

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 15, 2015
ATTENTION: Board Members
SUBJECT: Request for Attorney General Opinion on Business and Professions Code section 805(b) Reporting Deadline
FROM: Kerrie Webb, Senior Staff Counsel

REQUESTED ACTION:

After review and consideration, make a motion to authorize the Executive Director to request a formal legal opinion from the Attorney General's Office (AGO) with regard to when Business and Professions Code (B&P) section 805(b) reports must be filed.

BACKGROUND:

Pursuant to B&P section 805(b), a report must be filed with the Medical Board of California (Board) within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:

- 1) A licentiate's application for staff privileges of membership is denied or rejected for a medical disciplinary cause or reason.
- 2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.
- 3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12 month period, for a medical disciplinary cause or reason.

There is a difference of opinion as to how the phrase "within 15 days after the effective date" is interpreted. Some individuals and entities have interpreted this phrase as applying only after the licentiate has been afforded a hearing, if requested, pursuant to B&P section 809.2. Other individuals and entities have argued that the 15-day deadline starts to run as soon as one of the three actions taken above occurs, regardless of whether the licentiate has requested and been afforded a hearing.

B&P section 805.5 requires that 805 reports be shared upon a request made on behalf of certain institutions, such as hospitals, before they grant a licentiate staff privileges. Therefore, the timing and credibility of 805 reports is of paramount concern to all parties involved.

The reporting entities, the physicians, the Board, investigators and Deputy Attorneys General would benefit from a formal legal opinion from the AGO to achieve clarity on this important issue. In addition, a legal opinion could also be used to prompt legislation to clarify this issue, once the legal opinion has been received.