

SB 425 adds Section 805.8 to the California Business & Professions Code Requiring Reporting of Allegations of Sexual Abuse or Sexual Misconduct in Certain Circumstances

Insights

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PROFESSIONAL

On October 12, 2019, the Governor approved SB 425 adding Section 805.8 to the Business & Professions Code. The new law requires any health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to report any allegation of sexual abuse or sexual misconduct (defined to mean inappropriate contact or communication of a sexual nature) made against such licensee by a patient or the patient's representative. The complaint must be in writing and the report must be made within 15 days of receiving the written allegation. The agency receiving the report must investigate the underlying facts and circumstances.

Limitations and Timing of Reporting Requirement

Application of this new reporting requirement does have specific limits. It applies only if the allegations are made by a patient in writing, not to allegations made by nurses or other hospital staff, or oral allegations by a patient. The report is required within 15 days of receipt of the written allegation, as opposed to Section 805 and 805.01 reports which are made after a final decision or recommendation regarding disciplinary action. No proposed disciplinary action is required for such report to be made and the filing of a Section 805.8 report does not itself trigger Section 809/Medical Staff Bylaws' hearing rights. The report will almost certainly have to be made prior to the completion, or even the start, of a formal investigation and before any disciplinary action is recommended or taken.

A Section 805.8 report will be required in addition to, not in lieu of, Section 805 or 805.01 reports. For example, a Section 805.01 report is required within 15 days after a peer review body makes a final decision or recommendation regarding disciplinary action based on the peer review body's determination that any of four specific situations may have occurred, including sexual misconduct with one or more patients during a course of treatment or an examination. Hypothetically, a patient could submit a written complaint of alleged sexual misconduct but the medical staff could find such complaint unsubstantiated and not propose any action. A Section 805.8 report would be submitted even though the subsequent medical staff investigation found that the complaint had no merit. On the other hand, disciplinary action could be taken against a physician for alleged sexual misconduct requiring an 805.01 report but if no written report was made by a patient, an 805.8 report would not be required. There could also be situations where both reports are required.

Entities Required to Report

The scope of which entities are required to report under Section 805.8 is much broader than the definition of "peer review bodies" required to report under Section 805 and 805.01. This is a critically important distinction. Section 805.8 requires health care facilities, licensed or unlicensed and including clinics, or other entities that make any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to file such reports when required. An arrangement under which a licensee is allowed to practice or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, courtesy staff privileges,



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locum tenens arrangements, and contractual arrangements to provide virtually any professional services. But the key point is the breadth of institutions to which this statute applies.

Application to Broad Range of Healing Arts Licensees

The scope of healing arts licensees for which Section 805.8 reporting is required is broader than the definition of licensee under Section 805. The Section 805.8 reports apply not only to physicians but also for other healing arts professionals, including but not limited to physical therapists, optometrists, speech and language pathologists and audiologists, licensed marriage and family therapists, and respiratory therapists. This list is not exhaustive so it is critical to check whether the report is required for the subject health care professional in question.

Confidentiality

The bill requires such reports to be kept confidential with certain exceptions to include disciplinary hearings conducted pursuant to the Administrative Procedure Act in licensing board actions to revoke a licensee's professional license.

Penalties for Failure to Report

Similar to fines for failure to submit Section 805 and 805.01 reports, SB 425 makes a willful failure to file the report by a health care facility or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation, as specified. The amount of the fine shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under the section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required would not be filed; whether there was a prior failure to report; and whether a report was filed with another state agency or law enforcement.

Immunity

The new law provides immunity from civil or criminal liability to employees or individuals contracted or subcontracted to provide health care services, a health care facility, or other entity for making such reports required by law.

Effective Date

The new law takes effect January 1, 2020.

Format of Report

As of the date of this Alert, the Medical Board of California has not developed a form for 805.8 reporting. We do expect the Medical Board will be preparing a form to include on its web site. We will continue to monitor this issue and report to clients when a form is developed.

Health care entities must have systems in place and alert all employees/Medical Staff leaders who may receive such reports. Given the short 15 day deadline provided for by this new statutory requirement, awareness and timely action is critical. It is critical to recognize both the limitations and breadth of the new requirements to evaluate quickly and effectively whether such a report is required and who is responsible for its submission.

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