

New Mandatory Reporting Requirement: Patient Allegations of Sexual Misconduct by his/her Licensed Provider

Effective January 1, 2020, Section 805.8 of the California Business and Professions Code was added to the statutory framework. When a health care facility receives a written allegation of a provider's sexual misconduct or sexual abuse of a patient, submitted to the facility by the patient or the patient's representative, the health care facility must report it within 15 days to the provider's professional licensing board, or face monetary penalties not to exceed \$100,000. "Sexual misconduct" is defined as "inappropriate contact or communication of a sexual nature." This mandatory reporting requirement applies to clinics or health care facilities, whether licensed or exempt from licensure, and includes post-secondary educational institutions. Providers include a person with a license to practice in the healing arts including physicians on a medical staff, or hired under contractual or locum tenens arrangements for inpatient or outpatient services.

Willful failure to file the report is punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per violation. If the responsible reporter is a physician, his/her failure to report will be subject to an action or proceeding by the Medical Board of California. If the failure to report is not willful, it is punishable by a fine not to exceed fifty thousand dollars (\$50,000) per violation. The amounts are determined by several factors including whether the failure to report resulted in patient harm or risk to patient safety; whether there was a prior failure to report and other factors.

Nelson Hardiman regularly advises clients on mandatory reporting requirements, including reports required by medical staffs, hospitals and individual licensees.

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