

When Facing a Medical Board Probe, First and Always, 'Call a Lawyer'

BY BETSY BATES
Los Angeles Bureau

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, Mr. Osinoff said.

"I want to assure you that the vast majority of cases [in California] are resolved without an accusation," once the facts are known.

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 without 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.



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MR. OSINOFF

However, there are common themes. Medical oversight boards generally fall within consumer protection divisions of state government. Accordingly, they often look 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. Yet a surprising number of medical board cases are based on the care and treatment of a single patient.

Dishonesty, illegal conduct, and psychological or physical problems often generate interest among state boards. Finally, in quality of care cases, boards look for such things as gross negligence or 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 un-

der investigation, Mr. Osinoff said.

One category of red-flag incidents can be grouped as "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.

Nonetheless, he repeated his basic advice: "Call a lawyer first," he said. ■

Lawmakers Toss Around Health Care Reform Ideas

WASHINGTON — Health care reform would be nice. That seemed to be the message from politicians speaking at a national advocacy conference sponsored by the American Medical Association.

Democrats and Republicans told the audience of politically active physicians about their ideas for addressing problems with Medicare reimbursement, the medical liability system, and, more generally, a health care system that is failing both physicians and patients.

"If our health care system doesn't work for doctors, it doesn't work," said Sen. Hillary Clinton (D-N.Y.). She drew resounding applause from the physicians when she proposed that Congress stop legislating Medicare reimbursement freezes and replace the sustainable growth rate (SGR) formula with something better.

Physicians at the meeting heard similar rhetoric from other lawmakers. "Most of us don't want to go through this annual ritual," said Rep. Nathan Deal (R-Ga.). However, he also said that fixes are expensive and doctors shouldn't expect them to happen this year.

Rep. Edward Markey (D-Mass.) proposed that Congress form a task force to review the SGR over a 2-year period and increase physician reimbursement 5% a year in the interim.

Lawmakers from both par-

ties said physicians need relief from skyrocketing medical liability premiums in many states.

Republicans continue to push for caps on noneconomic damages in medical malpractice lawsuits, an approach supported by states in which similar caps have been linked to slower increases in liability premiums. Democrats oppose caps because caps put limits on legitimate lawsuits.

"Caps don't get to the heart of the problem," said Sen. Clinton. Instead, Congress needs to bridge the gap between medical liability reform and error-reporting legislation. She cited the University of Michigan's "Sorry Works!" initiative—a program that encourages doctors and their insurers to be honest when mistakes happen, offer apologies, and provide compensation up front to patients and their attorneys—which has cut liability costs, freeing up new money to improve systems that can reduce errors.

Democrats and Republicans demonstrated a similar divide on the uninsured. Rep. Markey said the government should expand Medicare, Medicaid, and the Federal Employees Health Benefits program to include more of the uninsured. Rep. Tom Price (R-Ga.) said the last thing government should do is take over the responsibility for providing health care.

—Joel B. Finkelstein

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