

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 27, 2022
ATTENTION: Members, Medical Board of California
SUBJECT: Consumer Involvement in the Disciplinary Process
STAFF CONTACT: Aaron Bone, Chief of Legislation and Public Affairs

REQUESTED ACTION

To provide direction to staff whether to further develop, and report back at a future meeting of the Medical Board of California (Board), the recommended proposal to develop a unit within the Board dedicated to providing support, guidance, and outreach to complainants.

BACKGROUND

During the Board's November 18-19, 2021, Board meeting, staff were directed to evaluate proposals to increase the involvement of consumers in the disciplinary process.

Business and Professions Code (BPC) section 2330 currently reads as follows:

Complainants against licensees of the board, including licensees of allied health boards within the jurisdiction of the board, and of the Board of Podiatric Medicine, who are subject to formal disciplinary proceedings shall be notified of the actions proposed to be taken against the licensee. This notification shall be provided only to complainants who are known to the boards.

Complainants shall be given an opportunity to provide a statement to the deputy attorney general from the Health Quality Enforcement Section who is assigned the case. These statements shall not be considered by a panel of the division, the Board of Podiatric Medicine, or other board for purposes of adjudicating the case to which the statement pertains but may be considered by the division or those boards after the case is finally adjudicated for purposes of setting generally applicable policies and standards.

One proposed suggestion was to amend this section to instead require a Board panel to consider such statements during the adjudication of a case and to allow the statements to be provided in person. Currently, physicians subject to investigation have the right to provide written statements and oral statements during an administrative hearing. Therefore, the proposal is intended to provide parity, transparency, and the opportunity for panel members to hear directly from complainants.

ANALYSIS

The purpose of the disciplinary process is to investigate and determine whether a violation of the Medical Practice Act (MPA) has occurred and then take appropriate action. As an investigation proceeds, complainants, the physician in question, and other

witnesses are interviewed as deemed necessary by the investigator and the deputy attorney general, with those statements considered to be evidence in the investigation. In addition, medical records and other available evidence is gathered and reviewed, with the goal of determining whether a violation of the law occurred.

As a Board panel considers whether a physician violated the MPA, for example, in quality-of-care cases, the panel is seeking to determine whether the physician failed in their duty, rather than the impact that failure may have had on their patients. A physician who violates the MPA is subject to discipline, even if the violation does not result in harm to a patient. Likewise, a patient's death or negative outcome may occur even when the physician committed no violation of the MPA.

When deemed necessary to prove a case against a physician, the prosecuting attorney will call the complainant as a witness at hearing, where they will testify under oath and be subject to cross examination consistent with the due process rights of the respondent. Consideration of complainant statements outside of the record are not consistent with due process and could lead the Board to impose sanctions beyond its authority to impose discipline necessary to protect the public and rehabilitate the physician when such action is not inconsistent with public protection. The Board does not have the authority to punish a physician but may be influenced by a complainant's statement to impose a penalty not otherwise required to protect the public.

Accordingly, staff do not recommend the Board approve this proposal.

Proposal to Develop a Board Complainant Liaison Unit

To help address concerns surrounding Board communication with complainants, staff recommend exploring the development of a team of Board staff with the mission of supporting complainants throughout through the disciplinary process. The goals of this new team of staff could include, but not be limited to:

- Respond to complainant inquiries about the Board's enforcement programs.
- Support complainants when interacting with Board investigators and attorneys.
- Develop and execute communication and outreach programs intended to:
 - Help complainants file complete and timely complaints.
 - Increase public awareness of the Board, the laws governing the Board's enforcement program and operations, and Board enforcement procedures.

If directed by the Board to do so, staff propose to further develop this proposal, with consideration of Board member and public comments, and report back to the Board at a future meeting.