

## **MEDICAL BOARD STAFF REPORT**

DATE REPORT ISSUED: October 13, 2015  
 ATTENTION: Members, Enforcement Committee  
 SUBJECT: Interim Suspension Orders  
 STAFF CONTACT: Kimberly Kirchmeyer, Executive Director  
 Gloria Castro, Senior Assistant Attorney General  
 Michael Gomez, Deputy Director of the Division of Investigation  
 and Enforcement Programs

### **REQUESTED ACTION:**

This report is intended to provide the Members with 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 (AG) Office 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.

Board staff and staff from the HQIU and the AG's Office have met to conduct a policy review of the handling of ISOs. Part of the review was a review of what happened in ISO matters, including timelines and action taken along the complaint and investigation processes. In addition, the review included an analysis of what could have been done to improve the process and what can be done in the future to eliminate any obstacles that occurred. Based upon this review, the ISO policy workgroup identified several improvements that could be implemented to expedite the investigation and issuance of an ISO. The following is a list of improvements/policy changes that can be made:

- 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.
- 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.
- 3) Board monitoring of all investigation/prosecution cases – on a monthly basis, the Board needs to monitor cases that are at both at the AG's Office and at the HQIU to ensure all cases that could be an ISO are moving forward.
- 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 AG's Office to see this determination is made in the required timeframe.
- 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 AG's Office upon receipt in order to expedite the process.
- 6) The Board, HQIU, and AG's Office report reconciliation – Board, HQIU, and AG's Office staff will, on a monthly basis, reconcile reports for cases that have been referred to the AG's Office 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 AG's Office.

- 7) Request that the Office of Administrative Hearings 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.
- 8) Recommend training to the Office of Administrative Hearings 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.
- 9) Update the investigation report synopsis – HQIU will clearly identify in the case synopsis of a Report of Investigation that the case is being transmitted for an ISO and an Accusation.
- 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.
- 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.
- 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.
- 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.
- 14) Create an activity code within the BreEZe system to identify a case as an ISO case for monitoring and statistics.

Several of these recommendations have already been implemented. Recommendations 1, 2, 4, 5, 9, and 11 have been either fully implemented or are in the process of completion. Board staff will continue to work with HQIU and the AG's Office to implement the remainder of these changes as soon as possible to assist in the timely identification and processing of cases warranting an ISO.

An update on the progress of these changes and their impact will be provided at a future Enforcement Committee meeting.