

**DEMYSTIFYING THE STATE BOARD OF MEDICINE**

---

September 13, 2019

Presented By:  
Wesley Rish, Esq.  
Katherine B. Kravitz, Esq.

---

---

---

---

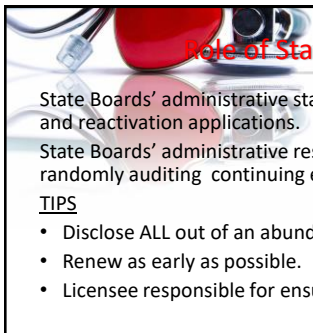
---

---

---

---

1



**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!

---

---

---

---

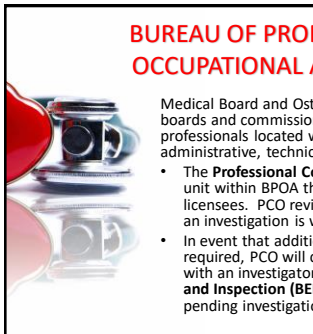
---

---

---

---

2



**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.

---

---

---

---

---

---

---

---

3

### 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

---

---

---

---

---

---

---

---

4

### 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

---

---

---

---

---

---

---

---

5

### 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

---

---

---

---

---

---

---

---

6

### 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**.
- Report at <https://www.pals.pa.gov/#/page/default>.
- Failure to report is a separate basis of discipline.

JNET is already reporting you.

---

---

---

---

---

---

---

---

7

### 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

---

---

---

---

---

---

---

---

8

### 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

---

---

---

---


---

---

---

---

9



**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.

10

---

---

---


---

---

---

---

---



**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.

11

---

---

---


---

---

---

---

---



**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.

12

---

---

---


---

---

---

---

---



**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.**

13

---

---

---


---

---

---

---

---



**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!

14

---

---

---


---

---

---

---

---



**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

15

---

---

---


---

---

---

---

---



**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.

16

---

---

---


---

---

---

---

---



**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.

17

---

---

---


---

---

---

---

---



**DISCIPLINARY ISSUES CONT.**

**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 2019 based on a 2012 malpractice claim)
- Rare.

**TIP:** A physician has right to respond to data bank report.

18

---

---

---


---

---

---

---

---



**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!

---

---

---

---


---

---

---

---

19



**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.

---

---

---

---


---

---

---

---

20



**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.

---

---

---

---

---

---

---

---

21

### AUTOMATIC SUSPENSIONS



- Mandatory Automatic Suspension on
- (1) Commitment because of mental incompetency; 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.

---

---

---

---

---

---

---

---

22

### REINSTATEMENT 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.

---

---

---

---

---

---

---

---

23

### 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

---

---

---

---

---


---

---

---

24





**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”

---

---

---

---


---

---

---

---

25



**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

---

---

---

---


---

---

---

---

26



**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

---

---

---

---


---

---

---

---

27



### Working with Physician Assistants

- PA “practices medicine w/ 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.”

28

---

---

---


---

---

---

---

---



### 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

29

---

---

---


---

---

---

---

---



### 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

30

---

---

---


---

---

---

---

---



**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.

31

---

---

---


---

---

---

---

---



**Working with PAs (cont.)**

- 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.”***

32

---

---

---


---

---

---

---

---



**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.

33

---

---

---


---

---

---

---

---



**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

34

---

---

---


---

---

---

---

---



**QUESTIONS?**

35

---

---

---


---

---

---

---

---



**THANK YOU!**

<p>WESLEY J. RISH, ESQ. RISH LAW OFFICES 2431 N. SECOND STREET, STE 201 HARRISBURG, PA 17110 (717) 234-6200 (P) (717) 707-3088 (C) <a href="mailto:WESLEY@RISHLAWOFFICE.COM">WESLEY@RISHLAWOFFICE.COM</a></p>	<p>KATHERINE B. KRAVITZ, ESQ. BARLEY SNYDER 126 EAST KING STREET LANCASTER, PA 17602 (717) 399-1533 (P) (717) 435-2479 (C) <a href="mailto:KKRAVITZ@BARLEY.COM">KKRAVITZ@BARLEY.COM</a></p>
---	---

36

---

---

---

---

---

---

---

---