

New York State
Department of Health



Board for
Professional
Medical
Conduct

1998 Annual Report

Board for Professional Medical Conduct 1998 Annual Report

Public Health Law, Section 230(14) states in pertinent part:

The board shall prepare an annual report for the legislature, the governor and other executive offices, the medical profession, medical professional societies, consumer agencies and other interested persons.

The Board for Professional Medical Conduct (the Board) through its Office of Professional Medical Conduct (OPMC) investigates complaints made against physicians and physician assistants, and prosecutes those charged with misconduct. Investigations that reveal evidence of physician misconduct are referred to a committee of the Board, which hears the evidence in the case and makes the final decision concerning the charges and, if appropriate, imposes a penalty.

Executive Summary

Outreach, partnerships, education, national recognition, new leadership and new ventures marked 1998 for the Board and OPMC. Improvements in performance were also recorded with the number of cases referred for prosecution rising and final adjudications taking less time to complete.

- In its on-going effort to inform the Board's many constituencies about its work, a variety of communications and outreach activities were undertaken. Among them were: an enhanced website, new publications, a series of articles mailed to all of the state's licensed physicians and public appearances.
- Complaints received rose by 11% in 1998 to a program high of 6,440.
- To increase efficiency and effectiveness, a partnership was created between OPMC and the Division of Legal Affairs, Bureau of Professional Medical Conduct. Attorneys, investigators and medical coordinators now work and train together. Further integration of these key members of the medical conduct team will continue in 1999.
- The average time from investigation committee to final order and the average number of days to complete a hearing both declined. Monitoring agreements, consents and surrenders increased.
- A record number of physicians on probation for misconduct were sent for violation proceedings and half of those had new, stricter penalties imposed.

- **The Board** was awarded the Administrators in Medicine (AIM) First Annual "Best of Boards Award." The award was given for OPMC's physician monitoring and retraining programs.
- In rankings released in 1998, the Federation of State Medical Boards (FSMB) ranked New York first among all large states in the percentage of total actions taken against licensed physicians in 1997.
- A Fraud Unit, with separate legal, investigative and clinical staff, was formed to investigate cases of financial fraud in the practice of medicine. Liaisons with major law enforcement agencies, insurance carriers and other state and federal agencies have been established allowing the unit to work proactively to identify fraud cases rather than waiting for complaints.
- Board members worked, for the first time, on special committees of the State Public Health Council, studying barriers to effective pain management and issues raised by the increase in office-based surgery.
- A new Board chair and vice chair were named.
- A highly successful Board Annual Meeting was held November 13-15, 1998 in Albany.

Performance

OPMC received a record number of complaints in 1998. Complaints increased 11% from 5,782 in 1997 to 6,440 in response to accelerated outreach activities.

The number of licensees referred to counsel's office for prosecution rose by 11 percent from 1997 to 1998. A total of 354 licensees was referred for action in 1998 compared to 320 in 1997.

Hearing committees of the Board acted on more complex cases in 1998. **Despite this**, the time it took to complete a hearing and the overall time it took for a case to go from the investigation committee stage to the final order both declined. The time from investigation committee action to final order dropped from an average of seven months to five months from 1997 to 1998. The average number of days to complete a hearing also declined by 17 percent during that period, from 82 to 68 days.

The number of monitoring agreements more than tripled. The increase is directly attributable to a decision to use Section 230(17) of the state Public Health Law to pursue actively physicians with questionable performance whose conduct required

intervention, but whose actions did not constitute provable misconduct. In the past, cases against these physicians were either dismissed or resulted only in a warning. The decision to pursue these cases reflects the Board's commitment to use every tool available to protect the public.

During 1998, the number of cases returned to the Board for probation violation proceedings doubled. A total of 42 physicians, a record number, was referred to the Board for violations of probation conditions. In half the cases referred, major disciplinary action was taken, including revocation, six-month actual suspensions and license surrenders.

Consent agreements and license surrenders also rose from 211 in 1997 to 218 in 1998, reflecting the beneficial effect of the cooperative working relationship between OPMC and counsel's office. These agreements reduce the time and expense necessitated by hearings and result in swifter justice both for the physician and the public.

Despite these improvements in performance, final disciplinary actions were down from a program record of 342 in 1997 to 319 in 1998. The decline is the result of a number of factors. The number of complaints received was the highest in the program's history. In addition, the nature of the case load changed to a more complex mix which required greater investigation and attorney time to prepare and to present successfully and argue. Finally, the focus on monitoring agreements, which require as much manpower as preparing a full hearing case, and the increase in probation violation cases and nondisciplinary license surrenders also affected the overall total.

Board Activities

National Recognition

The Administrators in Medicine (AIM) awarded the Board its First Annual "Best of Boards Awards." The award was given for OPMC's physician monitoring and retraining programs. AIM is a national organization comprised of representatives of state medical and osteopathic boards.

The Federation of State Medical Boards (FSMB) ranked New York first among all large states in the percentage of total actions taken against licensed physicians in 1997.

Three Board members were elected to FSMB committees during the group's annual meeting: Rev. Daniel Morrissey to the Board of Directors; Robert Briber to the

Nominating Committee; and Thea Graves Pellman to the Editorial Committee. In addition, Michael Golding, M.D., was appointed to the Bylaws Committee.

New Leadership

Patrick Carone, M.D., and Thea Graves Pellman stepped down as chair and vice chair of the Board respectively during 1998. Their leadership helped steer the Board in many of the new directions outlined in this report.

William P. Dillon, M.D., a Board member for six years, and an associate professor and vice chair of the department of Gynecology and Obstetrics at the State University at Buffalo School of Medicine and a perinatal consultant, took over as Board chair.

Denise Bolan, R.P.A., a Board member for nine years, and a registered physician assistant who practices in Essex County, was named Board vice chair.

Working on Newly Evolving Physician Practice Issues

Members of the Board were involved, for the first time, in projects undertaken by the Public Health Council.

Pain Management

Former Board Chair Patrick Carone, M.D., M.P.H., served on the Ad Hoc Committee on Pain Management and OPMC Director Anne Saile served as staff to the committee.

In its report, "Breaking Down the Barriers to Effective Pain Management," released in January 1998, the committee called for changes in controlled substances laws, an affirmation by the department that the treatment of pain is a medically necessary service, and for the department to work with other state agencies, providers, educators, insurers and others to support research and policy initiatives to improve pain management practices.

Because the committee cited fear of disciplinary action as one barrier to aggressive pain management efforts, OPMC reviewed more than 1,000 disciplinary actions taken over a three-year period. Twenty-six of those cases were based on improper prescribing of controlled substances; however, in every instance, other significant issues of misconduct were also involved.

Pain management was the focus of part of the 1998 Annual Meeting of the Board and more training on this topic is planned for staff and Board members in 1999.

Office-Based Surgery

Former Board vice chair Thea Graves Pellman served on the Committee on Quality Assurance in Office-Based Surgery and Ansel Marks, M.D., Board Executive Secretary, served as staff to the committee.

The committee was formed to assure that the public is being adequately protected as the number of office-based surgeries continues to rise. New York currently has no regulatory authority over procedures conducted in these settings.

The committee is preparing a set of clinical guidelines for surgical or other invasive procedures performed in offices. The guidelines, which will be recommended as an appropriate standard of care, will provide practitioners who perform surgery in their private offices with uniform professional standards regarding qualifications of practitioners, staff, equipment, facilities, and policies and procedures for patient assessment and monitoring. The guidelines are expected to be finalized and presented to the Public Health Council for endorsement by the spring of 1999. These guidelines should also serve as a benchmark for OPMC and the Board as cases involving office-based surgery are investigated and adjudicated.

Annual Meeting

The 1998 Annual Meeting of the Board had a greater attendance than any previous meeting. More than 130 Board members, representing three-quarters of the Board, attended the weekend session in Albany November 13-15.

Board members attended sessions on fraud in health care, international medical school graduates and the medical conduct system, and effective pain management. Issues surrounding pain management will be more fully discussed during the 1999 Annual Meeting.

Program Activities

Continued Constituent Outreach

Enhancements continue to be made to the OPMC website (<http://www.health.state.ny.us/nysdoh/opmc/main.htm>) to make the medical conduct process more open to the public. The site includes information on disciplinary actions taken against physicians, annual reports, the latest brochures, answers to "Frequently Asked Questions," and the OPMC Complaint Form. A link to the State Education

Department website, which includes licensing information, is also available. The site receives an average of more than 11,000 "hits" per week.

A new brochure, "Physician Sexual Misconduct," was published and thousands of copies were distributed during 1998. "How to Choose the Right Physician--How to Tell Us if You Don't," and "Do I Have the Right to See My Medical Records?-YES" were mailed to more than 2,000 individuals. In addition, a series of four articles for physicians on the medical conduct process was mailed to the state's 54,000 licensed physicians. The articles were well received, with numerous notes of appreciation from physicians.

Many thanks for the copies you sent to all of us recently. The articles are conspicuously well-written and informative, and I want to compliment whomever produced them. It's unusual indeed to receive from a large organization documents which are so concise and clear. Please keep up the good work!

I recently received articles from OPMC regarding professional misconduct. I run a 37 person internal medicine residency program. Can I get copies for each resident...? Thanks.

To assure consistent responses to hundreds of calls regarding Physician Assistant scope of practice issues, OPMC, working with other Department of Health bureaus, the State Education Department and the New York State Society of Physician Assistants, developed a reference document. That publication is currently available on request and will be mailed to Physician Assistants and health care institutions. It also will be placed on the OPMC website.

The OPMC Director and Assistant Director, the Director of the Bureau of Legal Affairs and the Executive Secretary of the Board spoke before a wide variety of professional and medical organizations and the media in New York State and nationally. They discussed such issues as pain management, the disruptive physician, creating a “consumer friendly board” and the overall workings of the medical conduct system. Presentations were made to organizations such as the New York State Association of Medical Staff Services; the Federation of State Medical Boards; the Consumer Advocacy Center; the New York State Society of Internal Medicine; Department of Community and Preventive Medicine, New York Medical College; WROW radio, Albany and Channel 12, Long Island.

The Legal-Investigative Partnership

To improve efficiency and effectiveness, significant effort was made to enhance a working partnership with the Division of Legal Affairs, Bureau of Professional Medical Conduct--the attorneys who prosecute medical conduct cases. As a result of this integration effort, attorneys are now assigned to work directly with investigators and OPMC staff as key partners within a single organization serving the Board.

In some instances attorneys have been physically relocated to work in the central office or area offices or have been assigned to function as liaisons with the area offices. All cases planned for presentation to an Investigation Committee are reviewed by the investigative team, consisting of investigators, attorneys and physicians prior to presentation.

Joint case review of prosecutions and investigations

All cases assigned to counsel now undergo a joint case review by the Director of OPMC and the Chief Counsel. This joint review, conducted for the first time in the nearly 20-year history of the program, was a landmark event in achieving a true integration of investigative and legal resources. These reviews insure that prosecution priorities are the product of consensus, resources are appropriately deployed to effectuate Board priorities and that all staff involved in the misconduct process are held to the same level of accountability for the progress of cases. Conversely, in an effort to effectively triage high priority investigations, senior legal staff now participate in the case reviews conducted by OPMC.

Joint legal and investigative training

In May 1998, OPMC and its attorneys embarked on a major training initiative designed to facilitate the integration of legal and investigative functions. OPMC and the

Division of Legal Affairs jointly sponsored a three-day training workshop involving all attorneys, investigators and medical coordinators. The workshop seminar, which focused on the team approach to various aspects of the investigation and prosecution of physician disciplinary cases, marked the first time all investigative and prosecutorial staff underwent joint training. Another joint training workshop is planned for 1999.

Fraud Unit

The Fraud Unit was established in 1998 to investigate financial fraud cases in the practice of medicine. Liaisons have been established with the FBI, the state Attorney General, the Drug Enforcement Agency, the National Insurance Crime Bureau, major insurance carriers and other state and federal agencies. The unit has identified 700 physicians who are under investigation by these agencies.

At year's end, the unit had 29 open cases involving 49 physicians and had already received three license surrenders, one of them permanent, and had two physicians whose right to practice was summarily suspended. The amount of fraud committed by the physicians prosecuted by this new unit totaled more than \$4 million. The unit's effort has resulted in an approximately \$1.5 million savings for insurance companies and the Medicaid program. Along with identifying financial fraud, the unit's investigations also found deficiencies in the medical care provided by the physicians prosecuted.

The unit has its own investigative, clinical and legal staff and will continue its proactive approach to investigating and prosecuting fraud cases.

Physician Monitoring

The Physician Monitoring Program improved its procedures for monitoring physicians' compliance with Board Orders by undertaking a complete review of all cases, conducting initial probation interviews with all physicians to review requirements of their orders and collaborating with Counsel's office to streamline the adjudication process. A total of 330 cases is currently being monitored by this program.

During 1998, the number of cases returned to the Board for probation violation proceedings doubled and half the cases referred resulted in significant new disciplinary action.

Physician Profiling

The director and staff worked with members of the Medical Society of the State of New York and the State Education Department to gather information regarding legislative proposals for a physician profiling system in New York. Among the issues identified were the current adequacy of information already available in New York, problems associated with physician self-reporting of credentials and the usefulness of medical malpractice data. In addition, OPMC is closely following national trends and activities relating to the profiling issue. Physician profiling will be studied again in 1999 due to continued legislative interest.

General Program Information

Board for Professional Medical Conduct

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. However, the Education Department and the Board of Regents, that department's governing body, made the final decisions in all discipline cases.

In 1991, the state 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. There still exists the unique dichotomy in New York State of one department, the Department of Education, issuing licenses, and another department, the Department of Health, having disciplinary authority, including the revocation and rescinding of licenses, for physicians and physician assistants. All other health care professionals (e.g., nurses, dentists, podiatrists) are both licensed and disciplined by the Department of Education.

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. The Board serves as a key resource in the state's disciplinary process and strives to make the process more responsive to the needs of both patients and physicians.

Physician members of the Board are appointed by the Commissioner of Health based largely 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. Disciplinary committees include two physicians and a lay member.

Members of the Board fulfill several major roles in the disciplinary process. They serve on investigation, hearing and license restoration committees and on the Administrative Review Board. In addition, Board members may serve on a variety of subcommittees which address procedural and emerging policy issues.

The roles of the Board and the OPMC are delineated in Public Health Law Section 230. The definitions of misconduct are found in Sections 6530 and 6531 of the Education Law.

Office of Professional Medical Conduct

Mission Statement Office of Professional Medical Conduct

- To protect the public from medical negligence, incompetence, illegal or unethical practices by physicians and physician assistants.
- To deter the incidence of professional misconduct by physicians and physician assistants.
- To promote and preserve standards of medical practice which conform with laws, rules and regulations of the State of New York.
- To respond to expressed public questions and concern over the quality of medical care.

The Office of Professional Medical Conduct provides staff to carry out the objectives of the Board. Its mission is to protect the public through the investigation of professional discipline issues involving physicians and physician assistants. Through its disciplinary and monitoring activities, OPMC strives to deter professional misconduct and promote and preserve standards of medical practice.

The Office:

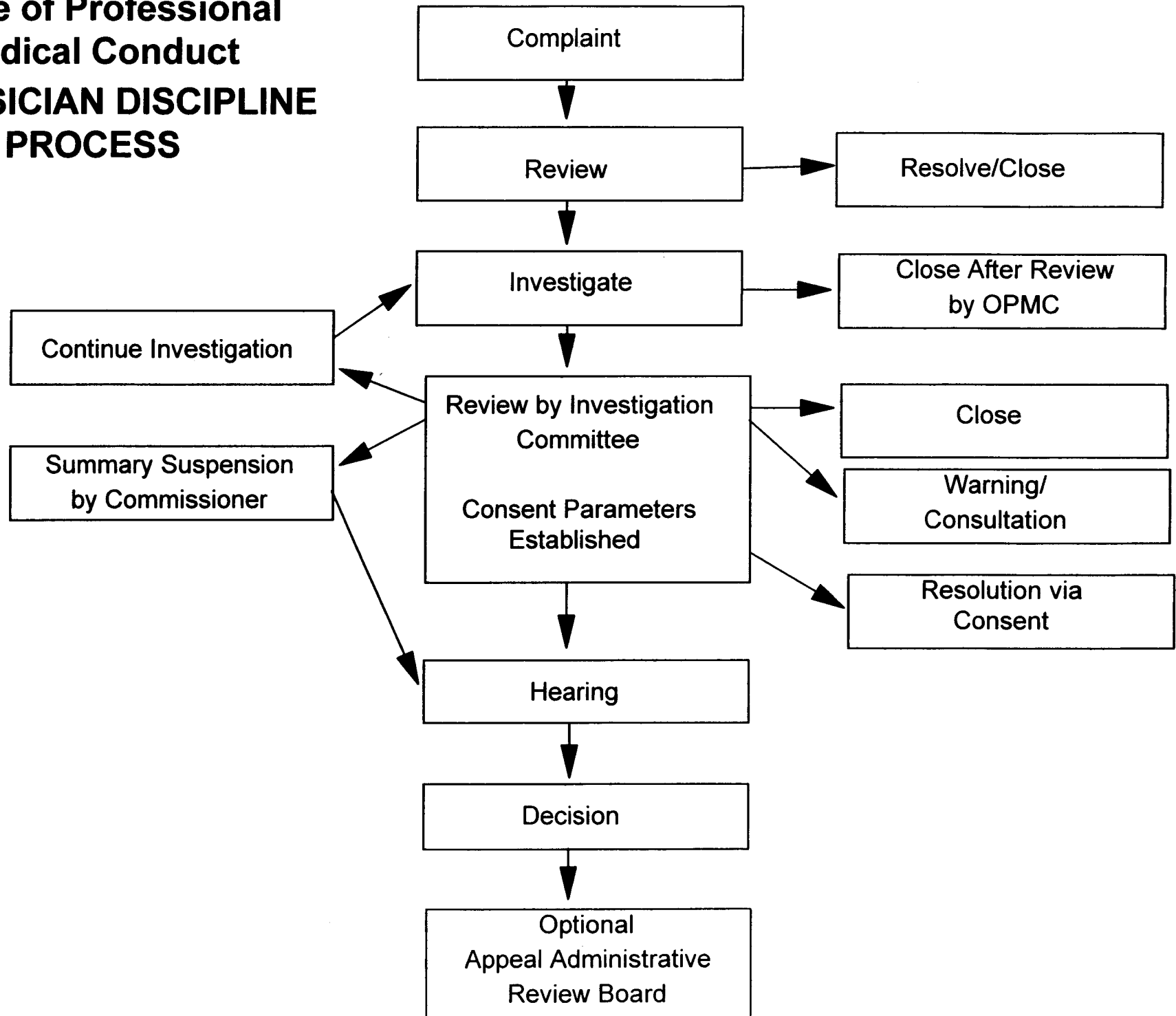
- investigates all complaints;
- with assistance of counsel, prosecutes physicians formally charged with misconduct;
- monitors physicians whose licenses have been restored following a temporary surrender due to incapacity by drugs, alcohol or mental impairment and oversees the contract with the Medical Society's Committee for Physicians' Health (CPH), a non-disciplinary program to identify, refer to treatment and monitor impaired physicians.
- monitors physicians and physician assistants placed on probation as a result of disciplinary actions and occasionally non-disciplinary action.

The Disciplinary Process

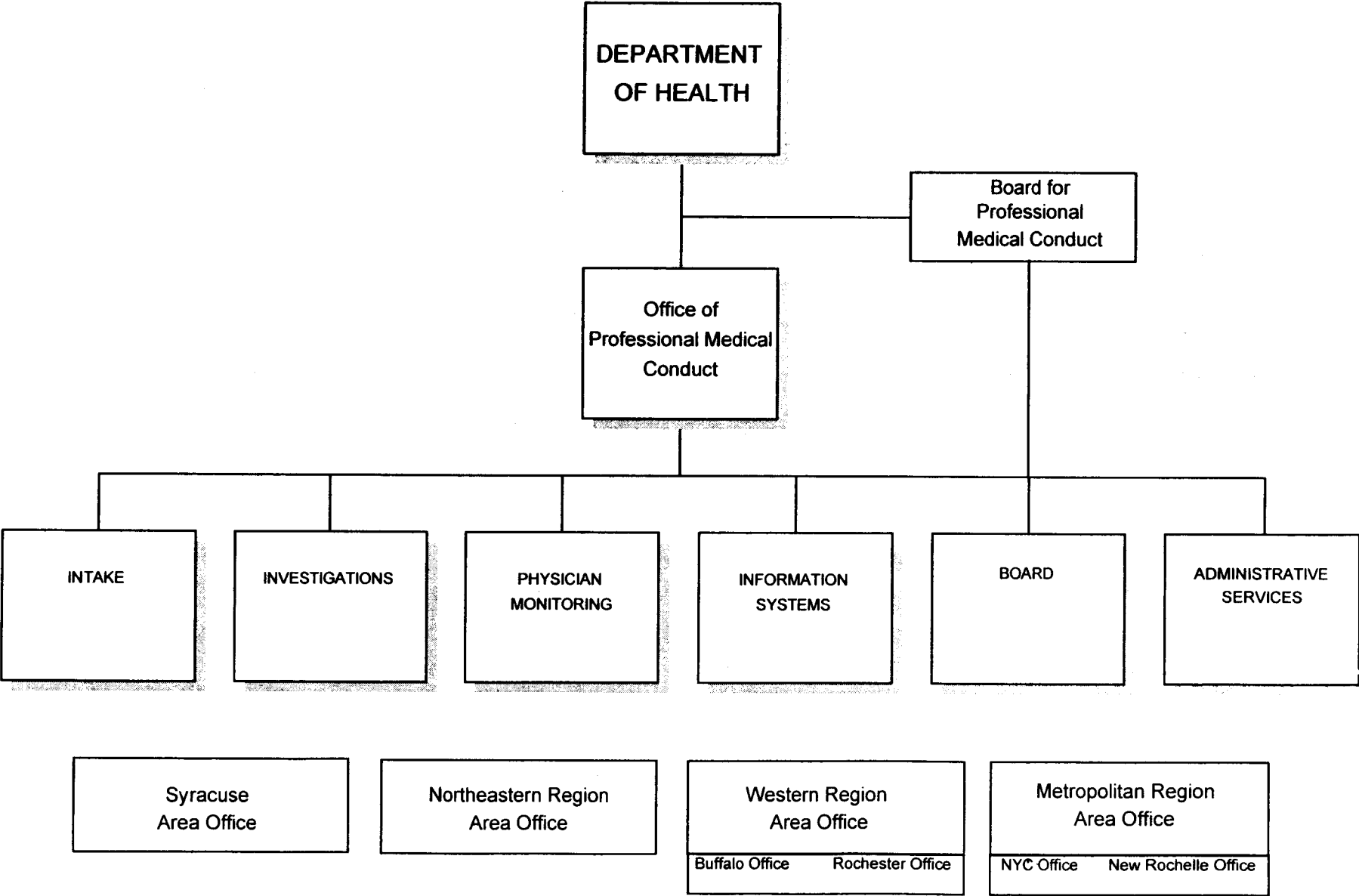
- Complaints are received in the central office, are screened and either resolved or referred to the complaint resolution unit for further investigation. Cases requiring more intense investigation are sent to the appropriate geographically located field office.
- Cases in which investigative staff have 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 recommend a hearing, an administrative warning or consultation, administratively close the case, request additional investigation, direct physicians to undergo physical and psychiatric examinations, or recommend a summary suspension to the Commissioner of Health. The latter is done if the physician is deemed an imminent danger to the public or if the physician has been convicted of a felony offense. The committee can also recommend acceptable parameters for a consent agreement to help speed settlements. The recommendations are acted upon by the Chair and the Director of OPMC in consultation with the Executive Secretary.
- Cases voted to hearing are assigned to Department of Health attorneys who review the cases and draw charges. Consent agreements within previously recommended parameters may be sought to resolve cases without the need for a hearing.

- If a consent agreement has not been recommended or cannot be reached, a hearing panel, consisting of two physicians and one lay person is drawn from the Board. A chairperson is appointed. This panel, assisted by an administrative law judge, hears the case, reviews the evidence, renders a decision and assesses a penalty. The hearing committee's action can range from dismissal of charges to suspension or revocation of a license.
- Either the state or the respondent physician 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 internal administrative remedy available for the state and the physician. Once the appeal is properly requested, the ARB must render a decision within 45 days.
- The determination of the hearing panel or the ARB may be appealed outside the OPMC process by means of an Article 78 proceeding to the Appellate Division, Third Department.

**Office of Professional
Medical Conduct
PHYSICIAN DISCIPLINE
PROCESS**



Office of Professional Medical Conduct Organizational Structure



1998 Summary Statistics

New York State Department of Health

OFFICE OF PROFESSIONAL MEDICAL CONDUCT

SUMMARY STATISTICS

	1994	1995	1996	1997	1998
Complaints Received	4675	5028	5151	5782	6440
Investigations Completed	4852	6014	4527	6453	6359
Licensees Referred for Charges	328	334	350	320	354
Administrative Warnings/Consultations	79	88	90	126	103
Summary Suspensions	8	10	10	12	32
Disciplinary Actions:					
Surrender	66	75	97	93	100
Revocation	73	94	87	81	59
Suspension	79	94	88	92	90
Censure and Reprimand/Probation	25	30	17	33	29
Censure and Reprimand/Other	20	25	17	37	34
Dismiss	8	6	5	6	7
Subtotal	271	324	311	342	319
Temporary/Permanent Surrenders	28	36	23	23	28
Monitoring Agreements	8	3	6	6	22
Total Actions	307	363	340	371	369

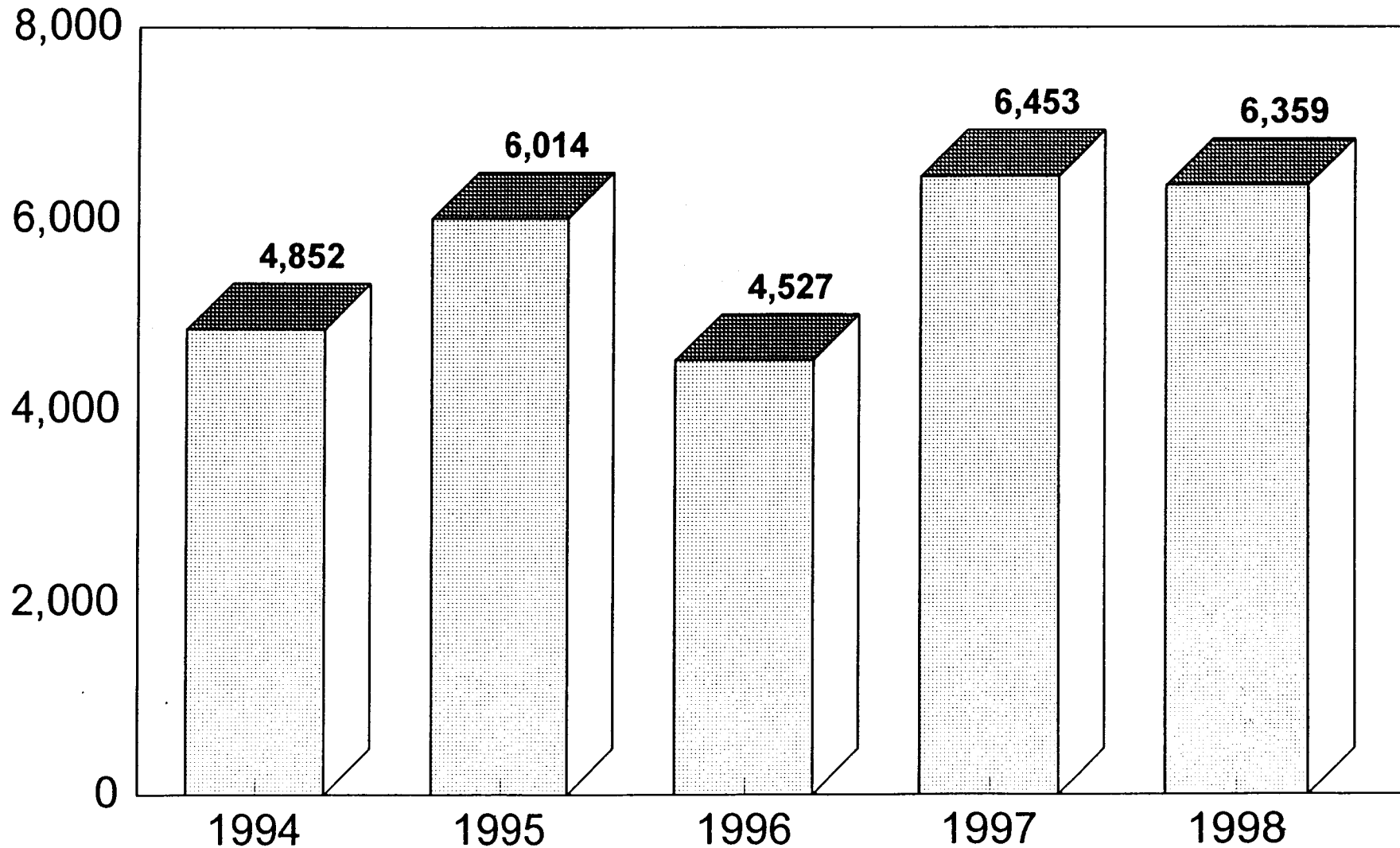
**OFFICE OF PROFESSIONAL MEDICAL CONDUCT
DISCIPLINARY DECISIONS**

**Average Time Length of Time from
Investigation Committee Date to Final Action**

<u>Category</u>	<u>1996 Average Months</u>	<u>1997 Average Months</u>	<u>1998 Average Months</u>
Consents/Surrenders	5	6	4
Hearings/Referrals	8	9	7
All Categories	6	7	5

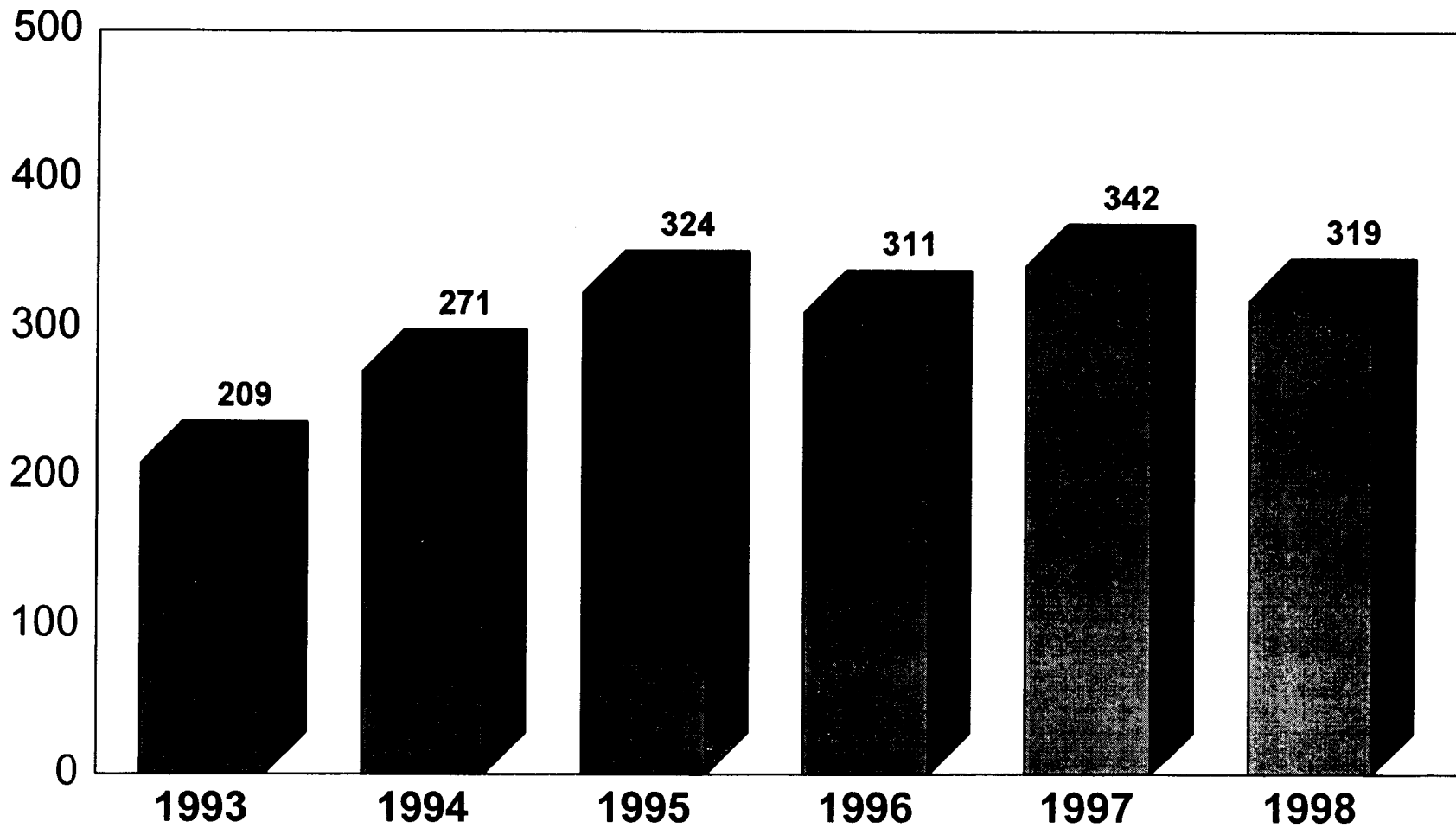
Office of Professional Medical Conduct

Investigations Completed

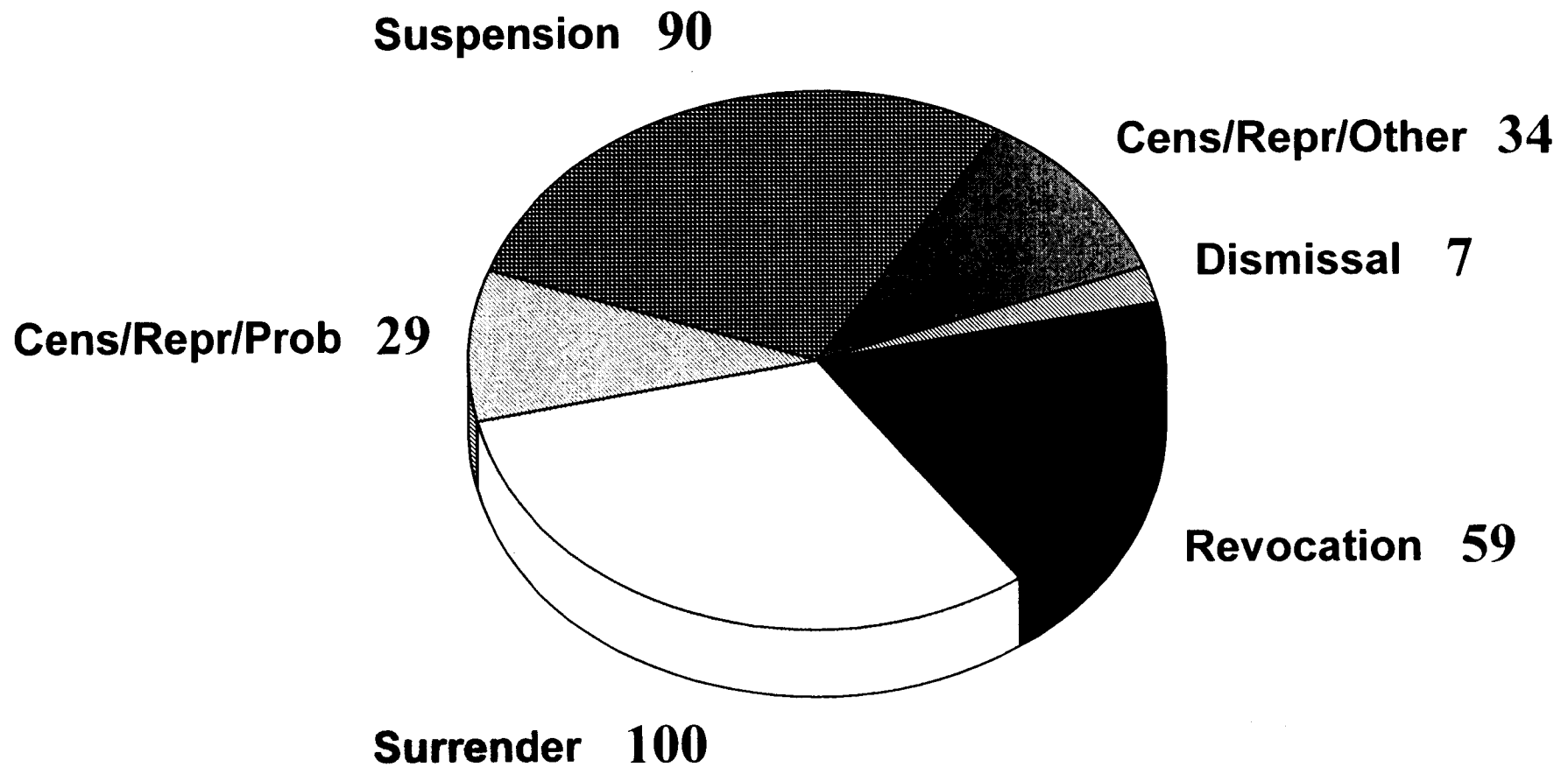


Office of Professional Medical Conduct

Final Disciplinary Actions



Decisions by the Board for Professional Medical Conduct 1998



Office of Professional Medical Conduct

Source of Complaints

