



New York State Department of Health

Board for Professional Medical Conduct

2006 Annual Report

**Office of Professional Medical Conduct
New York State Department of Health**

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Board for Professional Medical Conduct ANNUAL REPORT

General Program Information

Board for Professional Medical Conduct

The Board for Professional Medical Conduct (board) was created by the New York State Legislature in 1976 and serves as a key resource in the state's disciplinary oversight of physicians. (In this report, when using the term physician, it refers to licensed MDs, DOs, and licensed, certified physician assistants and specialist assistants.)

Public Health Law (PHL), Section 230(14) states:

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.

Prior to 1976, the New York State Education Department was responsible for the licensing and disciplining of physicians and physician assistants. In 1976, the state Legislature split the licensing and disciplinary processes between the Departments of Education and Health. The board became responsible for investigating complaints, conducting hearings and recommending disciplinary actions to the State Education Department. The State Education Department and the Board of Regents, the department's governing body, were responsible for determining final actions in all physician discipline cases.

In 1991, the physician disciplinary process was again modified by the state Legislature. The Board of Regents and State Education Department were entirely removed from the physician discipline process. The State Education Department retained licensing authority, while the Department of Health assumed disciplinary authority, including the revocation of licenses, for physicians, physician assistants and specialist assistants. The Board for Professional Medical Conduct was granted sole responsibility for determining final administrative actions in all physician, physician assistant and specialist assistant discipline cases. All other health care professionals (e.g., nurses, dentists, podiatrists, etc.) are licensed and disciplined by the State Education Department.

The board serves as a key component in the state's disciplinary process. The board's mission is to protect the public from medical negligence, incompetence and illegal or unethical practice by physicians, physician assistants and specialist assistants. Physician members are appointed by the Commissioner of Health with recommendations for membership received largely from medical and professional societies. The Commissioner of Health, with approval of the Governor, appoints lay members of the board. By law, the Board of Regents shall appoint 20 percent of the

board's membership. The board's membership at the end of 2006 was comprised of 139 physicians (representing 24 different medical specialties) and 54 lay members, six of whom are physician assistants.

In disciplinary matters, board members serve on committees consisting of two physicians and one lay member, who are appointed by the board chair. Disciplinary committees include investigation, hearing and license restoration. The Administrative Review Board (ARB) is a standing committee consisting of three physicians and two lay members. Board members also serve on a variety of committees that address procedural and emerging policy issues.

The roles of the board and the Office of Professional Medical Conduct (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

The OPMC provides staff to carry out the objectives of the board. OPMC's mission is to protect the public through the investigation of professional misconduct issues involving physicians. Through its investigative and monitoring activities, OPMC strives to deter medical misconduct and promote and preserve the highest standards of medical practice.

The OPMC has a central office in Troy, New York and six field offices (Troy, Buffalo, Rochester, Syracuse, New York City, and New Rochelle).

The office:

- Investigates all complaints and, 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;
- Oversees the contract with the Medical Society of the State of New York's Committee for Physicians' Health (CPH) – a non-disciplinary program to identify, refer to treatment and monitor impaired physicians;
- Monitors physicians placed on probation; and
- Supports the activities of the board, including managing the appointment process, training, assisting with committee work and policy development, recruitment of medical experts, and coordinating the canvass procedures for approximately 130 hearing panels that are convened annually.

Overview of New York's Medical Conduct Process

The OPMC is required by law to investigate every complaint it receives. Many complaints involve issues over which OPMC has no jurisdiction or authority, such as billing disputes. In these instances, a physician is not aware of the complaint because they are closed administratively. In other cases, a complaint is investigated but insufficient evidence is found to support charges of misconduct, and the investigation is concluded.

When someone does file a complaint with OPMC that appears to involve possible misconduct, the physician will be notified either by letter or through a telephone call. Generally, unless specifically stated otherwise, a letter requesting patient records is an indicator that a complaint has been filed against a physician and an investigation is underway. An investigator may call and say there is a complaint and ask for records or to discuss the matter.

State Public Health Law requires the OPMC to keep confidential the names of any individuals who file complaints. The source of a complaint may not necessarily be the patient whose medical records are requested, but rather a friend, relative or health care worker. Sometimes patient medical records are requested because a health facility has reported to OPMC, as required by law, that it has taken disciplinary action against a physician.

The law also preserves a physician's right to be heard. State Public Health Law requires that a physician be given the opportunity to be interviewed by OPMC staff to provide an explanation of the issues under investigation if the matter is going to be referred to the board. This interview may be conducted in person or over the telephone, and the physician may have an attorney present.

In many cases, even if the matter does not result in a referral to the board, the physician is contacted to respond to the issues in the complaint. Cases are not referred to the board when there is insufficient evidence to proceed or the issues are outside of its jurisdiction. Physicians contacted in such cases are advised by letter that the matter is closed.

Public Health Law Section 230(7) provides that a committee of the board may also direct a physician to submit to a medical or psychiatric examination when the committee has reason to believe the licensee may be impaired by alcohol, drugs, physical disability or mental disability.

When an investigation finds evidence that appears to indicate that misconduct has occurred, the evidence is presented to an investigation committee of the board for review. If a majority of the investigation committee concurs with the director of OPMC that sufficient evidence exists to support misconduct, and after consultation with the executive secretary to the board, the director shall direct counsel to prepare charges.

The committee may recommend to the Commissioner of Health that a physician's practice be summarily suspended because he or she poses an imminent danger to the

public health. If the director of OPMC, after obtaining the concurrence of a majority of a committee on professional conduct, and after consultation with the executive secretary, determines that there is substantial evidence of professional misconduct of a minor or technical nature or of substandard medical practice which does not constitute professional misconduct, the director may issue an administrative warning and/or provide for consultation with a panel of one or more experts, chosen by the director. Administrative warnings and consultations are confidential.

If the case proceeds to a hearing or the Commissioner of Health orders a summary suspension, another three-member panel, including two physicians and a lay member, is drawn from the board. A hearing is much like a trial, although in this case the board panel serves as the jury and may also ask questions. An administrative law judge is present to assist the panel on legal issues. The state's case is presented by a staff attorney and physicians generally choose to be represented by counsel. At the hearing, evidence is presented and testimony may be given by witnesses for both sides.

Public Health Law requires that hearings start within 60 days of the service of charges or, in cases of summary suspension, within 10 days of the service of charges. The last hearing day must be held within 120 days of the first hearing day. The hearing panel's decision must be issued within 60 days of the last hearing day. Changes in these time frames can be made by agreement of both sides.

A hearing panel may decide to dismiss some or all of the charges against a physician. If the panel sustains charges, penalties can range from a censure and reprimand to revocation. The panel may also suspend or annul a physician's license, limit his or her practice, require supervision or monitoring of a practice, order retraining, levy a fine or require public service. Revocations, actual suspensions and license annulments are immediately made public and penalties go into effect at once.

Other penalties are not made public until the period for requesting an appeal has passed. If there is an appeal, disciplinary action is stayed (delayed) until there is a resolution. Either side may appeal the decision of a hearing panel to the ARB.

Notices of appeal to the ARB must be filed within 14 days of the service of a hearing committee decision. Both parties have 30 days from the service of the notice of appeal to file briefs and another 7 days to file a response to the briefs. There are no appearances or testimony in the appeals process.

The ARB reviews whether or not the determination and penalty of the hearing committee are consistent with the hearing panel's findings and whether the penalty is appropriate. The ARB must issue a written determination within 45 days after the submission of briefs.

Board Accomplishments

Committee for Physicians' Health and Board for Professional Medical Conduct

The Joint Committee of the Committee for Physicians' Health (CPH) and the Board for Professional Medical Conduct (joint committee) is charged with developing recommendations that will enhance the continued efforts of New York State's impaired physician programs to both protect the public and assist physicians in need.

The joint committee discussed a number of topics in 2006 related to the effective identification, treatment and monitoring of impaired physicians. In particular, procedures established by OPMC to improve the timely investigation of impairment cases were reviewed. These discussions resulted in prioritization of cases involving allegations of impairment, increased use of impairment examinations under Public Health Law 230(7), and greater sharing of information between OPMC and CPH.

Staff from both offices meet regularly to develop better monitoring protocols, to explore the latest drug testing mechanisms and to identify appropriate evaluation and treatment resources.

Hospital Reporting Requirements

Hospitals are statutorily required to report to the board any information that reasonably appears to show that a licensee is guilty of misconduct. Each year approximately 20% of the hospital reports of misconduct to OPMC involve allegations of possible impairment. Of 114 hospital reports received in 2006, 16 alleged physician impairment.

To increase the understanding of the reporting requirements and to assist in the early intervention of impaired physicians, the joint committee has directed a subcommittee to develop guidance to hospitals on the need for reporting and to develop a plan to disseminate educational material about the Committee for Physicians' Health.

Committee on Quality Assurance in Office-based Surgery

The Committee on Quality Assurance in Office-based Surgery (committee) was reconvened in October 2005 in response to ongoing concerns about serious medical care problems involving office-based surgical procedures. Members of the Board for Professional Medical Conduct were appointed to the committee and the Office of Professional Medical Conduct provided staff support. The committee's final report was unanimously endorsed by the New York State Public Health Council (PHC) and publicly released in July 2006.

The PHC agreed with the committee's recommendation that the New York State Department of Health should seek legislative authority to require accreditation of office-based surgical practices, including adverse event reporting. The committee recommended that this legislative proposal only apply to physicians, since physicians are regulated by the New York State Department of Health. In order to ensure one

standard of care across all office-based surgical practices, the committee also recommended that the New York State Education Department adopt the same regulations for the professions it oversees (dentists, podiatrists, etc.) that perform office-based surgical procedures.

Federation of State Medical Boards

The Federation of State Medical Boards (federation) is a national not-for-profit organization representing 70 medical boards within the United States and its territories. As the representative body and forum for physician licensing and disciplinary boards, the federation co-sponsors the United States Medical Licensing Examination (USMLE) with the National Board of Medical Examiners (USMLE).

In 2006, an article describing New York's Administrative Warning (AW) Process was published in the *Federation's Journal of Medical Licensure and Discipline*. Administrative warnings are a powerful tool used by the board and Office of Professional Medical Conduct to advise and educate physicians about substandard medical practice of a minor or technical nature that does not rise to the level of misconduct under the law. These warnings are most often delivered in person by the executive secretary of the board. Since the year 2000, 893 licensees received AWs. The Board for Professional Medical Conduct has recognized the value of AWs as a vehicle for informing physicians and physician assistants of practice problems before the issues escalate to the level of misconduct. Publication of the article in the *Federation's Journal* provided New York with an opportunity to showcase this innovative program as a model for other medical boards.

Biennial Meeting

The Board for Professional Medical Conduct biennial training workshop was held November 18-19, 2006 in Albany. The board training workshop is a significant part of the total training plan for board members, which includes new member orientation, education and focused point of service training on specific topics.

Using redacted case studies, the workshop staff provided an overview of the medical conduct process. The investigation committee session included a case presented for a PHL Section 230(7) impairment examination, an administrative warning case and a medical care case that was recommended for a hearing. The same redacted hearing case was used for the hearing committee small group exercise and the facilitated discussion. Electronic voting machines were used to provide immediate feedback on group recommendations and decisions. Concurrent sessions were conducted focusing on the PHL Section 230(7) proceeding, restoration proceedings and direct referral hearings.

Program Accomplishments

- During the last five years, the average number of disciplinary actions taken per year is 321, a 29 percent increase over the average of 248 taken per year during 1992 -1996.
- During the last ten years, the number of complaints received has increased an average of 4 percent per year. In 2006, there was a 55 percent increase in complaints received (8,001) compared to the number of complaints received (5,151) in 1996.
- In 2006, 73 percent of the complaints received during the year were resolved; in 1996, only 59 percent of the complaints were resolved by the end of the year.
- The Federation of State Medical Boards (FSMB) released its annual report on medical board performance. In 2006, the Board for Professional Medical Conduct led the nation in taking more serious disciplinary actions, resulting in restriction or loss of license, than any other state. New York took 323 serious disciplinary actions, California took 301, and all other states took fewer than 200 serious disciplinary actions.
- Following release of the FSMB Annual Report, Public Citizen, a national consumer advocacy group, issued its annual ranking of state medical board performance. New York was ranked 17th in the nation in the number of serious disciplinary actions taken. The rankings are achieved using physician population data from the American Medical Association and disciplinary data from the Federation of State Medical Boards. For the period 2004-2006, New York took 4.15 actions per 1,000 physicians. Alaska ranked number 1 with 7.30 actions per 1,000 physicians and Mississippi was ranked lowest with 1.41 actions per 1,000 physicians. New York ranked 20th in 2002 and 49th in 1991.
- Public Citizen also released a report entitled "Report of Doctor Disciplinary Information on State Web Sites, A Survey and Ranking of State Medical and Osteopathic Board Web Sites in 2006." In the study of all state medical boards' web sites, New York ranked 4th in the nation, for the content and user friendliness of the information made available to the public via the Internet.

Investigative Training

A two-and-a-half day off-site training conference was held March 29 – 31, 2006 for OPMC investigative staff from central office and regional offices across the state. Also participating were attorneys from the Bureau of Professional Medical Conduct, OPMC medical coordinators and speakers.

The purpose of this conference was to reinforce, review and assess two initiatives presented at the prior training conference held in March 2003: streamlining the investigative process and implementation of a new case management and tracking system, Trakker. Other topics included discussion of recent legislative changes affecting OPMC processes, identifying and developing priority investigations and working effectively with medical experts. Training topics included investigation of alleged substance abuse and impaired physicians, enhanced interviewing skills and improved documentation of findings. Breakout sessions were held for medical coordinators, attorneys, and managers.

OPMC One-stop Physician Search (OOPS)

The Office of Professional Medical Conduct requires its investigators to access information from numerous databases to prioritize complaints, conduct initial research, develop leads, and execute sound investigative strategies. The OPMC One-stop Physician Search (OOPS) is a web application that allows users to access a wide variety of data sources through a single search. OOPS, developed by the office, streamlines data checks and information retrieval by allowing investigators to check multiple data sources in one step, rather than individually querying each database. With one login, the software returns all available licensing and registration information from the State Education Department, medical malpractice data from the Medical Malpractice Data Collection System, as well as information from OPMC's case management information systems, physician monitoring program and Board member records. The information is secured through the regular OPMC network protocols. OOPS has drastically reduced the amount of time it takes to obtain vital information, thereby allowing investigative staff and managers easy, efficient and timely access to vital background information on physicians under investigation.

Statewide Volunteer Management Program

The Department's Health Emergency Preparedness Program enlisted the assistance of the Office of Professional Medical Conduct in designing a "real-time" screening system for its Statewide Volunteer Management Program. OPMC agreed to design and provide the Office of Public Health with a secure, confidential mechanism to access the OPMC datafile that identifies physicians and physician assistants who have been subject to a disciplinary action by the Board for Professional Medical Conduct. The process that was developed will allow county volunteer coordinators to query OPMC's datafile prior to approving medical volunteers to provide care in a public health emergency situation. This screening will immediately identify those physicians who may be ineligible to practice medicine as a result of a disciplinary action.

Criminal Reporting Responsibility

Effective September 2003, OPMC is required to notify the appropriate district attorney when, based upon a reasonable belief, a criminal offense has been committed by a physician. Since inception, OPMC has made a total of 39 referrals: 14 in 2006; 14 in 2005; and 11 for the period September 2003 through the end of 2004.

Internet Access to Physician Information

Information regarding the Office and Board for Professional Medical Conduct can be accessed through the Department of Health's web site, www.nyhealth.gov. Click on "Physician Discipline." All disciplinary actions taken since 1990 are posted on OPMC's site, as well as information on how to file a complaint, brochures regarding medical misconduct, frequently asked questions, and relevant statutes.

OPMC received nearly 1,300 e-mail requests for information and assistance in 2006, a 40% percent increase over 2005, demonstrating that consumers are becoming increasingly aware of the information and assistance available from OPMC.

Office of Professional Medical Conduct

Summary Statistics

Year	2002	2003	2004	2005	2006
Complaints Received	7295	6275	6925	7358	8001
Investigations Completed	7082	6882	6711	7032	7372
Licensees Referred for Charges	328	354	337	326	383
Administrative Warnings/Consultations	165	166	123	110	101
Summary Suspensions*	13	37	19	28	24

Disciplinary Actions

Surrender	86	61	85	67	60
Revocation	49	37	17	33	31
Suspension	99	116	116	98	112
Censure and Reprimand/Probation	33	51	55	71	46
Censure and Reprimand/Other	49	59	41	40	64
Dismiss	4	8	6	8	4

Subtotal	320	332	320	317	317
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Non Disciplinary Actions

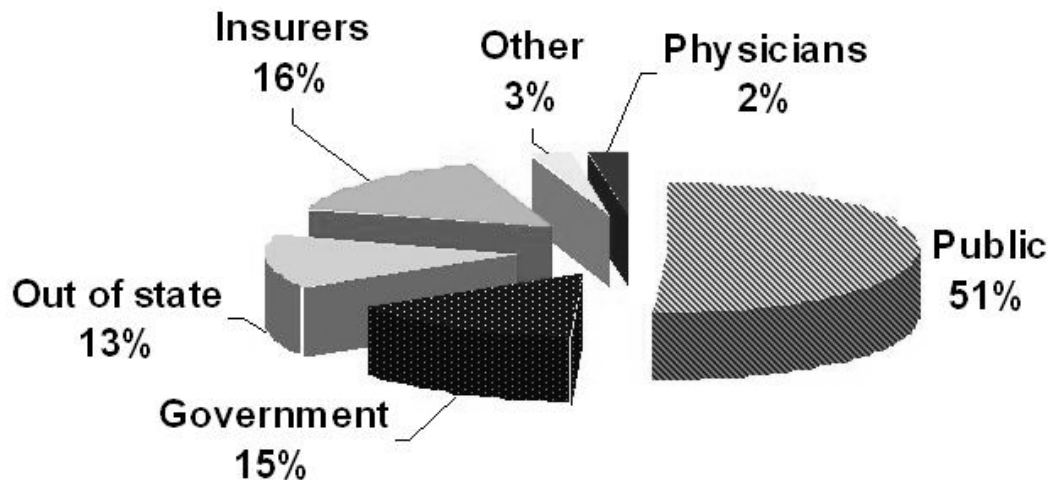
Temporary/Permanent Surrenders	8	13	23	22	15
Monitoring Agreements	21	27	44	37	35

TOTAL ACTIONS	349	372	387	376	367
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* In 1996, Public Health Law 230 was amended to permit a summary suspension when a licensee has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State Law or federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York state law, or when the duly authorized professional agency of another jurisdiction has made a finding substantially equivalent to a finding that the practice of medicine by the licensee in that jurisdiction constitutes an imminent danger to the health of its people...

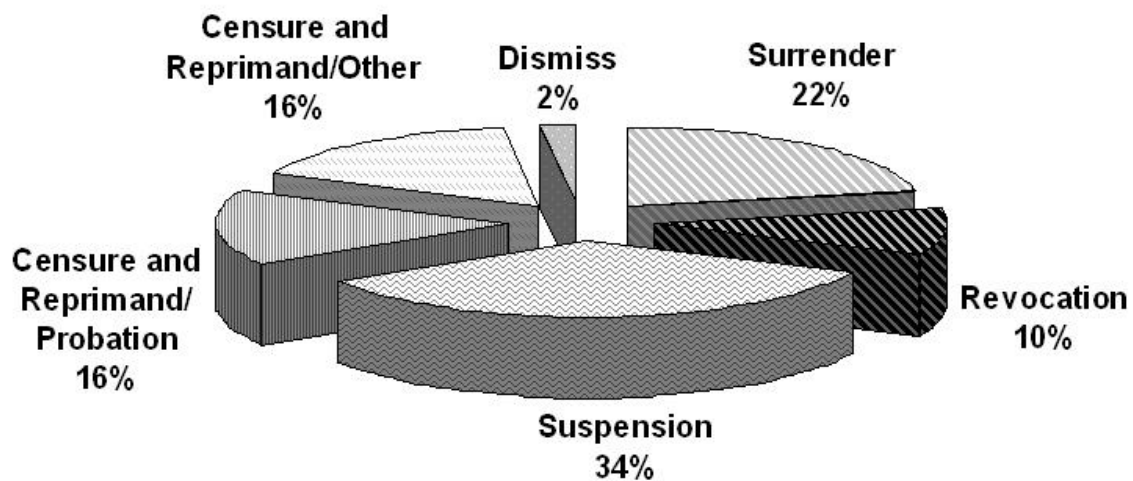
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Source of Complaints
2006



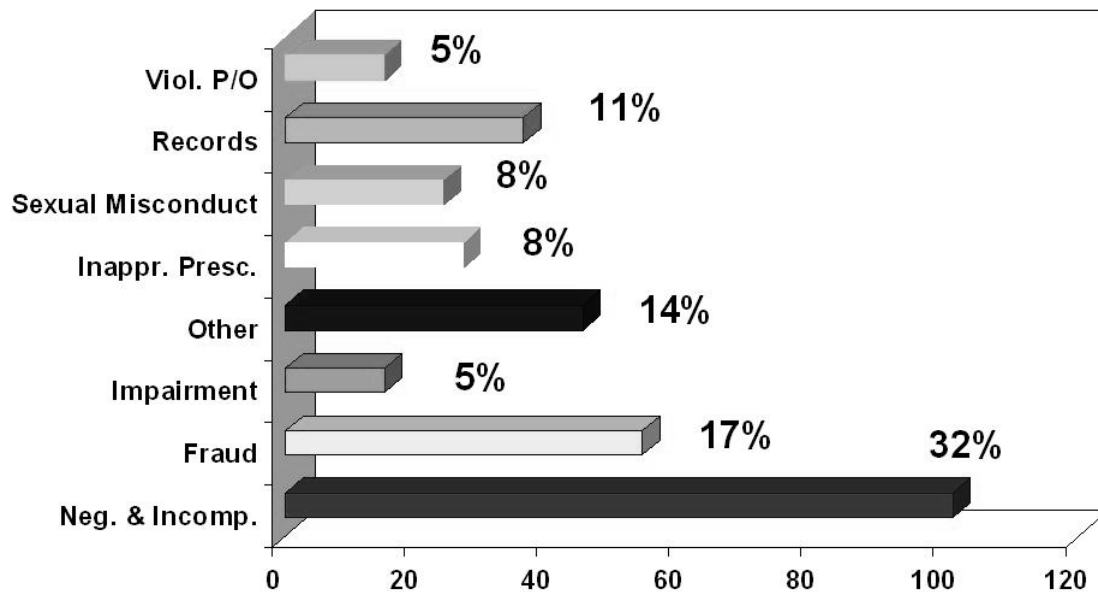
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Disciplinary Actions: Average Distribution by Type
2002 - 2006



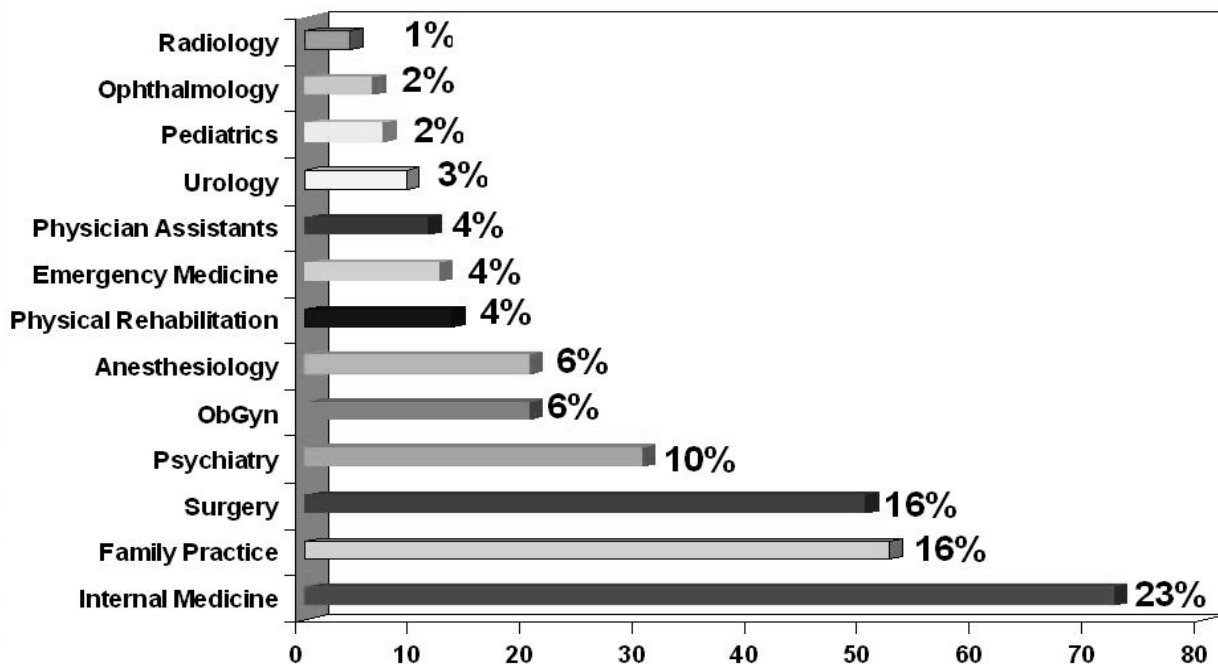
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Final Actions by Type of Misconduct 2006



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Final Actions by Selected Specialty 2006





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