

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 13, 2016
 ATTENTION: Members, Medical Board of California
 SUBJECT: Interim Suspension Orders
 STAFF CONTACT: Kimberly Kirchmeyer, Executive Director

REQUESTED ACTION:

This report is intended to provide the Members with an update on the strategies identified to expedite cases where an Interim Suspension Order (ISO) should be sought. No action is needed at this time.

BACKGROUND:

At the May 7, 2015 Medical Board of California (Board) Meeting, the Members directed the Executive Director to work with the Attorney General's Office (AGO) and the Health Quality Investigation Unit (HQIU) to identify strategies to expedite cases where an ISO should be sought and to report these strategies to the Board at the October 2015 meeting.

At the October 30, 2015 Board Meeting, after conducting a policy review of the handling of the ISOs, staff from the Board, AGO, and HQIU identified several improvements that could be implemented to expedite the investigation and issuance of an ISO. There were 14 different improvements or policy changes that were identified (see below for more information). Prior to the October 30, 2015 Board meeting, several of the recommendations had already been implemented by Board, AGO, and HQIU staff while some of the recommended improvements are still in progress, most have already been implemented with very positive results.

The statistics in the chart below, comparing fiscal year (FY) 14/15 to FY 15/16, show significant improvements, both in the time it takes to obtain a suspension/restriction (specifically ISOs) and in the number of suspension/restrictions orders issued. Although the focus of this study was ISOs, the information below identifies all suspensions issued by the Board for both fiscal years. From the statistics below, there was a 157% increase in the number of ISOs issued and a 150-day decrease in the length of time it took to obtain an ISO.

Suspension/Restriction Type	Issued FY 14/15	Issued FY 15/16	*Average Days FY 14/15	*Average Days FY 15/16
Stipulated Agreements	0	1	0	394
Automatic Suspension Orders	4	0	293	0
Cease Practice Orders	9	14	N/A	N/A
Interim Suspension Orders	14	36	588	438
Out-of-State Suspension Orders	11	18	71	82
Penal Code section 23/Court Orders	14	15	179	192
TOTAL	52	84		

* This time is calculated from the time a complaint is received until the suspension/restriction order is issued. This does not include cases where more than one suspension/restriction was issued.

The following is a list of improvements/policy changes that were identified to be implemented with the status of their implementation.

- 1) Expert training – for cases alleging physical or mental impairment, training needs to be provided to the Board’s subject matter experts on report writing and clarity of reports. The reports need to specifically indicate whether the individual is safe to practice without any restrictions.
 - This recommendation has been partially implemented in that the HQIU staff discusses with the experts the need to provide a clear report when the review is assigned. Board staff in the Expert Reviewer Program needs to identify physicians who specifically conduct these reviews and then establish a training program that can be used for these specific reviewers.
- 2) If an expert report states that the individual needs to have restrictions in order to practice safely, an ISO should be considered to pursue an order instituting those restrictions.
 - This recommendation has been implemented. Both the AGO and the HQIU identify these cases upon receipt of the review and then pursue an ISO.
- 3) Board monitoring of all investigation/prosecution cases – on a monthly basis, the Board needs to monitor cases that are at the AGO and at the HQIU to ensure all cases that could be an ISO are moving forward.
 - The Board staff have begun to run reports that can be used to track cases at the AGO, however, Board staff still need to identify reports that can be utilized and reviewed for HQIU.
- 4) Close monitoring by the Board of the requirement in Business and Professions Code (BPC) section 2220(a) – BCP section 2220(a) specifically states that within 30 days of receipt of a BPC section 805 or 805.01 report, the Board must investigate the circumstances to determine if an ISO should be issued. A process needs to be in place for follow up by the Board with HQIU and the AGO to see if this determination is made in the required timeframe.
 - This recommendation was implemented. The Chief of Enforcement maintains a log of 805 or 805.01 reports and contacts the HQIU to determine the status of the investigation. However, more discussion on the implementation of this process needs to occur between the Board and the HQIU.
- 5) Central Complaint Unit’s (CCU) immediate transfer of BPC 805 and 805.01 reports – the Board’s CCU will immediately transfer these reports via email to both the HQIU and AGO upon receipt in order to expedite the process.
 - This recommendation was fully implemented, and staff from the CCU immediately transfer these cases to the HQIU and the AGO.
- 6) The Board, HQIU, and AGO report reconciliation – Board, HQIU, and AGO staff will, on a monthly basis, reconcile reports for cases that have been referred to the AGO to request an ISO. This will ensure that cases that have been identified as ISO cases are actually prioritized by the Board, HQIU, and the AGO.
 - Board staff and staff from the AGO have begun to meet to reconcile reports, including those cases that were transmitted for an ISO.
- 7) Request that the Office of Administrative Hearings (OAH) expedites ISO decisions and serves the Board, along with the AG’s Office, to ensure timely receipt of decisions where ISOs are issued, as well as denied. In addition, the Office of Administrative Hearings should also be specifically requested, when granting an ISO on an ex parte basis, to issue the ISO immediately at the conclusion of the ex parte hearing, rather than taking the matter under submission, so that the physician can be immediately and personally served with the ISO before leaving the Office of Administrative Hearings. Taking such matters under submission, in order to prepare a

- detailed decision to be issued later is only appropriate at the conclusion of a noticed hearing on the ISO petition.
- The OAH has been setting ISO cases in a timely manner. However, OAH stated that only the AGO would be served with the ISO decisions. In regard to OAH immediately issuing the ISO, OAH stated that a Deputy Attorney General representing the Medical Board can request that the Administrative Law Judge (ALJ) issue an ex parte ISO at the conclusion of the hearing, but it is not always possible or appropriate for an ALJ to do so. OAH added that each case presents different facts and issues, and the ALJ may need to briefly take a matter under submission in order to reach a well-informed decision regarding whether an ex-parte ISO is legally and factually supported.
- 8) Recommend training to the OAH on impairment and how it impacts the practice of medicine. Such training could be provided by the Physician Assessment and Clinical Training Program Staff, if available.
 - The Board is working with OAH on providing training on several different topics and this will be provided in the near future.
 - 9) Update the investigation report synopsis – HQIU will clearly identify in the case synopsis of a Report of Investigation (ROI) that the case is being transmitted for an ISO and an Accusation.
 - The Board, HQIU, and the AGO changed the case disposition process and the decision to transmit the case for an ISO is clearly identified on the new case disposition form.
 - 10) The Lead Prosecutor (LP) and the Supervising Investigator I should review each case immediately upon receipt and throughout the course of the investigation to determine if the case should be identified and handled as an ISO. In addition, during quarterly case reviews, both the LP and the Supervising Investigator I shall review all the cases to identify if there is a need to seek an ISO. Throughout the course of any investigation, the Deputy Attorney General and the Investigator assigned shall alert their chain of command that the evidence has changed the matter to an ISO.
 - Board staff will work with HQIU and the AGO to ensure this is being completed.
 - 11) Add ISO cases to the Monthly Investigative Case Activity Report (MICAR) – adding these cases to the MICAR report will immediately inform the Senior Assistant Attorney General that a case is being transmitted for an ISO so that the case can be closely monitored.
 - The Board will work with HQIU to ensure this is being completed.
 - 12) Any disagreement on whether a case should be processed as an ISO should be immediately placed into the dispute resolution process and follow the chain of command.
 - With the new vertical enforcement manual, the dispute resolution process is clearly delineated and is being used by both HQIU and AGO.
 - 13) As soon as possible, establish a parallel criminal/administrative investigation policy and process for cases where HQIU designates a Board investigation as criminal. Providing for a parallel policy will help protect the Board's integrity in its investigation process when these dual pathways arise. Additionally, staff anticipates this policy will eliminate the need to wait for a criminal case to proceed through the criminal process before seeking an ISO (or a Penal Code section 23 Order). This may result in an investigator assigned to the criminal investigation and a separate investigator assigned to the administrative investigation. This would allow the investigations that have been designated as criminal by HQIU, which may also be ISO cases, to proceed in the administrative process if warranted by the evidence.

As stated at the May 2016 Board meeting, a policy has been developed and approved by HQIU and AGO.
 - 14) Create an activity code within the BreEZe system to identify a case as an ISO case for monitoring and statistics.

- Board staff is working on obtaining a code in the BreEZe system.

Board staff will continue to work on implementing all of these recommendations. Several of the recommendations will include working with HQIU and AGO. Although the ISO timelines and the number of ISOs obtained has seen significant improvements, full implementation of these recommendations will further enhance the ISO process and assist the Board in meeting its mission of consumer protection.