

INFORMATION ON ENFORCEMENT

Licensing and enforcement of the Medical Practice Act are the two major responsibilities the Legislature has assigned to the Medical Board of California (MBC) and the State Board of Podiatric Medicine (BPM). BPM contracts with the larger MBC for services, including those from Central Complaints and regional offices of investigators. MBC and BPM contract with the Attorney General's office for prosecution, use independent Administrative Law Judges (ALJs), and follow the State Administrative Procedure Act (APA) like all other state licensing boards to ensure due process.

"Administrative discipline" results from the Board's review of complaints submitted by patients, providers, facilities, insurers, and other law enforcement agencies. About 200 complaints a year are received in Central Complaints. If a quality-of-care case is assigned to an investigator, it is reviewed by one of the BPM's medical consultants, and then, if they recommend, to one of BPM's approved experts.

If the investigator, after these reviews, recommends a case be referred to the Attorney General, the board's enforcement coordinator authorizes the transmittal. A Deputy Attorney General then reviews the case and, if appropriate, prepares an Accusation. Once signed by the board's Executive Officer, the Accusation becomes a public document, and a hearing is then scheduled before an Administrative Law Judge (ALJ). Frequently, "the Board" and the doctor settle out of court by entering into a Stipulated Agreement. If the case goes to hearing, the ALJ takes the testimony and prepares a proposed decision based on the official record of evidence. Both stipulated agreements and proposed decisions go to the board (the seven board members appointed by the Governor and Legislature) for decision.

What should I do if . . . ? If a complaint is filed, the best thing to do is cooperate with any investigation. It may be the result of a misunderstanding the Board can help clear up. BPM cannot advise about if and when you should hire an attorney, but most doctors do so if the case moves beyond the initial information gathering and interview stages. Remember: Medical Board investigators are peace officers. Before refusing to cooperate, consider how a police officer will react.

When a case moves into serious investigation or prosecution, some doctors attempt to politicize the case. This is counter-productive. The best advice is to act professionally, under advice from a responsible attorney. The case will be decided on the facts, not on any special consideration such as who you know. Never contact a board member. Under the State Administrative Procedure Act, the board members must decide the case as a jury, based only upon the findings of fact provided by the judge in the proposed decision. *Ex parte* communication with the board members (jury tampering) is forbidden.

BPM ENFORCEMENT RESPONSIBILITIES

The Board

- Hires/evaluates executive officer
- Adopts discipline guidelines for enforcing Medical Practice Act
- Approves policies for selection of consultants and experts

Executive officer (EO) / Enforcement coordinator (EC)

- Manage *program* pursuant to Board-adopted position descriptions and discipline guidelines and State laws such as the Administrative Procedure Act.

Central Complaints Office (CCIC)

- Registers & reviews complaints
- In consultation with BPM Enforcement Coordinator, sends to investigators and consultants
- Tracks cases and maintains records

Investigators (peace officers)

- Manage cases and recommend referral to Attorney General

Medical Consultants

- Contracted by executive officer pursuant to Board-adopted qualifications statement
- Provide preliminary screening of quality-of-care cases as requested by enforcement coordinator, Central Complaints, or investigator

Experts

- Drawn from pool approved by BPM's Enforcement Committee; must meet Board-approved qualification criteria
- Provide independent, written medical opinions and testify

Deputy Attorneys General (DAG)

- Evaluate referred cases
- Draft accusations for signature by executive officer (the *prosecutor*)
- Prosecuting attorney

Administrative Law Judges (ALJs)

- Preside at hearings--take evidence (through testimony of witnesses and cross-examination by attorneys) - sitting alone *unless Board chooses to sit with the judge for the duration of the hearing*
- Issues Proposed Decision (PD)

The Board

- Decides case (adopt, reduce penalty, non-adopt) based only upon written record as provided by ALJ in PD. If the Board non-adopts, it may decide the case itself upon the record, including the hearing transcript, with or without taking additional evidence, or may send the case back to the ALJ for taking additional evidence.