

Medical Board Probes: First of All—Call a Lawyer

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PASADENA, CALIF. — Your state medical board requests medical and billing records from your office.

You are advised to appear for an interview with state medical board representatives.

Investigators from the state medical board show up in your waiting room and demand to inspect your office.

What should you do? In all three instances, the answer is the same.

“Call a lawyer,” advised Peter R. Osinoff, a Los Angeles lawyer who specializes in defending physicians in medical malpractice cases and before the Medical Board of California.

Physicians who believe they’ve done nothing wrong often think they will have no problem dealing with questions from medical board investigators. But legal representation is critical, even for preliminary

investigations that may be prompted by a call from a mentally imbalanced patient or a former staff member with an axe to grind, Mr. Osinoff asserted at the annual meeting of the Obstetrical and Gynecological Assembly of Southern California.

The physician who is thinking, “There really is nothing to this case!” may very well be right, said Mr. Osinoff. However, going it alone “is like walking into the police station as the prime suspect in a case. You would never think of doing that with-

out a lawyer by your side, well prepared,” he said.

Physician oversight boards operate differently in every state, following independent statutes and proceeding with investigations based on state-based criteria, but there are common themes.

Medical oversight boards generally fall within consumer protection divisions of state government. Accordingly, they are often looking for patterns of conduct that might present a danger to patients, rather than focusing on an isolated error in a lengthy and well-conducted career.

However, a surprising number of medical board cases are based on the care and



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treatment of a single patient. Dishonesty, illegal conduct, and psychological or physical problems often generate interest within state boards. Finally, in quality of care cases, boards look for such things as gross negligence, an “extreme departure” from standard of care, or repeated negligent acts.

As in medical malpractice cases, inadequate record keeping can be a serious problem for a physician under investigation, said Mr. Osinoff.

For obstetricians and gynecologists, red-flag incidents can be grouped under the heading, “Sex, Lies, and Videotape.”

Sexual offenses may involve overt conduct, such as having sex with patients, but can also be interpreted as including inappropriate conversations or violating professional boundaries.

Mr. Osinoff strongly recommended that physicians “avoid the danger zone,” which could mean something as simple as doing a special favor for a patient or meeting her outside the office.

Lies often prompt action from medical boards. Coding errors or revisions on charts may be “interpreted in the most sinister way.” A history of aboveboard record keeping and honesty in dealing with patients, staff, and insurers will help to protect the physician.

Videotape most often comes into play in obstetric cases, when the excited father films what may be interpreted as “too vigorous” use of forceps or some other event that may or may not represent any medical error. Some hospitals currently forbid videotaping during labor and delivery.

Mr. Osinoff said he is frequently asked whether a physician should report a medical board investigation to his or her insurance carrier. In general, the answer is yes; in fact, some insurance carriers can invalidate coverage if they are not notified in a timely manner, and most policies include coverage of costs associated with an investigation.

However, he repeated his basic advice. “Call a lawyer first,” he said. ■



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