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Managing the Multiple Layers of Physician Oversight

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Managing the Multiple Layers of Physician Oversight

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Health Care Providers Operate in a Complex and Overlapping Regulatory Environment

- Federal
 - CMS
 - Department of Justice
 - DEA
- State
 - Medical Board of California (MBC)
 - California department of Public Health (CDPH)
 - Tort System
 - Criminal Justice System- Attorney General

Health Care Providers Operate in a Complex and Overlapping Regulatory Environment (cont'd)

- Providers
 - Hospitals
 - *Smith v. Selma*
 - Physician Groups
- Associations
 - ABMS
 - AMA
 - Other Specialty Group
- Health Plans

Medical Staff Role

- Evaluation of Significance of Action by Regulatory Bodies
 - Medical Staff Bylaws Contain Provisions Which Allow for Action Based on Discipline or Restrictions
 - MBC
 - DEA
 - Conviction of a Felony
 - Other Licenses or Certification
 - Is Physician “In Good Standing”?
 - Questions
 - How to Interpret Actions?
 - Is a Conclusion by a Court, Agency or Entity Determinative of the question of whether Corrective Action is Required?
 - When does duty for independent investigation arise?

Medical Staff Role (cont'd)

- Response to Requests for Information from Regulatory Agencies
 - Subpoenas
 - Protection of Privileges - Evidence Code § 1157
 - Sharing Agreements – CA B&P Code § 809.08



Medical Board of California (MBC)

- Enforcement Division - California Business & Professions Code Sections 2200 et seq
 - Responsibilities
 - Receive, Review and Investigate Complaints
 - Review Proposed Decisions - Can Adopt or Non-Adopt
 - Stipulated
 - Decisions following administrative hearings
 - Carry out disciplinary actions pursuant to final decisions
 - Administer probation program

Medical Board of California (MBC) (cont'd)

– MBC Receives Information From

- Complaints - any source
- Mandatory Reports
 - Death in Outpatient Surgery Setting – CA B&P Code § 2240(A)
 - Peer Review/Health Facility Reporting - 805
 - Insurer's Report of Settlement, Judgment, Arbitration Award – CA B&P Code § 801.01
 - Report of Charge of Felony, or Conviction of Felony or Misdemeanor

Medical Board of California (MBC) (cont'd)

– Investigations

- Complaints or reports of violations of Medical Practice Act
- Unprofessional Conduct is Defined in CA B&P Code § 2234 as:
 - Gross Negligence - defined as “the lack of even scant care or an extreme departure from the ordinary standard of conduct.” (*Kearl v. Bd. of Med. Quality Assurance* (1986) 189 Cal. App. 3d 1040, 1052.)
 - Repeated acts of Negligence - simple negligence only
 - Incompetence
 - Commission of any act of dishonesty or corruption that is substantially related to the qualifications, functions or duties of a physician and surgeon.
 - Any action or conduct that would have warranted the denial of a license

Medical Board of California (MBC) (cont'd)

- Potential Actions by the MBC - See Manual of Model Orders and Disciplinary Guidelines
 - Nothing
 - Public Letter of Reprimand
 - Citation and Fine
 - Suspension
 - » includes Interim Suspension Order
 - Placing Physician on Probation- with conditions such as:
 - » psychiatric treatment
 - » additional clinical training or education
 - » practicing under supervision
 - » evaluation by organizations
 - Restricting or Limiting Scope or Type of Practice
 - Revocation

Medical Board of California (MBC) (cont'd)

- Process

- Interview of physician
- Review of Medical Records
 - » MBC has Administrative Subpoena Power
 - » *Arnett v. Del Cielo* - Evidence Code § 1157 does not apply
- Attorney General's Office then decides whether to:
 - » Close
 - » Public Letter of Reprimand
 - » Accusation- Physician Can Challenge in Administrative Hearing Before Administrative Law Judge
 - ❖ Settlement is by Stipulated Decision and Order
 - ❖ Decision of ALJ
 - ❖ BOTH must be adopted by Medical Board
 - ❖ Both Stipulated Decisions and ALJ Discipline will be phrased as Physician License is "Revoked, Stayed by Probation..."
- Action is Not Final Until MBC Issues Effective Date

Medical Board of California (MBC) (cont'd)

– Physician Responsibility to Medical Staff

- Report any Action Taken By MBC
- Comply with any conditions of probation including restrictions
- Questions regarding hospital/Med Staff obligation to provide proctors/monitors?



Civil Actions Against Physicians and Hospitals

- Basics of Civil Litigation
 - Complaint
 - Causes of Action
 - Causation
 - Damages
 - Answer
 - Denial
 - Affirmative Defenses
 - Discovery
 - Interrogatories
 - Depositions



Civil Actions Against Physicians and Hospitals (cont'd)

- Settlement vs. Trial

- Settlement

- Any settlement over \$30K must be reported to the MBC – CA Bus & Prof Code § 801.01 (a)(1).
 - Any settlement must be reported to National Practitioner Data Bank - 45 CFR § 60.5; 60.7.
 - All settlements will contain release denying liability
 - Settlement itself may or may not indicate issue with quality

- Trial

- Any judgment in civil case must be reported – CA Bus & Prof Code § 801.01 (a)(1).



Civil Actions Against Physicians and Hospitals (cont'd)

- Actions Against Physicians

- Causes of Action

- Negligence
 - Lack of Informed Consent
 - Fraud/Misrepresentation

- Causation

- Was physician's conduct a substantial factor in causing the harm?
 - Physician can prevail at trial even if jury concludes care was below standard of care.



Civil Actions Against Physicians and Hospitals (cont'd)

- Actions against hospitals for failure to adequately perform oversight of physician quality care in hospital
 - *Elam v. College Park Hospital* – Corporate negligence
 - Hospital defense counsel **must** understand Evidence Code § 1157
 - Hospital will need to decide if going to asset § 1157
 - Overlapping actions – JRC + civil trial

