinary against you, get a lawyer immediately. Do not try to reason with the board members in an informal hearing because, to a great degree, you are "playing another man's game." The members of your state board have been through this process many times before and know all the rules. You, on the other hand, likely have no experience in this area and, without expert legal advice from a competent health care attorney, will likely become cannon fodder.

Third, consider retaining chiropractic experts who will evaluate the complaint against you and offer objective, expert advice regarding the case and your options.

Fourth, never ever agree to a settlement agreement and/or monetary fine and/or letter of reprimand if you believe you did nothing wrong. Your admission of guilt could invite a malpractice

lawsuit against you. Also, you will have to forever answer "yes" in managed care applications that ask if you have ever been disciplined by a state licensing board. Your positive response may cause you to be dropped from participation in that managed care organization, and possibly even prevent you from participating in others from that point forward.

Please feel free to contact me (jamesedwards@jamesedwards.com) if you have any questions or feel you need assistance in regard to a licensing board complaint.

References

1. Edwards J. ["Thanks for What You Do!" *Dynamic Chiropractic*, Dec. 17, 2006.
2. Edwards J. "Sacrifice Deserves Gratitude." *Dynamic Chiropractic*, Jan. 29, 2008.

FEBRUARY 2010