

## **Withholding a Licensee's Response to Complaint**

**POLICY:** It is the policy of the Board of Licensure in Medicine ("board") that it delegates to the board Secretary the decision regarding withholding a licensee's response to a complaint, or portions thereof, from the complainant if the board Secretary determines the original response or portions thereof would be detrimental to the health of the complainant, utilizing the following process.

**PROCESS:** Licensees and/or board staff may identify situations in which providing the licensee's response or particular portions thereof might be detrimental to the health of the complainant. In such situations, either the licensee or the board staff may request that the response or portions thereof be withheld from the complainant. Any request made pursuant to this policy shall specifically identify those portions of the response that may be detrimental to the health of the complainant and the reasoning, and be processed as follows:

1. The board Secretary, the board Medical Director, the board Consumer Assistant, and the board attorney will review the complaint, the licensee's response, and the request (including reasoning or justification) for withholding the response from the complainant;
2. The board Secretary will make the decision regarding whether or not the release of the licensee's response to the complainant would be detrimental to the health of the complainant;
3. If the request to withhold the licensee's response is approved by the board Secretary, the licensee will be granted an additional ten (10) days to submit a general response to be shared with the complainant; and
4. If the licensee does not submit a general response to the board within ten (10) days the board staff, with the approval of the board Secretary, may take any one of the following actions:
  - a. Create a summary of the licensee's original response that does not include information that might be detrimental to the health of the complainant and provide it to the complainant;
  - b. Provide the complainant with a copy of the licensee's response that does not include information that might be detrimental to the health of the complainant; or
  - c. Notify the complainant that they have not been provided with the licensee's response because it may be detrimental to their health.

**EFFECTIVE DATE:** January 14, 2014

**REVISION DATE:**

**HISTORY:** Licensee's responses to complaints are shared with complainants as required by 32 M.R.S. §3282-A(1). However, Section 3282-A(1) also provides the board with discretion to

withhold a licensee's response from a complainant if the "board determines that it would be detrimental to the health of the complainant to obtain the response." In addition, 32 M.R.S. § 3266 authorizes the "secretary of the board shall perform such duties as delegated by the board." Board staff has historically made these decisions, which have been supported by the board. Recent legal interpretation indicates that the board or the board's Secretary must make the final decision regarding this issue.

By approving this policy, the Board delegates this decision-making to the Secretary and establishes a procedure for handling requests to withhold a licensee's response or portions thereof from a complainant.

STATUTORY AUTHORITY: 32 M.R.S. §§ 3266 & 3282-A

HISTORY: Formerly titled "Physician Complaint Response Waiver" the policy read as follows:

POLICY: It is the policy of the Board of Licensure in Medicine that a confidential copy of the licensee's response to a complaint will be provided to the complainant unless the Board's executive staff determines there exists a compelling case that to do so would seriously jeopardize the health and well-being of the complainant/patient.

EFFECTIVE DATE: January 14, 1997

REVISION DATE: June 12, 2012

HISTORY: In 1993, based upon an unofficial opinion of Legal Counsel, the following procedure was implemented. It is the policy of the Board of Licensure in Medicine to enclose a Waiver Form for release of Physician/Licensee Response to Complainant, with an appropriate explanation in the cover letter of its purpose, along with the notice of complaint to the physician/licensee. As of January 1, 1997, with the support of current legal counsel, the Board reverted to the previous policy of providing a copy of the physician's response to every complainant unless there was a compelling reason not to.

June, 2012: The requirement that a copy be provided to the complainant is in statute, MRS 32 §3282-A.