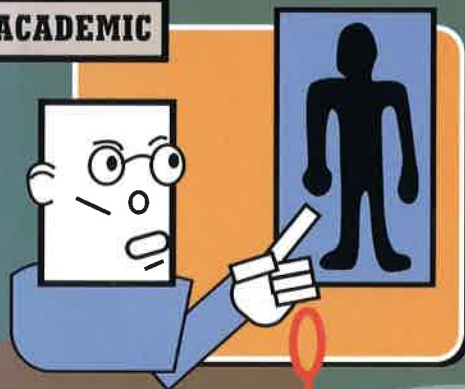


PHYSICIAN

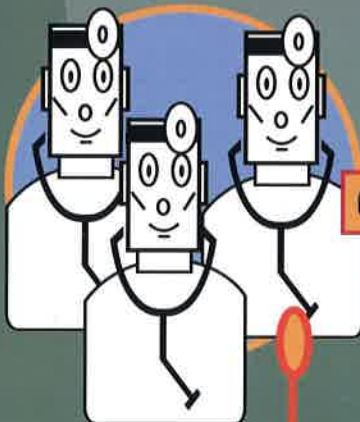
MAGAZINE OF THE LOS ANGELES COUNTY MEDICAL ASSOCIATION

JANUARY 17, 1994

ACADEMIC



GROUP PRACTICE



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HENRY R. FENTON JD

Medical Board Forgoing Due Process?

A series of recent events have placed great pressure on the Medical Board of California (MBC) to discipline physicians in the state, and the Board has responded in a variety of ways, some of which create serious concerns about whether or not physicians in California are being singled out for excessively harsh treatment and, indeed, for treatment that deprives physicians of fair procedure and due process of law.

The MBC's actions are of great concern to physicians in California, because they reflect a harsher and more prosecutorial approach to physician discipline. Recently, the Medical Board adopted an approach of providing confidential information about physicians to the public. These changes are the culmination of a trend that began a few years ago.

In 1990, the Medical Judicial Procedures Improvement Act was adopted in California as a result of publicity and public criticism of the state Board of Medical Quality Assurance (the name of the Board of Medical Quality Assurance was changed to the Medical Board of California) on the basis that it was too lenient in disciplining physicians and unwilling to take the strong measures that were necessary to protect the public from incompetent and dangerous practitioners. The legis-

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[T]he Medical Board has an obligation to the medical profession to treat physicians fairly and to make sure that their constitutional rights are not being intruded upon as a result of excessive enforcement practices

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lation has impacted physicians throughout California in several ways.

Far more physicians are now being disciplined than ever before. There is now a focus within state government on disciplining physicians so that attorneys in the California Attorney General's office are assigned to specialize in the prosecution of physician disciplinary cases, and a similar

specialization is taking place among administrative law judges who preside at physician disciplinary hearings.

Under the new law, the MBC has the power to seek suspension of a physician's license or to seek limitations on his or her practice essentially without providing that physician any notice in advance and without going to court. Formerly, if the MBC sought to impose restrictions on a physician's practice or to suspend a physician before that physician was provided with an accusation and hearing, it had the burden of proving to a court that the practicing physician was a danger to the public health or safety unless an immediate restraining order was issued. The law was changed to permit the Medical Board to seek immediate suspension from an administrative law judge without even apprising the physician of the basis for the sought for suspension until the day that the application for suspension is presented to the administrative law judge. Under the new procedure, a suspension can be obtained even before an accusation is issued and before the physician has any opportunity to present evidence and arguments to oppose the suspension. Suspensions can be imposed without the necessity of a court order.

In 1992, a public outcry resulted from reports that agents of the MBC had destroyed hundreds of files concerning complaints against California

physicians and that those cases had not been adequately investigated. This led to a new round of criticism of the Board and renewed pressure for increased disciplinary measures. One result of this increased pressure was a report by a task force on central complaints and information disclosure created by the Medical Board and issued in March 1993.

Based upon the task force recommendations, the Medical Board has adopted a policy of revealing to the public whether physicians have had malpractice judgments of more than \$30,000, been disciplined by California or any other state, or been convicted of a felony. The most troublesome portion of the policy is that the Medical Board also reveals to the public not only cases where a physician has actually been disciplined but also instances where there has merely been a Medical Board investigation and where a case has been referred to the Attorney General's office for review.

The California Medical Association, aggressively challenging this policy, filed suit seeking to halt this practice in November. In early December, the CMA was granted a preliminary injunction prohibiting the MBC from publicly disclosing preliminary investigation information about physicians. The injunction will remain in place for the duration of the litigation.

Still, the Medical Board's contentious policy flies in the face of the basic principle of fairness in our judicial system, under which persons are presumed innocent until proven guilty. Now the Medical Board does not hesitate to release information about a case where a determination has not even been made that the physician will be charged with violations of the Business and Professions Code and before there has been any determination of guilt. All of this is very disturbing, because the Medical Board, in its zeal to discipline errant physicians, is now pursuing cases that are of questionable merit. Under the new system of making pending cases public before there has been a decision by the Attorney General's office as to whether or not an accusation for disciplinary action will



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even be filed, perfectly innocent physicians may suffer irreparable damage to their practices and careers from premature negative publicity.

Under well-established principles of law in California, a person may not be deprived of the pursuit of his or her profession or excluded from his or her occupation without first affording a charged person with notice, confrontation, and a full hearing. When the Medical Board actively adopts a policy of publicly disclosing instances where charges have not even been filed against a physician, public knowledge is gained that such an investigation is pending. The mere fact of the pending case can destroy the physician's practice. Although the actions taken by the Medical Board to make public such pending investigations do not quite rise to the level of exclusion from the practice of medicine, they can quite easily constitute a deprivation of the

pursuit of one's profession if they damage the reputation of the affected physician. For this reason, not only is there a question of fundamental fairness but there is a legal question about whether the MBC's new policy intrudes upon the constitutional rights of the affected physicians under the due process protection of both the California and the United States constitutions and the privacy protection of the state constitution.

It is notable that Section 800 of the Business and Professions Code expressly provides that the contents of Medical Board files on physicians must be kept confidential, except the portions of these files that are public record. A criminal conviction in the file or a judgment might be considered a public record. A mere allegation, however, before any filing is made of unprofessional conduct is *not* a public record. Thus, the new policy appears

on its face to violate Business and Professions Code Section 800.

The issues of breach of confidentiality and privacy also raise a constitutional question under the privacy provisions of the California and United States constitutions and suggests that the new policy violates the privacy protections contained within these constitutions.

The new, tougher approach has also manifested itself in other ways. As a result of another legislative change in 1990, any physician whom the Medical Board suspects may be incompetent may be required to undergo an oral examination in that physician's field of practice before three other physicians. If the physician fails the examination, that finding can be used as evidence in support of a petition to revoke the physician's medical license for incompetence. The statutory scheme, however, requires that a physician who fails the exam be given an opportunity to challenge, on procedural grounds, the first exam within 45 days from the date that she or he receives a copy of the tape of the initial exam and to be given a hearing on the fairness of the exam. The statutes provide, further, that no accusation may be filed against the physician for incompetence before that physician is given an opportunity to protest the initial examination. Additionally, failure of the examination is not incompetence *per se* but may merely be introduced as evidence of incompetence. It is disturbing that in a recent case, the Medical Board proceeded as follows in a situation involving a competency examination: The physician in question, who had practiced for a considerable period of time, was required to undergo a competency examination. He failed the examination. Immediately after the results were received and before 45 days had even expired for the physician to review the tape of the exam and to protest the giving of the initial exam, the Medical Board sought to suspend the physician's license based upon the failure of the examination. This was particularly troubling because under the statutory scheme, even the failure of an examination does not necessarily indicate incompetence.

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A physician who has been out of school for many years may be a competent physician but yet may simply have done poorly on an examination. Yet, based upon the mere failure to pass the examination, the Medical Board was prepared to summarily end this physician's practice.

Fortunately, the administrative law judge who considered the case determined that under the statutory scheme, the Medical Board was not empowered to even seek a suspension at that stage of the game, since there was no evidence that this physician's practice would pose a danger to the public simply because he had failed an examination.

The rush to judgment by the Medical Board is also resulting in a profound change in the Board's investigation practices so that cases which formerly took months to investigate are being investigated in a very short period of time. As a result of this, there is a great danger that investigations will be incomplete. This writer recently encountered such an instance where allegations contained in an accusation were clearly erroneous because the Medical Board investigator did not bother to obtain complete information from not only witnesses hostile to the physician but also witnesses who were neutral.

There is no doubt that it is important that the Medical Board carry out its obligation to the public to protect the public from incompetent physicians and to guard the quality of medical care in California. By the same token, however, the Medical Board has an obligation to the medical profession to treat physicians fairly and to make sure that their constitutional rights are not being intruded upon as a result of excessive enforcement practices. Recent events raise concern about whether the Medical Board is paying sufficient consideration to its obligation to provide procedural fairness and due process of law to physicians in California. **LP**

Henry R. Fenton JD, an attorney in West Los Angeles, specializes in the representation of physicians in Medical Board investigations, hearings, and appeals.

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Action: Yohimbine blocks presynaptic alpha-2 adrenergic receptors. Its action on peripheral blood vessels resembles that of reserpine, though it is weaker and of short duration. Yohimbine's peripheral autonomic nervous system effect is to increase parasympathetic (cholinergic) and decrease sympathetic (adrenergic) activity. It is to be noted that in male sexual performance, erection is linked to cholinergic activity and to alpha-2 adrenergic blockade which may theoretically result in increased penile inflow, decreased penile outflow or both.

Yohimbine exerts a stimulating action on the mood and may increase anxiety. Such actions have not been adequately studied or related to dosage although they appear to require high doses of the drug. Yohimbine has a mild anti-diuretic action, probably via stimulation of hypothalamic centers and release of posterior pituitary hormone.

Reportedly, Yohimbine exerts no significant influence on cardiac stimulation and other effects mediated by B-adrenergic receptors, its effect on blood pressure, if any, would be to lower it; however no adequate studies are at hand to quantitate this effect in terms of Yohimbine dosage.

Indications: Yocon[®] is indicated as a sympatholytic and mydriatic. It may have activity as an aphrodisiac.

Contraindications: Renal diseases, and patient's sensitive to the drug. In view of the limited and inadequate information at hand, no precise tabulation can be offered of additional contraindications.

Warning: Generally, this drug is not proposed for use in females and certainly must not be used during pregnancy. Neither is this drug proposed for use in pediatric, geriatric or cardio-renal patients with gastric or duodenal ulcer history. Nor should it be used in conjunction with mood-modifying drugs such as antidepressants, or in psychiatric patients in general.

Adverse Reactions: Yohimbine readily penetrates the (CNS) and produces a complex pattern of responses in lower doses than required to produce peripheral a-adrenergic blockade. These include, anti-diuresis; a general picture of central excitation including elevation of blood pressure and heart rate, increased motor activity, irritability and tremor. Sweating, nausea and vomiting are common after parenteral administration of the drug.^{1,2} Also dizziness, headache, skin flushing reported when used orally.^{1,3}

Dosage and Administration: Experimental dosage reported in treatment of erectile impotence.^{1,3,4} 1 tablet (5.4 mg) 3 times a day, to adult males taken orally. Occasional side effects reported with this dosage are nausea, dizziness or nervousness. In the event of side effects dosage to be reduced to 1/2 tablet 3 times a day, followed by gradual increases to 1 tablet 3 times a day. Reported therapy not more than 10 weeks.³

How Supplied: Oral tablets of YOCON[®] 1/12 gr. 5.4mg in bottles of 100's NDC 53159-001-01, 1000's NDC 53159-001-10 and Blister-Paks of 30's NDC 53159-001-30

References:

1. A. Morales et al., New England Journal of Medicine: 1221 November 12, 1981.
2. Goodman, Gilman — The Pharmacological basis of Therapeutics 6th ed., p. 176-188. McMillan December Rev. 1/85.
3. Weekly Urological Clinical Letter, 27:2, July 4, 1983.
4. A. Morales et al., The Journal of Urology 128: 45-47, 1982. Rev. 1/85



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