The Board for Professional Medical Conduct

Annual Report
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Board for Professional Medical Conduct

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The Year in Review

Nineteen hundred and ninety-five was a year of great accomplishment and change for the Board for Professional Medical Conduct (BPMC) and the Office of Professional Medical Conduct (OPMC). Most notably, OPMC ended 1995 with 324 final disciplinary actions, the greatest number in the history of the program and an almost 20 percent increase from 1994. New York is one of the few states that regularly and rigorously pursues the most complex of all medical conduct cases--those dealing with negligence and incompetence. Negligence and incompetence cases are the most difficult and require the most resources to pursue because of the highly complex and technical nature of the issues involved. However, these quality of care cases put the public at greatest risk of harm. The number of final decisions in negligence and incompetence cases increased by eight percent from 1994 to 1995.

Final Disciplinary Actions

1992	1993	1994	1995
124	209	271	324

Negligence and Incompetence Cases

35	64	75	81

Helping OPMC to make significant advances in case completion were the aggressive steps taken to further professionalize the investigative efforts of the OPMC through the implementation of case and file management systems and a new case classification system. All these efforts contribute to the BPMC's goals of more efficiently and effectively responding to the public.

The variety of programmatic and policy changes, all geared toward speeding the medical conduct process so cases can be resolved more quickly, include:

- The complaint intake process underwent significant changes. The 5,000 complaints received by OPMC annually are now not only screened, but whenever possible, resolved in central office. Previously each area office opened its own cases. This change allowed OPMC to address complaints more quickly, cutting the time for assignment of a case for investigation by an average of 11 days. The change also meant that simpler cases, that did not require field investigation, were resolved by phone and letter. This permitted area

offices to concentrate on the more complex complaints.

- A new case management system was implemented. Under the system, a 100 percent review, audit and analysis of active OPMC investigations was conducted. The system is designed to develop a base of information to allow a systematic identification and tracking of high priority investigations; document investigative and supervisory performance; provide investigative guidance; and achieve effective management of investigative resources. Planning was completed and a Request for Proposals released for a pilot computerized monitoring and tracking system which will ultimately enhance current efforts and provide more meaningful measures of productivity, quality and timeliness of case completion.

- A new file management system was developed and launched in 1995. This system provides an organized means of documenting and storing investigative material and protecting and securing evidence. The initiation of a newly implemented case classification system now allows accurate assessment of investigator caseloads, case priorities and case types.

These and other changes and improvements in OPMC management and systems brought significant improvements in the reduction of the program's backlog of cases awaiting action and helped reduce the length of time it takes staff to complete cases.

Individual case reviews and the focus on resolving longstanding cases resulted in a decline in pending cases of 34 percent. The more uniform and organized approach to the investigative process helped to drive the number of investigations completed from 2,835 at the end of 1994 to 3,433 by the end of 1995, a 21 percent improvement. The total of all cases closed increased from 4,852 in 1994 to 6,014, a 24 percent improvement.

The average time to close an investigation in 1994 was 658 days; in 1995 that average fell to 403 days, an improvement of 39 percent. A breakdown by type of case further illustrates this improvement. The average time to close a case that went to hearing fell by seven percent. The improvements made to the intake process meant that the average time it took to assign a case to an investigator dropped from 29 days in 1994 to 18 days in 1995, a 38 percent improvement.

The following table helps to summarize the dramatic progress OPMC has made in 1995.

Milestone	1994	1995	Percent Change
Investigations on hand (12/31)	2,877	1,891	(34.27)%
Complaints received	4,675	5,028	7.55%
Investigations completed	2,835	3,433	21.09%
Investigations completed ***that were received in the same year***	974	1,373	40.97%
Total cases closed	4,852	6,014	23.95%
Average time to close an investigation (in days)	658	403	(38.75)%
Average time to close a case that went to hearing (in days)	428	398	(7.01)%
Average time to close an investigation ***received in the same year*** (in days)	118	100	(15.25)%

While these improvements are encouraging, the BPMC recognizes that the time it takes to successfully complete an investigation and bring a complaint to resolution remains too long. The goal of the program is to complete all investigations within six months. That goal can be achieved when the full array of administrative and process changes are completely implemented and with the addition of more resources to permit the hiring of additional investigators, doctors, nurses, lawyers and administrative law judges.

Background

Originally, the State Education Department was responsible both for the licensing and disciplining of physicians in New York State. In 1976 the State Legislature divided the process between the Education and Health Departments. The Health Department became responsible for investigating complaints and holding hearings, but the Education Department and Board of Regents, the department's governing body, made the final decision in all discipline cases. Education also continued to maintain responsibility for the licensing of physicians. In 1991 the state's disciplinary system was changed again by the State Legislature. The Regents and the Education Department were removed from the disciplinary process and that responsibility was given solely to the Board for Professional Medical Conduct and the Health Department's Office of Professional Medical Conduct.

The Board for Professional Medical Conduct

Members of the New York State Board for Professional Medical Conduct (BPMC) fulfill four major roles in the discipline process through service on investigation, hearing and restoration committees and on the Administrative Review Board. In addition, Board members serve on a variety of subcommittees which address key issues and problems identified in the medical conduct system.

The Board, created by the same legislation that divided the disciplinary process, represents a wide spectrum of the state's practicing physicians as well as lay citizens. It serves as a key medical resource in the state's disciplinary process and strives to make the process more responsive both to the needs of physicians and patients.

Physician members of the Board are appointed by the Commissioner of Health based on recommendations made by medical and professional societies. Lay members are appointed by the Commissioner of Health with the approval of the governor. By law, the Board of Regents may appoint 20 percent of the membership of the Board. At the close of 1995 there were 229 members of the Board, 180 physician members and 49 lay members.

The roles of the BPMC and the Office of Professional Medical Conduct (OPMC) are delineated in Public Health Law Section 230. The definitions of misconduct are found in Section 6530 of the Education Law.

The Office of Professional Medical Conduct

The Office of Professional Medical Conduct's (OPMC) mission is to protect the public through professional discipline of physicians and physician assistants for medical negligence, incompetence and/or illegal or unethical practices. Through its discipline process, the office strives to deter professional misconduct and promote and preserve standards of medical practice.

The Office is responsible for:

- Thoroughly investigating all complaints, and, when warranted, issuing charges and convening a hearing of the State Board for Professional Medical Conduct;
- Monitoring physicians whose licenses have been restored following a temporary surrender due to incapacity by drugs, alcohol or mental impairment and overseeing the contract with the Medical Society of the State of New York Committee for Physicians' Health;
- Monitoring the compliance of physicians and physician assistants placed on probation as a result of disciplinary action;
- Collecting data on physician and medial malpractice claims.
- Staffing all activities of the BPMC, including all activities of disciplinary hearings; investigation, restoration and advisory committees; and, all special subcommittees of the board.

The Disciplinary Process

The state's disciplinary process is designed to guarantee members of the public a thorough and responsive investigation of their complaints, while at the same time assuring physicians that their actions will ultimately be judged by their peers.

Physicians and other health professionals are involved in all stages of the disciplinary process, from assessing complaints as they are received, to evaluating a physician's actions against the standards in his or her field to determine if there were deviations which would constitute misconduct.

The Disciplinary Process

* Complaints are received by the intake unit, screened and either resolved in central office or sent to the appropriate field office for investigation.

* Cases in which staff of the investigative unit have found evidence that may support charges of misconduct are presented to an investigation committee of the BPMC, consisting of two physicians and a lay person. The committee can vote the case on to charges and a hearing, dismiss the case, request additional investigation or recommend a summary suspension of a physician deemed to be an imminent danger to the public.

* Cases voted to hearing go to the OPMC counsel's office where they are reviewed and charges are drawn. Consent agreements may be sought to quickly resolve cases without the need for a hearing.

* If a consent agreement cannot be reached, a hearing panel of two physicians and a lay person is drawn from the BPMC. This panel, assisted by an administrative law judge, hears the case, renders a decision and assesses a penalty which can range from dismissal of charges, to suspension with probation, to license revocation.

* Either the state or the physician or physician assistant can appeal a hearing committee's decision to the Administrative Review Board of the BPMC. This board, consisting of three physician and two lay members drawn from the board, serves as the final administrative remedy for either the state or the physician. Once the appeal is properly filed, the board must render a decision within 45 days.

Intake and Complaint Resolution Unit

The intake unit is the start of the state's medical conduct process. Complaints of medical

misconduct are received in the OPMC from a variety of sources, including patients, family members, health care professionals, health care organizations and regulatory agencies. It is the duty of the OPMC to respond to all complaints and to reply to requests for information from the public, health care facilities and federal and state agencies. In 1995, 5,028 complaints were received.

Every medical conduct complaint received is analyzed to determine the appropriate scope and nature of investigation needed. Intake staff gather the initial complaint data, evaluate the information and determine the nature of the complaint. The case is resolved in central office if the issues can be settled by telephone or letter, saving the more complex cases for staff in one of the six OPMC field offices.

The intake process was reorganized in 1995 to require that all cases be opened in central office rather than also allowing field offices to initiate cases. This was designed to assure consistency in decision making regarding what constitutes a case and what level of investigation is necessary.

Complaint Resolution Unit

In its first full year of operation the complaint resolution unit within the intake unit processed 226 investigations, 85 percent of which originated from New York City and Long Island complaints. The unit was established to help reduce area office backlogs of non-priority cases. The unit helped OPMC improve response time to initial complaints as well as providing education to the public and physicians on legal aspects of misconduct and public health issues.

Investigation Unit

Medical conduct investigations typically involve allegations of poor medical care, abuse of patients, fraud or impairment. The investigation unit is responsible for researching and investigating claims of misconduct.

Investigative steps include obtaining relevant medical records; interviewing potential sources of information such as patients, family members, health care professionals; and interviewing the physician under question. Investigative staff often work closely with consulting physicians and outside medical experts.

In 1995 the program's new case management system was fully refined and implemented resulting in the on-site review, audit and analysis of OPMC's entire active caseload. Twelve case reviews involving central office and all area offices documented the full OPMC case inventory, identified nonproductive cases for closure and prioritized significant investigations.

A new file management system was initiated during 1995 which provides a systematic protocol for the documentation and storage of investigative files and evidence. This will assure

the security of all records and evidence as well as enhancing the ability of supervisors to readily access investigative files and monitor the status of investigations. The system integrates the newly developed case classification system which more accurately identifies case priorities and case types.

Physician Monitoring Programs

Probation

One of the penalties that may be imposed by the board as a result of a finding of misconduct is a period of probation during which the health professional must comply with specific requirements. Probationary terms may impose a practice limitation or require supervised practice, additional training, drug or alcohol testing, community service or a review of continued performance. OPMC is responsible for monitoring compliance with the probationary terms through the receipt of reports from physicians and others overseeing the probationer's progress, medical record reviews, telephone interviews and periodic meetings. Physicians who are non-compliant are referred for violation proceedings which may result in further disciplinary action.

During 1995, 144 physicians and physician assistants were placed on probation, bringing to 275 the total number of licensees being monitored. Four physicians were referred for violation of probation, resulting in one revocation and one surrender.

Impaired Physician Program

Physicians and physician assistants who have not caused patient harm but who are incapacitated for the active practice of medicine by alcohol, chemical or mental impairment may surrender their license temporarily to the OPMC. Surrendered licenses may be restored by a committee of the board after a period of demonstrated recovery. The terms for license restoration may include requirements for therapy, sobriety and practice monitoring. This program is voluntary, nondisciplinary and confidential.

During 1995, the OPMC held 116 temporary and 50 permanent license surrenders; conducted 13 restoration hearings; and monitored compliance with the terms of 41 restoration orders and 26 voluntary agreements.

In 1983, legislation was passed that authorized the Medical Society of the State of New York (MSSNY) to create a committee of physicians to confront and refer to treatment physicians and physician assistants suffering from alcoholism, chemical dependency or mental illness. The society created the Committee for Physicians' Health (CPH), which is a voluntary, confidential program to identify, refer to treatment and monitor the recovery of impaired health professionals. CPH operates as a three-year demonstration program under contract to the OPMC.

The impaired physicians program is establishing a computerized data base which will assist in analyzing the monitored population as well as tracking compliance with monitoring terms.

Physician Retraining

Evaluation and retraining are growing aspects of the disciplinary process in New York. This effort attempts to assure that physicians in need of additional or updated training are appropriately identified and retrained so they may return to full and productive practice. Initiated in 1993, New York's program has grown to become a national model even as it continues to define and refine itself.

The retraining program, a three-phase process, includes assessment of the retraining candidate's knowledge and skills, individualized remedial programs to address the identified deficiencies, and ongoing monitoring of the retrainee's progress. The program is designed primarily for internists, family practitioners and general practitioners. Twelve major teaching hospitals have now agreed to participate in the program. Thirty-one physicians are now enrolled.

At the request of the American Medical Association, OPMC continues to work with a sub-committee that was established to foster individualized continuing medical education. In addition, the Director made several presentations about New York's retraining efforts to the members of the Federation of State Medical Boards in 1995.

The Board Unit

The Board Unit serves as staff support for the BPMC by coordinating the hearing process, designing and implementing strategies to assess hearing outcomes, and assessing and responding to the training needs for the board.

The annual meeting of the BPMC was held in November and had record attendance. Those in attendance heard a panel presentation on "complementary medicine" and a presentation on the preliminary findings of the Physician Discipline Process Evaluation Panel.

In 1995 four new members were appointed to the Board to comply with the Laws of 1994 which require that not fewer than two board members "...shall be physicians who dedicate a significant portion of their practice to the use of non-conventional medical treatments..."

A number of subcommittees which focus on a particular issue or portion of the physician discipline system were appointed by the Chair of the Board. These subcommittees share the common goals of identifying new methods or enhancing existing processes to work toward streamlining the physician discipline system and fostering consistency within the system.

The Physician Discipline Process Evaluation Panel

Chapter 735 of the Laws of 1992 created the Physician Discipline Process Evaluation Panel. The mission of this panel is to review the structure, processes and resources of OPMC and to assess whether the goals of the program are being achieved. The panel has met with OPMC

staff and BPMC members, observed hearings and reviewed the findings of an analysis prepared by a management consulting firm hired to assist them in their evaluation. The panel's report is due to the Governor and the Legislature by June 1996.

Information Processing

The primary functions of the Information Systems Unit are to coordinate, supervise and manage all aspects of the computerization of OPMC functions from word processing to the development of area networks to link all office operations. The unit is also responsible for all financial and budget preparations, responses to Freedom of Information Law requests and credential checks of New York State licensed physicians requested by health care organizations. The unit is coordinating the addition of OPMC-related information on the department's Gopher and World Wide Web sites to increase public awareness of, and access to, program information, including the publication of final disciplinary actions and information on how to file a complaint.

The Information Systems Unit's primary focus in 1995 was to build an information system infrastructure necessary for the implementation of OPMC's case tracking and management system. A request for proposals was issued for consulting services to design and implement a hearing case schedule and case tracking system which will serve as the pilot for an OPMC-wide tracking, review and management system.

Medical Malpractice

The Office collects and maintains data on all physician and hospital malpractice claims filed in New York State. The data base consists of approximately 86,000 claims since 1986 with reports coming from more than 100 insurers. The transition of the data base from a paper report process to an electronic system moved ahead in 1995, with 16,000 electronic submissions and 2,000 paper reports. The electronic submission process reduces manpower needs and processing time. Already, 40 insurers have enrolled in the electronic system with another 25 preparing to join in the near future.

The data are collected under the authority of Insurance Law Section 315. The information is used by investigators and medical reviewers to profile a physician's practice history. The data are also used for longer term research projects which may include assessing the relationship of a physician's age to malpractice filings or looking at the types of claims filed as a teaching tool for medical students.