

Physician Discipline and the Medical Conduct Program

It's important to understand how this process works.

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For the most part, licensed physicians are dedicated, caring, and capable professionals working to protect and improve the health of their patients. However, as with most professions, there are those who are dishonest, impaired, or just deficient in their practice. These “bad apples” can affect the integrity of the entire profession and potentially impact the quality of patient care and confidence in physicians. What can be done to weed out the few that tarnish the reputation of the many and discipline them as appropriate?

In New York State, the Health Department's Office of Professional Medical Conduct (OPMC) and the state Board for Professional Medical Conduct (board) are responsible for investigating and adjudicating complaints against physicians, physician assistants, and specialist assistants. Each year, the OPMC investigates thousands of complaints received from the public and from healthcare professionals and institutions. Most states have similar boards and guidelines, but information in this article is based on the New York State OPMC.

The board is composed of two-thirds physicians and one-third lay members, including physician assistants. Physician members are nominated by state, county, and specialty medical societies. Lay members are ap-

pointed by the commissioner of health with the approval of the governor. The OPMC serves as staff to the board.

When complaints are filed with OPMC, an in-place procedure effectively weeds out any complaints that lack foundation or are based on issues that lie outside the jurisdiction of OPMC and the board. If evidence is found that suggests misconduct, checks and balances built into the

contact OPMC. If the colleague is affiliated with a hospital, a report can be made to the facility's professional practices committee, which must then inform OPMC. If the colleague is not affiliated with a hospital, a report can be filed with the county medical society, which will be responsible for reporting to OPMC. If you are uncertain whether specific actions or behaviors constitute misconduct, you may re-

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medical conduct system ensure that physicians receive due process.

Complaints can be filed by any person or entity. However, more than half of all complaints about physicians and physician assistants come from the public, usually patients, family members, or friends. In New York, state law requires health facilities, including health maintenance organizations, to report disciplinary actions that they take against medical professionals and any other instances of possible misconduct.

All licensed health professionals, including physicians, physician assistants, and specialist assistants, are required by state law to report colleagues whom they suspect may be guilty of misconduct. Failure to report suspected instances of misconduct is, in itself, misconduct.

If you believe a colleague's actions may constitute misconduct, you must

quest advice from OPMC without revealing the name of the practitioner. Once OPMC provides an official response, you are required to follow it.

Practitioners suspected of having problems with alcohol, drugs, or mental illness, but whose ability to practice is not impaired, may be reported to the Committee on Physicians' Health of the Medical Society of the State of New York (the committee). All calls are confidential. The committee identifies, refers to treatment, and monitors impaired physicians. The program is voluntary, and participation is confidential. The names of physicians participating in the program are not shared with OPMC without the participant's approval unless the participant fails to comply with treatment recommendations.

If you believe, however, that a colleague's medical performance may be

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impaired, you must contact OPMC. The law does not exempt physicians from their duty to report colleagues practicing with a suspected impairment to OPMC because they have reported to the committee. However, this requirement does not apply if compliance would violate a physician-patient relationship.

Physicians may be charged with misconduct for any of the following:

- Being impaired by alcohol, drugs, or physical or mental disability;
- Abandoning or neglecting a patient in need of immediate care;
- Promoting the sale of services, goods, appliances, or drugs in a manner that exploits the patient;
- Refusing to provide medical care because of a patient's race, creed, color, or national origin;
- Guaranteeing a cure;
- Performing professional services not authorized by the patient;
- Willfully harassing, abusing, or intimidating a patient;
- Ordering excessive tests or treatments;
- Failing to make patient records and x-rays available to a patient or another physician on request;
- Permitting unlicensed persons to perform activities that require a license;
- Practicing the profession with a suspended or inactive license;
- Revealing personally identifiable facts, data, or other information without consent of the patient, except as authorized or required by law;
- Permitting another to share in the fees for professional services, except as authorized or required by law; and
- Failing to maintain a record for each patient that accurately reflects his or her medical evaluation.

In some instances, investigations fail to find sufficient evidence to warrant a charge of misconduct for complaints. In many others, the complaints reviewed by OPMC staff concern issues over which OPMC has no legal authority.

Many complaints received by OPMC arise from failed communication. Typically, these do not constitute misconduct, but they do point out basic problems in the doctor-patient relationship that, if left uncor-

rected, ultimately could lead to serious problems.

Misunderstandings about diagnoses, treatments, referrals, and billing, as well as concerns about rudeness and a perceived lack of caring, often produce complaints to OPMC. Complaints regarding fees generally do not fall under the jurisdiction of the board unless they represent fraud. For example, it would be considered fraud if a physician charged for tests or services not provided. A patient may feel a physician charged too much for services received, but that fact alone cannot form the basis of a misconduct action.

Similarly, complaints about a physician's communication skills, attitude, or "bedside manner" generally do not fall under the jurisdiction of the board. Neither does the board have any authority over such office practice issues as long waiting times or rude staff. However, the willful harassment, abuse, or intimidation of a patient, either physically or verbally, does constitute misconduct.

How Does the Process Work?

Written complaints are reviewed by OPMC investigative and medical staff. Complaints that raise possible misconduct issues are assigned to investigators. OPMC medical coordinators provide clinical guidance. Typically, complainants, doctors, and others involved are interviewed. Interviews may be conducted over the telephone or in person. Complainants' identities are kept confidential, although a physician may deduce the source of a complaint from the available information.

Licensees who are under investigation are expected to cooperate in the investigative process, to participate fully and openly in the interview process, and to make records relevant to an inquiry available upon request. Failure to respond to written communications from the state Health Department and to make available any relevant records with respect to an inquiry about the licensee's professional misconduct in and of themselves constitute misconduct under the state Education Law. A physician may have legal counsel present during an interview or at any time during the investigatory process.

If appropriate, complaints that raise issues outside the jurisdiction of

the OPMC are referred to the proper agency. Complainants are notified of that action by letter. If a physician was contacted, he or she is also notified by letter.

If an investigation uncovers sufficient evidence to suggest misconduct, the case is presented to an investigation committee consisting of two physicians and one layperson drawn from the board. The committee can recommend to the Director any of the following: a hearing; additional investigation; dismissal of the matter; or non-disciplinary warnings or consultations.

If the investigation committee determines that the physician poses an imminent danger to the public health, it may recommend to the state health commissioner that the physician's license be summarily suspended.

If the investigation committee finds evidence suggesting misconduct or if the commissioner orders a summary suspension, charges are filed against the physician and a hearing is scheduled:

- If sufficient evidence suggesting misconduct is not found, the investigation is terminated and the case is closed. A record of the investigation remains in OPMC files for possible future reference. Complainants and physicians are notified by letter.
- Cases ordered to hearing go before another committee of the board—also consisting of two physicians and a layperson—which hears and reviews evidence from both sides. The physician and the state usually are represented by counsel, who introduce evidence and call and question witnesses. Typically, the physician testifies at the hearing as well. An adverse inference may be drawn against a physician who does not testify. The committee rules on the case and determines whether a penalty is warranted.
- The hearing committee decision may be appealed by either side to an Administrative Review Board composed of three physician and two lay members of the board.

What Are the Penalties for Misconduct?

The board has the authority to take certain actions against a physician's license. Those actions include:

- Revocation;

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- Suspension;
- License limitation to a specified area or type of practice;

mination of the board. The physician's license may be placed on probation for a fixed period of time, and the physician may be required to adhere to the terms and conditions of that probation.

complaints, dismissed actions, and ongoing investigations is confidential, as are the names and identities of complainants. Investigative files are confidential as well and are disclosed neither to complainants nor to physicians.

- Final decisions, the charges on which they are based, and penalties are public record.

Resolving complaints can take several months. Issues that go to hearing typically take longer.

- A requirement that a physician pursue a course of education or training;
- License or registration annulment;
- Censure and reprimand;
- A fine not to exceed \$10,000 for each finding of guilt; and
- Community service of up to 500 hours.

In addition, state Public Health Law 230(18) gives OPMC the authority to monitor physicians who have been placed on probation pursuant to a deter-

Those terms and conditions may include review of randomly selected patient records, periodic visits to OPMC, employment of a practice monitor or chaperone, or other requirements necessary to ensure protection of the public.

Some Things You Should Know

- All final disciplinary actions and summary suspensions are public information. Effective November 3, 2008, charges filed against a physician will be made public once the physician is served. Information on previous closed

Because medical conduct investigations are complex, resolving complaints can take several months. Issues that go to hearing typically take longer. However, OPMC makes it a priority to close cases as quickly as possible. Timely investigation and resolution of misconduct complaints is essential to protect patients and preserve public confidence in the physician discipline process. **PM**

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