

What to Know When the Medical Board Comes Calling

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There are few things more unnerving to physicians than when the Medical Board contacts you. This article is meant to provide basic information regarding preliminary contacts and proceedings between the California Medical Board and physicians. This article is general in nature and is not intended to establish an attorney-client relationship. Individuals are strongly encouraged to contact an attorney experienced in this area for specific legal advice.

Why did the Medical Board contact you?

The Medical Board rarely contacts a physician unless there is a problem. The contact commonly comes about because the Board has received a complaint from some source and the Board is either mandated to or decides for some reason to open an investigation. Complaints can come from a variety of sources including, for example, a patient, a family member of a patient, a pharmacy, a colleague, a co-worker, or a current or former employer. In California, any professional liability insurer who settles a lawsuit on behalf of a physician for over \$30,000.00 is mandated to report that settlement to the California Medical Board. All settlements of any amount are reported to the National Practitioner Data Bank, which in turn will report these settlements to the California Medical Board; in those instances, while not mandatory, the Board may elect to investigate.

Complaint Processing

In many instances a complaint will be processed by the Central Complaint Unit at the Board. The complaint is processed by a "Consumer Services Analyst" who generates a letter to the physician advising of the complaint. In some instances the correspondence will be accompanied by a medical authorization form signed by the patient and demanding the pertinent medical records be produced. (*Business & Professions Code* §§ 2225(e) and 2225.5) The time frame within which the records must be produced is extremely short; 15 days and a civil penalty of \$1,000.00/day can be assessed if the records are not furnished. Generally the correspondence will invite the physician to provide a narrative summary of the care provided to the patient within a very short (and arbitrary) period of time; typically 14 to 21 days. While previously, requests for reasonable extensions to respond were freely granted, more frequently of late the Consumer Services

Analyst will decline to do so absent extenuating circumstances; however the practice varies significantly between Analysts.

Seeking Counsel

It is important to take these communications from the Board extremely seriously; procrastination is not advised. It is recommended physicians seek professional help from an attorney skilled in Board matters for assistance. Many times a physician will have a rider on his or her malpractice policy providing some coverage for attorneys' fees relative to these matters. Malpractice carriers can often offer recommendations or referrals to attorneys experienced in this area. (For example, see the California Academy of Attorneys for Health Care Professionals at caahcplaw.org.¹)

The physician should work closely with counsel to generate an appropriate response to the Board. In California, the response does not have to be signed by the physician, but can come from counsel. This approach can be beneficial for evidentiary reasons if the Board pursues the matter further. However, the physician should review for accuracy any response sent to the Board.

Response Time

Although the Board requires physicians respond very quickly to their requests, the same does not hold true for the Board which can take weeks to months or even years to process the responsive documents once received. Generally, once the Analyst collects the documents, they are forwarded to a medical board consultant, generally a physician, for review. The physician being investigated is not entitled to know the identity, or even the specialty, of the consultant. That consultant will recommend whether the complaint should be considered further or closed. The Board may or may not communicate these results to the physician and it is often difficult to obtain information on the status of any such investigation.

The Interview Process

On occasion, a physician may be contacted seemingly "out of the blue" by a Medical Board Investigator requesting a face to face interview. This request can come in writing, by phone, or even in person. One of the biggest mistakes a physician can make is to make

¹ Ms. Pollara has been a member of CAAHCP since 2013.

light of this request, to consider the request “no big deal.” Under no circumstances is it recommended that a physician speak with an Investigator informally or go to an interview with the Board without preparation or representation.

It is important for physicians to know their rights and what to expect in the context of an investigative interview. While this list is not exhaustive, the following general information may be useful:

1. Physicians have the right to be represented in interviews with the Board. Be extremely wary of Board Investigators who try to dissuade you from bringing counsel with you or who minimize the significance of their request to speak with you. Medical Board investigators are not your friends. Do not allow yourself to be persuaded to informally “chat” with them. Do not let them gain entrance into your home.
2. If you are approached by a Board Investigator, inform that Investigator you are willing to speak with them, but only with counsel present. Get the Investigator’s contact information and immediately contact your insurance carrier for assistance.
3. Interviews with the California Medical Board are typically attended by the Investigator assigned to the matter and a medical board consultant (a physician hired by the Board who rarely will be in the same specialty as the physician being interviewed). Sometimes, a Deputy Attorney General (the arm of the state of California that represents the Medical Board) also will attend the interview.
4. All interviews are recorded. You are entitled to a copy of the recording and should request one be provided at the time of the interview.
5. You will be asked to present a driver’s license or picture ID at the outset of the interview to verify your identity.
6. It is important to prepare carefully for the interview with your attorney. Be familiar with the records and care you provided. Review your records analytically and be prepared to address standard of care related concerns and issues.

7. If you do not have access to the records in advance of the interview for some reason, you are entitled to make an appointment with the Board Investigator to review the records at the Board's office. You will not be permitted to make copies and you will not be entitled to see other parts of the Board investigative file.
8. Be prepared to be asked questions on a wide range of topics unrelated to the specific complaint underlying the investigation, including your health history, your use of alcohol and other substances, prescribed medications, mental health history, psychiatric and substance abuse related hospitalizations, criminal history, disciplinary history, and hospital credentialing and employment history. You will be asked to bring a current curriculum vitae and to discuss your education and provide explanations for any gaps in employment. If you have affirmative responses to any of these questions, make sure to discuss them with counsel before the interview so you and your attorney will be fully prepared.
9. Do not be defensive, dismissive or arrogant. Be respectful and polite. Dress appropriately and professionally. Do not lose your temper.
10. You have the right to take breaks to speak with counsel. If you feel yourself becoming agitated or angry, take a break.
11. You are not obligated to answer confusing or misleading questions. If a question is not clear, ask the questioner to clarify the question. Make sure you understand the question before you answer. Do not let the questioner put words in your mouth or rephrase your responses. You should discuss with counsel how to handle these situations in advance of the interview so you know how to proceed.
12. Do not guess or speculate if you do not know the answer to the question. Simply tell the questioner you do not know the answer. Understand you can face a charge of dishonesty if you intentionally lie to an Investigator.
13. Understand the Board is supposed to focus primarily on public safety. Be prepared to discuss your care and your decision making process. If there are ways your care could have been improved upon or if the event underlying the complaint has led to a change in your practice, be ready to discuss these issues thoughtfully and humbly. Discuss these issues in advance with counsel so you are prepared.

What happens after the interview?

Once the interview is over, the recording of the interview and the records will be sent to a medical board consultant in the physician's specialty for review and a recommendation as to whether the case should be referred to the Attorney General's office for further action. Typically, the Investigator will send a letter to the physician once that determination is made either informing the physician the investigation has been closed or that it is being referred to the Attorney General's office. Generally, a letter advising the matter has been referred will mean the physician should expect an Accusation will be filed leading to a formal disciplinary process. It goes without saying that this is not a positive development. If a physician has gotten to this point in the process without having engaged counsel, now would be a good time to do so.

This article is for general informational purposes only and is not meant to provide specific legal advice or create an attorney-client relationship with the reader. Please consult your malpractice carrier and/or an attorney experienced in this area of the law.

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