# The Impact of a Medical Board Investigation On Your Practice

Kathleen Stillwell, RN, MHSA, MPA, CPHRM Senior Patient Safety Risk Manager

Richard Cahill, Esq. Vice President, Associate General Counsel

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The Doctors Company
TDCGROUP

**Activity Code 4090** 





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### Kathleen Stillwell, RN, MPA, MHSA, CPHRM Senior Patient Safety Risk Manager

Kathleen Stillwell earned Master's Degrees in Public Administration and Health Services Administration. She is a registered nurse and Certified Professional Health Care Risk Manager (CPHRM). Ms. Stillwell is a nationally recognized expert in healthcare risk management with over 38 years of experience in clinical risk management, professional liability claims management, compliance, and high-risk underwriting. Her expertise includes hospitals, medical practices, and integrated healthcare organizations. She is a frequent speaker for conferences, and authors articles for TDC articles and health care publications.

Ms. Stillwell serves on Chapman University, Leadership Council for Crean College of Health and Behavioral Sciences in Irvine, CA. She also serves on the University of California Riverside Advisory Board for Women in Leadership Program. Kathleen is a member of Brandman University Nurse Advisory Board, and a volunteer coach for physicians and nurses for the California Medical Association Care 4 Caregivers program. She has served as faculty for the American Society for Healthcare Risk Management and is published in the American Hospital Society Risk Management Handbook for Healthcare Organizations.

Kathleen has held numerous leadership positions with national and state risk management and quality organizations, including past Board Member for the American Society for Quality (ASQ), Healthcare Division, President of the CA State Patient Care Assessment Council, Board member for the California League of Nursing, adjunct faculty for Woodbury University and the University of San Francisco. She served on the Advisory Board of King International, Inc., and is a Charter Member of the Business Renaissance Institute.





### Richard Cahill, Esq. <u>Vice President and Associate</u> General Counsel

Richard Cahill received his undergraduate degree (*summa cum laude*) from UCLA in 1975 and his Juris Doctorate from Notre Dame Law School in 1978. He served as a deputy district attorney in California at the outset of his career and was subsequently appointed as counsel on the Central Legal Staff of the Nevada Supreme Court before entering private practice in southern California.

Mr. Cahill has specialized in various facets of health care litigation for more than 40 years, including the defense of hospital and physician professional liability claims, managed care contract disputes, network privileges issues and related business torts. His principal clients included Cigna Health Plans, Kaiser-Permanente and Tenet HealthCare. He has completed in excess of 185 trials and binding arbitrations during his career with a combined win-rate of 92% and has been appointed as an arbitrator in more than 350 cases involving complex healthcare issues.

Mr. Cahill is currently Vice President and Associate General Counsel with The Doctors Company and provides legal support to the Claims and Patient Safety Departments, oversees company appellate litigation, researches and submits original content for publication and also lectures frequently around the country on topics related to the health care community. He has a preeminent rating with Martindale-Hubbell, the premiere peer-reviewed attorney rating service in the United States.



# No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it.

Theodore Roosevelt 1858-1919 26th President of United States



### **Objectives**

- Understand the role of a state licensing board in handling consumer complaints against licensed healthcare professionals.
- Discuss three common reasons healthcare practitioners receive a letter from a state licensure board.
- Evaluate my practice to identify opportunities to reduce the risk of being reported to the state licensing board.



### **Medical Board Investigation Changes Your Life**

#### Unprofessional conduct

- Breach of confidence
- Record alteration
- Fraudulent insurance claims
- Misleading advertising
- Arrest, conviction, DUI

#### Office practice issues

- Failure to provide medical record
- Wrongful patient termination
- Failure to sign death certificate
- Patient abandonment





## Medical doctors are licensed and regulated by the Medical Board of California.

To check up on a license or to file a complaint go to

www.mbc.ca.gov,

email: licensecheck@mbc.ca.gov, or call (800) 633-2322



### California Headline News

- Physician facing sexual battery charges arrested at San Francisco International Airport; employee alleged physician touched her sexually against her will
- Doctor arrested for domestic violence during fight with ex-wife's boyfriend
- MD license revoked for allowing unlicensed providers to treat patients in her practice
- University reached \$73 million settlement with seven women related to sexual abuse of patients in student health center
- Physician arrested on allegations he physically forced himself on patient...
   ignored her rejections... held her down to kiss her...
- Physician put on three years probation for negligent treatment and failure to maintain appropriate medical records documentation



### California Headline News

### California physician gets probation for unapproved drug use

San Diego-based physician was sentenced to three years of probation for his yearslong use of unapproved, misbranded cosmetic drugs, the Justice Department said Oct. 20. From November 2016 to October 2020, physician injected patients with unapproved injectable botulinum toxin or lip fillers smuggled into U.S. from Mexico. Along with three years' probation, he must pay a \$201,534 fine and forfeit the \$100,767 he made from the drugs.

SB 1448, known as the **Patient's Right to Know Act of 2018**, requires doctors to provide patients with disclosure that includes probation status, length of probation, end date, and restrictions on the doctor's practice. Disclosure must also include the California Medical Board phone number and details about how to learn more about the doctor's probation.



## Medical Board investigate many types of professional misconduct complaints that include quality of care:

- Misdiagnosis, treatment, medication prescribing, surgical complications
- Office practice: failure to sign a death certificate, refusal to provide medical records, misleading or inappropriate advertising
- Provider impairment: including physical, mental deterioration, alcohol or drug use
- Sexual misconduct
- Unlicensed activity
- Billing fraud
- HIPAA violations



### **Medical Board Triggers**

### This will get the Board's attention:

- Complaints
- Settlements over state reporting limit >\$29,999
- Arrests or conviction
- 805 reports
- Unfavorable media attention



### Senate Bill 815 Effective January 1, 2024

#### **Section 2225.5 Business and Professions Code**

(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

California SB815 | 2023-2024 | Regular Session. LegiScan. Published 2023. Accessed February 4, 2025. https://legiscan.com/CA/text/SB815/id/2818678



### **Medical Board Enforcement Changes**

### Complainant Liaison Unit establishes a new staff unit with following duties

- Respond to communications from public about complaint review and enforcement process
- After complaint is referred to field investigation, assist with coordinating communications between complainant and investigators
- Following disciplinary decision, respond to questions from the complainant regarding appeals process available to disciplined licensee



### Medical Board Enforcement Changes (continued)

- Understanding of Board's enforcement process, including laws and policies
- Evaluate and respond to requests from complainants to review a complaint closure that the complainant believes was made in error

### **Patient Impact Statements**

- After complaint is referred for a field investigation, complainant, patient, or patient representative will have opportunity to provide statement to Board regarding harm they experienced
- Impact statement will be considered by Board's disciplinary panels when adjudicating the relevant case

SB 815 | MBC. www.mbc.ca.gov. https://www.mbc.ca.gov/About/Laws/SB815.aspx



### **Interviews for Quality-of-Care Complaints**



- Before closing a quality-of-care complaint, the Board shall request and conduct an interview with the complainant, patient, or a patient representative
- If request for an interview is not responded to within 30 days, Board may close complaint, if otherwise warranted

SB 815 | MBC. www.mbc.ca.gov. https://www.mbc.ca.gov/About/Laws/SB815.aspx



### Dear Dr...

I am an analyst with the Medical Board of California, complaint submitted regarding your overall prescribin and an effort to prevent delays, I have attached a lett mail requesting information pertaining to this complai

Please do not hesitate to email me if you have any qu

Thank you,



Scott Carver, Associate Govern Medical Board of California - Enfo 2005 Evergreen Street, Suite 120 Sacramento, CA 95815-5401 (916) 263-2207 (desk)













### **DO NOT Respond!**

Contact your malpractice carrier risk manager immediately

For TDC Insureds call:

Kathleen Stillwell, RN, MHSA, MPA, CPHRM

Senior Patient Safety Risk Manager 562-900-3008





#### MEDICAL BOARD OF CALIFORNIA

Central Complaint Unit



Patient:
Control Number:
Date(s) of Service:

Dear Dr.

The Medical Board of California is in receipt of a complaint regarding the care and treatment provided to the above named patient. Pursuant to the provisions of Section 800(c) of the Business and Professions Code, we are providing a comprehensive summary of the complaint filed against you.

The complaint alleges the following: it is alleged that while listening to the patient's chest, Dr. put his stethoscope under the patient's breast and began to "jiggle" the breast up and down. This occurred at both appointments. At the end of the appointment Dr. hugged the patient goodbye.

Pursuant to Section 2220.08(a)(2)(B) of the Business and Professions Code, the Medical Board of California is required to provide you with an opportunity to respond to the allegations noted above. As such, in accordance with the enclosed Authorization for Release of Medical Information form, please provide a written summary of the care and treatment rendered to this patient and a copy of your curriculum vitae. You may also provide any additional expert testimony or literature which you feel would be pertinent to the Board in evaluating this complaint.

The summary and your curriculum vitae are to be provided by June 6, 2016 and sent to:

Elena Contreraz Medical Board of California 2005 Evergreen St., Suite 1200 Sacramento, CA 95815-3831

The Medical Board of California is a regulatory law enforcement agency and the information above is requested for a confidential review. If you should have any questions, please feel free to contact me.

Thank you for your cooperation in this matter.

Sincerely.

Elena Contreraz Consumer Services Analyst 916-263-2446

### **Investigation and Enforcement Costs**

6. <u>INVESTIGATION/ENFORCEMENT COST RECOVERY</u>. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena enforcement, as applicable, in the amount of \$27,809.40 (twenty seven thousand and eight hundred and nine dollars and forty cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.



### 2024 SB 815 Added New Categories of Unprofessional Conduct

- Failure of physician to maintain adequate, accurate records relating to providing services to patients for seven years after last date of service
- Failure by licensee under investigation, without good cause, to attend and participate in interview with Board investigators within 30 calendar days of request
- Any action of licensee, or another person acting on their behalf, intended to cause patient or patient's authorized representative to rescind consent to release patient's medical records to Board or its investigators
- Dissuading, intimidating, or tampering with any person to prevent them from reporting or testifying about a licensee

 ${\tt SB~815~|~MBC.~www.mbc.ca.gov.~https://www.mbc.ca.gov/About/Laws/SB815.aspx}$ 



### **Probation Monitoring Costs**

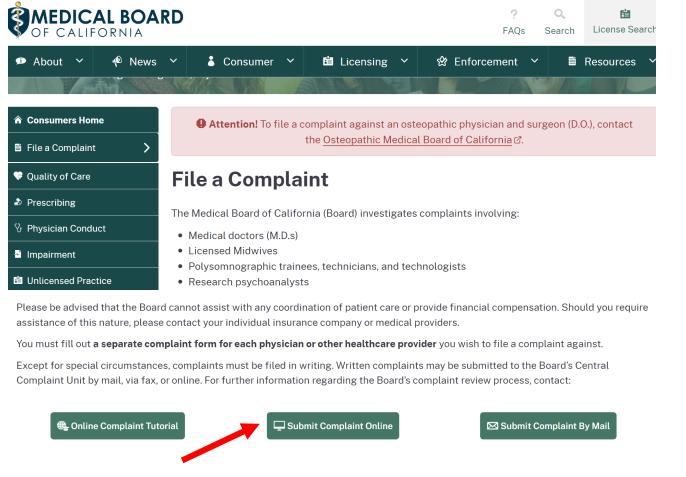
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14. <u>PROBATION MONITORING COSTS</u>. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

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File a Complaint | MBC. www.mbc.ca.gov. https://www.mbc.ca.gov/Consumers/file-a-complaint/



### **Medical Board Online Complaint Form**

NATURE OF COMPLAINT (Check all that apply)
Quality of Care (Misdiagnosis, treatment/medication causing side effects, surgical complications, negligent care, etc.)
Office Practice (Failure to sign death certificate, failure to provide records, misleading advertising, double billing, billing for services not rendered)
Inappropriate Prescribing
Provider Impairment (Under the influence of drugs or alcohol, mental or physical impairment)
Sexual Misconduct
Unlicensed Activity (Aiding and abetting unlicensed practice, unlicensed provider)
Medical Board of California State of California   Business Consumer Services and Housing Agency   Department of Consumer Affairs   071-61 (Rev 01/25)



## Physician and Surgeon Complaints 2023-2024 By Complaint Type and Source

#### Physician and Surgeon Complaints Received by Complaint Type and Source

	Public	Business and Professions Code <sup>1</sup>	Licensee/ Professional Group <sup>2</sup>	Government Agency <sup>3</sup>	Anonymous	Total Type Complaints Received
Fraud	53	2	4	8	9	76
Health and Safety⁴	142	1	6	55	54	258
Non-Jurisdictional <sup>5</sup>	1,021	9	49	51	578	1,708
Gross Negligence/Incompetence <sup>6</sup>	3,506	577	32	468	302	4,885
Personal Conduct <sup>7</sup>	47	39	10	208	54	358
Unprofessional Conduct <sup>8</sup>	922	119	71	689	234	2,034
Unlicensed/Unregistered	118	0	10	100	167	396
Total Source Complaints Received	5,809	747	182	1,579	1,398	9,715

### Administrative and Probation Violation Outcomes by Case Type 2023-2024

	Revocation	Surrender	Probation with Suspension	Probation	Probationary License Issued	Public Reprimand	Other	Total Actions
Gross Negligence/ Incompetence	4	40	0	70	1	49	1	165
Inappropriate Prescribing	0	15	0	20	0	3	1	39
Unlicensed Activity	0	3	0	2	0	2	0	7
Sexual Misconduct	2	11	1	2	0	4	0	20
Mental/Physical Illness	3	14	0	6	0	0	1	24
Self-Abuse of Drugs/Alcohol	2	10	1	26	1	15	0	55
Fraud	3	3	0	2	0	1	0	9
Conviction of a Crime	2	1	0	1	0	2	0	6
Unprofessional Conduct	7	5	0	8	8	21	0	49
Total Administrative Actions	23	102	2	137	10	97	3	374

Medical Board of California. Ca.gov. Published 2024. Accessed October 29, 2024. https://www.mbc.ca.gov/Download/Reports/Annual-Report-2023-2024.pdf.



### **Causes for Disciplinary Action**

- Sexual misconduct
- Conviction of a serious crime
- Substance abuse
- Violating drug laws or unlawful prescribing
- Dishonesty, including filing false or fraudulent claims
- Illegal referrals
- Engaging in kickback schemes
- Knowingly allowing an unlicensed person to practice medicine



Medical Board of California. Ca.gov. Published 2024. Accessed October 29, 2024. http://www.mbc.ca.gov/Publications/Brochures/consumer\_info\_english-web.pdf



### Romantic or Sexual Relationships with Patients

A physician must terminate the patient-physician relationship before initiating a dating, romantic or sexual relationship with a patient

AMA Code of Medical Ethics Opinion 9.1.1

Romantic or Sexual Relationships with Patients | AMA-Code. Ama-assn.org. Published 2024. Accessed October 29, 2024. http://www.ama-assn.org/delivering-care/romantic-or-sexual-relationships-patients



### Can You Lose Your License If You Get a DUI?

#### Physician could face severe consequences

- If you fail to properly report your DUI to the medical board, you risk losing your medical license
- If you do not cooperate with the board's investigation, you could lose your medical license
- Possible consequences include:
  - Fines, penalties, sanctions, public reprimand, probation, suspension, revocation, surrender of license

### **Critical First Step: Notify Your Malpractice Carrier**

### **Obtain Experienced Legal Counsel**

- Attorney will request copy of the board discovery file through document production request
- Understand and focus on key issues, not just the accusation
- There are limited discovery rights





### Defense Response



#### **Procedural**

- Attorney prepares response
- On attorney letterhead
- Written and signed by attorney
- 90 percent of matters are closed at this level



### It's Your License

#### Remember...

- Never talk or meet with Medical Board investigator without legal guidance
- Do not discuss a Medical Board inquiry with staff and colleagues
- Minor complaints can snowball
- Have legal counsel at meetings with Medical Board
- Medical Board is educating consumers to alert Board about their right to complain and report physicians





### Strategies to Mitigate Your Risk



### Strategies To Mitigate Risk of a Medical Board Complaint

- Recognize some unhappy patients may retaliate against you by filing a complaint to the Medical or licensing Board
- Focus on the patient's experience: consider a follow up call or letter
- Ensure patient's medical record documents what happened in office and on phone
- Implement medical chaperone policy for sensitive patient examinations
- Implement and enforce a zero-tolerance harassment policy
- Understand potential repercussions of a complaint and licensing board investigation



### Your First Step...

After receiving a letter from the Medical Board contact your Patient Safety Risk Manager for guidance.

- 1. TDC will appoint an attorney who specializes in Medical Board issues to assist you with the response.
- 2. Never speak with a Medical Board investigator, on the phone or in person, without the presence of legal counsel.
  - Physicians report being approached, in a public place often near their office or home or receiving a call on their cellphone
- 3. Under no circumstances should you discuss or answer any questions from the Medical Board until you have your assigned legal counsel with you, in person or on the phone.



### Medical Board Expert Reviewer Shortage

- Registration is open for expert reviewer training
- Attend an expert reviewer training event
- The expert reviewer opinion is the most critical component of the Board's investigative process
- Training will educate you in preparing a legally sound medical opinion and to present testimony
- Compensation: \$150 per hour for case
   \$250 per hour for expert testimony, up to \$2000 per day

Expert Reviewer Training | Medical Board of California. Ca.gov. Published 2020. Accessed February 4, 2025. https://www.mbc.ca.gov/Enforcement/Expert-Reviewer-Program.aspx



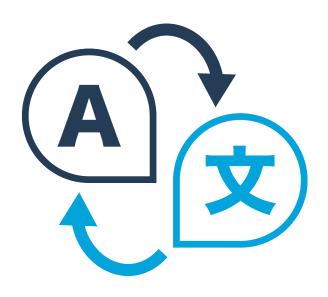
### Effective January 1, 2022 CA Business & Professions Code 2190.1

- Accredited CME courses must meet standards for inclusion of Cultural Linguistic Competence (CLC) and implicit bias (IB)
- Standards were developed by the California Medical Association, at the direction of the California Medical Board, for all CME accrediting organizations

CMA announces new standards for cultural linguistic competency and implicit bias in CME CMADocs. Published 2021. https://www.cmadocs.org/newsroom/news/view/ArticleId/49479/CMA-announces-new-standards-for-cultural-linguistic-competency-and-implicit-bias-in-CME



### **Cultural Linguistic Competency**



### Cultural Linguistic Competency Definition

The ability and readiness of health care providers and organizations to humbly and respectfully demonstrate, effectively communicate, and tailor delivery of care to patients with diverse values, beliefs, identities, and behaviors, in order to meet social, cultural and linguistic needs as it relates to patient health.

California Medical Association. *Cultural Linguistic Competency & Implicit Bias Standards*.; 2021. https://www.cmadocs.org/Portals/CMA/CmeStandardsWebinar\_1.pdf.





### **Implicit Bias**

### **Implicit Bias Definition**

The attitudes, stereotypes, and feelings, either positive or negative, that affect our understanding, actions and decisions without conscious knowledge or control.

Implicit bias is a universal phenomenon. When negative, implicit bias often contributes to unequal treatment and disparities in diagnosis, treatment decisions, levels of care and health care outcomes of people based on race, ethnicity, gender identity, sexual orientation, age, disability and other characteristics.



Continuing Medical Education Cultural Linguistic Competency & Implicit Bias Standards. https://www.cmadocs.org/Portals/CMA/CmeStandardsWebinar\_1.pdf



### **TDC** Resources

- <u>Curbside Consultations: Patient Safety and Legal Risks</u>
   Richard Cahill, JD, Vice President, Associate General Counsel, The Doctors Company
  - Informal consultations are tempting to busy healthcare practitioners because they are convenient and speedy, but these situations also include inherent liability risks for the consulting practitioner.
- Documentation Strategies for Open Notes in Healthcare: The Cures Act
  Richard Cahill, JD, Vice President, Associate General Counsel, The Doctors Company and Kathleen Stillwell, RN,
  MHSA, MPA, CPHRM, Senior Patient Safety Risk Manager, The Doctors Company
- <u>Sexual Harassment Allegations in Healthcare: Rising Risks</u>
  Richard Cahill, JD, Vice President, Associate General Counsel, TDC
- Healthcare practitioners are not immune from the growing number of reported incidents of alleged sexual harassment in the workplace. This article provides risk mitigation strategies.
- With Law Enforcement, Be Courteous but Follow HIPAA Rules
   With violent crime on the rise, especially in inner-city metropolitan areas, hospital EDs are experiencing more interactions with law enforcement personnel, says Richard F. Cahill, JD, Vice President and Associate General Counsel with The Doctors Company.
- TDC Effective Patient Communication Guide
  - https://www.thedoctors.com/articles/effective-patient-communication-strategies-for-challengingsituations/



### A man who is his own lawyer has a fool for a client.

**1814 Proverb** 



### IMPORTANT MESSAGE! New Process to Claim CME/CE Credit

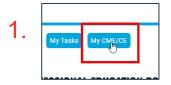
The Doctors Company's new CME platform, CloudCME, will archive your CME/CE certificates and provide 24/7 access to your historical CME/CE certificates. You must first set up an account with your email address, you may want to use your personal email, and password. Then you will be able to log in and complete your evaluation to claim credit.

1. Click on/enter thedoctors.cloud-cme.com in browser.



### Please sign-in and complete the evaluation by 5 pm July 10, 2025, to obtain your Certificate of Participation.

- Log into CloudCME either through the app or the portal <a href="https://thedoctors.cloud-cme.com/default.aspx">https://thedoctors.cloud-cme.com/default.aspx</a>
- Click on My CME/CE
- Click Claim Credit
- Enter Activity Code 4090
- Click Submit Activity ID
- Follow the onscreen directions to continue to claim credit.





Self-Claim Credits

To claim credits for an activity, enter the Activity ID (number) below and click Verify Activity ID.





Our Mission is to Advance, Protect, and Reward the Practice of Good Medicine.

We're Taking the Mal Out of Malpractice.

Thank you!

Kathleen Stillwell, MPA/HSA,RN,CPHRM kstillwell@thedoctors.com
800-421-2368 ext. 4254
Cell 562-900-3008



