Role of State Boards

State Boards’ administrative staff process initial, renewal and reactivation applications.
State Boards’ administrative responsibilities include randomly auditing continuing education requirements.

TIPS
• Disclose ALL out of an abundance of caution.
• Renew as early as possible.
• Licensee responsible for ensuring license was renewed!

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS (BPOA)

Medical Board and Osteopathic Board are among the 29 boards and commissions responsible for licensing individual professionals located within BPOA, which provides administrative, technical and legal support.

• The Professional Compliance Office (PCO) is the intake unit within BPOA that receives complaints about licensees. PCO reviews complaint to determine whether an investigation is warranted.
• In event that additional medical records or information is required, PCO will coordinate the information request with an investigator from the Bureau of Enforcement and Inspection (BEI) – may be your first notice of a pending investigation.
Complaint and Investigation

- Complaints received from patients, co-workers, insurance companies, law enforcement, other agencies, MCARE, Act 6 of 2018.
- Reviewed by PCO – many closed without any further action.
- If necessary, assigned to BEI investigator and attorney within prosecution division of Dept of State.
- Interview of complainant, witnesses, respondent/licensee (Respondent has NO obligation to submit to interview).
- Patient records – consent of patient or subpoena.
- Investigative files, including complaints, are confidential and protected by statute.

TIP: Consult legal counsel PRIOR to interview.

DISCIPLINARY PROCESS

- Investigation can lead to three results:
  1. No action by the Board (most common!)
  2. Warning Letter – Closes case, no public discipline.
  3. Filing of an Order to Show Cause (no statute of limitations)
- Licensee has 30 days to file an Answer
  - May enter into a Consent Agreement or
  - Proceed to Hearing (conducted by Hearing Examiner)
- Board renders final decision

THE NUMBERS

Most complaints to the Board do not result in the initiation of the disciplinary process.
The Board of Medicine received approximately 4,423 complaints in FY18/19
- The Board of Medicine imposed 241 final sanctions in FY18/19 including 11 revocations; 39 voluntary surrenders in lieu of discipline; 24 suspensions; 26 probations
- 310 Warning letters issued in FY18/19
REPORTING REQUIREMENTS
ACT 6 OF 2018

Act 6 of 2018, 63 P.S. § 2202.1, imposed new, more stringent reporting requirements on all BPOA licensees:

• Must report all disciplinary actions from other jurisdictions in writing within thirty (30) days.
• Must report in writing a finding or verdict of guilt, an admission of guilt, a nolo contendere plea, probation without verdict, a disposition in lieu of trial or an ARD related to ANY felony or misdemeanor offense in a criminal proceeding within thirty (30) days.
• Failure to report is a separate basis of discipline.

JNET is already reporting you.

REPORTING REQUIREMENTS of the MCARE Act

• Must report the filing of a medical professional liability action against you to the State Board
• Report within 60 days of “Notice of a complaint”
• Obligation is yours not your employer’s or your attorney’s
• Reporting requirement also applies to disciplinary action, arrest/sentencing

What Happens after that Professional Liability Complaint is sent to the Board?

• Most – nothing (letter)
• Attorney General’s office may investigate
• Situations most likely to raise a red flag:
  – Wrong site surgery
  – Unexpected death
  – Multiple cases, especially if similar facts
Voluntary Recovery Program (VRP)
The Professional Health Monitoring Program (PHMP), within BPOA, administers the Voluntary Recovery Program (VRP), which is a non-public, non-disciplinary monitoring program available to licensees who are impaired by a substance use disorder or other mental/physical impairment.

Invitation to Undergo Voluntary Evaluation
VRP Triggers include:
• DUI arrest (most common)
• Report from Employers, Co-Workers, “Peers or Colleagues”
• Colleagues are likely mandatory reporters
• Required to report other “professionals” if they have “substantial evidence” the person is suffering from an active addictive disease for which they are not receiving treatment.

Agree to VRP Evaluation
• If evaluation (for which licensee pays – approx. $500) results in a finding of no impairment, case closed.
• If impairment determined, opportunity to enroll in the 36-month VRP monitoring program.
• Successful completion results in no public disciplinary record, no report to the National Practitioners Data Bank.
**VRP**

Terms and Conditions include:
- Random drug and alcohol screens
- Participation in 12-step program
- Notification of employer
- Participant to pay costs
- Thirty-six months
- Successful completion means no public or disciplinary record.

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**If VRP Evaluation Declined**

- Commonwealth has the authority to file a Petition to Compel Mental and Physical Examination with Board-selected physician (Board pays for evaluation).
- No impairment – case closed, no record.
- Impairment will result in filing of Order to Show Cause and initiation of formal disciplinary action – adverse outcome would be public, disciplinary and reportable.
- Once VRP declined – NO going back to it!

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**COMMON DISCIPLINARY ISSUES**

**BOUNDARY ISSUES**
- Sexual exploitation of current or former patients prohibited
- Sexual behavior with current patient prohibited
- Sexual behavior with former patient treated for mental health disorder prohibited for two years

Recognize the danger of social media – Facebook, Emails, Texts, Pages, Calls lead to SUSPENSION!

Examples
- Psychiatrist – pager to telephone number to sexual relationship to 3-year suspension.
- Psychiatrist – 1,000s of emails with minor patient of sexual nature to indefinite suspension followed by 3 years probation.

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DISCIPLINARY ISSUES CONT.

Be aware of patient’s sensitivities during examinations – Protect yourself!
- Incidental conduct can lead to complaints or to law enforcement inquiries.

TREATING FAMILY MEMBERS
- Not prohibited.
- Must comply with normal record-keeping requirements.
- Treating outside normal scope of practice may raise red flag.

DISCIPLINARY ISSUES CONT.

RECIPROCAL DISCIPLINE
- A physician’s discipline in another state is grounds for discipline in Pennsylvania.
- Reciprocal discipline forms majority of discipline cases before Pennsylvania boards.
- Physician retains property right to license even if expired and, therefore, subject to discipline in many states.

HEALTH CARE FRAUD
If you did not do it, do not bill it.
Even a misdemeanor health care fraud conviction can result in discipline.

MALPRACTICE
Failing to provide medical services at the accepted standard of care grounds for discipline.
- Damages not required.
  - No statute of limitations. (Board just resolved an Order to Show Cause filed in 2009 based on a 2012 malpractice claim)
  - Rare.
  TIP: A physician has right to respond to data bank report.
SANCTIONS

Board has wide range of sanctions:
- Civil penalty
- Public reprimand
- Probation
- Suspension
- Revocation

COLLATERAL CONSEQUENCES of Board discipline:

PROBATION will result in loss of credentialing with most network insurance providers and loss of hospital privileges!

STATUS OF TELEMEDICINE IN PENNSYLVANIA

The General Assembly has not passed any legislation regulating practice of telemedicine.
Board has not promulgated any regulations regarding telemedicine.

To treat a patient in Pennsylvania, physician must be licensed in Pennsylvania regardless of doctor’s location and abide by Pennsylvania law and regulations.

TEMPORARY SUSPENSION

Boards have the authority to temporarily suspend a license of licensee who is an immediate and clear danger.
- Temporary suspension can be granted without hearing on petition to the Board's probably cause screening commission.
- Within 30 days of a temporary suspension order, licensee entitled to a preliminary hearing.
- If hearing examiner determines that there is not a prima facie case, the suspended license shall be immediately restored.
- The temporary suspension shall remain in effect until vacated by the board, but no longer than 180 days.
AUTOMATIC SUSPENSIONS

Mandatory Automatic Suspension on
(1) Commitment because of mental incompetence; or
(2) Conviction of felony under PA Drug Act or laws of another jurisdiction which would be a felony under PA Drug Act

– reinstatement after felony drug conviction suspension only if significant progress in personal rehabilitation.

RE instatement PROCESS

• Petition for Reinstatement, if reinstatement after Board Order, ensure Petition and attachments address what’s required by Order for reinstatement.
• Common major issues – rehabilitation AND current competency.
• Reinstatement after active suspension – likely will result in reinstatement to probation.
• Reinstatement from probation to unrestricted/non-probation status.

Protecting Your License When Working with Advanced Practice Providers (APPs)

• What APPs are we talking about?
• Why is this being included in this presentation?
  – Increase in claims involving APPs and their supervisors/collaborators
  – Scope of practice is a moving target
  – Important to understand your obligations
Working with Nurse Practitioners

- What is collaboration?
  - “Process” which includes
    - Immediate availability of physician
    - Predetermined plan for emergencies
    - Physician available on regular basis for
      - Referrals
      - Review of standards of medical practice
      - Consultation
      - Chart review
      - Drug and other practice protocols
      - Updating in medical dx and tx
      - Co-signing records “when necessary to document accountability of both parties”

Working with NPs: The Collaborative Agreement

- Written, signed agreement between NP and collaborating physician
- Agree to the “details of their collaboration”
  - Immediate availability directly or by phone
  - Plan for emergency services
  - Availability for referrals
  - How often/how many charts will be reviewed?
  - When will charts be co-signed?
  - Circumstances under which physician will be consulted

Statute/Regulations re: Collaborating Physician Obligations

- None (other than cited above)
- NP are regulated by State Board of Nursing
- Standard of Care
- Potential consequences of lack of adherence:
  - Civil litigation
  - Licensure implications
Working with Physician Assistants

• PA “practices medicine with physician supervision”
• PA may “perform those duties…as directed by the supervising physician”
• PA may “provide any medical services directed by supervising physician” when
  – Within PA’s skills, training & experience;
  – Is a component of physician’s practice
  – Is included in the written agreement; and
  – Amount of supervision is “in keeping with accepted standards of medical practice.”

Working with PAs (cont.)

• The Written Agreement
  – Signed by PA/each supervising physician (designate one primary)
  – Describe functions to be delegated to PA
  – Describe manner of supervision, including “frequency of personal contact”
  – Address co-signature
  – ID locations

Working with PAs (cont.)

• Responsibility of Primary Supervising Physician
  – Monitor compliance of all
  – Arrange for substitute supervision
  – See patients
    • “as needed” based upon “medical condition and prognosis” or
    • upon request of patient
Working with PAs (cont.)

- Responsibilities of Supervising Physicians
  - Patient record review/countersign requirements:
    - PA's first 12 mos. of practice: all
    - PA's first 12 mos. in new specialty: all
    - PA's first 6 mos.
      - In same specialty under approved supervisor
      - Unless
        - PA has multiple approved physicians and
        - Practiced under supervision of at least one
          for 6 mos.

Responsibility of Supervising Physician (cont.)

- “Accept full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patients.”

Practice TIPS

- Be realistic
- Do what you say you are going to do
  - Chart reviews
  - Countersign (not rubber stamp)
- Have a robust internal roundtable process for sharing of new medical developments, implementation of new protocols
- Use and document meaningful performance reviews.
Practice TIPS cont.

• When addressing scope of practice
  • Use flexible language
  • Guidelines
• Review collaborative agreements periodically
• Monitor changes in law
  — HB 100/SB 25
• Hospitals – make sure you have a copy of agreement for credentialing purposes
• When making hiring decisions, understand statutory and regulatory requirements