

## Board of Osteopathic Examiners in Medicine and Surgery (Report Highlights)

April 2001

The Arizona Board of Osteopathic Examiners in Medicine and Surgery's (Board) mission is to protect public health and safety by licensing osteopathic physicians, disciplining physicians guilty of unprofessional conduct, and providing consumer information. Osteopathic physicians qualify for unlimited medical practice just as do allopathic physicians (MDs).

**Our Conclusions:** The Board frequently fails to take disciplinary action when warranted. In addition, the Board has not been opening complaints when notified of medical malpractice settlements or judgements, and is slow in resolving complaints. Further, the Board's complaint records are inaccurate and incomplete. Finally, the Board had to reduce its staff and its budget and receive emergency funding due to a financial crisis caused by over-spending.

### The Board Should Discipline Physicians Who Violate Statutes

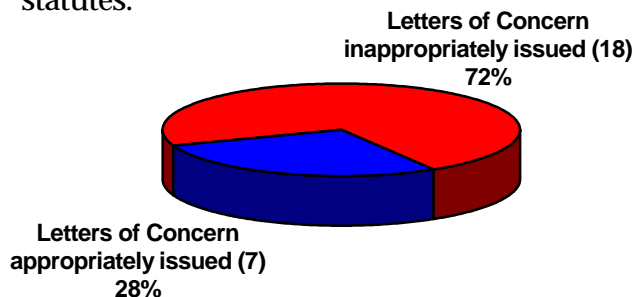
The Board can protect the public by investigating and adjudicating instances where physicians may have violated the Board's unprofessional conduct statutes. The Board's statutes define the appropriate actions the Board should take in response to complaints. Specifically, the Board should:

- **Dismiss** the complaint if it is without merit;
- Issue a **Letter of Concern** if the Board is concerned about the physician's actions, but lacks evidence to prove a statutory violation; and
- **Discipline** when the physician is found guilty of violating unprofessional conduct statutes.

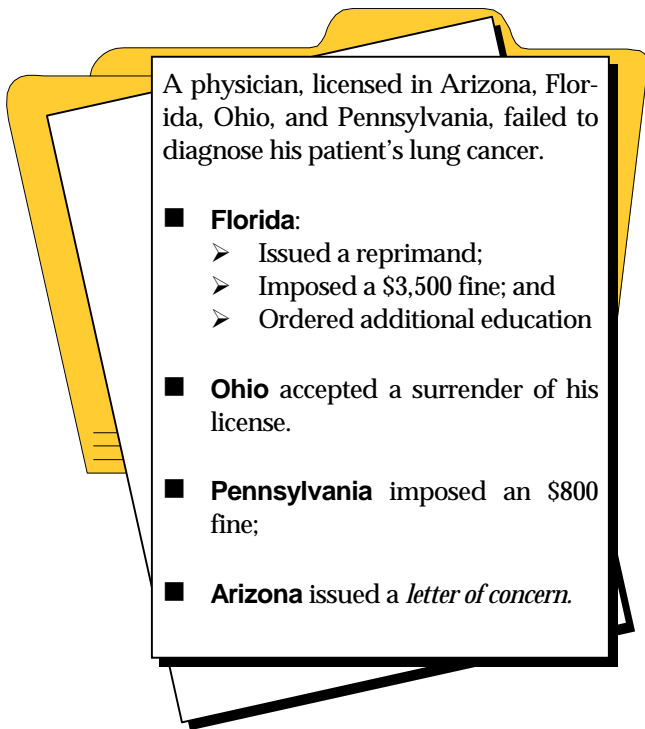
The Board has a range of disciplinary options including:

- Censure
- Probation
- Civil Penalties
- Suspension or Revocation

A dismissal or **letter of concern** is not considered a disciplinary action. However, in the last three years, most **letters of concern** have been issued when there is evidence that the physician violated unprofessional conduct statutes.



In addition, 4 of 30 dismissed complaints had evidence of unprofessional conduct; therefore the Board should have disciplined the physicians.



**The Board should:**

- ✓ Take disciplinary action when a physician violates the Board's unprofessional conduct statutes
- ✓ Ensure that staff perform complete investigations and provide conclusions on whether the physician met the standard of care
- ✓ Before discussing penalties, determine for each allegation whether a violation has occurred
- ✓ Establish and use disciplinary guidelines
- ✓ Review a physician's letter of concern and disciplinary history prior to adjudication.

**The Board should improve investigations—**

Staff do not always investigate every complaint allegation nor interview every complainant. Investigations also lack conclusions regarding:

- Whether evidence supports every complaint allegation
- Whether the physician met the standard of care.

**The Board should improve its decision-making processes—**

The Board can also improve how it reviews and adjudicates cases. Currently, the Board does not reach a formal conclusion for each allegation as to whether a violation has occurred. In addition, the Board does not:

- Use disciplinary guidelines, as other boards do, for consistency in deciding penalties.
- Always check to see if a physician has a history of letters of concern or disciplinary actions to see if progressive discipline is warranted.

**Complaint Processing Needs Improvement**

Complaints come from two main sources: patients and malpractice settlements and judgments. The Board is slow to resolve complaints from both sources and has not even opened investigations on some complaints.

**Patient Complaints:**

- 291 days average resolution

**Malpractice Complaints:**

- 10 open over 600 days
- 45 investigations not opened as required.

This delay could permit a negligent physician to continue practicing unchecked. One physician's example:

**Complaint #1:** Opened in August 1995 for surgical error resulting in a \$223,000 judgment. The Board waited until June 2000 to issue subpoenas for records. The complaint was dismissed in February 2001.

**Complaint #2:** Opened in August 1996 for failing to notify a patient of a cancer diagnosis from a pap smear test. The patient died. In August 1999 the Board issued a *letter of concern*.

**Complaint #3:** Opened in December 1998 for failing to notify a patient of a cancer diagnosis from a pap smear test. The complaint was dismissed in December 2000.

### The Board Should:

- ✓ Ensure it opens malpractice complaints when the lawsuit has a settlement or judgment
- ✓ Establish and meet deadlines for each step of the complaint investigation process
- ✓ Prioritize complaints based on seriousness

### Poor Records Affect Discipline Process and Public Information

**Board's complaint database is inaccurate and incomplete**—While the Board's complaint information is computerized:

- The database contains inaccuracies
- Complaints are missing

As a result, the accuracy of public information is questionable and complaint processing time frames cannot be tracked.

**Wording of a recent statutory change may hamper the Board**—In 2000 the Legislature amended the Board's statutes to limit public access to complaint information after three to five years. These changes were similar to 1999 changes in the Board of Medical Examiner's (BOMEX) statutes limiting public access to complaints after five years. However, unlike the BOMEX changes, the Board's statutes now require that:

- After five years the Board must **delete** records of complaints dismissed without prejudice and all *letters of concern*
- After three years the Board must **delete** all complaints dismissed with prejudice

**The Board could improve timeliness**—The Board can take several steps to improve timeliness:

- Meet process deadlines
- Establish deadlines for all steps, including issuing subpoenas
- Set time standards for medical consultant review

Deleting records could result in:

- The Board not having complete information to appropriately discipline a physician
- The public receiving an incomplete complaint history.

**The Legislature should:**

- ✓ Consider amending the Board's statutes so complaint records are not deleted.

**The Board should:**

- ✓ Adopt a plan to correct its database so it can be used to manage the complaint process
- ✓ Work with its computer consultant to make the database more useful and effective
- ✓ Generate computerized monthly complaint status reports.

### **The Board's Financial Crisis**

In early July 2000 the Board faced a financial crisis because it had insufficient funds to operate. The crisis resulted from:

- Unrealistic revenue projections
- Overspending actual revenues
- Accounting for monies incorrectly
- Inadequate financial controls

To ensure the Board could continue operating, the Governor loaned the Board money from the Health Crisis Fund. The Board is required to repay the funds by June 30, 2002, by:



- Seeking a license fee increase
- Reducing staff from 8 to 5.5

- Delaying rent and risk management payments
- Canceling its contract for rule writing

This plan, along with increased oversight of Board staff by the Arizona Department of Administration and Board members, should help prevent future mismanagement.

### **To Obtain More Information**

- A copy of the full report can be obtained by calling (602) 553-0333 or by visiting our Web site at:

[www.auditorgen.state.az.us](http://www.auditorgen.state.az.us)

- The contact person for this report is **Melanie Chesney**.