

Appendix 4. Elements on Training Program

Elements of a Training Program for Reviewers

(The Board acknowledges that some of this material is derived from the Oregon Board of Medical Examiners "Handbook for BME Consultants" August 2001 though that publication forms no part of this list of essential training elements.)

I. Board Investigative Process.

Reviewers should be familiar with the investigative process of the Board. The Board offers a short tutorial to new Physicians which outlines the process, includes a flowchart of the disciplinary process under the State Board of Physicians, and provides useful links. Reviewers may access this tutorial at <https://www.mbp.state.md.us/bpqanpo/> (New Physician Orientation. Log on a Guest.) The authorizing statute may be accessed at <http://mgaleg.maryland.gov/mgaweb/Laws/StatuteText?article=gho§ion=14-401.1&enactments=False&archived=False> (Health Occupations Article, §§14-401.1 thru 415); and regulations at https://www.mbp.state.md.us/resource_information/res_pro/resource_Practitioner_regs.aspx (COMAR 10.32.02.01 through 10.32.02.10).

II. Role of the Reviewers

The attached flow chart shows the process a complaint goes through from the time it is received by the Board of Physicians until it reaches final resolution. If the Board determines that a full investigation is warranted, the case is sent to the Peer Review Contractor and then assigned to Reviewers under this Contract.

The case would then be assigned to a Reviewer under this contract. The Reviewer's expertise in the licensee's specialty (or the procedures in question in a case) provides the Board a basis on which to decide whether or not to charge and/or sanction a Physician with failure to meet the standard of quality medical or surgical care, inadequate documentation or another violation of the Medical Practice Act. A written Peer Review report, and, in some cases, expert witness testimony by the Peer Reviewers, provides the Board with an expert opinion in this case.

The Reviewer is asked his/her opinion on whether the licensee's action or lack of action was consistent with the standard of quality care (regardless of whether or not this care can be shown to have resulted in actual harm to the patient), whether documentation was adequate and whether a licensee's conduct was consistent with other grounds under the Maryland Medical Practice Act. Reviewers do not make a final decision on whether a violation of the Medical Practice Act has occurred. The Board of Physicians has the authority to charge and/or sanction a Physician under the Medical Practice Act. The Peer Review report assists them to determine if a violation has in fact occurred.

The contractor will ask the Reviewers about conflicts of interest. Some of the more common conflicts of interest include personal or professional relationships with the licensee under review or the patient or complainant (e.g., reviewing the medical care provided by or to friends, family members, economic partners, or competitors).

VI. What is an Expert Witness?

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The rules of evidence generally provide that if scientific, technical or other specialized knowledge will assist the trier of fact or a deliberative body (such as the Board of Physicians) to understand the evidence or to determine a fact in an issue, then a witness qualified as an expert by knowledge, skill, experience, and training may testify thereto in the form of an opinion or otherwise. In the event that a case results in charges against a licensee, the Reviewer may become an expert witness. When a Reviewer accepts a case for review, the Reviewer may also be required to appear and testify regarding his or her expert opinions during a hearing on the case.

a. Hearings: What to Expect

If the Board of Physicians votes to charge a licensee with a violation of the Medical Practice Act and the licensee contests the charge, a hearing at the Office of Administrative Hearings is held. The majority of cases settle without the need for an evidentiary hearing. Typically, the need for such a hearing and the need for an expert witness's testimony will be known several months in advance. The administrative prosecutor in the case will assist a Peer Reviewers in preparing for a hearing. A Peer Reviewers will not usually be required to travel in order to engage in this preparation, however, will likely be required to travel to the Office of Administrative Hearings in order to testify and/or be present to consult with the Administrative Prosecutor during witness testimony.

During the direct examination, the administrative prosecutor will question the Reviewer first. The initial questions will be about education, training and experience. These questions are designed to "qualify" the Reviewers--that is, establish the qualifications as an expert for the official record.

After a Reviewer has been qualified as an expert, the Board attorney will question the Reviewer about the medical records reviewed. The Reviewer will be given a copy of the medical records to refer to for specific page numbers, dates, lab reports and quotes. The Reviewer is not expected to recite every detail in the medical record from memory. The Reviewer may ask to see the medical records. Any document reviewed, read or referred to while the Reviewer is on the witness stand is legally available to both the Board attorney and to the defense attorney.

After direct examination, the licensee's attorney will have the opportunity to ask leading questions of the Reviewer on cross-examination. Additionally, the Administrative Law Judge may ask the Reviewer questions. Prior to the evidentiary hearing, the Administrative Prosecutor will meet with the Reviewer to prepare him or her for the hearing process.

III. Report Writing (The Opinion)

The Reviewer's opinion will be initially embodied in a written document, using the report format specified. It should be clear, specific, and complete. The report should avoid abbreviations and use plain English as much as possible, since many non-medical people will read the report.

The report should be specific in describing the factors which made the Reviewers believe that the licensee's action or inaction resulted in (or failed to result in) quality care, inadequate documentation or any other issue the Board has asked the Reviewer to address. If it is the Reviewer's opinion that the licensee did in fact provide competent and quality care and was not in violation of the grounds he or she was asked to review, the Reviewer should state this plainly and explain the reasons for this opinion.

The Peer Review report is not a public document. Names of the patients whose care is subject to a Peer

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Review may if necessary be used without disguising them with initials or other means of protecting the identity of the patient. Should the case record be the subject of a court appeal at any point, the names of the patients in the Peer Review report will be redacted, or the record will be sealed or both. Avoid inflammatory or derogatory remarks. Reviewers should be aware that Board members and staff, the administrative prosecutor, the licensee, the licensee's attorney, and/or an administrative law judge may read the report, should the case go to adjudication.

Reviewers need to consider when the events under review took place and when particular advances in the profession became part of the standard of quality care. For example, if pulse oximeters or other technology were not widely available at the time of an incident in which their use is now standard, make a note of this fact. The care should be judged against the standard at the time the events occurred.

IV. Confidentiality

All health care practitioners have a duty in law to maintain confidentiality of their patients. Confidentiality is equally important when dealing with the work of the Board of Physicians, since all records of the Board, including the medical records reviewed and the Peer Review report are made confidential by law. All documents that the Reviewers receive or discussions they have with authorized individuals (Board staff, another Reviewer on the case, contractor, or administrative prosecutor) are confidential. Reviewers should not tell anyone that they are reviewing a particular case. Refer questions to the Board of Physicians through the Department's Contract Monitor.

V. Conflict of Interest.

If the Reviewer believes that he or she has a conflict of interest in reviewing a particular licensee, the Reviewers should notify the Peer Review contractor as soon as possible. Reviewers should feel comfortable and unbiased about the work they do so that they can provide a completely objective opinion and avoid any real or apparent conflict of interest.

During his/her testimony, the Reviewer should try to avoid using medical jargon whenever possible. If the Reviewer does use jargon or difficult scientific terms, the Reviewer should try to define or explain them in lay terms. This testimony must be understood by:

1. Attorneys (who are probably unfamiliar with medical terminology).
2. Board members, some of whom are non-Physicians. Many of the Physicians may practice in an unrelated sub-specialty.
3. In the event of an appeal, by a judge who may review a written transcript of the Reviewer's testimony.

If it would be easier for the Reviewer to explain certain concepts by drawing pictures or diagrams or referring to photographs, the Reviewer should tell the Board attorney in advance. Arrangements can be made to have a flip chart, lighted view boxes for displaying X-rays, a slide projector, or other helpful materials available in the hearing room.