Enforcement Program

Business and Professions Code Section 2001.1

(Priority of the Board – protection of the public)

Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount

Enforcement Program

- Vigorous enforcement of the Medical Practice Act
- Protection of the public; patient safety is paramount by law, rehabilitation only when it does not conflict with public safety (B&P Code §§ 2001.1 and 2229)
- Responds to complaints
- Conducts investigations
- Imposes disciplinary action
- Monitors discipline imposed

Central Complaint Unit (CCU)

- Complaints are received from:
  - ✓ Public (patient, patient's family, friend, etc.)
  - ✓ Mandated Report (i.e., malpractice, peer review)
  - ✓ Licensee
  - ✓ Government Agency/DCA Boards & Bureaus
  - ✓ Anonymous

Complaint Review Process

Triage Process

- Is the issue within the Board's jurisdiction?
  - Non-jurisdictional issues include: physician or office personnel rudeness; HMO system problems or denial of services; hospital facility issues, etc.
- Does complaint warrant immediate investigation?
  - High Priority/Urgent Complaint: sexual misconduct, physician impairment (i.e., drugs/alcohol or physical/mental impairment)

Complaint Review Process

- Medical Consultant Review (upfront expert)
  - Quality of Care Cases (BPC section 2220.08)
- Possible Complaint Unit Outcomes
  - ✓ Close case
  - ✓ Refer to the Complainant Liaison Unit (CLU) for an interview – BPC section 2220.1
  - ✓ Issue a citation and fine (For technical violations: failure to provide medical records, false advertising, etc.)
  - ✓ Refer for formal investigation

Complainant Liaison Unit

- CLU started operations on January 2, 2025
- CLU staff offer interview in quality-of-care cases under the Board's jurisdiction before case closure to:
  - Complainant
  - patient, or
  - patient representatives
- Interview ensures Board has all necessary information directly from involved parties before making final determination

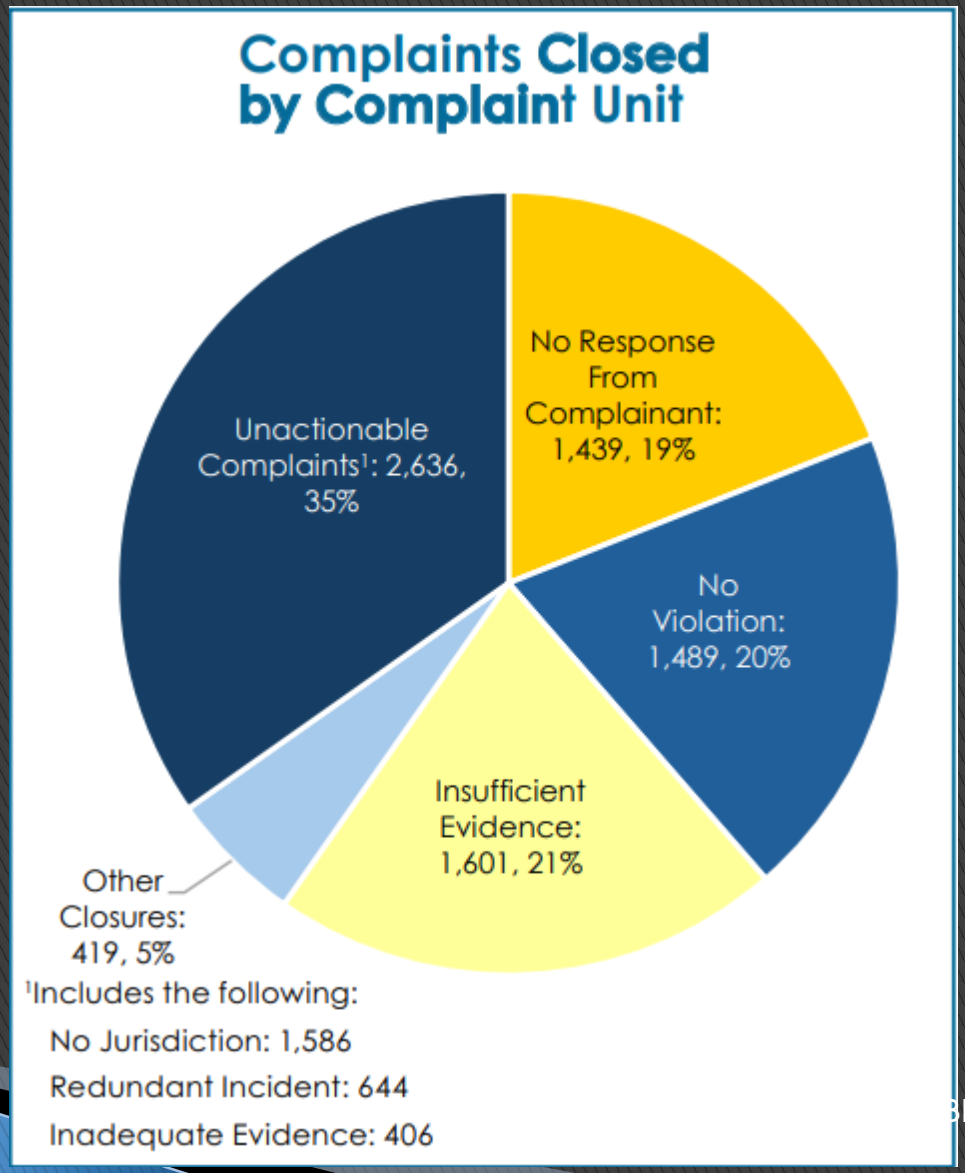
Pursuant to Business and Professions Code Section 2220.1

Possible Interview Outcomes

- **Possible CLU Outcomes**

  - ✓ Return to CCU to obtain further records
  - ✓ Refer to Medical Consultant for review and consideration
  - ✓ Refer to Health Quality Investigation Unit (HQIU) for investigation
  - ✓ Closure

Complaints Closed



Investigations

Complaint Investigation Office (CIO)/HQIU

- Investigate allegations of criminal/administrative misconduct
  - Gather evidence
  - Independent expert review
    - thorough, unbiased opinion as to whether the standard of care was met or breached
  - Evidence includes:
    - witness testimony (interviews)
    - physical evidence (medical records, x-rays, fetal monitoring strips)
    - subject interview, and
    - if needed, expert review

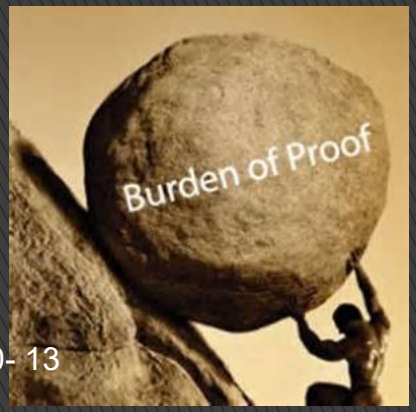
Expert Reviewer Program

- Review complaints referred for investigation
- Provide clinical opinions and testimony about the practice of medicine
- Conduct professional competency exams and physical/psychiatric exams
- Opinions based on expert's knowledge of accepted standard of care
  - draw on their education, training, experience and knowledge
- Currently, there are approximately 860 active experts

Considerations When Concluding an Investigation

- Expert report – simple vs. extreme departures
- Mitigating factors
- Is there clear and convincing evidence of the violation?

Preponderance of Evidence (Civil)
Clear and Convincing (Administrative)
Beyond Reasonable Doubt (Criminal)



Violation of Medical Practice Act BPC Section 2000

Types of Violations/Allegations

- **Gross negligence** (an extreme departure from accepted standards of medical practice)
- **Incompetence** (a physician is found to be lacking in knowledge and performing procedures that are beyond their training or expertise)
- **Repeated negligent acts** ("simple" negligent acts that are not extreme departures from the accepted standards of practice are still considered a departure from the care – one act of simple negligence is not enough to take formal action)

Types of Violations/Allegations

- **Sexual misconduct** or sexual exploitation of the patient/physician relationship
- **Over/Under prescribing**
- **Aiding and abetting** (including the corporate practice of medicine)
- **Physician misconduct** (including conviction of a crime, substance abuse, fraud)
- **Physician mental/physical illness**

Investigation Process

- Possible Investigation Outcomes
  - ✓ Close case
  - ✓ Issue citation and fine
  - ✓ Refer for criminal action
  - ✓ Issue a public letter of reprimand
  - ✓ Refer for disciplinary action
  - ✓ Interim actions (PC23, ISO, Petitions to Compel)

Collaborative Process

Goals of the Process:

- Reduce number of cases returned to HQIU for supplemental investigations
- Reduce number of cases rejected by the Attorney General's (AG) Office
- Enhance disciplinary outcomes of administrative actions
- Increase communication between investigators and Deputy Attorney Generals (DAG)
- Increase alignment across investigations on the same subject or across related investigations into multiple subjects
- Improve complaint processing timelines

Citation and Fine Program

- Business and Professions Code Section 125.9 authorizes the Board to establish a system by regulation for the issuance of a citation which may contain an order of abatement.

- Referrals to the Cite/Fine program may come from:
  - CCU
  - CLU
  - Discipline Coordination Unit (DCU)
  - CIO/HQIU
  - Probation
  - Licensing program

Discipline Coordination Unit

Disciplinary Process

- Board prepares and sends case to the AG
- DAG prepares documents
  - Accusation
  - Statement of Issues (applicants)
  - Petition to Compel-Mental Evaluation
  - Petition to Compel-Physical Evaluation
  - Petition to revoke (PTR)

Disciplinary Process

Petition to Compel Exam-BPC §820

- Unable to practice safely due to mental/physical illness
- Executive Officer has delegated authority to order exams
- Board obtains an examiner (psychologist, psychiatrist, medical doctor)
- If licensee is deemed safe to practice = Case is closed
- Unsafe to practice = Disciplinary Action
- Failure to comply = Disciplinary Action

Disciplinary Process

Three types of decisions:

Stipulated Settlement

Proposed decision

Default Decision

Disciplinary Process

- All decisions go to a Panel of the Board, except Automatic Revocations, Surrender of License and Default Decisions
  - ✓ Adopt
  - ✓ Non-adopt
  - ✓ Reject

Disciplinary Process

- Possible Outcomes:
  - ✓ Revocation
  - ✓ Surrender
  - ✓ Probation
  - ✓ Public Reprimand
  - ✓ Accusation Withdrawn/Dismissed

Disciplinary Process

- Respondent Appeal Options:
  - ✓ Petition for Reconsideration
  - ✓ Writ of Mandate
  - ✓ Court of Appeals
  - ✓ Supreme Court

Final Reporting

- ✓Federation of State Medical Boards
- ✓National Practitioner's Databank
- ✓Newsletter
- ✓Board's website

PUBLIC RECORD ACTIONS

- ADMINISTRATIVE DISCIPLINARY ACTIONS (1)
- COURT ORDER (NO RECORDS)
- MISDEMEANOR CONVICTION (NO RECORDS)
- PROBATIONARY LICENSE (NO RECORDS)
- FELONY CONVICTION (NO RECORDS)
- MALPRACTICE JUDGMENT (NO RECORDS)
- HOSPITAL DISCIPLINARY ACTION (NO RECORDS)
- ISSUED WITH PUBLIC LETTER OF REPRIMAND (NO RECORDS)
- ADMINISTRATIVE CITATION ISSUED (NO RECORDS)
- ACTION TAKEN BY OTHER STATE/FEDERAL GOV (NO RECORDS)
- ARBITRATION AWARD (NO RECORDS)
- MALPRACTICE SETTLEMENTS (NO RECORDS)

Probation Unit

Probation Case Cycle

Disciplinary action comes to Probation

Case file is prepared and sent to assigned Monitor

Intake Interview is scheduled

Conditions of Probation

- Standard Conditions
  - Notification, obey all laws, quarterly declarations, non-practice, etc.
- Optional Conditions
  - Abstain from use of controlled substances and/or alcohol, biological fluid testing, education Course
- Patients Right to Know Act

Violations of Probation

What happens if a violation of probation occurs?

- Request a letter of explanation from the probationer
- Prepare a non-compliance report
- Recommend action to be taken:
  - non-compliance letter
  - citation and fine
  - cease practice order, or
  - petition to revoke

QUESTIONS?