



What to Do if You Have a Concern about the Quality of Care from a California Physician

Introduction

For many people, the relationship with their doctor is one of the most important in their lives. Trust in a physician's ability to help prevent or navigate an illness is essential to that relationship. There are almost 100,000 physicians licensed to practice in California and most provide high quality care to their patients. However, there are times when the relationship causes concern, for example, when a patient sees or experiences a problem in the quality of care from a physician. What should they do? Who should they talk to?

This brief provides answers to these questions and links to resources that can help. It addresses steps you can take within a physician's office or with organizations that regulate or oversee physicians. You certainly also have the option to consider a malpractice lawsuit, but that topic is not the focus of this brief.

For many of us, it's not easy to act on a concern about the quality of physician care that we or a loved one receive, particularly if efforts to talk about concerns with a doctor fail. The process can be stressful, frustrating and take a long time. And ultimately others may not agree with the way we see the situation. Is it worth it? Only you or your loved one can decide. However, consider the continued harm that might take place if you don't take action – for yourself, your loved one, and/or other patients and their families.

What is quality of care?

Quality health care is characterized by doing the right thing, at the right time, in the right way, for the right person and with the best possible results. Generally care delivered by physicians and other health professionals must meet a “standard of care,” that is, the expected level and type of care provided by the average competent health professional under certain circumstances. The standard is based on good scientific evidence and/or expert medical consensus.

What can you expect as a patient regarding the quality of physician care?

Physicians have undergone rigorous and lengthy training to become doctors, including hands-on learning in hospitals and other health settings. When they finish training, they take an oath to “do no harm” to their patients. As professionals, they voluntarily subject themselves to codes of ethics addressing their behavior. For example, the American Medical Association Code of Ethics lays out elements of the patient-physician relationship:

- The patient has the right to receive information from physicians and to discuss the benefits, risks and costs of treatment alternatives.
- The patient has the right to make decisions regarding health care recommended by his or her physician and may refuse any recommended treatment.
- The patient has the right to courtesy, respect, dignity, responsiveness and timely attention to his or her needs.

A new physician charter published by the American Board of Internal Medicine Foundation, an organization affiliated with a Board that certifies physicians caring for adults, specifically addresses issues of physician quality and competence in its set of professional responsibilities:

- Physicians must be committed to lifelong learning and be responsible for maintaining the medical knowledge and clinical and team skills necessary for the provision of quality care.
- Physicians must be dedicated to continuous improvement in the quality of health care. This commitment means not only maintaining clinical competence, but also working with other professionals to reduce medical error, increase patient safety, minimize overuse of health care resources and optimize the outcomes of care.

What types of quality concerns might you experience?

Health care quality concerns could arise for a variety of reasons in a physician's office. Some relate to how well their office works—for example, when the correct medical record isn't in the room with the patient or patient messages aren't relayed in a timely fashion. Other concerns are the result of a specific action a physician or staff member takes (or doesn't take) as they treat you or a family member, such as misdiagnosing a condition or prescribing a drug to which you have a known allergy. Other actions are clearly cause for concern, such as when a physician or physician office member is drinking or using drugs. The consequences of these actions may have no effect on your health, may cause some inconvenience or pain, or may have serious health consequences.

The most common complaints received by organizations that oversee or regulate physicians nationwide are:

- Overprescribing or prescribing the wrong medication
- Failure to diagnose a medical problem that is found later
- Misreading X-rays to identify a medical problem
- Failure to get back to a patient with medical results in a timely manner, which leads to harm to that patient
- Failure to provide appropriate care after a surgical procedure

What should concern patients the most – and what concerns organizations that oversee physicians – is when there is a pattern of problems with a physician. If something happens once, it is usually a mistake. If it happens again and again, it may indicate a larger problem of competence or quality.

What steps should you take if you have a concern about quality?

Step 1 – Talk to your physician or another staff member who can address your concern

Depending on the nature of the problem and your relationship with your physician, you might want to express your concerns directly to him or her or to another office staff member. For example, if the concern relates to the way the physician's office is organized, they may not be aware of how it feels from the perspective of the patient, particularly in terms of the risk of making a mistake. Speaking candidly about your concerns gives your physician or another staff member the opportunity to explain why things happen the way they do and/or it may lead to changes in the office. Certainly, if your concern is more medical in nature—for example, getting the wrong prescription, the wrong dose, or the wrong referral—you should speak with the physician directly to correct the problem. Then think about whether this has happened before and be alert to whether it happens again.

If your concern is with a physician that you've been referred to for specialty care, make sure you share your concerns about that physician with your personal doctor. It will help them decide whether they will want to refer other patients to that doctor. Or, if your concern is with a physician you're seeing while in a hospital or other health organization, again, let your personal physician know as they may be able to help you resolve your concern. They may suggest that you talk to the guest relations or patient advocate staff who address patient complaints.

Step 2 – Leave the practice

If you continue to have concerns about the quality of a physician and their staff, you have the option to end the relationship and go to another physician. Bear in mind that you might need to check with your health insurance plan to see which physicians are affiliated with your plan and which are taking new patients. You do not need to tell your physician why you are leaving, but you might consider writing them a note outlining your concerns. The more specific you are, the more he or she might be able to understand your views and possibly take action on them.

If you leave the practice, you should request copies of your medical records to take with you. Under California law, you have the right to view and have a copy of your medical records, though physicians may charge a fee to cover their costs for copying. Your physician may transfer your records to your new physician, though they aren't legally required to do so. The Medical Board of California has more information on accessing your medical records:

http://www.medbd.ca.gov/consumer/access_records.html

Step 3 – File a complaint with the Medical Board of California

If you feel you should take action to protect yourself and/or other patients from a physician who you think poses a public safety threat, you can file a complaint with the Medical Board of California. The Board oversees physicians as well as podiatrists, physician assistants, and midwives. Working with the California Office of the Attorney General, the Medical Board ultimately has the power to discipline a physician—to decide whether and how a physician can practice medicine in California. It should be noted up front that if your case is pursued by the Medical Board, the process can take a long time, involves many steps and requires a high standard of proof before the Medical Board can take action against a physician. There were over 6,000 complaints filed during fiscal year 2008-2009 and 272 physicians had some type of action taken against their license.

Filing the Complaint: The Medical Board of California has a consumer complaint form that you should use to file your complaint. It is available online to print out, fill out and mail in, or you can call the Board and have them mail you a copy: 800-633-2322. You must also complete and sign an authorization to release your medical information so the Board can request your medical records as part of their investigation.

Medical Board of California Complaint Form:

<http://www.medbd.ca.gov/forms/07i-61.pdf>

Complaint form in Spanish: http://www.medbd.ca.gov/forms/07i-61_spanish.pdf

The information should be sent to:

Medical Board of California

Central Complaint Unit

2005 Evergreen St. Suite 1200

Sacramento, CA 95815

The investigation: When your complaint is received, a consumer services analyst is assigned to review it. The analyst will gather the information needed to review your case, including whether the physician has a history of issues with their license. If the case doesn't involve medical care—for example, if the physician won't provide your medical records—the analyst may call the physician, explain the law and persuade the physician to turn them over to you. If the complaint involves medical care and treatment and you've authorized the release of your medical records, the Board will request your records from your physician's office. An expert medical consultant will review them to evaluate whether the care in question met the “standard of practice.” The Board will notify you when your case goes out for review to a medical consultant.

The medical consultant will evaluate whether there's any evidence in your medical record to indicate:

➤ **Gross negligence** - An “extreme” departure from the standard of practice such as failing to do basic diagnostic tests, not recognizing or acting on common symptoms, not using accepted or effective treatments or diagnostic procedures, or not referring a patient to a specialist when appropriate.

➤ **Negligence** - A “simple” departure from the standard of practice. One act of simple negligence usually is not enough to take formal action against a physician's license.

➤ **Incompetence** - A physician who is unable to recognize and act appropriately on a patient's symptoms.

If no violation is found, the case will be closed and maintained on file for one year. If a violation is found, but does not warrant action against the physician's license, the case is closed and maintained on file for 5 years, thereby assuring that if others complain about this physician, there will be evidence of your concerns for some period of time. You have the right to appeal the findings only if you have new information that was not previously submitted.

If the medical consultant determines that there is enough evidence of a serious violation, the complaint will be forwarded to one of the Board's district offices for further investigation. Under the law, all of the Medical Board's investigative files are exempt from public disclosure, so you won't be able to receive a copy of the consultant's report.

Next steps: If the investigative office finds evidence of a violation, then a formal charge or “accusation” is filed against the physician and a hearing is scheduled. At that point, the physician and the state may decide to settle the case, subject to review by an Administrative Law Judge (ALJ) and the Medical Board. If there is no settlement, the case is heard by an ALJ who drafts a proposed decision. That decision is then reviewed by the Medical Board. The Board can adopt the decision of the ALJ, reduce the penalty given to the physician, or increase the penalty. Resulting disciplinary

actions might include taking away a physician's license to practice in the state or putting them on some type of probation. Physicians have the ability to appeal and, if they lose their licence, can petition to practice again after meeting certain requirements and timelines of the Medical Board. They can also appeal to the California court system.

How long does this process take? There are no specific timelines for how long the Medical Board complaint process takes. Normally, it can take 4-6 weeks to initially review the complaint. A complicated case that goes through the entire disciplinary process can take up to 3 years.

Can I remain anonymous when I file a complaint? A complaint can be filed anonymously, but the Board has a difficult time investigating such complaints and may not be able to pursue them. If the Board can't obtain medical records for a specific person, the complaint may not move forward. The Board does accept complaints from individuals who wish to designate themselves as "confidential informants." In that case a code name can be used which allows investigators to discuss the complaint with the physician without disclosing the patient's name. However, if the case goes to a hearing, the confidential informant's name may become public.

Additional information about the Medical Board of California complaint process:

Other information about filing a complaint with the Medical Board of California:

http://www.medbd.ca.gov/consumer/complaint_info.html

Where else can you complain about the quality of a physician?

Medicare: If Medicare (federal health insurance for people over age 65 or the disabled) pays for the care you're receiving from a physician, you might also consider calling the agency charged by the government with overseeing Medicare patients' quality of care. Be advised up front, however, that these agencies primarily view themselves as helping physicians improve the care they provide, not punishing them. They also allow the physician against whom you lodge a complaint to decide whether you can see the details about the results of the investigation.

In California, the agency overseeing quality of care for Medicare patients is called the Health Services Advisory Group (HSAG). HSAG only reviews quality of care complaints involving care written down in your medical record. After you file a complaint with HSAG and authorize release of your medical records, your records will be reviewed by an expert physician. After the review, you will get a letter indicating whether the standard of care was met in your case or not - that is, that the expected level and type of care was provided. Only if your physician allows it will you be provided additional details about the findings.

Timetables affect the handling of each step of the HSAG review. If you are no longer receiving the services in question, the review can take from 85 to 165 days depending on whether a quality problem is found. If you are still receiving the services in question, the review should take 38 to 83 days.

HSAG Medicare Beneficiary Complaint Hotline: 1-866-800-8749

Information about complaints and link to complaint form:

<http://www.hsag.com/camedicare/complaints.aspx>

Other Health Organizations

Physicians often practice as part of larger organizations such as a medical group, hospital or managed care plan or HMO. Each of these organizations might have a process that patients can use to express concern about the quality of a physician. Generally, the health organization's process of reviewing a concern about a particular physician's quality will involve "peer review," that is, review of a physician's conduct by a committee of his or her peers or other physicians that practice in the same specialty area. If the organization confirms that there's a quality concern with your physician, they can act to limit the physician's ability to practice in a hospital or HMO. Under certain circumstances, they're required to report their actions to the Medical Board of California, which can then conduct an investigation. A health organization may also be required to report its actions against a physician to the federal National Practitioner Data Bank, which would then be checked by any hospital or health plan in the country where that physician might try to work.

If you're a patient of a large medical group: Look on the website of your medical group for any information about voicing a complaint. It might be in a section on "Member Rights," or "Customer Service" or in the "Contact Us" section. You can also ask an administrative staff member if there is a number to call or a process to follow.

Your health insurance plan or HMO: Physicians are usually affiliated with a health insurance plan or HMO. Call your health plan, explain the problem to them and ask whether you can file a complaint about the care provided by a physician affiliated with their health plan. A list of phone numbers and websites of health plans in California is available at the Department of Managed Care website:

http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_contact.aspx

or you can call the Department of Managed Care's Help Center:

1-888-466-2219

TDD: 1-877-688-9891

Physician Organizations

The physician's specialty society: A few physician specialty societies (the professional association affiliated with the physician's type of practice, for example, pediatrics or orthopedics) accept and have a process to review complaints against their members. For example, the American College of Physicians (ACP), an association of internal medicine doctors who generally treat adult patients, has a process for addressing "ethical complaints" against their physician members that come from laypeople. For more information about the ACP process:

http://www.acponline.org/running_practice/ethics/complaints

Local medical societies: In some California counties, local medical societies receive patient complaints and attempt to resolve them by mediating between a physician and a concerned patient. Call the California Medical Association (CMA) (916-444-5532) and see if the physician you're concerned about is a member and lives in an area where this service is available. If it is, you'll be directed to that local medical society for further information.

Consumer Organization

The Safe Patient Project (SPP) is a project of Consumers Union (publishers of *Consumer Reports* magazine) that seeks to eliminate medical harm in the health system. The Project is collecting stories about patients' experiences and concerns with their care in hospitals and from physicians across the nation, including California. While they can't help with your specific complaint, the collective power

of stories from patients and families can help SPP pass laws and seek other changes to make the health care system safer.

<http://www.safepatientproject.org>

Where can you find out information about physicians in California?

Physician License Lookup – A site maintained by the Medical Board of California that tells whether a physician has been disciplined in California or by a Medical Board in another state. The site also includes some information about malpractice settlements. Information about complaints against a physician is NOT available.

<http://www.medbd.ca.gov/lookup.html>

Quality Report Card on Doctors and Medical Groups – A site of the California Office of the Patient Advocate that provides information on whether a medical group's care met national standards in areas such as preventive services and diabetes care. Includes patients' ratings of care and service. The site doesn't provide information on individual physicians.

http://www.opa.ca.gov/report_card/doctors.aspx

Other useful information:

If you're concerned about the quality of care in a California hospital, managed care plan or HMO, or nursing home, or the care provided by registered nurses, here's information about what to do:

What To Do If You Have Concern About Quality in a California Hospital:

<http://www.informedpatientinstitute.org/HOSQuality-CA.php>

Managed Care: California Department of Managed Health Care, Problems and Complaints:

http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_default.aspx

What To Do If You Have Concern About Quality in a California Nursing Home:

<http://www.informedpatientinstitute.org/NUHQuality-CA.php>

Registered Nurses: California Department of Consumer Affairs:

http://www.dca.ca.gov/online_services/complaints/complain_rn.shtml

This document was written by Carol Cronin, Executive Director, Informed Patient Institute. It was supported by the California HealthCare Foundation based in Oakland, CA.

March 2010