



*Oregon Board of Medical Examiners  
Investigations and Compliance Department*

**Efficiency and Effectiveness Evaluation**

**April 2006**

**TKW**

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April 2006

Ms. Kathleen Haley  
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We have completed our evaluation of the Oregon Board of Medical Examiners' Investigation and Compliance Department. This report contains our analysis and conclusions based on our review.

We wish to express our appreciation to Board members and employees, and those persons from other organizations we spoke with for their cooperation and assistance during this analysis.

*Talbot, Korvola & Warwick, LLP*

**Talbot, Korvola & Warwick, LLP**



# **Investigations and Compliance Department Effectiveness and Efficiency Evaluation**

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**Investigations and Compliance  
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**Report Summary**

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## Report Summary

### PROJECT PURPOSE AND OBJECTIVES

Talbot, Korvola & Warwick, LLP (TKW), under contract to the Oregon Board of Medical Examiners (OBME), conducted an evaluation of the efficiency and effectiveness of the Investigations and Compliance Department. The OBME requested services from an independent organization to analyze the Department to determine if it is meeting the Board's goals of investigating complaints of licensee misconduct:

- in accordance with state law,
- in a manner that is responsive to the needs of the public,
- is fair to licensees, and
- that provides the Board with the information it needs to resolve complaints against its licensees.

### THE BOARD

Since 1889, the Oregon Board of Medical Examiners has been responsible for licensing and monitoring the professional conduct of Oregon's physicians. The Board oversees Medical Doctors (MD's), Doctors of Osteopathy (DO's), Doctors of Podiatric Medicine (DPM's), Physician Assistants (PA's), and Acupuncturists (Lac's). To assure that Oregon citizens receive appropriate medical care from qualified professionals, the Board investigates complaints against licensees and takes disciplinary action when a violation of the Medical Practice Act - the governing regulations for the practice of medicine in the state - occurs.



To investigate and adjudicate licensee complaints, the Board uses an approach that essentially consists of the use of primarily ex-law enforcement personnel to investigate complaints, medical experts to provide technical assistance, legal support as necessary, and adjudication by a committee of a licensee's peers.

Complaints, received from a variety of sources including patients, other providers, and hospitals, are investigated by the Board's Investigations and Compliance Department. This ten-member function gathers relevant information through a variety of activities including interviews with complainants and licensees and a review of licensee files. During the investigation, the investigator discusses the case with other investigative staff and the Medical Director. If the case involves a highly specialized medical field, the Medical Director may hire a consultant who can knowledgeably review case files and ask relevant questions to determine if the licensee acted in accordance with acceptable practices within that field of medicine.

Once all evidence has been gathered and summarized, it is presented to the Investigative Committee (IC), a subcommittee of the full Board. The IC, based on information gathered through the investigation, interviews with the licensee, and comments and suggestions from medical consultants, recommends what action the allegations warrant. If there is sufficient evidence to determine that a violation of the Medical Practice Act has occurred, a



recommendation is made to the full Board that disciplinary action be taken. The Board's 12 members make all final decisions.

This approach provides review and oversight at almost every level of the process and helps to assure the Board is complying with applicable rules and regulations, is fair to licensees, and responsive to the public. Investigators use a variety of sources and techniques to ascertain factual evidence to assist the Board in determining whether violations of the MPA occur, and if so, appropriate action. A review of case files coupled with interviews of both licensees that have come before the Board and attorneys representing licensees indicated the Board's actions were fair and based on facts presented.

Although the investigation and disciplinary process does appear to be providing a level of assurance that the Board is protecting the health, safety, and well being of Oregon citizens, two specific aspects of the process - timeliness and the identification of complaints – can be improved. In addition, opportunities to enhance the efficiency and effectiveness of the investigation process exist.

## **TIMELINESS**

Information obtained from OBME staff, attorneys representing licensees, and licensees who have been through the process identified the need to improve the timeliness of complaint processing. In 2001, the most recently completed year where all cases have been closed,



an average complaint required almost seven months to resolve.

Many factors contribute to the timeliness of complaint resolution including: the timelines of the receipt of information from licensees, ability to schedule interviews with appropriate parties, and workloads of external medical consultants. Because the Board has implemented an approach that involves an extensive review and oversight component, additional time is required to sufficiently complete the process.

Opportunities to improve the timeliness of the current investigation process include:

#### ***More Frequent IC Meetings***

Increasing the frequency of IC meetings and, if necessary, Board meetings, could improve timeliness. However, since this is a voluntary board that currently requires almost 400 hours annually of its IC members; we believe this is not a viable option.

#### ***The Use of Consultants***

Consultants are often hired to review additional patient files of the licensee to see if a trend in technique or behavior can be determined. Consultant reviews are typically requested by the IC after a case is initially presented and discussed by Committee members. Although the Medical Director can order a consultant review prior to the case presentation, this seldom occurs. Of the 55 consultants hired in 2005,



approximately ten percent were hired prior to the case going to the IC.

Because consultants are typically active practitioners, reviews can take many days/months to complete. Requesting consultant reviews earlier in the process can potentially decrease the average time currently required to resolve complaints.

### *Closing Cases at the IC Level*

After the IC determines its recommendation regarding an investigation, the case is brought to the full Board for final action. In most instances, the IC's recommendation is agreed to by the full Board. Because several months can pass between an IC meeting and the next quarterly Board meeting, having the IC close certain cases would also decrease the average time to complete investigations. Specific types of cases, criteria, etc., should be established by the Board regarding what cases could be acted upon by the IC.

### *The Medical Director*

The Board's Medical Director reviews almost every opened complaint - some requiring a few hours, others taking several days. A backlog of cases to be reviewed is common. In addition, the Medical Director leads the effort of organizing the Appropriate Prescribing Workshop (APW). The preparation time spent organizing the APW by the Medical Director and other staff, including the Compliance Officer is extensive. By using an outside



consultant to organize the APW, the Medical Director would have additional time to devote to case review.

## **IDENTIFICATION OF COMPLAINTS**

To effectively “protect the health, safety, and well being of Oregon citizens by regulating the practice of medicine in a manner that promotes quality care,” the Board is dependent primarily on outside sources to identify potential concerns with licensee care and conduct. Without the knowledge of a potential violation, the Board is unable to initiate an investigation.

It appears reasonable that those individuals and organizations - patients, other providers, hospitals - that have the most contact with licensees would be the primary sources of complaints. However, although over 50% of all complaints received come from patients or associates, less than 5% of all complaints are received from hospitals.

Based on limited available information<sup>1</sup>, approximately 5,700 licensees are associated with hospitals in one form or another. Because of the extensive level of contact with licensed professionals, it would be realistic to expect hospitals to initiate a greater number of reported complaints.

ORS 677.415 requires healthcare facilities and Board licensees to report to the Board of Medical Examiners any

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<sup>1</sup> Per representatives from the Oregon Medical Association, the DHS Healthcare Licensure & Certifications Department, and the Oregon Association of Hospitals and Health Systems, no details regarding licensees and hospital associations exist.



“official action, incident or event taken against or involving a Board licensee, based on a finding of medical incompetence, unprofessional conduct, or licensee impairment, within 10 working days of their occurrence.” The statute however, does not provide for any consequences of not reporting and the Board has no authority to require hospitals, other institutions, or medical professionals to inform it of actions and events concerning licensees. The Board should request the Legislature to establish specific consequences for not reporting any action, incident, or event taken against or involving a Board licensee.

## **THE INVESTIGATION PROCESS**

### ***Investigator Responsibilities***

The three currently active full-time Investigators, with assistance from the Complaint Resource Officer, investigate all open complaints. Although administrative responsibilities are part of an investigation, the Board’s Investigators are currently spending an inordinate amount of time - over 50% - on those tasks.

Because of the high case load currently managed by Investigators, reducing the quantity of administrative tasks would result in greater focus on actual investigations and increase the ability to provide increased compliance. The OBME should assess what tasks could be performed by a

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<sup>2</sup> As of February 22, 2006.



paralegal/para-professional and dedicate resources to a new position.

### ***The Database***

The database currently being utilized by the OBME to track licensing, investigative, and compliance efforts was created in the late 1980's, and is outdated and inefficient. Obtaining management information is extremely difficult and downloading information to the national and federal databanks that require reporting is cumbersome. The Board should allocate resources to move forward with implementation of a database designed to meet the needs of the individuals using it.

### ***Information Distribution***

Currently, all information prepared for IC and Board meetings is provided in hard copy. The preparation is time consuming, costly, and inefficient. Hundreds of pages are compiled for each IC or Board member. Since Board members typically receive materials for meetings in advance, shipping these materials is also costly.

Submitting information to Board members in a reliable electronic format would require less effort and cost to OBME.

### ***Documenting IC Discussions Regarding Final Dispositions***

Our review of 25 randomly selected completed case files found all to have appropriate documentation and followed established Board methodology. In addition, information obtained from case files was consistent with public information available on the OBME's website as well as



the information provided to the national and federal databanks.

We also reviewed the final disposition to determine if it appeared appropriate based on the information obtained from the investigation. In all but one of the 25 cases reviewed, it appeared that the action imposed by the Board was reasonable and consistent based on the facts of the investigation. In the one case that was the exception, it was not apparent why the Board elected to impose specific actions based on the documented record. Because the Board does not document the discussion that takes place before final disposition in the case file, the rationale behind specific decisions cannot be determined.

To assure that all Board decisions are well founded and consistent, all final dispositions should be documented in respect to why specific actions were imposed.



**Investigations and Compliance  
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**Introduction**

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## Introduction

### **PURPOSE AND OBJECTIVES**

The Oregon Board of Medical Examiners (OBME) initiated a competitive solicitation process to select a contractor and chose Talbot, Korvola & Warwick, LLP (TKW) to conduct an evaluation of the effectiveness and efficiency of the Investigations and Compliance Department. The intent of the analysis was designed to determine if the Department is meeting the Board's goals of investigating complaints of licensee misconduct:

- in accordance with state law,
- in a manner that is responsive to the needs of the public,
- is fair to licensees, and
- that provides the Board with the information it needs to resolve complaints against its licensees.

This report outlines the analysis and conclusions based on our work.

### **PROJECT APPROACH AND METHODOLOGY**

To gain a comprehensive understanding of the investigative and disciplinary function, we interviewed individuals from various OBME departments including Investigations and Compliance, Licensing, and Information Technology. We also spoke with selected Board members, the Executive Director, the Medical Director, and the Oregon Department of Justice attorney assigned to OBME. In addition, we spoke with licensees that have come before the Board as well as attorneys representing licensees.



The information gained from these individuals and from other corroborative sources provided insight into the issues, needs, and expectations surrounding the evaluation and was invaluable in reaching the conclusions and recommendations presented within this report. However, not all of the issues raised by OBME personnel fell within the scope of this project. Where possible, those issues have been addressed through means other than this report.

As part of our review, we evaluated numerous OBME documents and files. Included were ORS Chapter 677 (Medical Practice Act) and OAR Chapter 847, information obtained from an in-house database, job descriptions, the OBME budget, various local and national medical articles, the national and Federal databanks, various websites, etc. In addition, we randomly selected and reviewed closed case files and observed an Investigative Committee meeting and a quarterly Board meeting.



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**Overview**

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## Overview

### THE OBME

The Oregon Board of Medical Examiners (OBME), established in 1889, is responsible for administering ORS Chapter 677 (Medical Practice Act), and establishing rules and regulations pertaining to the practice of medicine in the state.

#### Mission Statement

*“ . . . to protect the health, safety, and well being of Oregon citizens by regulating the practice of medicine in a manner that promotes quality care.”*

OBME is responsible for:

- determining requirements for Oregon licensure as a Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Podiatric Medicine (DPM), Physician Assistant (PA), and Acupuncturist (LAc);
- ensuring all applicants granted licensure meet all Oregon requirements;
- investigating complaints against licensees and taking disciplinary action when a violation of the Medical Practice Act occurs;
- monitoring licensees under disciplinary action to ensure compliance with probationary terms and ensuring that it is safe for licensees to practice medicine;
- working to rehabilitate and educate "problem" licensees whenever appropriate; and
- educating licensees and the public.

The Board, consisting of 12 members appointed by the Governor, currently includes:

- seven medical doctors,
- two doctors of osteopathy,
- one podiatrist, and
- two public members not employed in the medical field.



Board members have ultimate responsibility for decisions regarding licensing individuals, disciplining licensees, and proposing statutes and administrative rules for legislative approval. The full Board meets on a quarterly basis for two all-day sessions.

Many Board members serve on various sub-committees, including the Investigative Committee (IC), which oversees the efforts of the Investigations and Compliance Department. The IC is made up of five members, including one public member.

OBME is a self-supporting agency that relies on fees paid by licensees, examinations, and other miscellaneous revenue. Its \$7 million budget<sup>3</sup> funds over 34 full-time employees tasked with:

- performing background checks on applicants for licensure and license renewal,
- investigating complaints against licensees,
- monitoring disciplined licensees and working to rehabilitate them where feasible;
- operating a diversion program to get licensees with addictive disorders into early treatment to ensure that they are able to practice safely, and,
- educating licensees to help prevent the development of potentially dangerous medical practices, and
- educating consumers by providing access to information about Board licensees.

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<sup>3</sup> 2005-2007 biennium



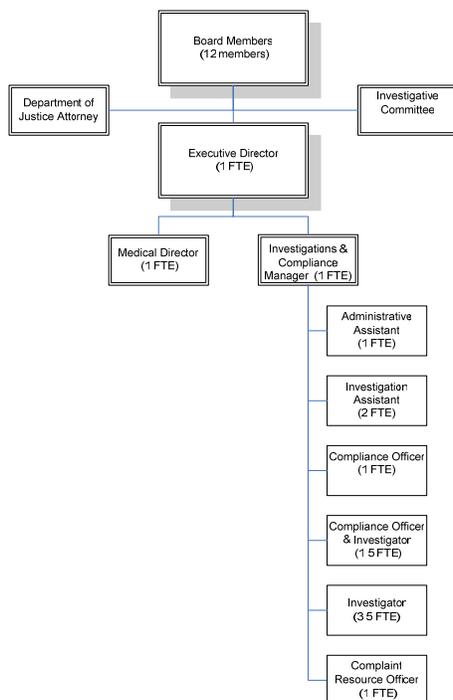
## INVESTIGATIONS AND COMPLIANCE FUNCTION

A major responsibility of the OBME is to investigate complaints against licensees, take disciplinary action when a violation of the Medical Practice Act (MPA) occurs, and monitor licensees to assure compliance with probationary terms and determine when it is safe for licensees to resume practicing medicine. These tasks are carried out through a combination of efforts by various Board functions.

### *Investigative and Compliance Department*

The Investigations and Compliance Department’s eleven employees are responsible for investigating complaints made against licensees and enforcing applicable statutes and Board rules. Duties include:

Investigative and Compliance Function



- receiving complaints against existing licensees,
- determining if a complaint falls under the purview of the Board,
- investigating those complaints where there appears to be a violation of the Medical Practice Act, and
- monitoring licensees under disciplinary action to ensure that it is safe for licensees to practice as well as to assist them with rehabilitation.

The Investigations and Compliance Manager (Chief Investigator) provides managerial oversight to department personnel and is responsible for directing investigative and probationary activities and ensuring departmental activities are carried out in accordance with applicable rules and regulations.

The Complaint Resource Officer receives and reviews telephone and e-mail complaints concerning licensees and conducts research and investigative duties as needed.



The function's three Investigators<sup>4</sup> receive, evaluate, and investigate written or verbal complaints, prepare reports on the investigations for presentation to the IC and the full Board, and provide testimony when necessary.

The Compliance Officers monitor compliance of licensees who have had limitations placed on their license.

The Administrative Assistant (Investigations Coordinator), is a job-share position split between two employees. The role of this position is to assist with general departmental operations, prepare legal actions taken by the Board and contested case hearings, assist with meeting preparation and follow-through for Board and IC meetings, and assure certain aspects of probationer compliance are carried out in accordance with pertinent laws and rules.

The two Office Specialists (Investigative Assistants) provide secretarial support for the Department.

### ***Medical Director***

The Medical Director is responsible for providing expertise for all OBME's programs and serves as a resource in evaluating credentials of applicants - particularly in cases where a possible "problem" physician asks to be licensed. In the disciplinary process, the Medical Director reviews all complaints of malpractice, incompetence, or unprofessional

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<sup>4</sup> Due to the vacancy of the Compliance Officer position, the Investigation & Compliance Officer, designed to be split equally between investigative and probationary tasks, is currently working 100 percent on probationary duties until the Compliance Officer position is filled.



conduct investigated by the Board, and provides medical expertise for the investigative process.

### ***Executive Director***

The Executive Director acts as the Public Information Officer and provides oversight and direction to all OBME staff. This position ensures Board and advisory committee members have the information needed to make sound decisions in addition to overseeing the development of laws and rules. The Executive Director attends Board and committee meetings, publishes a quarterly newsletter, and provides education to licensees and the public.

### ***Department of Justice***

The Oregon Department of Justice currently provides all legal assistance to the OBME. Approximately 80% of an in-house attorney is assigned to the Board to offer advice and representation as necessary.

### ***Investigative Committee***

The Investigative Committee reviews information provided by the Investigative staff and the Medical Director and makes preliminary determinations regarding complaints made against licensees that fall within the purview of the Board.

### ***The Full Board***

Regarding investigations and compliance, the full Board makes the final determination on cases that are brought before it.



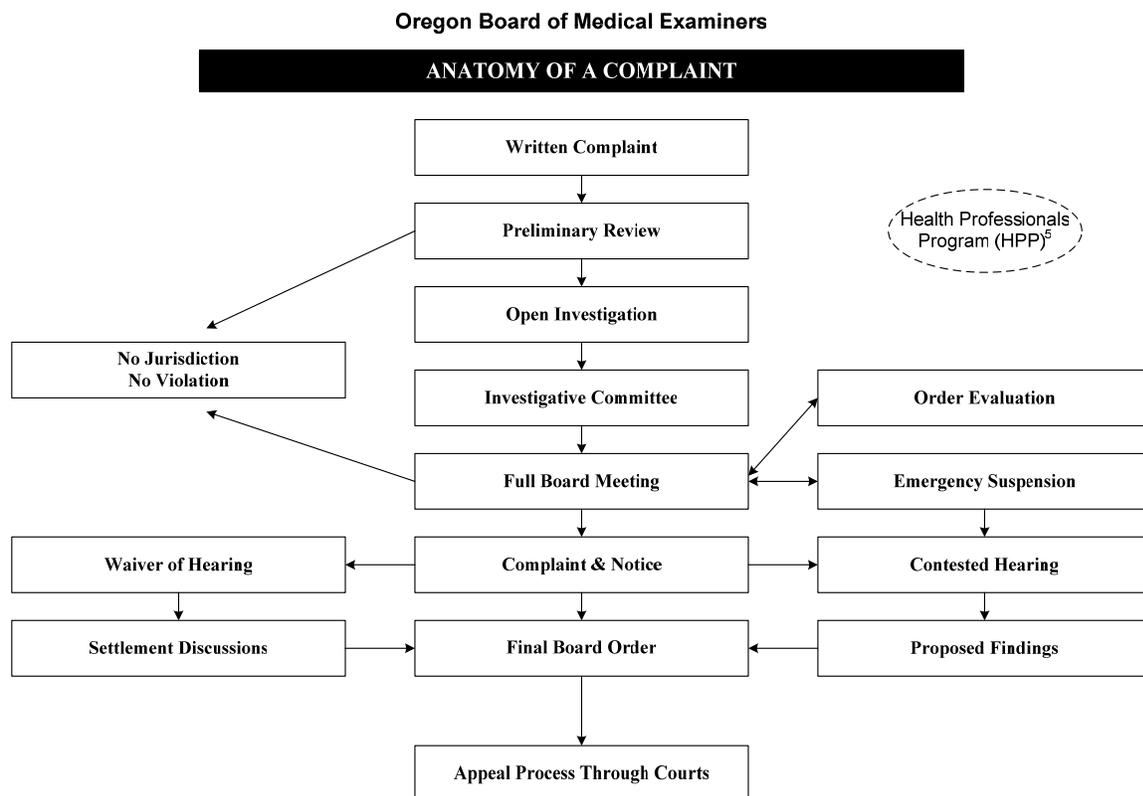
**Investigations and Compliance  
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**Processing a Complaint**

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## Processing a Complaint



Source: OBME

Complaints are received via phone calls, in writing, and from e-mail inquiries. Many are initiated over the phone, but unless it is an extraordinary circumstance, complaints are not acted upon until they are received in writing.

When a call is received, it is routed to the Complaint Resource Officer, who determines the appropriate action. Calls requesting information on topics such as applicable statutes, rules and regulations, billing issues, or the OBME's procedures are, if possible, addressed

<sup>5</sup> The Health Professionals Program is the diversion program dedicated to intervention, rehabilitation (including long-term monitoring), and education concerning licensees who suffer from substance abuse disorders.



immediately or a letter is sent to the complainant by the Chief Investigator explaining why an investigation is not warranted. Callers with complaints outside Board jurisdiction are referred to other applicable agencies or additional appropriate avenues are suggested.

If the Complaint Resource Officer determines that the complaint falls within the purview of the Board, the caller is asked to send a detailed synopsis of the allegations in writing. In the event a caller identifies a more serious violation - substance abuse, sexual misconduct, or an immediate danger to the public - the Chief Investigator is informed. Once a written complaint is received, it is routed to the Chief Investigator to determine if further action is warranted. All written complaints are logged.

Although complaints are received from a variety of sources, most are initiated by patients or associates of a patient. Additional sources include other medical professionals, pharmacies, malpractice claims, hospitals, insurance companies, and requests by the Board.

If it appears that there may have been a violation of the Medical Practice Act, the Chief Investigator assigns the case to an Investigator. The Investigator initiates an investigation through a variety of activities:

- contacting the complainant and licensee to inform them about the impending investigation,



- searching the OBME's database to determine whether previous claims have been made against the licensee,
- reviewing licensee files,
- determining the existence of malpractice claims,
- requesting and reviewing information from the complainant and the licensee,
- requesting a summary explanation from the licensee regarding the allegations, and
- interviewing complainants, licensees, and others who may have insight regarding the allegations.

If the licensee is non-responsive, the Investigator can obtain a subpoena as necessary.

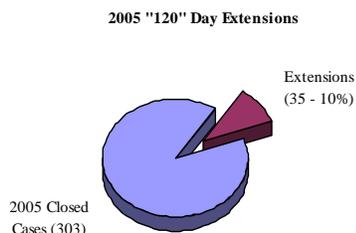
When interviews occur, they are typically held at the offices of the OBME or at the medical facility where the licensee practices.

During the investigation, the Investigator discusses the case with other investigative staff and the Medical Director. If the case involves a highly specialized medical field, the Medical Director may hire a consultant. The consultant is a medical professional in the same field as the licensee under investigation. This person can knowledgeably review case files and ask relevant questions to determine if the licensee acted in accordance with acceptable practices within that field of medicine.

Investigators have 120 days to investigate and bring the case to the Investigative Committee (IC). Within the 120-



day period, the Medical Director reviews the case and prepares a summary.



If the case will not be ready for the IC before the 120-day period has passed, a request for extension is prepared and sent to the Executive Director for approval. Reasons for extension include the timing of the next IC meeting, when a consultant has been hired to assist with reviewing the case, or lack of cooperation from the licensee in providing requested information. All extensions are included on the IC agenda for notification.

If it is apparent that there is no violation of the Medical Practice Act, the Medical Director recommends that the case be included on the "Consent Agenda" and brought before the IC for consideration. An investigation report is provided for review and if the Committee agrees with the Medical Director, the IC recommends to the full Board that the case be closed. The full Board votes on all investigations that have been opened.

If it appears that there is a violation of the Medical Practice Act, an investigation report is presented to the IC for its evaluation. The Investigative Committee meets approximately ten times annually and reviews and discusses numerous cases at each meeting. The Medical Director identifies an IC member to review the case file to present to the Investigative Committee.



The Committee evaluates all evidence presented and may require the licensee under review to appear before it. Each IC member present at the interview has the opportunity to ask specific questions of the licensee at that time. The case may also be analyzed by a medical consultant from the same specialty to assist the IC in determining the extent of the violation.

Based on the evidence obtained from the OBME investigation, information gathered from the interview and comments and suggestions from the medical consultants, the IC decides what action the allegations warrant. If there is sufficient evidence to determine that a violation of the Medical Practice Act has occurred, a recommendation is made to the full Board that disciplinary action - revocation, suspension, or probation - be taken. If no apparent violation of the Act has occurred, the IC can recommend to:

- close the case,
- request an additional investigation take place, or
- write a Letter of Concern regarding the licensee's practice and/or behavior.

Once the Board moves to discipline a licensee, a "Complaint & Notice of Proposed Disciplinary Action" is issued. The licensee has two options once disciplinary action is taken. First, the findings of the Board and the resulting action can be unconditionally accepted. In this case, the Board will issue a Stipulated Order which can impose varying degrees of discipline:

- Revocation of License (Restoration discretionary after 2 years)



- Suspension of License (Length set by Board)
- Probation (Terms established by Board)
- Limitation on License - (Restricted activities)
- Penalties or Fines (Up to \$5,000)
- Deny Renewal or Re-activation of Medical License
- Referral to Diversion Program
- Suspension of Judgment (No sanctions imposed)
- Surrender of License
- Retirement under Investigation
- Reprimand
- Referral for Additional Training

The licensee can also request a hearing after the Board has moved to take disciplinary action. This Contested Case Hearing is presided over by an impartial hearings officer and each party, the licensee and the State (OBME), are typically represented by legal counsel. The hearings officer submits a Proposed Order to the Board based on testimony heard and evidence presented. These findings are reviewed by the Board and a Final Order is issued as discussed previously.

If a licensee disagrees with the Board's Final Order, the decision may be appealed to the Oregon Court of Appeals and ultimately to the Oregon Supreme Court.

In cases that result in a fine, reprimand, suspension, license restrictions, surrendering of a license, and revocation, the National Practitioners Database & Healthcare Integrity & Protection Data Bank, and the Federation of State Medical



Boards of the United States are provided the details of the case for national reporting requirements.



**Investigations and Compliance  
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**Results**

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## Results

The Oregon Board of Medical Examiners is tasked with assuring that Oregon citizens receive appropriate medical care from qualified professionals. To accomplish part of this mandate, the Board has established a process by which identified complaints against Oregon licensees are investigated and ultimately adjudicated.

The “model” used by the OBME to investigate and adjudicate licensee complaints essentially consists of the use of primarily ex-law enforcement personnel to investigate complaints, medical experts to provide technical assistance, legal support as necessary, and adjudication by a committee of a licensee’s peers.

The model appears to be sound. The review and oversight that occurs at almost every level of the process helps to assure the Board is complying with applicable rules and regulations, is fair to licensees, and responsive to the public.

The Board’s current investigative process allows for a thorough review of information. Investigators use a variety of sources and techniques to ascertain factual evidence to assist the Board in determining whether violations of the MPA occur, and if so, appropriate action. A review of case files coupled with interviews of both licensees that have come before the Board and attorneys representing licensees indicated the Board’s actions were fair and based on facts presented.

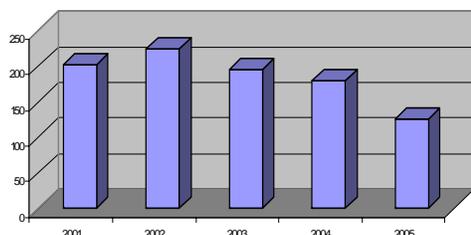


The investigation and disciplinary process does appear to be providing a level of assurance that the Board is meeting its mission to “protect the health, safety, and well being of Oregon citizens by regulating the practice of medicine in a manner that promotes quality care.” However, two specific issues regarding the process have been identified - timeliness and the identification of complaints. In addition, the investigation process itself does have opportunities to improve its efficiency and effectiveness.

## TIMELINESS

Information obtained from OBME staff, attorneys representing licensees, and licensees who have been through the process identified a common theme - the need to improve the timeliness to process a complaint.

Average Days to Close Complaints  
2001 - 2005



Most licensees who have a complaint brought against them hope to resolve the issue expeditiously. Being the subject of an investigation can be disruptive and distracting.

For complaints opened in 2005, the average time to close a complaint that completed the investigative process was 126 days. However, 182 complaints were still open at the end of 2005 which will increase this average extensively. In 2001, the most recently completed year where all cases have been closed, an average complaint was resolved in 203 days.

Many factors contribute to the timeliness of complaint resolution including: the timelines of the receipt of



information from licensees, ability to schedule interviews with appropriate parties, and workloads of external medical consultants. In addition, one of the Board's greatest strengths is also one of the greatest contributors to timeliness issues. Because the Board has implemented an approach that involves an extensive review and oversight component, additional time is required to sufficiently complete the process.

Options do exist to help improve the timeliness of the current investigation process. The following are potential opportunities as well as the advantages and disadvantages of each.

#### ***More Frequent IC Meetings***

Increasing the frequency of IC meetings and, if necessary, Board meetings, could improve timeliness. However, since this is a voluntary board that receives minimal compensation, we believe this is not a viable option.

The IC currently meets approximately ten times annually. Members of the IC also serve on the full Board, which convenes quarterly for two-day sessions. Both IC and full Board meetings typically consist of ten hour days.

IC members commit approximately 180 hours annually to their OBME meeting responsibilities and another 200 hours to case reviews.



Although more frequent IC meetings would help decrease the time required to resolve complaints, it also would place an even greater burden on its volunteer members. Asking Board members to dedicate additional time is unreasonable considering most are active practitioners who already spend a large amount of time focused on Board issues.

### *The Use of Consultants*

Consultants are often hired to review additional patient files of the licensee to see if a trend in technique or behavior can be determined. They also participate in interviews and attend IC and Board meetings as necessary.

Consultant reviews are typically requested by the IC after a case is initially presented and discussed by Committee members. The IC directs the OBME Medical Director to find an applicable consultant to answer questions concerning quality of care, technical techniques, etc. However, the Medical Director can also request a consultant review prior to the case presentation to the IC if it is believed that an additional level of medical expertise is required. Of the 55 consultants hired in 2005, approximately ten percent were hired prior to the case going to the IC.

Because consultants are typically active practitioners, case reviews are not their primary focus. Although consultants are compensated for their review, their assistance is widely viewed as more of an altruistic act. As a result, reviews can take many days/months to complete.



Requesting consultant reviews earlier in the process can potentially decrease the average time currently required to resolve complaints. The Medical Director, using his extensive knowledge and experience, should be able to determine when a consultant's expertise will be required to provide additional information to the IC. Specific criteria can be defined by IC members to assist the Medical Director if needed.

### *Closing Cases at the IC Level*

As stated earlier, the model used by the Board to investigate and monitor licensees has many levels of review and oversight. The level of oversight built into the process also extends the amount of time it takes to formally close a case.

After the IC determines its recommendation regarding an investigation, the case is brought to the full Board for final action. In most instances, the IC's recommendation is agreed to by the full Board.

Because several months can pass between an IC meeting and the next quarterly Board meeting, having the IC close certain cases would also decrease the average time to complete investigations. Specific types of cases, criteria, etc., should be established by the Board regarding what cases could be acted upon by the IC.

### *The Medical Director*

The general consensus of current OBME investigative staff is that the Medical Director is over utilized. Almost every



opened complaint is reviewed by the Medical Director - some requiring a few hours, others taking several days. A backlog of cases to be reviewed is common.

In addition, the Medical Director leads the effort of organizing the Appropriate Prescribing Workshop (APW). The APW is offered by the Board as part of its objective to provide educational outreach. Many licensees who have come before the Board for inappropriate prescribing issues are required to attend this workshop. The two-day workshop is offered twice annually.

The preparation time spent organizing the APW by the Medical Director and other staff, including the Compliance Officer is extensive. By using an outside consultant to organize the APW, the Medical Director would have additional time to devote to case review.

## **IDENTIFICATION OF COMPLAINTS**

The ability of the OBME to effectively administer a successful investigative process is reliant on the identification of alleged violations of the Medical Practice Act by a variety of sources. Without the knowledge of a potential violation, the Board is unable to initiate an investigation.

Complaints can come from a variety of sources. The following summarizes the sources of complaints originated within the last five years:



Sources of Complaints	2001	2002	2003	2004	2005
Insurance Companies	14	3	9	4	2
Patient or Associates	241	171	214	174	170
Pharmacies	9	8	8	5	9
Other Providers	23	32	50	29	36
Others	31	26	27	23	25
Self	3	1	4	7	8
Hospitals/Institutions	11	15	20	13	9
Other Boards	2	1	6	3	7
Malpractice Reviews	41	42	53	37	23
Compliance	-	1	1	2	1
BME	39	26	42	49	56
<b>Total</b>	<b>414</b>	<b>326</b>	<b>434</b>	<b>346</b>	<b>346</b>

Source: OBME

It appears reasonable that those individuals and organizations - patients, other providers, hospitals - that have the most contact with licensees would be the primary sources of complaints.

As the above table indicates, over 50% of all complaints received come from patients or associates. However, less than 5% of all complaints are received from hospitals.

There are 62 licensed hospitals<sup>6</sup> in Oregon and, based on limited available information<sup>7</sup>, approximately 5,700 licensees are associated with hospitals in one form or another. This accounts for almost 50% of the 11,760 licensees practicing in Oregon<sup>8</sup>. Based on the extensive level of contact with licensed professionals, it would be

<sup>6</sup> Per DHS, Health Services, PHS, Healthcare Licensure & Certifications Department.

<sup>7</sup> Per representatives from the Oregon Medical Association, the DHS Healthcare Licensure & Certifications Department, and the Oregon Association of Hospitals and Health Systems, no details regarding licensees and hospital associations exist.

<sup>8</sup> As of February 1, 2006.



reasonable to expect hospitals to initiate a greater number of reported complaints.

The Oregon Legislature also recognized the need to inform the OBME of possible concerns with licensees through the enactment of ORS 677.415 which requires healthcare facilities and Board licensees to report to the Board of Medical Examiners any “official action, incident or event taken against or involving a Board licensee, based on a finding of medical incompetence, unprofessional conduct, or licensee impairment, within ten working days of their occurrence.”

Although healthcare facilities and licensees are required to inform the OBME of actions and events, given the low percentage of complaints initiated by hospitals, it appears that reporting requirements are being ignored.

Because the statute does not provide for any consequences of not reporting, the Board has no authority to require hospitals, other institutions, or medical professionals to inform it of actions and events concerning licensees. The Board should request the Legislature to establish specific consequences for not reporting any action, incident, or event taken against or involving a Board licensee.



## THE INVESTIGATION PROCESS

### *Investigator Responsibilities*

The three currently active full-time Investigators, with assistance from the Complaint Resource Officer, investigate all open complaints. An investigation includes a variety of responsibilities including:

- receiving/intaking case documents,
- organizing case files, copying/scanning relevant information for the permanent record and the working file,
- tracking tasks in the database,
- reviewing all information obtained,
- preparing requests for extension, when warranted,
- contacting various parties and conducting interviews,
- preparing summaries for case files, and
- answering questions at IC and Board meetings.

Many of an Investigators' current duties are administrative in nature. Although administrative responsibilities are part of an investigation, the Board's Investigators are currently spending an inordinate amount of time - over 50% - on those tasks.

### **Current Case Loads<sup>7</sup>**

	<i>Active Cases</i>
Investigator 1	65
Investigator 2	90
Investigator 3	66
Complaint Resource Officer	23

Given that Investigators are currently managing a high case load, reducing the quantity of administrative tasks required to be performed by an Investigator would result in greater focus on actual investigations and increase the ability to provide increased compliance. Using an Investigators'

<sup>9</sup> As of February 22, 2006.



experience and expertise in investigating complaints is the best use of their time.

The OBME should assess what tasks could be performed by a paralegal/para-professional and dedicate resources to a new position.

### ***The Database***

The database currently being utilized by the OBME to track licensing, investigative, and compliance efforts was created in the late 1980's, and is outdated and inefficient. Obtaining management information is extremely difficult and downloading information to the national and federal databanks that require reporting is cumbersome.

The Information Technology Department is currently polling staff on needs and researching options for replacing the current system. Having a database designed to meet the needs of the individuals using it will help increase the efficiency of the Department. Once resources have been identified for replacing the current database system, resources should be allocated to move forward with implementation.

### ***Information Distribution***

Currently, all information prepared for IC and Board meetings is provided in hard copy. The preparation is time consuming, costly, and inefficient. Hundreds of pages are compiled for each IC or Board member. Since Board members typically receive materials for meetings in advance, shipping these materials is also costly.



Submitting information to Board members in a reliable electronic format would require less effort and cost to OBME.

***Documenting IC Discussions  
Regarding Final Dispositions***

As part of our evaluation, we randomly selected and reviewed 25 case files completed within the last five years to determine if the Board's process was consistent and followed established methodologies and outcomes appeared reasonable based on case facts.

All case files reviewed were found to have appropriate documentation and followed established Board methodology. In addition, information obtained from case files was consistent with public information available on the OBME's website as well as the information provided to the national and federal databanks.

We also reviewed the final disposition to determine if it appeared appropriate based on the information obtained from the investigation. In all but one of the 25 cases reviewed, it appeared that the action imposed by the Board was reasonable and consistent based on the facts of the investigation.

In one case reviewed, it was not apparent why the Board elected to impose specific actions based on the documented record.



Although case files contained various records including transcriptions, investigation summaries, and consultant reports (as applicable), the rationale behind specific decisions is not documented. To assure that all Board decisions are well founded and consistent, all final dispositions should be documented in respect to why specific actions were imposed.



**Investigations and Compliance  
Department  
Effectiveness and Efficiency  
Evaluation**

**Appendix**

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**Oregon Board of Medical Examinations  
Statistical Information - 2001 through 2005**

<b>Complaints received</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Phone calls	3,759	4,051	2,957	3,020	3,394
Email inquiries	262	180	210	380	367
Written complaints	662	637	639	533	474

<b>Open &amp; Closed Investigations</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Investigations opened	379	300	398	331	329
Average investigations open	223	216	245	222	207
Investigations closed	334	351	381	313	323

<b>IC Interviews Held</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
	75	59	70	67	55

<b>Contested Case Hearings Held</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
	2	1	2	4	4

<b>Sources of Complaints</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Insurance Company	14	3	9	4	2
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Hospital or Institution	11	15	20	13	9
Other Board	2	1	6	3	7
Malpractice Review	41	42	53	37	23
Compliance	-	1	1	2	1
BME	39	26	42	49	56
<b>Total</b>	<b>414</b>	<b>326</b>	<b>434</b>	<b>346</b>	<b>346</b>

<b>Types of Complaints</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Inappropriate care /incompetence	274	203	262	208	215
Inappropriate prescribing	56	31	40	43	38
Personal substance abuse	12	6	13	8	9
Unprofessional conduct	58	57	117	89	119
Mental illness/impaired	6	8	10	13	19
Violation of state/ federal statutes	12	9	22	27	26
Violation of probation	2	3	2	5	3
Other/miscellaneous	29	15	36	21	16
Sexual misconduct	9	9	16	20	15
Compliance	-	1	-	-	6
<b>Total</b>	<b>458</b>	<b>342</b>	<b>518</b>	<b>434</b>	<b>466</b>

<b>Final Dispositions of Investigations</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
No violation: - No apparent violation/preliminary investigation	13	21	31	25	25
No violation: - prior to IC appearance - post IC appearance	193 16	234 8	235 16	203 4	193 7
Letter of Concern: - prior to IC appearance - post IC appearance	62 11	47 9	60 18	50 7	63 3
Public Order: - Corrective Action Order - Stipulated Order** - Voluntary limitation** - Final Order**	16 13 1 11	12 37 1 1	10 37 3 3	7 29 1 5	12 31 0 13
Totals - Total investigations closed - Investigations closed with public orders ** Total reportable orders to national data banks	346 51 35	370 51 39	413 53 43	331 42 35	347 56 44
Percent reportable board actions	10.11%	10.54%	10.41%	10.57%	12.68%

<b>Terms of Public Orders</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Refer to remedial program	13	22	28	8	20
Revocation	4	0	1	3	6
Revocation with stay	9	3	2	0	0
Surrender license	2	0	4	2	1
Retire/surrender under investigation	6	5	2	11	7
Probation	16	16	17	7	12
Suspension	1	7	3	3	6
Reprimand	12	18	21	9	19
Denial of license	1	2	0	1	3
Assessment of fine	9	10	12	4	11
Assessment of costs	1	0	0	3	5
Accept retirement	0	0	3	0	1
State Court of Appeals	0	0	0	0	5

Sources of all Tables: OBME