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INSIDE A CLINICIAN'S WORST-CASE SCENARIO: DEADLY MALPRACTICE

BY: MICHAEL VLESSIDES

Washington—Disciplinary action may be an anesthesiologist's worst nightmare, but for most clinicians it remains just that—a prospect unhitched from reality.

Yet for the few physicians who stand to lose their license as a result of state medical board action, the process can be extraordinarily stressful. In a presentation at the 2012 annual meeting of the American Society of Anesthesiologists, Ronald H. Wender, MD, dissected one such case, but was glad to report that, unlike most he has seen, it had a happy ending.

"Most physicians try to do the right thing when it comes to their profession," said Dr. Wender, co-chair of anesthesiology at Cedars-Sinai Medical Center, in Los Angeles, and past president of the Medical Board of California. "But when physicians are bad, they tend to be very bad."

In California, as in many states, medical board investigations can take many forms, including gross negligence or incompetence, sexual misconduct, unlicensed practice of medicine, prescription drug violations and fraud. Such investigations begin when a complaint is received by the board's central complaints unit, which first determines if the issue falls under its jurisdiction.

Most states make a distinction between cases that are referred to the medical board and those that become civil or criminal lawsuits. Medical board investigations do not have depositions; discovery often occurs through record reviews and interviews with the affected physician. And while criminal and civil cases can go to trial, medical board cases that are not settled between the parties—as most in fact are—wind up before an administrative law judge.

Mark F. Weiss, JD, an attorney at the Advisory Law Group, in Los Angeles, who specializes in anesthesia practices, explained the procedural differences between medical board cases and civil or criminal cases. "The administrative law judge hears the case, then writes his or her opinion," said Mr. Weiss, who also holds an appointment as clinical assistant professor of anesthesiology at the University of Southern California's Keck School of Medicine, in Los Angeles. "This is a suggested course of action that then goes to the medical board. In California, the medical board can either adopt the administrative law judge's ruling or toss it out."

Physicians who disagree with the decision of the administrative law judge can request a hearing directly in front of the medical board. "And if you don't like that decision either, you can appeal to the Superior Court," Dr. Wender said.

First Liposuction Case Turns Deadly

To help illustrate the process, Dr. Wender described a case that went through both the Medical Board of California and the state's court system. The physician involved was an anesthesiologist who had been a top student in medical school. After graduation, he joined a group of anesthesiologists performing outpatient procedures.

"His very first case was his first liposuction case," Dr. Wender said. The patient was a 50-year-old woman undergoing multiple cosmetic procedures, including total body liposuction. The surgeon was not a board-certified plastic surgeon. Although the patient was otherwise healthy—American Society of

Anesthesiologists physical status 1—she failed to inform the team that she had a previous history of arrhythmias.

The case was predicted to last eight hours; it dragged on for 12. The patient received a total of nearly 14 L of tumescent solution with lidocaine and epinephrine, plus 19 L of IV fluid.

Not long after the case started, the patient's oxygen saturation and blood pressure both decreased, while her heart rate increased. By 2 p.m., roughly six hours into the procedure, her urine output had decreased. At this point, the patient had received 11 L of IV fluid and 13 L of tumescent anesthetic. The surgeon then began the facelift and brow lift.

Shortly after 6 p.m., the patient was described as "swollen," and had begun leaking serosanguineous fluid from her face. "Soon they were putting on the dressing, and even though the patient was not really awake, she was extubated. Unfortunately, she wasn't waking up," Dr. Wender said.

The medical team administered naloxone, furosemide and ephedrine. Still hypotensive at 7 p.m., the patient was placed in the Trendelenburg position. The surgeon recommended more fluid, so hydroxyethyl starch was administered. By 10 p.m., emergency services had been called. When the paramedics arrived, they immediately performed CPR—the first time it had been performed on the patient—and reintubated her. Less than 30 minutes later, she was dead.

The complaint was filed against both the anesthesiologist and the surgeon, and a judge issued a temporary restraining order, preventing either from practicing until the case was decided. In this case, the prosecution sought revocation of both physicians' licenses.

"You can seek various forms of discipline," Dr. Wender explained, "but this case was considered heinous enough that they went for revocation of the license, the ultimate discipline." The administrative law judge recommended revocation.

The anesthesiologist, whom Dr. Wender did not identify to preserve his privacy, requested a hearing in front of the medical board, which subsequently upheld the revocation: He lost his license.

“Unlike many cases, though, this one has a happy ending,” Dr. Wender said. The anesthesiologist worked for four years as a research assistant at a university anesthesia program and tutored children in elementary school. After undergoing an extensive rehabilitation program, his license was reinstated with five years’ probation.

“He went back to university, did a 12-month pediatric anesthesia fellowship, then six more months of additional OR training.” At first his license was restricted to the hospital setting only, but eventually all restrictions were lifted.

“Today,” Dr. Wender said, “he’s working as an attending in a university program.”

Happy endings aside, Mr. Weiss urged physicians to recognize the overlap that can occur between medical board cases and criminal or civil suits. “There are obligations pursuant to your license to cooperate with the medical board,” he told *Anesthesiology News*. “But physicians need to understand that when they’re making statements to investigators and giving testimony in connection with medical board disciplinary proceedings, they may be impacting their own civil and criminal liability, since these statements could be admissible against you in court or otherwise compromise your defense.

“So, physicians accused of unprofessional conduct have to make sure their defense counsel isn’t simply familiar with medical board procedures, but has an awareness of defending the client against potential criminal and civil liability as well.”

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Mark F. Weiss is an attorney who specializes in the business and legal issues affecting anesthesia and other physician groups. He holds an appointment as clinical assistant professor of anesthesiology at USC’s Keck School of Medicine and practices with the Advisory Law Group, a firm with offices in Los Angeles and Santa Barbara, Calif. He can be reached by email at markweiss@advisorylawgroup.com and by phone at 800-488-8014.