In Medical Board Probes, Get a Lawyer Promptly

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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 representatives from the state medical board. 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 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 says, "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," he explained.

Physician oversight boards operate differently in every state, following independent statutes and proceeding with investigations based on state-based criteria. 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 treatment of a single patient.

Dishonest, 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 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. Mr. Osinoff said.

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 above-board record keeping and honesty in dealing with patients, staff, and insurers will help to protect the physician."

Mr. Osinoff said he is frequently asked whether physicians should report medical board investigations to their 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.

He reminded audience members that most investigations are closed before an accusation is ever brought, and said he "can’t even think of a case" where malpractice coverage was affected in such a case.

If a formal accusation is made, it becomes public information that will be discovered by the insurance company anyway. "so there’s no sense trying to hide it," Mr. Osinoff said.