

When the Commission Calls

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Darrel Royal used to have a saying about a forward pass: “Three things can happen, and two of them are bad.” The same saying applies to an investigation by the Medical Quality Assurance Commission – three things can happen, and two of them are bad. An investigation can lead to either: 1) closure (good), or 2) a Stipulation to Informal Disposition (bad), or 3) a Statement of Charges (really bad).

You have to cooperate – but so do they. Whenever an MQAC investigation is undertaken, a physician

has a duty to cooperate with the investigation, including a duty to provide information to the Commission. A failure to cooperate can even lead to its own sanctions. HOWEVER, because state disciplinary proceedings are quasi-criminal in nature, the physician has a constitutional right to consult with an attorney, and a legal right to know what the allegations are, before he has to respond to questioning.

Investigations are always serious business. To appreciate the seriousness of the disciplinary process, look at the sanctions the Commission is authorized to take, including restriction, suspension or revocation of your license. No sanction is without consequence. With the multitude of provider plans funding reimbursement, the consequences of any discipline may be significant. Some plans provide for a termination of credentials for any sanction, while others may limit termination to specific sanctions such as revocation or suspension. These same concerns may arise with credentialing for hospital privileges, employment by your group, or even your board certification.

Notice. Most (but not all) investi-

gations start with written notice. But the notice doesn’t tell you what the investigation is about. The notice will even tell you that you are free to submit a response at this time. DON’T! Instead, wait until you know the issues.

Investigations then progress to either: a) an inquiry letter asking for a written explanation, or b) a personal visit from the investigator.

The Inquiry Letter. If you get an inquiry letter, it will inform you of the nature of the complaint.¹ This is your chance to tell your story. Tell it wisely. The quality of your response is largely determinative of what steps the Commission takes next. Before submitting a response, you should review the entire chart of the patient(s) involved, consult counsel (and maybe even a colleague) and consider conducting a literature search to support your decisions. Your response can have even farther-reaching effect. SHB 1403 went into effect July 22, 2011 to require that copies of your reply to an inquiry letter be provided to the complainant. Not only can the MQAC use a poorly drafted response against you in a disciplinary proceeding, but the complainant can use your response against you in a medical

malpractice case.

The Interview. If the investigator drops by for a visit, it is *not just a social call*. He has reviewed the file, and everything the complainant has said about you, long before the visit. You, on the other hand, probably haven't seen the patient for quite some time, and have little recollection of the care or issues involved. Now is not the time to demonstrate your skills at extemporaneous speaking. If you haven't already done so, get a lawyer now.

Politely inform the investigator that you do want to cooperate, but that you also want a reasonable opportunity to consult with counsel and review the allegations and chart before responding. Otherwise, listen – don't talk. If the investigator has not by now presented you with a letter outlining

the allegations to which you are to respond, now is the time to ask for it (he has it with him). Then, set up an appointment in the near future that provides you with an opportunity to review the records, meet with counsel, and adequately prepare for the interview.

But lawyers cost money. True. However, most professional liability policies provide coverage for legal expenses associated with disciplinary proceedings. Some have deductibles, some have caps, some are direct pay, and some are reimbursement. If your lawyer doesn't mention this to you, be sure to mention it to him. If your insurance company prefers a certain lawyer, find out why. If you prefer someone else, insist on the right to use him or her. It is your license at stake, not theirs.

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attle law firm Fain Anderson VanDerhoef, PLLC, a Fellow in the American College of Trial Lawyers, and an Advocate in the American Board of Trial Advocates. Tom has tried cases in state and federal courts and administrative agencies. He has represented hundreds of health care professionals over the past 35 years, and tried their cases before civil juries, professional disciplinary boards, hospital fair hearing panels and provider plan panels. The firm's attorneys deal extensively with professional liability and disciplinary matters on a daily basis. The firm website is www.favfirm.com.

¹The actual complaint may not be provided with the inquiry. If it is only paraphrased, the actual complaint should be requested. It is not exempt from disclosure. The DOH sometimes does not agree with this position, but (in my humble opinion) they are wrong.

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