

# STANDARD OF CARE MODEL

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## Presentation to Board of Pharmacy



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# Business and Professions Code

## § 2234 – Unprofessional Conduct

- ▶ The MBC shall take action against any licensee who is charged with unprofessional conduct.
- ▶ Unprofessional conduct includes, but is not limited to:
  - Violating the Medical Practice Act
  - Gross negligence
  - Repeated negligent acts
  - Incompetence



# Standard of Care (SOC)

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## ▶ Definition

- That level of skill, knowledge and care in diagnosis and treatment ordinarily possessed and exercised by other reasonably careful and prudent physicians in the same or similar circumstances at the time in question.

## ▶ Established

- Standard of care must be established through expert testimony.



# Positives with SOC Model

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- ▶ Flexible – depends on the facts and circumstances.
- ▶ Changes over time with advancement in medicine without the need for statutory or regulatory changes.
- ▶ Law cannot and does not have to cover every possible scenario – SOC controls most interactions.



# Caveat – BAN on Corporate Practice of Medicine

- ▶ MPA has a BAN on the corporate practice of medicine. (Business and Professions Code §2400, et seq.)
- ▶ It is important that the SOC be set by licensees – **NOT** lay individuals or corporations.
- ▶ Licensees must put patient safety above profits and other interests.
- ▶ SOC must control over policies and procedures that require conduct below the SOC.



# Challenges with SOC Model

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- ▶ The Medical Practice Act has very few bright line rules, which can be frustrating to licensees who want to know what is expected.
- ▶ Case outcome is dependent upon “winner” of the “battle of the experts.”
- ▶ Defense has a bigger expert pool and sets their own limit on what they will pay; Board can only pay very little.
- ▶ SOC does not have to be the best care.



# Challenges with SOC Model (cont.)

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- ▶ Challenges with Experts
  - Finding
  - Training
  - Monitoring
  - Preparing
  - Paying
  - Retaining
  - Defending from lawsuits



# Questions?

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