Why Do Physicians Get in Trouble?
An Analysis of Rhode Island Medical Board Reported Complaints and Resolutions

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Introduction

State Medical Licensing Boards seek to ensure that physicians have the appropriate tools to provide high quality, patient-centered care in a safe environment. With this goal in mind, State Medical Boards strive to enforce regulations in clinical practice, improve the administrative process and integrate information to improve the efficiency and quality of patient care. This issue raises the issue of, "Why do physician's get in trouble?" The answer is not a simple one because each complaint reviewed by the Board of Medical Licensure and Discipline is unique. Physicians must be aware of the jurisdictional regulations of the Board, understand the origination and jurisdiction of the Board, the complaint process, the data representing "misconduct," and their resolutions.

Origination and National Regulation of Medical Boards

The authority to regulate the practice of medicine is established for the states in the 10th Amendment of the US Constitution. Since each state is responsible for the regulation of its own medial practitioners, each state established has a its own unique set of laws and standards. Interstate diversity continued until the states recognized the need to establish a national organization dedicated to unifying the various standards for professional licensing and conduct. This led to the creation of the **Federation of State Medical Boards (FSMB)** in 1912 to serve as a national resource for state medical boards' mission to protect the public. The FSMB eventually began to revolutionize the practice of medicine in the United States, by prompting the creation of the **Medical Practice Act (MPA)** in 1956. The MPA is a set of guidelines that broadly defines the practice of medicine and delegates the authority to enforce the law to each state medical board. All states have adopted the MPA guidelines to create or amend existing laws for preservation of public interest, and to maintain high professional standards in the practice of medicine. This incorporation of the MPA by the various states and regulatory bodies has strengthened cooperation among state medical boards and facilitated collaborative efforts with other entities. The FSMB continues to represent all 70 medical boards of the United States and its territories, including the 14 state boards of osteopathic medicine.

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The Rhode Island Board of Medical Licensure and Discipline (Board)

The Rhode Island Department of Health was established more than one hundred years ago. However, the **Board of Medical Licensure and Discipline (the Board)** and Discipline and the laws governing the practice of medicine, pursuant to General Laws Chapter 5-37, went into effect in 1895. For the next ninety years, the Board has enforced the law in a conservative manner, only seeking to amend the law when necessary and/or desirable. However, in an effort to elevate professional standards of physicians and improve public involvement, a re-organization of the Board was demanded in 1986, resulting in the current Board.

The current Board is unique as compared to other Boards throughout the nation due to its focus on representing both the interests of physicians and non-physicians in the community. The Board has twelve members, comprising of both physicians and non-physicians and it was the first state board to require half of its members to be non-physicians. The Board is also the only board in the nation to be chaired by a State Director of Health. This diversity gives rise to varied perspectives and knowledge that can desirably improve the Board's ability to make decisions regarding physician misconduct and their grounds for disciplinary action. This ultimately allows the Board to protect the interests of the public from the improper, incompetent, unlawful, fraudulent and/or deceptive practice of medicine.

Complaint Review Process

All medical complaints against Rhode Island physicians fall within the jurisdiction of the Board. The complaint review process begins with the receipt of a written complaint by the Department of Health. A complaint can originate from a variety of sources including, but not limited to, patients, family members of patients, other licensed professionals and hospitals. At inception, all complaints are confidential, and are reviewed by a small Investigative Committee to determine whether the complaint warrants further investigation by the Board (see General Laws § 5-37-5.2). Complaints that warrant further investigation are assigned to an investigator who collects information on the case and then notifies the physician of the complaint and the pending investigation. As part of this notification, the physician is always given a reasonable opportunity to respond to the complaint in writing and to present additional evidence. When all relevant information has been gathered, the investigator submits his or her recommendation to the Board, along with pertinent facts regarding the complaint for the Board to

make a decision on the case. The Board's members review all findings of fact and law, and a majority vote must exist for an individual to be found guilty of unprofessional conduct, pursuant to General Laws § 5-37-5.1). Once unprofessional conduct is found, the Board has the discretion to administer a variety of sanctions, ranging from reprimand of the physician to indefinite revocation of their license (see General Laws § 5-37-6.3). In addition, Rhode Island State Law requires that all conclusions made by the Board shall be made available to the public (see Department of Health website) and other Medical Boards (see FSMB website).

Analysis of Complaints

Over the past decade, from 2000 through 2009, the Rhode Island Board has received an average of four hundred complaints per year. The number of complaints filed with the board is somewhat relative to the overall feeling of well being in the community at large. The complaints tend to increase in difficult economic time. Approximately sixty-percent of the complaints are actually investigated by the board on average. The board concludes that "unprofessional conduct" by the licensee has occurred in less than ten percent of the cases. Another ten percent involve non-disciplinary "letters of concern" in which the board expresses its judgment about issues such as poor communication, documentation and care coordination problems.

Unprofessional conduct, as defined in RI General Laws § 5-37, is broadly defined to include a variety of descriptive behaviors or activities. The statute was designed to give the board the authority to determine the acceptable standards of care and professional behavior. In general terms, the types of complaints involving a finding of "unprofessional conduct" are either acts of physician negligence or acts of intent.

Acts of physician negligence have been the most common types of complaints received by the Board, representing approximately 53% of the total number of complaints filed with the Board since 2000. Physician negligence is broadly defined as the "failure to exercise the level of skill, care, and prudence necessary to prevent patient injury" or that a physician has "deviated from the accepted standard of medical care." The most common forms of negligence include failing to diagnose and treat medical problems, procedure errors and failing to notify patients of abnormal medical test results.

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Acts of intent are done with a purpose, knowledge, or substantial certainty that the action is wrong and violates professional responsibility. Examples of acts of intent can include crimes, some of which but not all, arise from the practice of medicine. Practicing while under the influence of alcohol or illicit drugs, and substance abuse or sexual contact in the context of a physician/patient relationship are common examples. An analysis of unprofessional conduct findings of the Board indicates that physician impairment and sexual misconduct represent a disproportionate number as compared to quality of patient care issues. This appears to be the trend of medical and osteopathic boards throughout the states. State regulatory boards tend to impose stiffer sanctions when the malfeasance is intentional.

Consequences of Intentional and Negligent Acts

The consequences of unprofessional conduct in Rhode Island are proportional to the type of professional misconduct.

The Board attempts to foster evaluation and remediation of physicians through the pathway of the Physician Health Program at the medical society, education enhancement programs, and ethics courses. The board does not sanction most of the physicians who are involved with the Physician Health Program. However, it is often true that by the time the board learns of problems, it is often too late for remediation only. Many of the dispositions of cases will include suspensions as well as board ordered remediation before re-entry into practice. Over the past ten years, of the physicians who have been *sanctioned* for drug and alcohol related offenses, fifty-percent had their license to practice medicine suspended, ranging from summary suspension to indefinite suspension, fifteen-percent received probation for an average of five-years, and ten percent were required to surrender their license to practice medicine. This is often because of crimes that were committed, patients harmed or the ethical violations were so profound that The statistics for those found to have sexually related offenses had similar consequences. Of these physicians, 50% had their licenses suspended. 12.5% of the physicians sanctioned received probation, most often for a period of five years. Finally, the remaining 12.5% were required to surrender their license to practice medicine within the State of Rhode Island. All violations and sanctions are reported to the National Practitioner Data Bank, where other state boards may view the information. When a physician moves a practice to another state, the reported action will be available to licensing authorities.

Conclusion

The Rhode Island Department of Health and the Board of Medical Licensure and Discipline are dedicated to protect the public interest through various avenues, such as the (1) regulation of physicians, (2) investigation of complaints, (2) administration of sanctions for physicians found to have engaged in unprofessional conduct, and (4) reporting of all Board disciplinary action decisions to the public. The collected data is used in assessing the ongoing competence of licensed physicians and to facilitate change in the laws. Such services benefit the Board, health organizations, and independent physicians interested in ensuring improvement in the regulation of the

practice of medicine in Rhode Island. By properly balancing the mutual interest of protecting the public interest, as well as the rights of its physicians, the Board seeks to enhance the overall awareness of the types of misconduct that can occur within the physician community and prevent future occurrences.

References

For inquiries regarding references, please contact author.

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