



Oregon Medical Board

Disciplinary Guidelines

These guidelines aim to promote consistency in the Oregon Medical Board's (OMB) case resolutions for violations of the Medical Practice Act (ORS chapter 677) and other state and federal laws pertaining to the practice of medicine, podiatry, and acupuncture. These guidelines are for reference only and are not binding on the OMB. The individual facts and unique circumstances of each case will inform the final outcome.

When the Board alleges a violation(s) of the Medical Practice Act, it must determine whether to issue remediation or discipline:

Corrective Action Agreements (CAAs) are formal, public, but non-disciplinary agreements between the Board and a licensee designed to modify, monitor, or otherwise correct an identified problem. A CAA is an appropriate resolution when all of the following criteria are met:

- The Board alleges only minor violation(s) of the Medical Practice Act, such as administrative or discrete, single-issue violations;
- Actual or potential patient harm does not represent a long-term pattern of substandard practice;
- The licensee has not been subject to a prior Board action for the same/similar concerns;
- The concerns identified may be corrected through remediation;
- The licensee's actions were not malicious (e.g. taking advantage of vulnerable patients or exploiting the provider-patient relationship);
- The resolution does not require a restriction of the licensee's practice;
- The resolution does not require a reprimand or fine for unethical or inappropriate conduct; and
- The matter does not involve sexual misconduct.

Stipulated Orders (SOs) are formal, public, disciplinary actions that are utilized when the Board finds a violation(s) of the Medical Practice Act. A SO is an appropriate resolution when any of the following apply:

- The conduct involves actual or potential serious patient harm, a pattern of negligence over time, or a willful disregard for the patient(s);
- The Board had prior concerns about the same/similar conduct by the licensee;
- The concerns cannot be remediated through coursework alone; instead, a practice limitation is needed to ensure patient safety;
- The licensee exploited a power differential or took advantage of a patient;
- The resolution involves a reprimand or fine;
- The resolution involves surrender or forfeiture of a license to practice; or
- The Board finds sexual misconduct.

In determining the specific terms of the Agreement or Order, the Board considers mitigating and aggravating factors, which may carry different weight based on the facts of the case, including but not limited to:

- Actual or potential harm to patient(s)
- Level of danger to the public
- Nexus to practice
- History of similar conduct (i.e., pattern)
- Complaint and discipline history (i.e., recidivism)
- Competency to practice within standard of care
- Concurrent findings of unprofessional conduct & negligence
- Willfulness or malice
- Availability of resources at time of conduct
- Environmental factors in the facility or workplace
- Patient factors (vulnerability, complexity, difficulty to manage)
- Licensee's personal factors (e.g., practice experience, medical conditions, etc.)
- Evidence of resistance and defensiveness
- Evidence of remorse and accountability
- Efforts toward self-remediation or corrective action
- Cooperation with investigation

Statute References	No Violation	Remediation or Discipline
<p>Unprofessional Conduct 677.190(1)(a), 677.188(4)(a) <i>conduct/practice contrary to recognized standards of ethics</i> 677.190(1)(a), 677.188(4)(a) <i>conduct/practice which does or might constitute a danger to the health/safety of a patient or public</i> 677.190(1)(a), 677.188(4)(b) <i>willful performance of any treatment contrary to medical standards</i> 677.190(1)(a), 677.188(4)(c) <i>willful and repeated unnecessary test/treatment, using outdated or unscientific treatment, failing to obtain consultations, inappropriate or unnecessary medical services</i> (see also, Negligence)</p>	<p>Close: no action Letter of Concern: identifying an area for improvement in an area of practice, may include suggestion on specific courses or other training.</p>	<p>Corrective Action Agreement:</p> <ul style="list-style-type: none"> • follow specific practice guidelines • educational courses (e.g. communication, professionalism, ethics, practice area, etc.) • clinical assessment and educational plan (e.g. CPEP) <p>Stipulated Order (may include CAA remedial terms +):</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice limitation • practice site approval • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
<p>Unprofessional Conduct, Sexual Misconduct 677.190(1)(a), 847-010-0073(3)(b)(F)(i) <i>sexual misconduct/violation</i> 677.190(1)(a), 847-010-0073(3)(b)(F)(ii) <i>sexual misconduct/impropriety</i> Notice of Proposed Discipline and SO will include the term "sexual misconduct."</p>	<p>Close: no action Letter of Concern (if no finding of sexual misconduct): identifying an area for improvement in an area of practice, may include suggestion specific courses or other training.</p>	<p>Stipulated Order:</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • case-specific terms: • practice limitations (e.g. female patients, solo practice, etc.) • require medical chaperones • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
<p>Negligence 677.190(13) <i>Gross negligence</i> 677.190(13) <i>Repeated negligence</i> (see also, Unprofessional Conduct)</p>	<p>Close: no action Letter of Concern: identifying an area for improvement in an area of practice, may include suggestion on specific courses or other training.</p>	<p>Corrective Action Agreement:</p> <ul style="list-style-type: none"> • follow specific practice guidelines • educational courses (e.g. specific practice area) • clinical assessment and educational plan (e.g. CPEP) • practice mentor <p>Stipulated Order (may include CAA remedial terms +):</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice limitation • practice site limitation • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying

Statute References	No Violation	Remediation or Discipline
<p>Inappropriate Prescribing/Authorizing of Substances 677.190(24) <i>Prescribing controlled substances without legitimate purpose, appropriate exam, or record keeping</i> 677.190(23) <i>Violation of Controlled Substances Act</i> 677.190(25) <i>Authorizing medical marijuana without legitimate purpose, appropriate exam, or record keeping</i> (see also, Negligence)</p>	<p>Close: no action Letter of Concern: identifying an area for improvement in an area of practice, may include suggestion on specific courses or other training, improved documentation or record keeping, improved patient counseling, etc.</p>	<p>Corrective Action Agreement:</p> <ul style="list-style-type: none"> • follow specific practice guidelines • educational courses related to appropriate prescribing • clinical assessment and educational plan (e.g. CPEP) • practice mentor <p>Stipulated Order (may include CAA remedial terms +):</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice/prescribing limitation • practice site limitation • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
<p>Impairment (Substance or Health Condition) or HPSP Non-compliance 677.190(1)(a), 677.188 (4)(a)(iii) <i>any conduct, practice or condition which does or might impair a physician's ability safely and skillfully to practice medicine or podiatry</i> 677.190(7) <i>Impairment, inability to practice with reasonable competence and safety due to habitual or excessive use of drugs or alcohol, other chemical dependency, or mental health condition</i> 677.190(14) <i>Incapacity to practice</i> 676.200(3) <i>HPSP noncompliance</i></p>	<p>Close: no action Letter of Concern: confidential letter stating OMB is concerned about the licensee's wellbeing. Presumptive Letter of Concern for DUII if: ✓ First or second incident in 3 years ✓ Blood alcohol less than 0.15 ≠ Nexus to the licensee's practice ≠ Alcoholism/dependence diagnosis ≠ Prior, recent history of DUII ≠ Significant property damage ≠ Children were in the vehicle ≠ A person suffered an injury</p>	<p>Corrective Action Agreement:</p> <ul style="list-style-type: none"> • maintain care with provider • enrollment in a monitoring program (e.g. HPSP) <p>Stipulated Order (may include CAA remedial terms +):</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice limitation • practice site limitation • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
<p>Criminal Activity 677.190(6) <i>conviction of an offense punishable by incarceration</i> 677.190(19) <i>Imprisonment</i> (677.225)</p>	<p>Not Applicable</p>	<p>Stipulated Order:</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice limitation • practice site limitation • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying

Statute References	No Violation	Remediation or Discipline
Fraud/Misrepresentation in Practice 677.190(3) <i>Representing that incurable condition can be cured</i> 677.190(4) <i>Obtaining fee by fraud or misrepresentation</i> 677.190(5) <i>Divulging a professional secret</i> 677.190(9) <i>False statements regarding skill or efficacy</i> 677.190(10) <i>Impersonating another licensee</i> 677.190(12) <i>Untruthful use of medical titles in advertising</i> 677.190(16) <i>Failing to designate license degree</i> 677.190(20) <i>Fraudulent claim</i> 441.098 <i>self-referral without informing the patient (Stark Law)</i>	Close: no action Letter of Concern: identifying an area for improvement in an area of practice, may include suggestion specific courses or other training.	Corrective Action Agreement: <ul style="list-style-type: none"> • follow specific practice guidelines • educational courses (e.g. ethics, professionalism, specific practice area, etc.) Stipulated Order (may include CAA remedial terms +): <ul style="list-style-type: none"> • reprimand • civil penalty/fine • practice limitation (e.g. supervising other personnel) • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
Non-compliance with Board Order, Investigation, or Interview 677.190(17) <i>Violation of Board Order</i> 677.190(22) <i>Refusing informal interview</i>	Not Applicable	Stipulated Order: <ul style="list-style-type: none"> • reprimand • civil penalty/fine • case-specific terms: <ul style="list-style-type: none"> -follow specific guidelines -educational courses -practice limitation -practice site limitation -clinical assessment and educational plan (e.g. CPEP) • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
Reciprocal Discipline 677.190(15) <i>Discipline by another state based on acts similar to 677.190</i>	Close: if not based on acts similar to 677.190. Letter of Concern: content specific to case information.	Corrective Action Agreement: <ul style="list-style-type: none"> • educational courses (e.g. mirroring the initiating state) • mentorship (e.g. mirroring the initiating state) Stipulated Order (may include CAA remedial terms +): <ul style="list-style-type: none"> • reprimand • civil penalty/fine • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying

Statute References	No Violation	Remediation or Discipline
<p>Failure to Report 677.190(26) <i>Failure to report adverse action by another board, institution, association, government agency, law enforcement or courts for acts similar to 677.190</i> 677.190(27) <i>Failure to report resignation or limitation of privileges while under investigation for incompetence, unprofessional conduct, or impairment</i> 676.150(2) and 677.415(3) <i>failure to report information of incompetence, unprofessionalism, or impairment within 10 days</i> 677.415(4) <i>failure to self-report an official action within 10 days</i> 677.415(6) <i>failure to report a voluntary resignation or limitation of privileges while under investigation for incompetence, unprofessional conduct, or impairment within 30 days</i> 676.150(3) <i>failure to report a misdemeanor conviction or a felony arrest/conviction within 10 days</i></p>	<p>Close: no action Letter of Concern: reminding the licensee of reporting requirements.</p>	<p>Corrective Action Agreement:</p> <ul style="list-style-type: none"> • educational courses (e.g. ethics, professionalism, etc.) <p>Stipulated Order (may include CAA remedial terms +):</p> <ul style="list-style-type: none"> • reprimand • civil penalty/fine • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
<p>Failure to Qualify for Licensure 677.100(1)(a) <i>failure to qualify with a degree</i> 677.100(1)(b) <i>failure to qualify with a postgraduate training program</i> 677.100(1)(c) <i>failure to qualify for licensure by not complying with board rule(s) [text rule #]</i> 677.100(1)(d) <i>failure to qualify due to not establishing good moral character</i></p>	<p>Not Applicable</p>	<p>Stipulated Order:</p> <ul style="list-style-type: none"> • withdrawal while under investigation in lieu of denial • denial of licensure

Statute References	No Violation	Remediation or Discipline
Fraud or Misrepresentation on an Application 677.190(8) <i>Fraud or misrepresentation in procuring licensure</i>	Administrative Civil Penalty: \$195 fine for misrepresentations or omissions on an application (see OAR 847-008-0058)	Stipulated Order (if not yet licensed): <ul style="list-style-type: none"> • reprimand • civil penalty/fine • withdrawal while under investigation in lieu of denial • denial of licensure Stipulated Order (if already licensed): <ul style="list-style-type: none"> • reprimand • civil penalty/fine • case-specific terms • suspension • loss of license <ul style="list-style-type: none"> -surrender/retire while under investigation -revocation -restriction on reapplying
Statutorily Prescribed Sanctions 305.385 <i>Failure to file/pay state tax</i> 25.750 <i>Failure to pay child support</i> 677.225(1)(a) <i>impaired + admitted for >25 days</i> 677.225(1)(b) <i>incarcerated</i> 677.415(5) <i>health care facility failure to report an official action against a licensee within 10 days</i>	Not Applicable	Follow specific statute requirements
Other 677.190(17) <i>Violation of statute or rule</i> 677.190(2) <i>Employing any person to solicit patients</i> 677.190(11) <i>Aiding unlicensed practice</i> 677.190(18) <i>Failure to report practice location change</i> 677.190(21) <i>Performing psychosurgery</i>	Close: no action Letter of Concern: content specific to case information.	See Primary Statutory Violation

Note: During the course of an investigation, the OMB may issue an Interim Stipulated Order or Emergency Suspension Order based on information gathered. A Final Order (including a Final Order by Default) may be issued through a contested case hearing process.

Definitions

Gross negligence: conduct of such magnitude or recurrence as to indicate a willful indifference to regular standards and practices, or a reckless disregard for a patient's wellbeing, or an error at a fundamental level. See *also* ORS 677.190; *Hambleton v Board of Engineering Examiners*, 50 Or App 9, 12 (1979).

Negligence: not practicing within the degree of care, skill, and diligence that is used by ordinarily careful physicians, PAs, or acupuncturists in the same or similar circumstances in the same or similar community. See *also* ORS 677.095, 677.097, 677.190, 677.265; *Getchell v Mansfield*, 260 Or 174, 179 (1971); *Creasey v Hogan*, 292 Or 154, 163 (1981).

Nexus to practice: the conduct directly relates to or has a connection with the practice of medicine, podiatry, or acupuncture. A fact-specific analysis determines whether a nexus exists. Off-duty conduct may substantially relate to the practice of medicine, podiatry, or acupuncture based on the facts, circumstances, and professional standards. See *also* ORS 670.280, 677.100, 677.190; *Dearborn v Real Estate Agency*, 334 Or 493 (2002); *Kerley v Real Estate Agency*, 337 Or 309 (2004); *Teacher Standards v Bergerson*, 342 Or 301 (2007); *Talbott v Teacher Standards*, 260 Or App 355 (2013); *Eicks v Teacher Standards*, 270 Or App 656 (2015); *Allied Structural v Construction Contractors Board*, 311 Or App 40 (2021).

Willful: conduct that was done deliberately, intentionally, or consciously, but not maliciously. See *also* ORS 677.080, 677.188, 677.190.

Malice: reckless disregard of the law or for the rights of others; the intent, without justification or excuse, to commit a wrongful act or to cause harm or injury.

Note: These definitions are provided for general reference only and should not be construed as legal interpretation or advice. The legal standards and definitions will be determined and applied after analysis of the unique circumstances in each individual investigation.