Annual Report 1996
The Year in Review

To ensure quality medical care to New York residents, the Office of Professional Medical Conduct (OPMC) investigates complaints against physicians and physician assistants, and prosecutes those charged with misconduct. Investigations that reveal evidence of physician misconduct or impairment are referred to a committee of the State Board for Professional Medical Conduct (board), which hears the evidence in the case and makes the final decision regarding a penalty, if appropriate.

The Board for Professional Medical Conduct continued its aggressive and expeditious investigation and adjudication of disciplinary actions. In 1996, the board completed 311 final disciplinary actions, the second highest number of final actions in its history. The number of serious actions taken--surrenders and revocations--rose 9 percent. This represents the greatest number of licenses lost since the Department of Health became involved in the medical discipline process in 1976. The speed at which cases were resolved improved significantly in 1996. In 1995, 33 percent of the OPMC total caseload was more than a year old. In 1996, only 15 percent of the case load was a year old.

Legislative Action

At the urging of the Department of Health, major reforms of the physician discipline process were adopted into law during the year. The legislation had a dramatic impact on public information and on revenues available for medical conduct activities. Approval of an increase in the biennial license registration fee physicians pay from $330 to $600 will support the work of the OPMC and the board. The additional revenues were earmarked to hire approximately 100 new investigators, nurses, attorneys, administrative law judges and support staff.

Key provisions of the new law include:

- The decision of hearing committees are made public as soon as they are issued in cases where a physician's license is ordered to be annulled, suspended without stay, or revoked.

- Physicians whose licenses are revoked, annulled or suspended with actual time out of practice no longer have their penalties stayed if they appeal.

- In cases where the Health Commissioner summarily suspends a physician's license based on an imminent danger to public health, the Commissioner's action will be announced immediately.

- Health Maintenance Organizations were added to the list of health care organizations required to report disciplinary actions against physicians and physician assistants to OPMC.

- Physicians practicing with limited permits, and medical residents are subject to misconduct proceedings by OPMC.

Disciplinary Activity

OPMC received a total of 5,151 complaints in 1996, a 2 percent increase over 1995. As in past years, the greatest number of complaints--2,848-- was received from the public.

The board imposed final disciplinary action in 311 cases in 1996, the second highest volume of final disciplinary actions in board history. The number of licenses surrendered or revoked reached an all-time high at 184. This increase in the number of cases resulting in the loss of license reflects an increase in focus upon cases involving acts of serious misconduct. Equally significant, the number of final actions in negligence and incompetence cases rose by almost 20 percent in 1996. Negligence and incompetence cases are the most difficult for OPMC to investigate and require the greatest resources to pursue due to the highly complex and technical nature of the issues involved. However, these quality of care cases put the public at the greatest risk of harm.

Final Disciplinary Actions

1993	1994	1995	1996
209	274	324	311

Surrenders and Revocations

98	139	169	184

Negligence and Incompetence

64	75	81	97

Case age also improved dramatically in 1996. The age of the caseload is significant because it is an indicator of how quickly OPMC is able to address and resolve cases it is investigating. In 1995, one-third of the caseload was more than a year old; in 1996, only 15 percent of cases were more than a year old. Overall case age improved as well. In 1995, almost 17 percent of all cases were between two and five years old; in 1996, only 5 percent of cases were between two and five years old.

PDPEP Final Report/Department Work Group

The six-member Physician Discipline Process Evaluation Panel (PDPEP) charged with evaluating the state's medical conduct process issued its final report to the Governor and Legislature in July 1996. The panel called for reforms in the system that would shorten the time it takes to discipline physicians and to make those decisions available to the public more quickly.

Many of the panel's recommendations had already been implemented administratively by OPMC management and others were approved as part of Governor Pataki's OPMC program bill. Health Commissioner Dr. Barbara DeBuono appointed a department work group to review the proposals and address appropriate changes.

The most significant change recommended by the PDPEP was to alter the hearing process so it is conducted solely by an administrative law judge (ALJ) rather than by a hearing committee of the board. The ALJ would recommend a decision to a hearing committee and the panel would

still retain the discretion to convene additional hearing days before making a decision. Such a change would require legislative action.

Peer Review

During 1996 the number of physicians working in the medical conduct process reached an all-time high. Physicians are involved in every stage of the discipline process, from assessing the initial complaint to hearing the appeal of a disciplined physician. OPMC has more than 24 full- and part-time staff physicians. These physicians work with investigators, many of whom are nurses, to evaluate allegations of misconduct. Virtually every medical speciality is represented by OPMC's roster of medical coordinators.

In addition to the medical coordinators and physician board members who make up the process, OPMC also has more than 750 outside practicing physicians, surgeons and physician assistants who have agreed to serve as consulting medical experts. These experts assist OPMC and the board in determining the validity of allegations against physicians and physician assistants.

CPH/IPP Monitoring Agreement

Chapter 24 of the Laws of 1995 required the Commissioner of Health to submit a report to the Legislature detailing the actions taken to eliminate dual monitoring of impaired physicians by the OPMC's impaired physician program (IPP) and the Committee for Physicians' Health (CPH) of the Medical Society of the State of New York.

CPH was created to identify, refer to treatment and monitor physicians impaired by alcoholism, chemical dependency or mental illness. CPH serves as a nondisciplinary adjunct to OPMC for the treatment of impaired physicians and has operated under a series of three-year demonstration contracts with the Health Department since 1984. Some impaired physicians monitored by CPH were also monitored by IPP. These physicians were subject to similar but separate reporting requirements by both monitoring agencies. In recognition of the burden this dual monitoring placed on the physicians as well as the staff from both programs, a Letter of Agreement was developed to permit the transfer of primary monitoring responsibility for selected dually monitored physicians from OPMC to CPH. During 1996, a test sample of dually monitored physicians was transferred to CPH. OPMC continues to work closely with CPH to evaluate the effectiveness of the single monitoring arrangement.

Program Activities

Steps continued during 1996 to speed the disciplinary process by streamlining and better defining procedures, involving legal staff earlier in the process and developing tracking databases.

Reorganization of the complaint intake unit helped to reduce the time it takes to log, classify and assign incoming cases. Complainants now receive a faster acknowledgment of the status of their issues.

For the first time in 1996, downstate cases bound for initial board review were assessed by legal staff to make certain they met requirements for successful prosecution. This system will be instituted for upstate cases in 1997. A database of high priority cases was established to improve tracking of significant investigations.

Responsibility for the physician portion of the Access to Patient Information Program was transferred to OPMC during 1996. The program assists patients in securing access to their medical records.

OPMC's formalized system for documenting and reporting investigative findings is being viewed as a model for other Department of Health investigative divisions. OPMC is sharing this system by training other department employees.

OPMC became the first medical conduct program in the nation to post disciplinary actions on the Internet. OPMC's web site can be reached at: www.health.state.ny.us (*Information for Consumers*).

Board Activities

To help speed the process and improve consistency in decision-making, standing investigation committees were established for upstate and downstate. These standing panels--two upstate, two downstate--include some of the board's most experienced members. Other board members are cycled in as part of a long-range training objective. Along with making determinations on whether cases should move forward, for the first time the panels are also making recommendations on consent parameters. Having the parameters established when the case is voted to hearing allows department attorneys to immediately pursue settlements, helping to speed the process.

The Sexual Misconduct Subcommittee of the board issued its draft report in the fall and the recommendations were discussed during the board's Annual Meeting. The subcommittee called on the board to adopt a position of zero tolerance of sexual misconduct. Among its other recommendations were:

- Seek legislative action to change Education Law 6530 to include all physicians, not just psychiatrists, in the definition of misconduct as physical contact of a sexual nature with a patient.

- Encourage physicians to include a third party during intimate examinations as a protective measure for both physician and patient.

- Educate both the physician community and the public about the nature of sexual misconduct.

- Train both OPMC staff and board members in sexual misconduct issues.

Appointments

After serving as acting director of OPMC for almost a year, Anne F. Saile was appointed director in October 1996. She joined the program as assistant director in November 1992 after serving for five years as assistant manager of the intermediate care facilities program for the mentally retarded within the Health Department.

Ansel R. Marks, M.D., J.D., New York City area program director since 1992, was named acting secretary to the board during 1996. Dr. Marks has been associated with New York's medical conduct system since 1980 as a board member, medical coordinator, program director and now as acting secretary.

Move to Troy

The OPMC central office moved to Troy, Rensselaer County at the end of the year. The new location provides professional conference, hearing and interview rooms necessary for conducting confidential investigations and board activities.

General Program Information

Background

The State Education Department was originally responsible for the licensing and disciplining of physicians in New York State. The State Legislature divided the process between the Education and Health Departments in 1976. The Health Department and the board became responsible for investigating complaints and holding hearings, but the Education Department and the Board of Regents, the department's governing body, made the final decisions in all discipline cases. In 1991, the state's disciplinary process was again changed by the Legislature. The Regents and the Education Department were removed from the disciplinary process and the responsibility was given solely to the board and the Health Department.

Board for Professional Medical Conduct

The Board for Professional Medical Conduct was created by the same legislation that divided the disciplinary process between the Education and Health Departments. Members represent a wide spectrum of the state's physicians, physician assistants and 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 end of 1996 there were 229 members of the board, 180 physicians and 49 lay members.

Members of the board 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 procedural and emerging policy issues.

The roles of the board and the OPMC are delineated in State Public Health Law 230. The definitions of misconduct are found in Section 6530 of the Education Law.

Office of Professional Medical Conduct

The Office of Professional Medical Conduct (OPMC) serves as staff for the board. Its mission is to protect the public through the investigation of professional discipline issues involving physicians and physician assistants. Investigations include issues of medical negligence, incompetence and/or illegal or unethical practices. Through its disciplinary and monitoring activities, the office strives to deter professional misconduct and promote and preserve standards of medical practice.

The office must:

- thoroughly investigate all complaints;
- monitor physicians whose licenses have been restored following a temporary surrender due to incapacity by drugs, alcohol or mental impairment and oversee the contract with the Medical Society of the State of New York Committee for Physicians' Health;
- monitor physicians and physician assistants placed on probation as a result of disciplinary action;
- conduct board training and staff all activities of the board, including disciplinary hearings and investigation, restoration and advisory committees and special subcommittees of the board.

The Disciplinary Process

The state's medical disciplinary process is delineated in Public Health Law Section 230. It is designed to guarantee the public a thorough and responsive investigation of complaints, while 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 standard in his or her field to determine if there were deviations that would constitute misconduct.

Steps in the 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 investigative staff have found evidence that may support charges of misconduct are presented to an investigation committee of the board, consisting of two physicians and a lay person. The committee can vote the case onto charges and a hearing, order an administrative warning or consultation, dismiss the case, request additional investigation or recommend a summary suspension to the Commissioner of Health of a physician deemed to be an imminent danger to the public. The committee can also recommend the acceptable parameters for a consent agreement to help speed settlements.

- Cases voted to hearing go to Department of Health attorneys assigned to the Bureau of Professional Medical Conduct 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, consisting of two physicians and a lay person is drawn from the board. This panel, assisted by an administrative law judge, hears the case, reviews the evidence, renders a decision and assesses a penalty which can range from dismissal of charges to suspension to license revocation.

- Either the state or the physician or physician assistant can appeal a hearing committee's decision to the Administrative Review Board (ARB). This standing committee, consisting of three physicians and two lay members drawn from the board, serves as the final administrative remedy available for the state and the physician. Once the appeal is properly served, the ARB must render a decision within 45 days.