The background of the slide is a microscopic image of cells, showing a network of thin, translucent membranes forming various sized polygons. The color is a uniform light blue. A dark blue rectangular box is positioned on the left side of the slide, containing white text.

ASIPP Annual 2022

California Society of
Interventional Pain
Physicians

Breakout Session C

Friday May 6, 2022

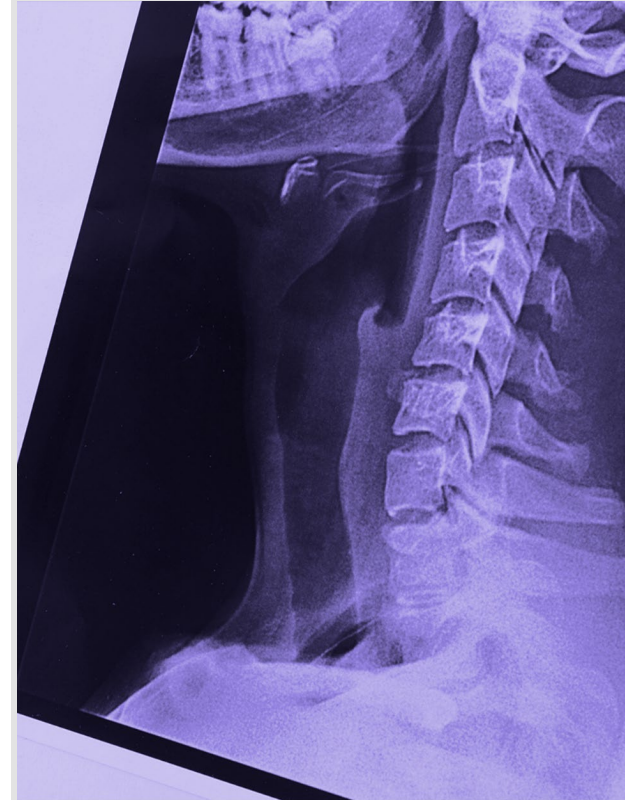
Proving the
Standard of
Care before
the Medical
Review
Panel

NO CONFLICT OF INTERST

- **Consultant to the MBC and Department of Justice and Expert Reviewer**
- **Expert Consultant on behalf of Physicians**

Proving the Standard of Care before the Medical Review Panel

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Medical Board of California Expert Reviewer Guidelines

Revised May 2021



Medical Board of California Expert Reviewer Guidelines

- Table of Contents
- MISSION STATEMENT
- OVERVIEW
- INVESTIGATIONS AND THE DISCIPLINARY PROCESS
- TYPES OF EVALUATIONS
- Instructions for Completing Your Review:
 - Reviewing the Case
 - Preparing your Report
- FORMATTING THE OPINION
- THE STANDARD OF CARE AND DEFINING DEPARTURES
- letterhead
- MOST FREQUENTLY ASKED QUESTIONS
- COMPENSATION
- GLOSSARY
- <https://www.mbc.ca.gov/Download/Documents/expert-reviewer-guidelines.pdf>

MISSION STATEMENT

The mission of the Medical Board of California is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professionals and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions.

Medical Board of California – Expert Reviewer Guidelines (2021)

INSTRUCTIONS TO REVIEWER

- The Medical Board of California (hereafter referred to as Board) is a state regulatory agency within the Department of Consumer Affairs.
- The Board is responsible for investigations and discipline of physician licensees of the State of California.
- The primary purpose of the Board is to protect the public from incompetent, negligent, dishonest and/or impaired physicians.
- Your role as an objective expert reviewer is critical in identifying whether a departure from the accepted standard of care has occurred, thereby constituting unprofessional conduct.

INSTRUCTIONS TO REVIEWER

KEY POINT

Submitting a case for expert review does not imply that there are departures from the standard of care.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Role of the Board in Physician Discipline

The Medical Board of California is responsible for investigating and bringing disciplinary action against the professional licenses of physicians and surgeons suspected of violating the Medical Practice Act

Complaints against physicians

Business and Professions Code Section 109 and Business and Professions Code Section 325 require the Board to investigate complaints concerning its licensees

Investigation of Complaints

Complaints regarding quality of care are received and reviewed in the Board's Central Complaint Unit (CCU) in Sacramento by a medical consultant in the same specialty in which the subject is practicing

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

- Investigators, District Medical Consultants, Deputy Attorneys General, and Expert Reviewers
- The Role of the Investigator
- The Role of the District Medical Consultant (DMC)
- The Role of the Deputy Attorney General (DAG)
- The Role of the Expert Reviewer

The expert reviewer plays a crucial part in the investigation process by providing an objective, reasoned, and impartial evaluation of the case. They are neither an advocate for the Board nor an advocate for the physician. Rather, the review is concerned primarily with whether there is a departure from the accepted standard of practice.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

KEY POINT

Expert Reviewers **must scrupulously protect** the confidentiality of medical records, persons, and all other information related to a case review.

TYPES OF EVALUATIONS

Quality-of-Care

These cases involve the quality of medical care rendered to a patient or patients. Under Business and Professions Code Sections 2234 (b), (c) and (d), it is unprofessional conduct for a physician to commit gross negligence, repeated negligent acts, or incompetence in the practice of medicine

Sexual Misconduct

In evaluating allegations of sexual misconduct, you are to assume the allegations are true

Drug Violations

Expert reviewers are referred a variety of cases alleging drug violations. These cases fall into three basic categories:

- Excessive prescribing or treatment (as defined in Business and Professions Code §725),
- Prescribing to an addict (Business and Professions Code §2241)
- Prescribing without an appropriate prior medical examination (Business and Professions Code §2242).

Guidelines for Prescribing Controlled Substances for Pain (Pain Management Guidelines)

Published 11/2014

It is imperative that when reviewing cases involving pain management, your opinion addresses the following specific points from the Board's Pain Management Guidelines. These Guidelines should be referenced for cases where the treatment occurred after November 2014. For treatment rendered prior to that, the investigator should provide you with the Pain Management Guidelines from 2003

Expert
Reviewer
Guidelines

KEY POINT

For treatment rendered after November 2014, use the Board's 2014 Pain Management Guidelines.

For treatment rendered prior to November, 2014 use the Board's 2003 Pain Management Guidelines.

Patient Evaluation and Risk Stratification

from the MBC November 2014
Guidelines

This includes but not limited to:

- Completing a medical history and physical examination.
- Performing a psychological evaluation to assess risk of addictive disorders.
- Establishing a diagnosis and medical necessity.
- Exploring non-opioid therapeutic options.
- Evaluating both potential benefits and potential risks of opioid therapy.
- Being cognizant of aberrant or drug seeking behaviors.
- As a universal precaution, undertaking urine drug testing.
- Reviewing the CURES/Prescription Drug Monitoring Program (PDMP) report for the patient.

Types of Evaluations

- **Consultation**–The physician and surgeon should seek consultation with, or refer the patient to a pain, psychiatry, or an addiction or mental health specialist as needed
- Treatment Plan and Objectives
- Patient Consent
- Pain Management Agreement
- Counseling Patients on Overdose Risk and Response
- Initiating Opioid Trial
- Ongoing Patient Assessment
- Compliance Monitoring
- Medical Records–clear, concise, and legible
- Supervising Allied Health Professional

Types of Evaluations

- Compliance with Controlled Substances Laws
- Excessive Treatment Violations
- Statutes citing unprofessional conduct
 - §2236 – Conviction of a crime related to qualifications, functions, or duties of a physician and surgeon
 - §2240 – Report for death of patient
 - §2262 – Alteration of medical records
 - §2264 – Employment of unlicensed person
 - §2271 – False or misleading advertising
- General Unprofessional Conduct

REVIEWING THE CASE

- Your review is an important step in the investigative process and must be completed before the Board can make a final disposition. The timely submission of your report is vital to the resolution of the case.
- The Board will rely on your report to determine if remediation or disciplinary action should be pursued. Your report should be clear, detailed, and followed the mandatory format.

THE STANDARD OF CARE AND DEFINING DEPARTURES

Standard of Care

That level of skill, knowledge and care in diagnosis and treatment ordinarily possessed and exercised by other reasonably careful and prudent physicians in the same or similar circumstances at the time in question

THE STANDARD OF CARE AND DEFINING DEPARTURES

Simple Departure

The failure to use that level of skill, knowledge and care in diagnosis and treatment that other reasonably careful physicians would use in the same or similar circumstances

THE STANDARD OF CARE AND DEFINING DEPARTURES

Extreme Departure

The want of even scant care

THE STANDARD OF CARE AND DEFINING DEPARTURES

Lack of Knowledge (Incompetency)

An absence of qualification, ability or fitness to perform a prescribed duty or function

TERMINOLOGY

Terms to Use	Terms NOT to Use
No departure	No Violation
Simple departure	Simple Negligence Ordinary Negligence Minor Violation Minor Departure Minor Deviation
Extreme departure	Gross Negligence Severe Departure Significant Departure Major Departure Major Deviation
Lack of knowledge	Incompetence Incompetent

THE STANDARD OF CARE AND DEFINING DEPARTURES

References

Identify the medical literature and texts that are being relied upon to form the basis of the standard of care

- Multiple Patients should be evaluated individually and not combined
- Objectivity. Remember that you are neither an advocate for the Board nor for the physician.
- Effect of Mitigation-Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law.
- Injury Is Not Essential-has there been a departure from the standard of care
- Interim Suspension Orders-Is the physician a danger to the public?

THE STANDARD OF CARE AND DEFINING DEPARTURES

Physician Supervisor Responsibility

The attending physician is ultimately responsible for the care provided to the patient

Assess the Standard of Practice at the Time of the Violation

The standard of practice is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of practice **AT THAT TIME**

THE STANDARD OF CARE AND DEFINING DEPARTURES

Terms to Avoid

- Exacerbation
- Guilt or Innocence
- Judgmental or subjective comments
- Malpractice
- Penalties
- Personalized comments

Proving the Standard of Care before the Medical Review Panel

In summary

- The Medical Board of California has provided a clear and concise definition of the standard of care
- The MBC also provides concise insight to the review process and what is expected of all licentiates engaged in patient care
- It behooves all physicians to be aware of what is expected from them in their medical practice
- AND the best preparation for any medical review is attention to and compliance with the treatment guidelines and the standard of care
- <https://www.mbc.ca.gov/Download/Documents/expert-reviewer-guidelines.pdf>

THANK
YOU
ASIPP
2022!

