

THE MEDICAL BOARD OF CALIFORNIA'S DISCIPLINARY PROCESS - ACCUSATIONS

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Disciplinary Process

- Role of DCU and HQE
- Request for Legal Action
- Transmittal for Prosecution/Evaluation of Complaint
- Accusation Process
- Discovery
- Default, Settlement, or Administrative Hearing
- Decision
- Post-Decision





Attorney General's Office Health Quality Enforcement (HQE) Section

WHAT WE DO

Prosecute disciplinary actions against license applicants and licensees of the Medical Board of California.

(Government Code section 12529 *et seq.*)



Medical Board of California's (MBC) Discipline Coordination Unit (DCU)

WHAT WE DO

- Review disciplinary documents for accuracy
- File and serve disciplinary documents
- Create public disclosure

Statutory Authority

B&P Code § 2229 (a) “Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.”

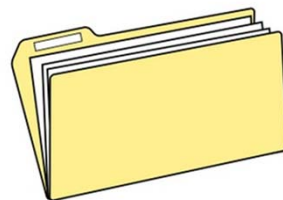
Gov. Code § 11371 provides that Office of Administrative Hearings shall establish “a Medical Quality Hearing Panel, consisting of no fewer than five full-time [ALJs].”

Gov. Code § 11500 establishes the administrative process for disciplinary actions.



Requests for Legal Action

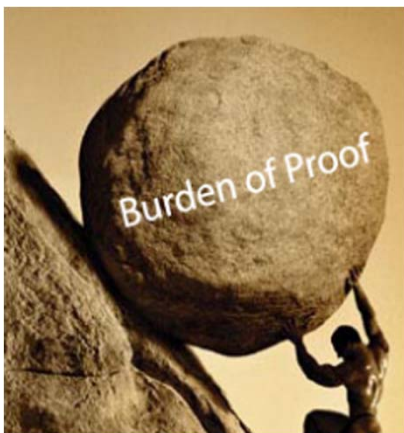
- The MBC refers the following matters to the AGO:
 - Accusation
 - Statement of Issues
 - Petition to Revoke Probation
 - Request for Interim Suspension Order
 - Subpoena Enforcement
 - Request for Penal Code §23 recommendation
 - Bus. and Prof. Code §820 Petition
 - Petitions for Early Termination of Probations and Petitions for Reinstatement
 - Citation Appeals



Transmittal for Prosecution Evaluation of Complaint

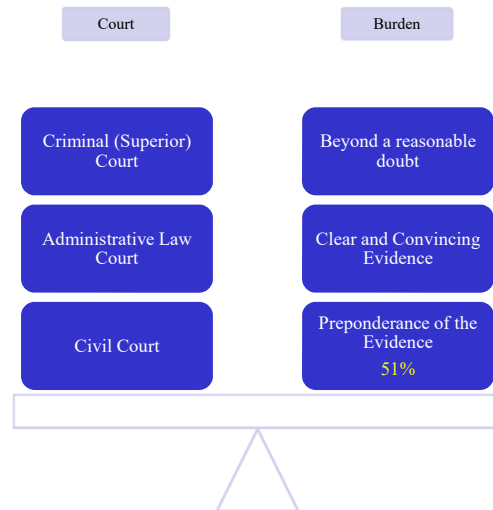
- Board transmits completed case to HQE
- SDAG exercises prosecutorial discretion to determine whether sufficient evidence to proceed with Accusation
- DAG reviews the Report of Investigation, evidence, and property sent by the MBC, which could contain voluminous documents and complex evidence.
- DAG learns medical issues in the case by having consultations with the reviewing expert.

Transmittal for Prosecution Evaluation of Complaint



- Sufficient evidence to prove unprofessional conduct?
- Burden: “clear and convincing evidence to a reasonable certainty.”
Ettinger v. Board of Med. Quality Assur. (1982) 135 Cal.App.3d 853

Burden of Proof



Case Acknowledgement

- Acceptance or denial of case
- Request further investigation

HQE Prepares Accusation

Charging Licensee with Unprofessional Conduct

- DAG drafts an Accusation, a document notifying the charged physician (Respondent) of the charges that are being brought against her or him.

Types of Disciplinary Charges

- Quality of Care: Gross Negligence and/or Repeated Negligent Acts
- Incompetence
- Sexual Misconduct
- Overprescribing and/or Excessive Treatment
- Mental or Physical Impairment of the Licensee
- Substance Abuse of the Licensee
- Conviction of a Crime
- Dishonesty and/or Fraud
- Discipline by Another State or Jurisdiction
- Medical Record Keeping
- General Unprofessional Conduct

DCU Reviews and Files Accusation

- Reviews Accusation for accuracy
- Presents final Accusation to Executive Director for signature
- Respondent is served with Accusation
- Updates public disclosure
- Monitors case

After Accusation is filed by DCU

- Respondent may respond with filing a Notice of Defense.
- If the respondent fails to file a Notice of Defense, then HQE drafts a default decision
- Default Decision is presented to Executive Director

Amended Accusations

Government Code section 11507:

- An amended accusation may be filed at any time before the submission of the matter to the Office of Administrative Hearings.
- Amendments may be made and served at any time during the course of the case as soon as new investigations are completed and accepted for prosecution
- Pre-Hearing – once the Pre-Hearing Conference is held six weeks prior to the hearing, the Administrative Law Judge may set deadlines about when an Accusation may be amended, filed, and served by or continue the hearing.

Discovery

- During the discovery process, the Deputy Attorney General provides a copy of non-privileged investigation materials to the charged physician (Respondent) and/or his/her attorney.
- Likewise, the Respondent provides to the Deputy Attorney General a copy of any relevant documents or evidence in their possession. This often includes mitigating evidence in support of possible settlement.

Expert Designation

- Business and Professions Code § 2334 requires parties in an MBC action to exchange expert reports and information 30 calendar days prior to the originally scheduled commencement day.
- Recent amendment to § 2334 allows administrative law judges to extend the time for exchange of information based upon a motion on a showing of good cause. The extension of time cannot exceed 100 calendar days.
- The DAG would exchange the expert report and information within the statutory deadline.

Settlement

- The DAGs will assess their ability to prove the charges in the Accusation to an Administrative Law Judge, based on the evidence in the following:
 - Documents
 - Expert report(s)
 - Anticipated witness testimony
 - Respondent's anticipated defenses
 - And other material and relevant matters
- Using the Disciplinary Guidelines as a guide, the DAG will then communicate with the Executive Director to determine an appropriate settlement, if any, based on the strength of the case, the charges in the Accusation, and any mitigating or aggravating factors.

Settlement Continued Range of Discipline

- Public Reprimand
- Revoke license and stayed revocation with probation conditions
- Accept surrender of license
- Revoke license

The Board's Disciplinary Guidelines frame the appropriate discipline in each case, including the length of probation and recommended terms and conditions, based on the nature of the misconduct.

Settlement Continued Board Approval

- Executive Director and DCU review settlement document
- DCU sends settlement to Panel Members
- DCU monitors panel votes
- If adopted
 - DCU serves decision
 - Updates public disclosure
- If held
 - DCU prepares case for Panel discussion

Administrative Hearing

- Scheduled with the Office of Administrative Hearings and heard by an Administrative Law Judge.
- Hearing preparation:
 - DAG meets with witnesses and prepares their testimony,
 - Organizes the evidence (documents and sometimes audio and video), and
 - Prepares her or his presentation to the ALJ (opening statement, witness examinations, and closing argument).
- At hearing, the DAG's burden is to prove the charges in the Accusation by clear and convincing evidence.

Decision

- After the ALJ hears evidence, the ALJ writes a Proposed Decision (PD) and submits decision to Board
- DCU reviews PD
- DCU sends PD to Panel Members
- DCU monitors panel votes
- If adopted
 - DCU serves decision
 - Updates public disclosure
- If held
 - DCU prepares case for Panel discussion

Panel Discussions

- Two Board Panels
- Stipulation held
 - Adopt
 - Counter offer
 - Reject
- PD held
 - Adopt
 - Adopt with reduced penalty
 - Adopt with technical changes
 - Remand back to the ALJ with instructions for further proceedings
 - Non-adopt
 - Board may decide case itself, based on the administrative record

Post-Decision

- Petition for Reconsideration:

The Respondent may petition the Board for reconsideration if dissatisfied with the Board's decision. In rare cases, the Attorney General's Office petitions.
- Petition for Writ of Administrative Mandate:

The Respondent may also file a Petition for Writ of Administrative Mandate in Superior Court to contest the Decision. The Superior Court rules on such petitions based on the record of the administrative hearing, including the hearing transcripts and exhibits (no witnesses are called).

Questions



Administrative Matter: Accusation Flow Chart

Agenda Item 6

Case Work (Accusation)

