



Approved by the Board on January 9, 2025.

OREGON MEDICAL BOARD

Meeting of the OMB Guideline Workgroup • November 18, 2024 • Held via Video Conference

PUBLIC SESSION

Welcome

POULSEN

Christoffer Poulsen, DO, Workgroup Chair, called the meeting to order at 5:01pm and called the roll. A quorum was confirmed.

The following Workgroup members were present:

Tim Beals, DO, OPSO Representative (5:43)

Mark Bonanno, OMA Representative

Troy Bundy, Attorney Representative

Valerie Harmon, Patient Safety Representative

Molly Marcum, Attorney Representative (5:03)

Connie McKelvey, Attorney Representative

Chere Pereira, Public Representative

Jill Shaw, DO, OMB Vice Chair

Christoffer Poulsen, DO, OMB Chair, Workgroup Chair

OMB Staff present:

Nicole Krishnaswami, JD, Executive Director

Elizabeth Ross, JD, Legislative & Policy Analyst

Gretchen Kingham, Executive Assistant

Dr. Poulsen welcomed Workgroup members and discussed ground rules for the meeting, provided an overview of the agenda, and invited members of the public to participate by providing comment during the public comment period or by submitting written comments via email to Board staff.

Updates

The OMB's Administrative Affairs Committee in September and the full Board in October reviewed the draft guidelines and notes from the Workgroup's first meeting but offered no comments or feedback for the Workgroup.

Discussion of Draft Guidelines

Criteria for the Board issuing a remedial action, known as a Corrective Action Agreement (CAA), versus a disciplinary action, known as a Stipulated Order (SO).

Regarding Corrective Action criteria, Molly Marcum, Attorney Representative, suggested making the conjunction at the end of the list "or" rather than "and." Staff noted that all criteria must be met to qualify for a CAA. Workgroup members noted the list could be interpreted differently. Staff will review the language to ensure the intent is clear.

Ms. Marcum suggested reordering the criteria for CAAs and SOs for consistency.

Discussion regarding list of mitigating and aggravating factors based on sample guidelines from other states and boards.

Mark Bonanno, OMA Representative, asked how the Board defines “nexus to practice.” Christoffer Poulsen, DO, OMB/Workgroup Chair, explained that “nexus” means there is a connection to the practice of medicine and shared that Board members recently underwent Department of Justice training on this topic. Nicole Krishnaswami, JD, OMB Executive Director, stated that Oregon case law exists on nexus to practice, and nexus is often discussed as a factor in cases involving impairment or criminal convictions, for example.

Valerie Harmon, Oregon Patient Safety Commission (OPSC), noted that some terms to describe mitigating and aggravating factors are not defined and include subjective language. She observed that consistency and transparency build trust, and she noted that clear definitions, perhaps with standards and measures, could offer reassurance that the Board is consistently interpreting and applying the criteria over time. For example, defining “willfulness” or “malice” could guard against inconsistent application of the criteria. Ms. Harmon referenced the Just Culture Algorithm as one example of good practice. Dr. Poulsen agreed that it is worthwhile to set expectations for consistency, but he also noted that each case is unique and requires some allowance for flexibility. He explained that when reviewing cases, willfulness and malice are generally very clearly identified.

Jill Shaw, DO, OMB Vice Chair, appreciated the expansion of the mitigating and aggravating factors based on the discussions at the first Workgroup meeting. She also appreciated Ms. Harmon mentioning the Just Culture Algorithm but noted that the Board may not be able to utilize the system. Ms. Harmon relayed that OPSC has used this system so that criteria is consistently applied over time. She offered that including “a physician in a similar community would not have taken this same action” can support transparency. Additionally, Ms. Harmon said clearer definitions can improve data collection. Dr. Poulsen noted that negligence and gross negligence are legally defined terms while other terms are more variable. Ms. Krishnaswami noted that nexus, willfulness, and malice are defined in statute or case law and can be included as footnotes or an addendum to the guideline. Ms. Harmon agreed that definitions would be appreciated. Connie McKelvey, Attorney Representative, stated that attorneys are familiar with most of the terms but would appreciate further details and citations to case law.

Troy Bundy, Attorney Representative, asked if the guidelines will affect how Orders are written. Specifically, will mitigating and aggravating factors be added to Board Orders? Ms. Krishnaswami answered that the Board is currently focused on addressing the Secretary of State’s audit recommendations; once the guidelines are finalized, the Board could consider whether to include additional information in Board Orders. Dr. Poulson questioned whether changing the way Board Orders are written would be beneficial for anyone, as Orders are currently factual and provide information which ensures the public, credentialing committees, hospitals, etc. are able to assess the situation and act as they see appropriate. Mr. Bundy noted that there is not a lot of case law with the Board and attorneys would value information that compares or distinguishes cases.

If Order language is reviewed in the future, Ms. McKelvey asked that the Board reconsider whether “unprofessional and dishonorable conduct” must be included in every Order. She noted that this language is a primary concern for licensees considering whether to agree to an SO.

Discussion regarding proposed groupings of statutory references.

The Workgroup did not discuss or suggest any needed changes to the groupings of statutory violations.

Discussion regarding potential remedial or disciplinary outcomes in the draft Guidelines.

The Workgroup did not discuss or suggest any needed changes to the range of remedial or disciplinary outcomes in the draft Guidelines.

Additional Discussion.

Ms. Marcum stated that she appreciates the use of “including but not limited to” in the introductory paragraph of the mitigating and aggravating factors section, which indicates that review is case by case and there can be other factors that may be raised by the responding licensee and their legal counsel. Additionally, she appreciated the addition of “Licensee’s Personal Factors.” Ms. Marcum emphasized the importance of insight, and she was pleased to see it incorporated within the criteria.

Mr. Bonanno commended the Board for the amount work done to address the Secretary of State audit and asked if there will be a process to evaluate the Oregon Medical Board Investigation Guideline in the future by reconvening the workgroup or otherwise evaluating whether the guidelines are working to ensure consistency. Ms. Krishnaswami answered that the Board plans to systematically collect data beginning in July 2025. Because the data pool for disciplinary actions is small (approximately 60-80 orders each year), the Board would like at least a full year of data collection before analyzing case outcomes; the Board plans to analyze the data in July 2026. Ms. Krishnaswami added that the Board had not discussed reconvening the workgroup to evaluate the data, but Board staff will follow up on this suggestion. Ms. Marcum echoed Mr. Bonanno’s comments that this has been a great undertaking and the Board’s response to the Secretary of State audit is commendable. Additionally, she agrees that it is a great idea to follow up after a year of data collection.

Public Comment

Dr. Poulsen invited comments from the public; however, no members of the public were present.

Closing Discussion

Ms. McKelvey and Mr. Bundy agreed with Mr. Bonanno and Ms. Marcum in thanking the Board for the work on the draft guidelines and for the inclusive and thoughtful process of this Workgroup.

Dr. Poulsen thanked Workgroup members for their time. He explained that the Board’s Administrative Affairs Committee will review the meeting minutes and draft guidelines at their meeting on December 11, and the full Board will further review these items at their meeting on January 9, 2025. The public is welcome to provide comments at either of those meetings or in writing to Elizabeth Ross, Legislative and Policy Analyst, at elizabeth.ross@omb.oregon.gov. Board staff will work to incorporate the suggested changes before the Workgroup’s next meeting on January 13 at 5:00pm.

Dr. Poulsen adjourned the meeting at 5:46pm.