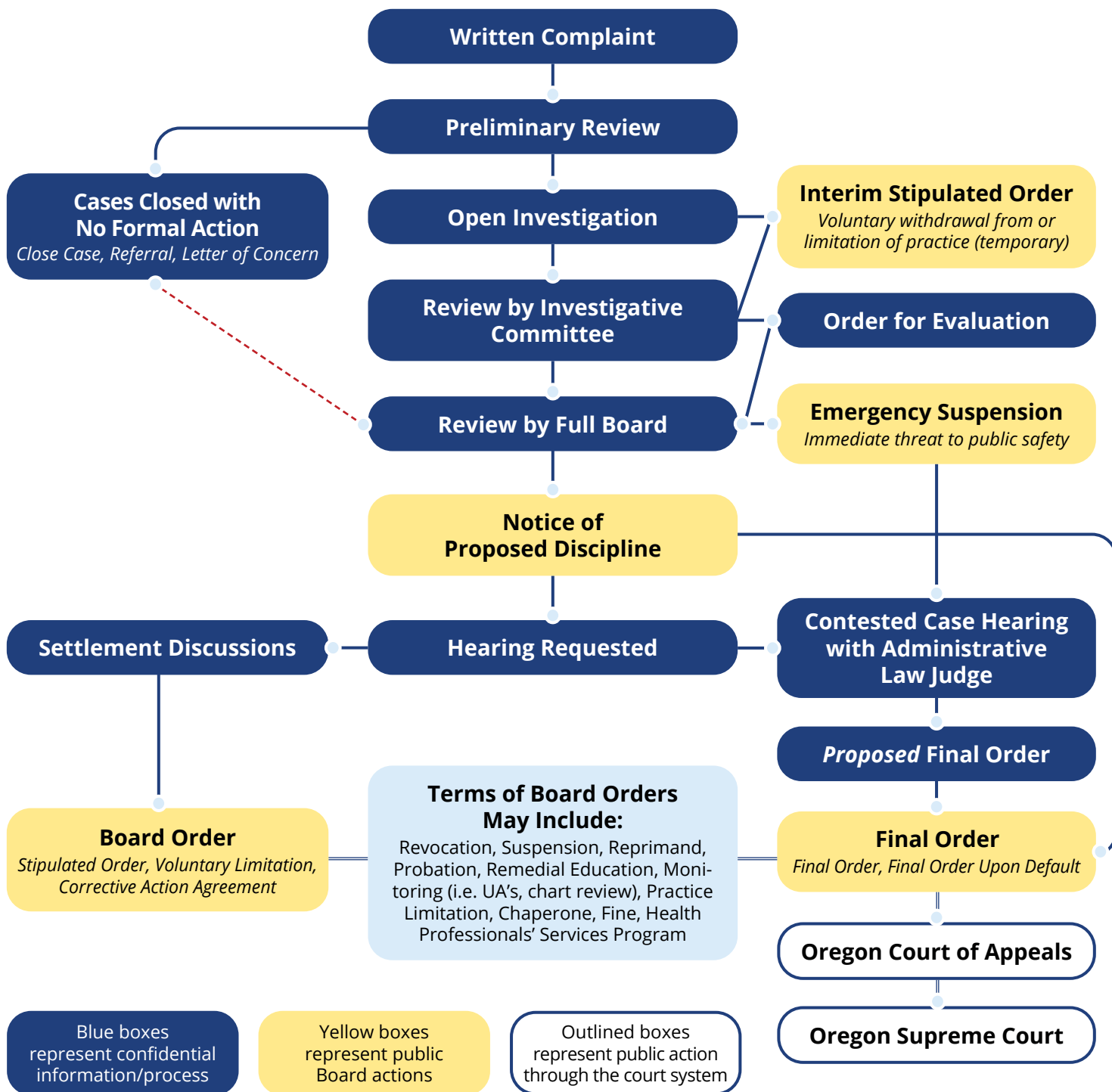




Oregon Medical Board

## Complaint and Investigation Process





## Oregon Medical Board

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### *Complaint and Investigation Process*

Every day, more than 25,000 licensed medical, osteopathic, and podiatric doctors, physician associates, and acupuncturists work diligently with the skill and professionalism to keep Oregonians safe and well. Under Oregon law, the practice of medicine is a privilege, not a right, and the Oregon Medical Board (OMB) is responsible for ensuring that the practice of medicine in Oregon is conducted safely and professionally.

Each year, the OMB receives around 750-850 complaints regarding the care provided by medical, osteopathic, and podiatric doctors, physician associates, and acupuncturists in Oregon. Complaints come from other health care professionals, hospitals, patients, patients' families, and other sources. All complaints are thoroughly reviewed, and approximately 400-500 of those complaints result in a complete and detailed investigation. Each complaint is unique and is considered on its own merits with its specific set of circumstances. The OMB may take public action only in matters where it is determined that a violation of Board rules or state law occurred.

When the Oregon Medical Board receives a complaint about the care provided by an OMB licensee, the OMB looks at the "standard of care," which Oregon law says is "that degree of care, skill and diligence that is used by ordinarily careful physicians in the same or similar circumstances in the community or a similar community." The OMB also looks to see whether the licensee's conduct is "contrary to medical ethics" or whether it "does or might constitute a danger to the health or safety of the public."

To the extent possible as provided in ORS 676.175 and 677.425, OMB investigations are confidential. When the OMB does not find a violation and votes to close the case without discipline, the investigative information remains confidential as allowed by law. Alternatively, when the OMB votes to issue a notice of proposed discipline based on an alleged violation, the allegation is summarized on the [OMB's website](#) and the notice itself is available via a [public records request](#). Any subsequent notices or orders issued by the OMB will also be summarized on the [OMB website](#) or available via a [public records request](#). Each month the OMB publishes a list of all final and interim [Board actions](#).

### **Written Complaint**

The Oregon Medical Board (OMB) requests that complaints about licensees be made in writing. Specific information about the person making the complaint (name, address, and phone number) is needed so they can be contacted for additional information and regarding the outcome of the complaint. A person may [submit a complaint online](#) or use the [OMB complaint form](#) to file a complaint about an OMB licensee – physician (MD/DP/DPM), physician associate (PA), or acupuncturist.

Complaints are confidential and not provided to the public. OMB staff will only reveal information required to further the review of the complaint or as required by law. Identifying information on the complainant (the person making the complaint) is not given out to the public. The OMB will notify the person filing the complaint about whether or not an investigation will occur.

There is no time limit with respect to filing a complaint with the OMB. However, the OMB is generally best able to obtain accurate and complete information when a complaint is submitted as soon as possible after the matter that prompted the complaint. For more information regarding how to file a complaint and the types of complaints the OMB can and cannot act upon, please click [here](#).

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#### **Preliminary Review**

All complaints received by the Oregon Medical Board (OMB) are entered into an electronic database and reviewed by OMB staff to determine if there is an alleged violation of the Medical Practice Act ([ORS 677](#)). All complaints are reviewed through the intake committee, which consists of investigations staff and the Investigations Manager. The OMB's Executive Director, Medical Director, and the Assistant Attorney General assigned to the OMB (by the Oregon Department of Justice) may also be involved in this review.

OMB staff may ask the complainant (the person making the complaint) to provide additional information. OMB staff may also request medical records directly from a health care facility or OMB licensee during this review.

If there appears to be a potential violation of law in which the OMB could take a formal action, the matter is assigned for additional investigation. If there does not appear to be a violation in which the OMB may take a formal action, the case will be closed with no formal action. The complainant will be notified of the outcome by letter.

Please note that complaints can take many months to resolve, so your patience during the investigative process is appreciated. At any time during the investigative process, a person who files a complaint is welcome to contact the OMB staff regarding the status of their complaint.

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#### **Cases Closed with No Formal Action**

##### **After Preliminary Review:**

Cases may be closed after a preliminary review when it is determined the Oregon Medical Board (OMB) lacks jurisdiction in the matter or there is insufficient evidence to prove that a violation of Oregon law (Medical Practice Act) has occurred. The OMB will notify the complainant by letter of such a case closure and will attempt to provide resources or make referrals to entities such as other regulatory/licensing boards or law enforcement when appropriate. Closed cases remain confidential.

##### **After Board Review:**

Cases may be closed after review by the full Board with no formal disciplinary action. In some instances, closure was due to insufficient evidence to prove that a violation of law occurred. In other cases, there may be no violation of law that warrants formal public action, but the Board is nonetheless concerned about some aspect of the licensee's conduct or performance. As a result, the Board will send a confidential Letter of Concern regarding the information gathered in the course of the investigation in order to provide guidance on practice improvement. The OMB will also notify the complainant by letter of the case closure. To the extent possible as provided in ORS 676.175 and 677.425, these cases remain confidential.

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#### **Open Investigation**

If after preliminary review it is determined that a violation of Oregon law (Medical Practice Act) may have occurred in which the Oregon Medical Board (OMB) could take a formal action, the matter is assigned to an OMB Investigator for further investigation. The Investigator will work with the Medical Director and Investigations Manager, as needed, to determine what information is necessary to evaluate the matter. Information that is gathered may include medical records, pharmacy records, or information from other healthcare providers or witnesses that may have relevant information. Confidentiality is maintained as much as possible during the course of an investigation. Only information required to further the investigation is released. All gathered information is reviewed by the Investigations Manager, Medical Director, and Executive Director prior to presentation to the Investigative Committee (IC) for review and direction.

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#### **Interim Stipulated Order (ISO)**

If information is gathered during the course of the investigation that raises an immediate concern about public safety, the licensee may be requested to voluntarily sign an Interim Stipulated Order (ISO). An ISO is an agreement between the Board and the licensee which places conditions on the licensee's practice. Those conditions may range from limitations on practice to ceasing practice until the investigation is complete. This Order is not considered a disciplinary action; however, it is a public document posted on the [OMB's website](#) under the licensee's profile.

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#### **Review by the Investigative Committee (IC)**

The Investigative Committee (IC) is composed of a subset of Board members. At least one of the IC members is a public, non-healthcare professional, member of the Board. The public member represents health consumers and patients. The IC meets eight times a year (February, March, May, June, August, September, November, and December) to consider all investigative and disciplinary matters.

The IC reviews investigations that have been conducted by OMB staff investigators, directs further investigative steps that may need to be undertaken, and interviews licensees who are under investigation when appropriate. The IC may direct that information be obtained from other specific healthcare providers or witnesses, or that a more detailed review of a licensee's practice be conducted through the review of additional patient records. The IC may direct that an outside consultant be obtained to review the care provided by the licensee. Ultimately, the IC makes recommendations to the full Board regarding case resolutions.

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#### **Order for Evaluation**

If concerns are raised regarding a licensee's physical or mental health or their medical knowledge or competence, the Board may issue an order for the licensee to get an appropriate evaluation to assess those concerns. These orders are confidential. The IC will review the results of the evaluation and make recommendations to the full Board regarding case resolution.

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#### **Review by the Full Board**

The Board reviews cases and recommendations from the Investigative Committee (IC) and makes final decisions on the cases. Prior to rendering a decision, the Board will review all materials that have been gathered in relation to the case. The Board members may refer the matter back to the IC if they desire additional information or investigative steps to be taken. The Board and Committee assignments are listed on the [Board and Committee Assignments webpage](#).

If, after the case has been reviewed, the Board believes there is enough evidence to support a finding that there has been a violation of the law (Medical Practice Act), the Board may vote to issue a Notice of Proposed Disciplinary Action, which is a public document summarized on the [OMB's website](#). The notice is available via a [public records request](#).

If the Board finds that there is insufficient evidence to support a finding that the law was violated, the Board will direct that the case be closed with no formal action. In those cases where the Board has concerns regarding some aspect of the licensee's conduct or performance, the Board may send a confidential Letter of Concern regarding the information gathered in the course of the investigation in order to provide guidance on practice improvement. As provided in ORS 676.175 and 677.425, no information about the case is posted on the OMB website or available via a [public records request](#). Whatever the outcome of the investigation, the person who originally made the complaint will receive a letter stating how the case was resolved.

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#### **Emergency Suspension**

On very rare occasions, evidence will show that a provider's continued practice poses an immediate danger to the safety and welfare of their patients. When that happens, the Oregon Medical Board is required by law to take action to protect existing and future patients from harm. The Order of Emergency Suspension is a public document posted on the [OMB's website](#) to immediately suspend the licensee's practice pending the completion of the investigation. The licensee has a right to a Contested Case Hearing on this interim order.

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#### **Notice of Proposed Discipline**

If the Board finds evidence to support a violation(s) of the Medical Practice Act, it will propose disciplinary action by issuing a Notice of Proposed Disciplinary Action (NPD). The NPD outlines the specific allegations against the licensee and summarizes the basis for disciplinary action. Upon receipt, the licensee may request a Contested Case Hearing or waive the right to a hearing. After the NPD is issued, the licensee may also begin settlement discussions with the Board. The NPD is a public document summarized on the [OMB's website](#). The notice is available via a [public records request](#).

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#### **Contested Case Hearing**

If the licensee requests a hearing, they can either enter into settlement discussions with the Board to find a mutually acceptable resolution (resulting in a public order such as a Stipulated Order (SO) or Corrective Action Agreement and waiving their right for a hearing) or proceed with a contested case hearing presided over by an administrative law judge, who will draft a Proposed Final Order. The Board will then review the Proposed Final Order and determine the appropriate final action.

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#### **Board Order**

The Board may issue a Stipulated Order or a Corrective Action Agreement. Terms and language in these orders are voluntarily agreed upon by the licensee and the Board. These orders are all public documents posted on the [OMB's website](#). The terms of these Board orders may include revocation, suspension, reprimand, remedial education, monitoring, practice limitation, and civil penalties (fines).

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#### **Stipulated Order (Disciplinary Action)**

The Stipulated Order (SO) is issued when a licensee voluntarily enters into a settlement agreement with the Board. The SO includes findings of one or more violations of the Medical Practice Act, and the specific terms or conditions the licensee agrees to follow. SOs are disciplinary actions and are public documents posted on the [OMB's website](#).

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#### **Corrective Action Agreement (Remedial Action)**

The Corrective Action Agreement (CAA) is a public, non-disciplinary order designed to modify, monitor, or otherwise correct an identified problem. The terms are agreed upon by the licensee and the Board and focus on addressing any identified concerns through remediation. CAAs are public documents posted on the [OMB's website](#) while in effect.

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#### **Proposed Final Order**

After a Contested Case Hearing, an Administrative Law Judge (ALJ) will issue a Proposed Final Order. This proposed order is not a public document. The Board has the discretion to revise the findings, sanctions, and terms of this proposed order when it issues a Final Order.

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#### **Final Order**

The Final Order (FO) is a public document that is issued by the Board after the completion of a Contested Case Hearing and subsequent to a Proposed Final Order. The FO generally imposes action upon the licensee and is often serious in nature. FOs are disciplinary actions and are public documents posted on the [OMB's website](#).

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#### **Final Order Upon Default**

The Board may issue a Final Order Upon Default if the licensee did not request a Contested Case Hearing by the deadline, withdrew their request for hearing, or failed to appear at a hearing without good cause. The Final Order Upon Default imposes action upon the licensee and is usually serious in nature, such as revocation of a license. This is a public document posted on the [OMB's website](#).

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#### **Oregon Court of Appeals**

A licensee may choose to appeal a Final Order or Final Order Upon Default issued by the Board. The licensee may ask for judicial review by the Oregon Court of Appeals within 60 days from the date of the Final Order or Final Order Upon Default.

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