

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 25, 2023
ATTENTION: Members, Medical Board of California
SUBJECT: Business and Professions Code (BPC) section 2220.05
(Prioritization of Allegations) and BPC section 2220.08
(Requirements Before Referring Complaints for Further
Investigation)
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION:

This report is for information only. No action is requested at this time.

BACKGROUND:

Recently, the Medical Board of California (Board) has received public comments asking the Board to follow the Department of Consumer Affairs' (DCA) Complaint Prioritization and Referral Guidelines (Prioritization Guidelines) (Attachment 1) in referring cases to the Division of Investigation.

DCA was required to implement its Prioritization Guidelines in 2016, via SB 467 (Hill, Chapter 656, Statutes of 2015). The goal of implementing the Prioritization Guidelines was to preserve resources, free up sworn staff to work on complex investigations, and keep all cases moving by appropriately assigning them to sworn or non-sworn staff in accordance with the Prioritization Guidelines.

The Board was exempted from this bill and from following DCA's Prioritization Guidelines, because the Medical Practice Act already set forth the Board's prioritization of allegations under Business and Professions Code (BPC) section 2220.05, which first became effective in 2003 (Attachment 2). The Board's priorities, however, closely align with DCA's Prioritization Guidelines and prioritize the investigation and prosecution of licensees representing the greatest threat of harm to patients. In fact, both DCA's Prioritization Guidelines and BPC section 2220.05 prioritize complaints involving great/serious bodily injury or death to one or more patients.

While the Board prioritizes complaints involving serious bodily injury or, the Board must also comply with BPC section 2220.08. Before certain quality of care complaints are sent to the field for further investigation, BPC section 2220.08 requires the Board to send any new complaint against a physician that involves quality of care allegations to "one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required," unless one of the following exceptions apply: the complaint is based on a report submitted to the Board pursuant to BPC section 801.01 (medical malpractice settlement, arbitration award, or civil judgment) or BPC section 805 (peer review); the complaint is against a physician who is the subject of a pending accusation or investigation; the complaint is against a physician who is on probation (Attachment 3).

BPC section 2220.08 requires the Board to send the medical consultant a copy of the 1) complaint; 2) relevant patient records; 3) the statement or explanation of care and treatment provided by the physician, if any; and 4) any additional expert testimony or literature provided by the physician.

If the medical consultant finds that no violation occurred or there is insufficient evidence to warrant a referral to the field, then the case is closed at this stage and it is not referred to DCA's Division of Investigation, Health Quality Investigation Unit.

BPC section 2220.08 ensures reviews are conducted by medical consultants with relevant education, training, and experience before referral to the field, which preserves and focuses resources on cases where further investigation is warranted to determine whether there is clear and convincing evidence that the physician departed from the standard of care.

COMPLAINT PRIORITIZATION & REFERRAL GUIDELINES*

COMPLAINTS IN CATEGORIES 1 & 2 ARE REFERRED TO DIVISION OF INVESTIGATION

CATEGORY 1 • URGENT

- Acts of serious patient/consumer harm, great bodily injury, or death
- Mental or physical impairment of licensee with potential for public harm
- Practicing while under the influence of drugs/alcohol
- Repeated allegations of drug/alcohol abuse
- Narcotic/prescription drug theft; drug diversion; other unlawful possession
- Sexual misconduct with a patient
- Physical/mental abuse of a patient
- Over-prescribing
- Gross negligence/incompetence resulting in serious harm/injury
- Media/politically sensitive cases

CATEGORY 2 • HIGH

- Prescribing/dispensing without authority
- Unlicensed practice/unlicensed activity
- Aiding and abetting unlicensed activity
- Criminal violations including but not limited to prescription forgery, selling or using fraudulent documents and/or transcripts, possession of narcotics, major financial fraud, financial elder abuse, insurance fraud, etc.
- Exam subversion where exam is compromised
- Mandatory peer review reporting (B&P 805)
- Law enforcement standby/security (subject to staff availability)

COMPLAINTS IN CATEGORIES 3 & 4 ARE INVESTIGATED BY BOARD/BUREAU STAFF

CATEGORY 3 • ROUTINE

- General unprofessional conduct and/or general negligence/incompetence resulting in no injury or minor harm/injury (non-intentional act, non-life threatening)
- Subsequent arrest notifications (no immediate public threat)
- Exam subversion (individual cheating where exam is not compromised)
- Medical malpractice reporting (B&P 801) cases unless evaluated as category 1 or 2
- Serving subpoenas for hearings and for records (non DOI investigations)
- Patient abandonment
- False/misleading advertising (not related to unlicensed activity or criminal activity)
- Applicant misconduct

CATEGORY 4 • ROUTINE

- Unsanitary conditions
- Project abandonment
- Failure to release medical records
- Recordkeeping violations
- Continuing education violations
- Declaration and record collection (e.g., licensee statements, medical records, arrest and conviction records, employment records)
- Complaints of offensive behavior or language (e.g., poor bedside manner, rude, abrupt, etc.)
- Quality-of-service complaints
- Complaints against licensee on probation that do not meet category 1 or 2
- Anonymous complaints unless Board is able to corroborate that it meets category 1 or 2
- Non-jurisdictional issues

*Complaint prioritization is statutory for some clients and supersedes these Guidelines. See Business and Professions Code sections 2220.05 (Medical Board/Board of Podiatric Medicine) and 4875.1 (Veterinary Medical Board).

(Rev 12/2017)

State of California

BUSINESS AND PROFESSIONS CODE

Section 2220.05

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California and the California Board of Podiatric Medicine shall prioritize their investigative and prosecutorial resources to ensure that physicians and surgeons and doctors of podiatric medicine representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon or the doctor of podiatric medicine represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon or a doctor of podiatric medicine involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(7) Repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

(Amended by Stats. 2017, Ch. 775, Sec. 72. (SB 798) Effective January 1, 2018.)

State of California

BUSINESS AND PROFESSIONS CODE

Section 2220.08

2220.08. (a) Except for reports received by the board pursuant to Section 801.01 or 805 that may be treated as complaints by the board and new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation or who is on probation, any complaint determined to involve quality of care, before referral to a field office for further investigation, shall meet the following criteria:

(1) It shall be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required.

(2) It shall include the review of the following, which shall be requested by the board:

(A) Relevant patient records.

(B) The statement or explanation of the care and treatment provided by the physician and surgeon.

(C) Any additional expert testimony or literature provided by the physician and surgeon.

(D) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

(Amended by Stats. 2013, Ch. 515, Sec. 14. (SB 304) Effective January 1, 2014.)