

The Medical Board of California is committed to consumer protection through the licensing and regulation of doctors and certain allied healthcare professionals.

Carlos Villatoro (CV): My name is Carlos Villatoro and this is Medical Board Chat, the official podcast of the Medical Board of California. In my years as being the Board's public information manager, I have talked to dozens of reporters. One of the questions that I am often asked is 'Does the Board have the authority to permanently revoke a license? Can the Board permanently discipline a physician?' Now here to talk to me about this is our Board President Kristina Lawson. Kristina welcome to Medical Board Chat

Kristina Lawson (KL): Carlos thanks for having me on the Medical Board Chat today.

CV: Absolutely, it's a pleasure to have you and I think this is the very first time that we've had you on Medical Board chat is that correct?

KL: That's correct, I'm glad to be here.

CV: Well it's long overdue. So Kristina, I'm going to ask you point-blank here, does the Board have the authority to permanently revoke a physicians and surgeons license? Why or why not?

KL: Carlos, in California the Board does not have the authority to permanently revoke a physicians and surgeons license, which is different than other states which in some cases do have that authority. The Board is actually obligated to consider petitions from individuals for reinstatement of a license that has been revoked and is also obligated to consider petitions for penalty relief where discipline has been imposed. We don't have the authority at the Medical Board to disregard or ignore those applications. There are a couple of circumstances where the Board is precluded from considering license reinstatement. That's for petitioners who would be serving a sentence for a criminal offense including any period during which the petitioner is on court-imposed probation or parole and it is also the case that the Board may not consider a petition by a physician and surgeon for penalty relief or for reinstatement where there is an accusation or petition to revoke probation that's already pending against them

CV: So this is for any offense right? It doesn't matter if the physician was, you know, mentally incompetent to practice, if they've committed sexual misconduct, it doesn't matter what the offense is right? The Board has to legally consider these petitions for reinstatement and penalty relief? Is that correct it?

KL: That's correct Carlos. Now, the Board is obligated to consider those applications or those petitions for either reinstatement or penalty relief, It does not however mean that they must be granted in every case of course, and often those petitions are not granted. But the Board does not have the authority to, like I said, ignore or not process those applications in the normal course. There isn't a permanent revocation option in California.

CV: So talk to me a little bit then about the process. How does it work when a physician has been disciplined by the Board and, you know, wants to petition the Board for, you know, license reinstatement or penalty relief

KL: Sure so once discipline has been imposed and that discipline could be either revocation or it could be another form of discipline including potentially years of probation. A petitioner, at a certain point in time, may apply for penalty relief or for license reinstatement and there are

different periods of time that apply. So, those periods of time are three years for reinstatement of a license surrendered or revoked for unprofessional conduct except, of course there's always exceptions, that the Board made for good cause shown specify in a revocation order that a petition for reinstatement may be filed after only two years. And sometimes that's the case. There's also, two years must elapse also before a petition for early termination of probation of three years or more may be filed. And then a petitioner must wait at least one year for modification of a condition or for reinstatement of a license that was surrendered or revoked for mental or physical illness or for termination of probation of less than three years. So the petitioners do have to wait for a fixed period of time before they can apply for that penalty relief or for license reinstatement where the license has been revoked. But again, we're obligated to process those applications once they're received.

CV: Right. So there is a time period, there is a buffer that is in place for these physicians who have been disciplined to apply, to petition for license reinstatement.

KL: That's correct and then it is up to the petitioner to prove to the Board that they've learned from their mistakes that they have rehabilitated themselves and are not a danger to consumers or to the public So the burden of proof is on the petitioner to prove, you know, to prove that their license should be reinstated or that they should receive penalty relief.

CV: And then, so it's not on the Board then? The Board doesn't have to prove anything.

KL: That's correct. So the petition, the petitioner has the burden of proof, and the petition typically states, you know, the facts that would be required by the Board, that the Board would want to consider It also must be accompanied by verified recommendations from physicians and surgeons who have personal knowledge of the activities of the petitioner since their discipline was imposed but those are burdens and requirements that are placed on the petitioner, not on the Board

CV: So what happens when a petition is received by the Board? Does that automatically mean that they get a hearing? Or do they go in front of a Board panel? Or I guess, how does that usually play out?

KL: Sure, so once the Board has determined that the petition meets the time requirements, that it is able to be processed because the minimum period of time has elapsed from either the revocation or surrender of the license, or the imposition of discipline, then the petition is first considered by an administrative law judge following a hearing. And the administrative law judge evaluated the testimony and evidence submitted and issues a proposed decision, which then following that proposed decision, goes to the Board Panel for review Once the Board Panel receives it, and the Medical Board of California is split up into two panels – Panel A and Panel B – once the panel receives that proposed decision from the administrative law judge the =Board may either adopt a decision as is or amend the decision and adopt it. And then there's a third option of potential non adoption, which happens when the Board does not agree with the proposed decision.

CV: So one of the things that we often hear – not just from the media, but from social media channels – is that the Board often rubber stamps the ALJ's decision, the proposed decision. That they just go with it – there's no review, there's no questioning, they just, they just rubber stamp and it's a done deal. Is that is that true? Does the Board do that?

KL: Carlos, that has not been my experience on the Board it certainly has not been my personal experience in reviewing the hundreds of cases that have come before me personally in the six years that I've been part of the Medical Board. And it hasn't been my experience on Panel B, which is the panel that I serve on. It is often the case that the Board non adopts decisions, it's often the case that the Board proposes, you know, alternative conditions if you will. Amends the decisions that are forwarded to us from the administrative law judges. So like I said, if it has not been my experience that, that the Board Panels simply serve as a rubber stamp or that they're not interested in really digging into the decisions and making sure that, you know, either the right discipline is being imposed or that the penalty relief or reinstatement of a license is appropriate. In fact, my experience has been quite to the contrary. The Board members are disciplined about the process, are inquisitive, want to make sure that we are protecting California consumers and patients and they take great care in their decision-making and furtherance of that mission.

CV: Yeah, you know I don't think that any board member wakes up in the morning and, you know, says hey I'm going to rubber-stamp and ALJ's decision today. I don't think that our Board is a Board that does that. As a matter of fact I too have seen the opposite from the Panel hearings. As a matter of fact there's one going on right now that I'm watching and you know it's a lively debate full of questions.

KL: Right

CV: Now, why does the Board when asked often by the media regarding the specific details of any Given case, why does the balk when it comes to sharing those specific details about its complaints and investigations.

KL: Sure. So there is a lot about our Board processes that is public, right? The accusation is public once it's filed, the discipline that is imposed is public and all of that information is available through the Medical Board of California is website. Now specific details complaints and investigations are confidential by law and the Board is not allowed to disclose certain specifics about the complaints and investigations – that comes from law both in the Government Code, in the Public Records Act, which exempts certain records from production and also in Business & Professions Code Section 800, which requires the Board to maintain the confidentiality of a licensee's file except for those documents that are made public pursuant to another law. So we are a highly regulated state agency, we are required to operate within the boundaries of the law and the Medical Practice Act, which governs us and so we're not allowed to share any details regarding the complaints and investigations, again beyond what we post on our website.

CV: And the Board members in these case act as the arbiters of cases and you know in my years of covering court cases as a member of the media, I can't remember ever a time where I judge went on the record to talk about the specific details of a case. It's just not something that happened so, so thank you for sharing that.

KL: And that's exactly right Carlos, we're acting essentially in a quasi-judicial capacity right? When we review the decisions of the administrative law judge and those deliberations are confidential.

CV: Absolutely. Does the board offer preferential treatment to physicians who commit certain offenses such as sexual misconduct? I mean are there separate rules that you guys follow for physicians have been accused of like for example sexual misconduct.

KL: No there aren't separate rules for any particular category of offenses or for - we don't, our rules are not set up in that way. So, each decision is, each complaint is investigated on its own merits and each decision is made both in accordance with state law but of course based on the individual facts and circumstances of the matter that's before the Board. So the laws that govern how the Medical Board of California imposes discipline or penalty relief or reinstatement don't change based on any particular petitioner. They don't change based on the nature or circumstances of the underlying offenses, if you will, and like I said before we're obligated by statute to consider any petition for relief or reinstatement. We can't ignore, you know, ignore it just based on a particular category of offense.

CV: So let's talk a little bit about the victims of sexual misconduct. Are victims of sexual misconduct involved when the Board considers a petition for penalty relief or license reinstatement and if they aren't should they be?

KL: Yeah it's a good question, Carlos, and the victims of sexual misconduct are frankly the victims of any, you know, the complainants in the context of any physician interaction are involved in the process and they are very important to the process. So oftentimes they're the complainant, oftentimes the victim is the patient who provided information to the Medical Board which then gave us the authority to investigate and ultimately impose discipline. So they play a very important part in the process. Now once the complaint advances, and advances to investigation and ultimately either a petition for reinstatement or penalty relief comes before the Board, the Board is precluded from obtaining additional victim, if you will, statements or complainant statements and considering those when ultimately adjudicating the matter and that's set forth in the Business & Professions Code. Again, we're a highly regulated state agency, and we are precluded from having the victim then involved in what is essentially our adjudicatory process. So that doesn't preclude them from working with the Office of Attorney General directly or others as part of the process, but we're precluded from having them come before the Board. Their statements can be used, like I said, as part of the process, but the Board can't consider brand new evidence when oral arguments are being conducted. Now would it be a good idea for us to have the opportunity to hear from the victims? Potentially. And that's a change that would need to be made by the state Legislature. And so that would be something that I think would be worth us considering whether there's a process improvement, a way that we can provide an opportunity for victims and for patients to be more involved in the process.

CV: Absolutely and we are always looking for ways to improve our process, but sometimes we need a little bit of help to do that right?

KL: Absolutely yes.

CV: Some physicians who have been disciplined by the Board for particularly egregious violations of the law, only to have received their licenses back or have penalty relief – it causes the public to question the Board's decisions, causes reporters to call us and ask us why we reinstated a license when someone was disciplined for a particularly egregious violation of the Medical Practice Act – so how does the Board justify giving licenses back to these physicians?

KL: Right and that's a good question as well. As we were talking about before, California of course does not have a permanent revocation option, no matter how egregious the violation and so we are required to consider applications and we don't, we can't by law differentiate who may or may not apply for the penalty or for reinstatement based on the particular nature of the

underlying conduct or the discipline imposed. But what I will tell you is that in general, the more significant the violation, the more egregious the violation, that led to the license revocation or for discipline being imposed, then the greater amount of evidence that would be required to show they are able to safely practice. And so each case is based on the individual facts and the individual circumstances again in the context of a petition for reinstatement or for penalty relief the burden of proof is on the petitioner. So they need to come with their evidence of rehabilitation. They need to come from recommendations from others that speak to their activities and speak to why their license should be reinstated, for example. And of course, like I said, typically the more significant the violation you know the more, the more evidence, more detailed evidence is going to be required to show they would be able to safely practice medicine in California.

CV: Ok so answer this then, what happens if someone who has their license reinstated or has had penalty relief reoffends and harms another patient?

KL: Yeah. Well hopefully will receive the complaint and then once the complaint is received the Board would go through its investigations process. It would investigate any new alleged violation of the law or standard of care and then take the appropriate disciplinary action against the reoffending licensee. So the Board would follow its normal enforcement process when investigating those cases and again we would tailor the specific discipline to the facts of the individual case

CV: So the Board is often criticized by the public and the media for being too lenient on physicians. At the same time the Board is often criticized by physicians for being too punitive and in some cases such as our, you know, our Prescription Review Program which was heavily scrutinized have been accused of conducting witch-hunts against physicians. So one side thinks we're too lenient, one side thinks we're too punitive. What's your response to this as the Board President?

KL: Sure, you know in any case, for any state agency where each individual case is highly dependent on individual facts and circumstances and where a license, or an opportunity to pursue one's livelihood in California is as stake, there's often criticism right? And frankly, we welcome the, you know, the criticism. We welcome the scrutiny and we're always looking for opportunities to improve. So you know, I'm actually glad that we have such a high level of participation in our processes – that we have thoughtful observers from all perspectives that help us to improve. So, with respect to the licensing regulation, enforcement of our regulations it's a highly complex process. It's highly fact-dependent, it's highly regulated by law and in order to impose discipline the Board has to prove with clear and convincing evidence that it's necessary to impose discipline on a licensee to protect the public. So when evidence of a particular violation comes to our attention we take action to investigate and discipline the licensees if that discipline is appropriate and as we've been talking about it, it's it really is important to emphasize that we review each case individually based on the individual facts and circumstances. And the details and the evidence matters right? That can be extraordinary frustrating for the public because a lot of the process is confidential and by law and so there isn't access to all of the details and all of the evidence and to the potential risks of the case. It's frustrating and I recognize that it's frustrating, that that process is not visible publicly to those who would like to understand the details of a particular case.

CV: Absolutely and you know I've heard you say before in interviews and in, you know, Board meetings, that the Board isn't perfect by no means. The processes are not perfect but it's what we have. Right? It's what we are empowered to do by the state Legislature so.

KL: That's right, and we aren't perfect right? And I'm not aware of a state agency that is perfect and that gets everything right. We are always open to suggestions for improvement in fact as part of our sunset review process earlier this year, we made some of our own suggestions for improvement to the Legislature. Some of which were adopted, some of which were not. Because we operate in this highly regulated process, because we're a creature of state statute, we only exist because the Legislature says via statute that we're permitted to exist and regulate physicians and surgeons, so long as we're part of that process we are bound by the legal requirements that are in place. But like I said we're always open to suggestions for improvement and frankly we're inward looking as well. We're always looking for opportunities to improve our processes, opportunities to improve communication, opportunities to help the public and California consumers better understand the work that the Medical Board does and how we do it.

CV: And hey, we have a board meeting taking place here in November and at this meeting there's going to be some legislation discussed tell me tell me about.

KL: That's right. Well one of, usually about this time of year at the Board's quarterly meeting we take the opportunity to consider exactly the things we were just talking about. Whether there are opportunities for improvement, whether we'd like to ask the Legislature to help us improve our processes. So we're going to be having a conversation about just that, we are going to have a conversation you know whether the Board wants to continue to advance the proposals that we were advancing as part of the sunset review process.

CV: You mean the ones that didn't get chosen into the sunset.

KL: Exactly. And also conversation around things like, you know, would there be a better standard of proof, a better way of thinking about when discipline should be imposed and what those standards are in California. Because California has some of the strictest standards in the country for imposition of discipline in terms of what the Board needs to prove. So we are going to have a conversation about whether or not the standards should be changed to strengthen consumer protection in California.

CV: Well excellent. Thank you very much for a for joining us today you've given us some great information and some of some great things to think about here. Is there anything that I didn't ask you that you feel would be important for the listeners of Medical Board chat to know?

KL: I don't think you missed any questions Carlos, but I just like to add that our Board members and our Board staff work tirelessly in furtherance of our mission which is to protect California consumers and ensure that all Californians have access to quality medical care. From a personal perspective I care deeply about the well-being of California's health care consumers and I just look forward to the opportunity to continue to do this work and think about how we can improve our effectiveness, our processes, and remain focused on our mission to protect California consumers and ensure they have access to the care that they deserve. So thank you for opportunity to talk with you today.

CV: And that's going to be it for Medical Board Chat. Thank you to Board President Kristina Lawson. Please don't forget to follow us on Twitter and like us on Facebook and check out our YouTube channel. Thank you Kristina

KL: Thank you Carlos