

30 Biggest Mistakes Dentists Make After Being Notified of a Department of Health Investigation



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Important:

The investigation of a Department of Health (DOH) complaint which could lead to the revocation of the dentist's license and the assessment of tens of thousands of dollars in fines, usually starts with a simple letter from the DOH. This is a very serious legal matter and it should be treated as such by the dentist who receives it. Yet, in many cases, we are consulted by dentists after the entire investigation is over, the case has been presented to the Probable Cause Panel, and formal charges have been filed against them. They have attempted to represent themselves throughout the case, unsuccessfully. Often, the mistakes that have been made severely compromise our ability to achieve a favorable result for the dentist.




These are the 30 biggest mistakes we see in the cases we are called upon to defend after a DOH investigation has been initiated against a dentist:




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1. Failing to keep a current, valid address on file with the DOH (as required by law), which may seriously delay the receipt of the Uniform Complaint (notice of investigation), letters, and other important correspondence related to the investigation.




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2. Contacting the DOH investigator and providing him/her an oral statement or oral interview. Note: There is no legal requirement to do this. We recommend that you never do this. Anything that you state may be used to help the state prove its case against you. The DOH investigator is the equivalent of a police investigator attempting to make a case against you. Don't help them.




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3. Making a written statement in response to the "invitation" extended by the DOH investigator to do so. (Note: There is no legal requirement to do this. See above.)




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4. Failing to carefully review the complaint to make sure it has been sent to the correct dentist. (Note: Check the name and license number, especially if you have a common name.)




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5. Failing to ascertain whether or not the investigation is on the "Fast Track" which may then result in an emergency suspension order (ESO) suspending the physician's license until all proceedings are concluded. (Note: This will usually be the case if there are allegations regarding drug abuse, alcohol abuse, sexual contact with a patient, mental health issues, failure to comply with PRN instructions, or default on a student loan.)




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6. Providing a copy of the physician's curriculum vitae (CV) or resume to the investigator because the investigator requested them to do so. Note: There is no legal requirement to do this. We have actually had information from the dentist's CV used against him in the case presented against the dentists.




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7. Believing that if they "just explain it," the investigation will be closed and the case dropped. This never happens. Every case is presented the Probable Cause Panel of the Board of Dentistry




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8. Failing to submit a timely objection to a DOH subpoena when there are valid grounds to do so. If there are valid grounds for objecting to a subpoena issued by a DOH Investigator (or by an Order from the Surgeon General to do so) then it can and should be made. The Department of Health does not have any authority to enforce subpoenas.




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9. Forwarding only a portion of or failing to forward a complete copy of the patient's dental record when subpoenaed by the DOH investigator as part of the investigation, when no objection is going to be filed. We have seen this, especially with electronic dental records such as those maintained using the Dentrix system. If you do provide a copy of the patient's dental record (whether to the DOH investigator or to your attorney) you must be certain you produce each and every part of it. This includes, daily journal entries, progress notes, periodontal charts, bills, treatment plans, x-rays, photographs, history & physical, informed consent forms, notes and telephone messages, correspondence, insurance company bills and EOBs.




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10. Delegating the task of providing a complete copy of the patient medical record to your office staff, resulting in an incomplete or partial copy being provided.




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11. Signing a "certificate" or "affidavit" that the copy of the record you have provided to the DOH investigator is complete. There is no legal requirement of which we are aware that requires this. Furthermore, we have seen this used against the dentists in a number of cases when he later discovers additional records (from another office or another source) that he had but did not include in the initial production.




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12. Not being knowing or being able to tell that the investigation against them is a "fast track" or "Priority 1" investigation which is likely to be submitted to the Surgeon General for an Emergency Suspension s Order (ESO).




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13. Failing to keep an exact copy of any dental records, documents, letters or statements provided to the investigator.




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14. Believing that the investigator has knowledge or experience in dental procedures, medical procedures or the health care matters or the specific care or procedures investigated.




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15. Believing that the investigator is merely attempting to ascertain the truth of the matter and this will result in the matter being dismissed.




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16. Failing to check to see if their dental malpractice insurance carrier will pay the legal fees to defend them in this investigation. In the absence of coverage by their insurance carrier, failing to retain the services of a health care attorney experienced in dental board cases to represent them from the beginning of the investigation.




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17. Talking to DOH investigators, staff or attorneys, in the mistaken belief that they are capable of doing so without providing information that can and will be used against them. Note: Every telephone conversation with DOH personnel is entered into their computer data base and often internal e-mails Are exchanged sharing this information afterwards.




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18. Believing that because they haven't heard anything for six months or more the matter has "gone away." The matter does not ever just go away.




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19. Failing to submit a written request to the investigator at the beginning of the investigation for a copy of the complete investigation report and file and then following up with additional requests until it is received.




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20. Failing to wisely use the time while the investigation is proceeding to interview witnesses, obtain written witness statements, conduct research, obtain experts, and perform other tasks that may assist defending the case once it has been completed.




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21. Failing to exercise the right of submitting documents, statements, and expert opinions to rebut the findings made in the investigation report before the case is submitted to the Probable Cause Panel of your licensing board for a decision.




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22. Taking legal advice from their colleagues regarding what they should do (or not do) in defending themselves in the investigation.




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23. Retaining "consultants" or other non-lawyer personnel to represent them in the matter, instead of experienced legal counsel.



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24. Believing that the case is indefensible so there is no reason to even try to have it dismissed by the Probable Cause Panel.




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25. Attempting to defend themselves.




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26. Believing that because they know someone on the Board of Dentistry, with the Department of Health, or a state legislator, that influence can be exerted to have the case dismissed. This is definitely not the case. If you do know someone on the Board of Dentistry, that person is required by law to recuse (disqualify) themselves from any discussion or vote on your case.




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27. Failing to immediately retain the services of a health care attorney who is experienced in such matters to represent them, to communicate with the DOH investigator for them, and to prepare and submit materials to the Probable Cause Panel.



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28. Believing that if an emergency Suspension Order (ESO) is entered against them that it may be successfully appealed. In reality, ESO's are reviewed by the appellate courts when there is an appeal based on what is contained "within the four corners of the document." Nothing outside the document may be considered. If the ESO appears to state a sufficient case for an emergency suspension (whether the facts it states are actually true or not), the court of appeal is required to uphold the emergency suspension.



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29. Communicating with the Department of Health about the pending case.



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30. Failing to obtain legal representation.

