Message From The Chair
Alden Roberts, MD, MMM, FACS

In this edition of UpDate!, I’d like to talk about what happens after a complaint gets opened by the Case Management Team (CMT) for investigation. If you recall from the last UpDate!, the CMT is composed of 3-4 Commissioners, all but one of whom are clinicians, and that about half of the complaints received by the Medical Commission do move forward to a full investigation. The investigative process, once initiated, is complex, interactive, time consuming and may be as disruptive to the involved clinician as a malpractice action.

When a case is opened, commission staff matches an investigator, a staff attorney and a Reviewing Commission Member (RCM) to the case. The RCM is determined by the Medical Commission’s medical consultant (a physician). Very soon thereafter, the MD or PA about whom the complaint has been lodged (the Respondent) will receive notification of the investigation. The investigative process is very thorough and can take several months.

The Investigator
An investigator is chosen based on the nature of the case. For a complaint regarding clinical care, the investigator will have a clinical background. We have investigators who are RN’s, PA’s and MD’s. For complaints regarding sexual misconduct, boundary violations, patient abuse, drug diversion, criminal activity and other unethical or unprofessional behavior, investigators who have backgrounds that are appropriate to the complaint nature are assigned. The role of the investigator is to work with the staff attorney and the RCM to gather whatever information is necessary for the RCM to thoroughly review and understand the case from both the Complainant’s and the Respondent’s perspective. In addition, the investigator attempts to get a waiver from the Complainant allowing the release of the Complainant’s identity. Statute demands that a complainant’s (whistle blower) identity must be kept secret unless that privilege is waived. If the Complainant refuses to release their identity, the case can

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WMC Mission
Promoting patient safety and enhancing the integrity of the profession through licensing, discipline, rule making, and education.
be VERY difficult to investigate and may be closed if the investigation would allow the Respondent to identify the Complainant. Early in the investigation, the investigator sends a “letter of cooperation” to the Respondent requesting a response to the allegations and usually posing several specific questions to be answered relating to the complaint. A timely response to this letter is required. It is worthwhile to be as cooperative as possible with an investigator.

The Staff Attorney
The role of the staff attorney is to ensure that our processes are followed from a legal prospective. Should a disciplinary action be required, they help place the recommendations of the Medical Commissioners into a legal format and ensure due processes is maintained.

The Reviewing Commissioner
The RCM is chosen based on their experience and specialty as it relates to the case allegations. For cases that involve possible sexual misconduct, two RCM’s are assigned, a public member and a clinician, both of whom have had additional training in how to assess this type of complaint.

The RCM may make requests for information from the investigative arm of the Medical Commission, but commissioners don’t perform their own investigation. The RCM will review all available material, including the complaint, the Respondent’s statement, chart notes, and anything else that might be useful to determine if the complaint should be closed or if a disciplinary action is required. This may be several thousand pages of data for each case and may take many hours to review. After the review has been completed, the RCM makes a detailed presentation to one of two panels of commissioners at the Medical Commission meeting. The Medical Commission meets approximately every 6 weeks, so this can add up to two additional months to the process.

The Reviewing Panel of Commissioners
The panels are composed of 10-11 commissioners. Each panel has a PA, three public members, and six or seven MD’s of various specialties. After the RCM presents the case, the panel discusses it thoroughly. The RCM often makes a recommendation regarding closure or disciplinary action to the panel, but it is these panels that make the decision to close a case or to pursue disciplinary action. The panel does not always follow the RCM recommendation, which may be altered during the discussion process. The panel can request additional information and/or an expert review, deferring the final decision until the additional information is available.

The Medical Commission takes all complaints seriously, so if you are notified that a complaint about you is being processed, you should also treat the matter seriously. Although few complaints result in disciplinary action (7% last year), such actions are reported to the National Practitioner Data Bank and may adversely affect your board certification or career. Occasionally, a disciplinary action ends a career. You may or may not choose to retain an attorney, and if you do, your malpractice insurance usually pays the attorney fees. The legal ramifications of the process are arcane and having good counsel can be both helpful and reassuring. Normally, we request a response to the letter of cooperation within two weeks of receipt. Failure to respond is an infraction that will result in a disciplinary action.

The Medical Commission closes the majority of cases that it investigates as having been within the standard of care. The Respondent’s statement can help support such a result. Provide the Medical Commission with an honest, thoughtful assessment of care provided and try not to sound defensive or hostile. If you have recognized that something potentially preventable happened, related to your own actions or “system” issues, and have already taken steps to prevent recurrence, describe what you have done. Relate how you communicated with the patient and family about the problem. If it is clear to you that a reasonable investigation will show that you made a mistake, take accountability for that mistake and tell the Medical Commission what you’ve learned, what you’ve done to educate yourself and others, and what steps you’ve taken to help others not make the same mistake. Understand that a malpractice settlement or finding in favor of the plaintiff does not necessarily mean that the Medical Commission will initiate disciplinary action – the Medical Commission does its own investigation and trusts its own experts.

How long is the process likely to take from beginning to end? With cases that are closed after an investigation, the average time is 232 days or almost 8 months, ranging from 21 to 969 days. The process is longer if a disciplinary action has been recommended, depending on the nature of the action. More often than not, a disciplinary action that has been authorized by one of the panels, but contested by the respondent, will require an outside expert in the field to assess the facts of the case.

In summary, complaints happen and the Medical Commission is required to assess them, in accordance with statute, in order to protect the public. The Medical Commission uses its disciplinary authority to prevent future harm and improve medical practice. It has no legislative mandate or appetite for punishment.