

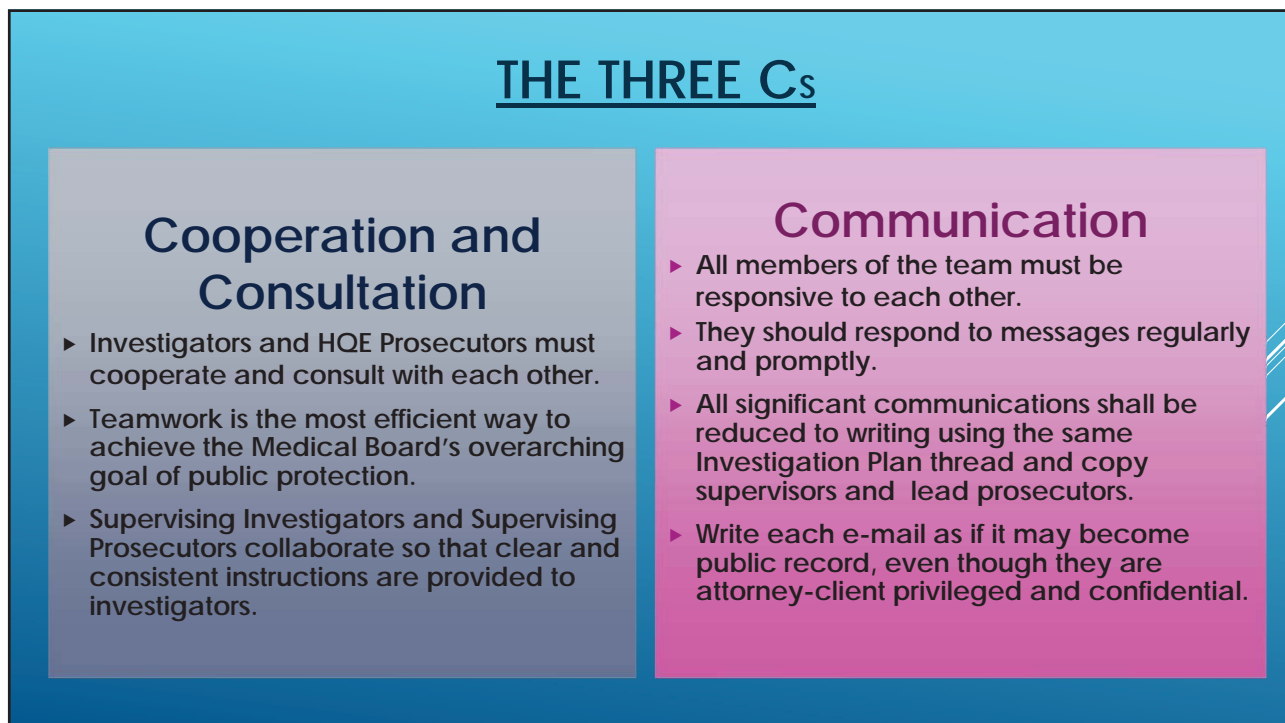
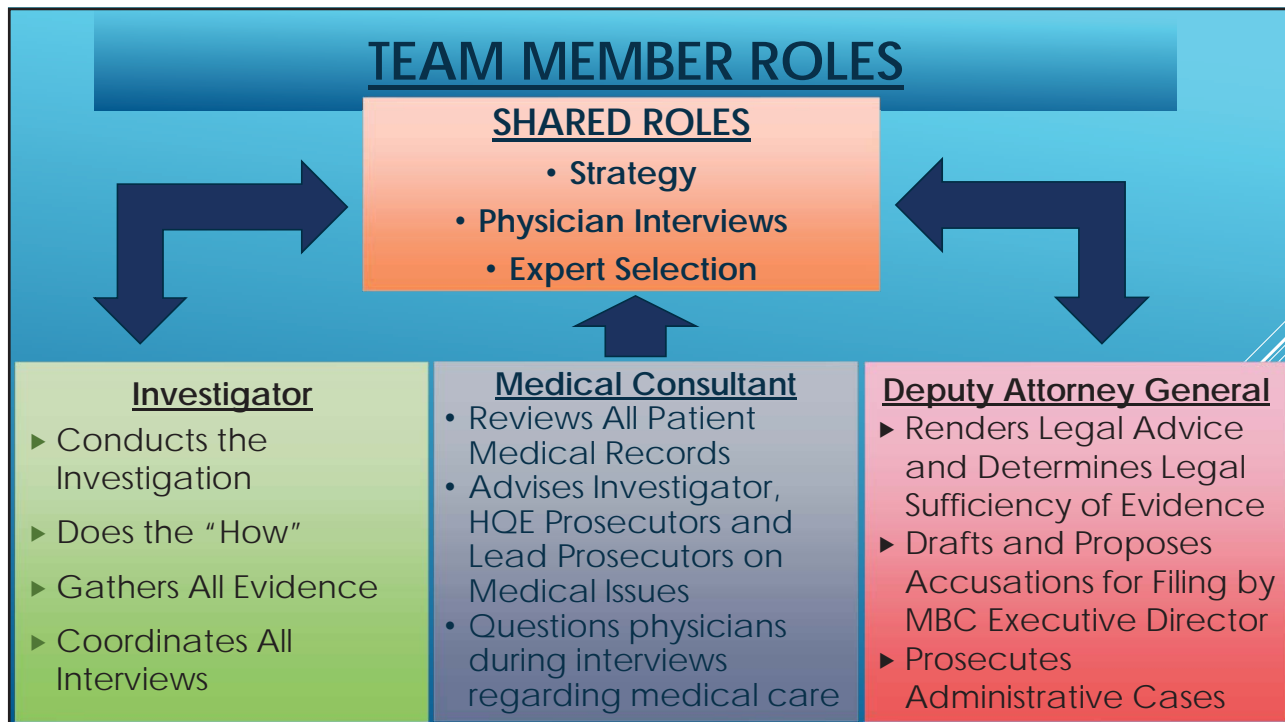
**HEALTH QUALITY INVESTIGATION UNIT
AND
HEALTH QUALITY ENFORCEMENT SECTION**

**VERTICAL ENFORCEMENT FIELD
INVESTIGATION PROCESS**

**VERTICAL ENFORCEMENT
AND PROSECUTION PROTOCOL
JULY 2015**

Vertical Enforcement Investigation Team Members

- ▶ Executive Director and Chief of Enforcement of the Medical Board
- ▶ HQIU Investigators (Supervisors, Commanders, Deputy Chief)
- ▶ HQE Deputy Attorneys General (Primary Deputy Attorneys General, Lead Prosecutors, Supervising Deputy Attorneys General and Senior Assistant Attorney General)
- ▶ Medical Consultants



COLLABORATION WITH INVESTIGATORS ON BEHALF OF THE MEDICAL BOARD

- ▶ Identifying and directing the acquisition of testimonial and physical evidence to permit the Attorney General to advise the Executive Director of the Medical Board on legal matters—
 - ▶ Whether the Medical Board should file a formal Accusation, dismiss the complaint for a lack of evidence meeting the applicable burden of proof, or take other appropriate legal action, such as citation and fine or Pre-Accusation reprimand.
- ▶ Working with the Investigator to develop and modify the investigation plan as new facts emerge and calculate statute of limitations.
- ▶ Determining whether and how to participate in physician interviews.
- ▶ Review and approve subpoenas for production of records, vetting reviewing experts, and evaluating expert opinions.

DISAGREEMENTS/ CONFLICT RESOLUTION

- ▶ Always discussed first with the other person at lowest level
- ▶ If not resolved, bring up the matter through their respective chain of command.
- ▶ If not resolved within 10 days, the matter is reviewed by the Executive Director of the Medical Board in consultation with the Chief of the Division of Investigation and the Senior Assistant Attorney General of HQE, and a final determination is made within 15 calendar days.

THE INVESTIGATION: REVIEW

- ▶ Upon receipt of the case file in the HQIU field office from Central Complaint Unit (CCU), HQIU uploads the CCU material to a cloud based sharing system ("cloud"), so both the Attorney General's Office and field office can review the evidence and collaborate.
- ▶ The HQIU Field Supervisor assigns an investigator and the lead prosecutor or supervising attorney assign a Primary Deputy Attorney General. The Statute of Limitations is calculated by the Lead Prosecutor.
- ▶ The investigator submits an Investigation Plan and Progress Report (IPPR) and draft report for approval by the Primary Attorney General and/or Lead Prosecutor, who either approves or adds to plan.

THE INVESTIGATION: REVIEW

- ▶ The Supervising Investigator, Lead Prosecutor, and Primary Deputy Attorney General assess whether the investigation warrants urgent action (Bail recommendations at criminal hearings (PC23s), Mental/Physical Examinations (820 Petitions), and Interim Suspension Orders (ISOs)
- ▶ From here, the investigation progresses according to the IPPR or is amended as the investigation takes shape and matters are reviewed at case reviews.
- ▶ The Investigator apprises the Primary Deputy Attorney General of major milestones via the draft report and uploads evidence to the cloud so the Primary Deputy Attorney General and MBC Chief of Enforcement can review the material as the case progresses.

THE INVESTIGATION: EVIDENCE COLLECTION

Investigations involve the following primary components that could be conducted by the HQIU investigator in consultation with the Primary Deputy Attorney General or lead prosecutor:

- ▶ Interview the complainant
- ▶ Interview the patient
- ▶ Interview other witnesses (nurses, patient's family, doctors, etc.)
- ▶ Surveillance
- ▶ Conduct undercover operations
- ▶ Obtain patient releases/issue *subpoena duces tecum* for records
- ▶ Subpoena Enforcement in Superior Court, if needed

THE INVESTIGATION: EVIDENCE COLLECTION

- ▶ Check for Other Patients Who May Be Victims
- ▶ Obtain Arrest Reports
- ▶ Obtain Pharmacy Records and Prescriptions
- ▶ Obtain Credentialing or Disciplinary Records
- ▶ Coordinate with Other Law Enforcement Agencies
- ▶ Obtain Depositions or Other Statements Concerning The Case
- ▶ Collect Biological Fluids and Order Testing

THE PHYSICIAN INTERVIEW

One of the most important components of the investigation is the physician interview. The participants include:

- ▶ The Investigator
- ▶ The Medical Consultant
- ▶ The Primary Deputy Attorney General or Lead Prosecutor
- ▶ The Physician
- ▶ The Physician's Attorney

THE EXPERT REVIEW

- ▶ After the physician interview, the Primary Deputy Attorney General and Investigator discuss with the Medical Consultant whether an expert review is needed; and if so, what medical specialty is required and what evidence will be provided to the selected expert.
- ▶ The Investigator and Medical Consultant compile an "expert package"- a packet of evidence collected during the investigation including interview transcripts, medical records and other case related material. All potentially biasing information is identified by the team and removed or redacted from the expert package.
- ▶ The expert package is reviewed by the Supervising Investigator then approved by the Primary Deputy Attorney General and Lead Prosecutor.
- ▶ Expert written opinions are expected within 30 days. Because many investigations are complex, involve multiple patients, and experts have their own medical practice, extensions beyond 30 days are sometimes warranted.
- ▶ Within one day of receipt of the written expert opinion, the Investigator provides the expert opinion to the Primary Deputy Attorney General .

ANCILLARY LEGAL WORK THAT OFTEN OCCURS DURING AN INVESTIGATION

- ▶ Subpoena Enforcement
- ▶ Petitions to Compel an Examination (820 Petitions)
 - ▶ Mental
 - ▶ Physical
- ▶ Interim Suspension Order (ISO)
- ▶ Automatic Suspension Order (incarcerated physicians)
- ▶ Court Appearance bail recommendations at criminal hearings for an Order pursuant to Penal Code section 23 (PC23s)

PARALLEL PROCEEDINGS

- ▶ Joint Vertical Enforcement Investigations do not include “criminal investigations”
- ▶ Criminal Cases filed against Licensees: Allegations that involve potential criminal charges are worked exclusively by HQIU using “parallel prosecution guidelines”
- ▶ These matters are simultaneously referred to a criminal prosecutor and the Attorney General’s Office.
- ▶ HQIU issues search warrants and conducts undercover operations outside the Vertical Enforcement Protocol.

THE COMPLETION/DISPOSITION PROCESS

- ▶ When the Investigator concludes that an investigation is complete (they conclude there are no investigative activities left to perform) they finalize their report and assemble all the evidence. This is generally triggered upon receipt of the final expert opinion.
- ▶ The Investigator assures that all attachments and digital property items are uploaded to the cloud, that all property items are secured in the evidence room, and submits their final report to the supervising investigator.
- ▶ Once the investigation is deemed complete, the Investigator or Supervising Investigator emails the HQE prosecutor and copies Lead Prosecutor and Supervising Attorney asking if the case is "complete" and provides the unsigned report and the expert opinion again.

THE COMPLETION PROCESS (CONTINUED)

- ▶ HQE prosecutor evaluates the evidence to determine if it is sufficient to meet the high evidentiary burden of clear and convincing evidence to a reasonable certainty. Within three business days, either concurs the investigation is complete or requests further investigation.
- ▶ After the reply or when three days elapse, the Supervising Investigator has the report signed, then processes the case file internally, causing the disks to be shipped to the Medical Board (or directly to the Attorney General if the statute of limitations is looming).
- ▶ The actual case file is set aside until there's a final "disposition" by Medical Board.

