Massachusetts Board of Registration in Medicine

Nancy Achin Audesse
Executive Director
AGENCY OVERVIEW
Organization of Agency

Physician Board Member
Physician Board Member
Physician Board Member
Physician Board Member
Physician Board Member
Public Board Member
Public Board Member

Executive Director

DPH

Enforcement Division
Division of Law & Policy
Pat. Safety Programs
Licensing Division
Physician Profiles Unit

Consumer Protection
Investigation
Litigation
Clinical Care

General Counsel
Physician Health
Data Repository
Patient Care Assessment
Clinical Skills Analysis
Liability Reform
Initial Licenses
Renewals
Verifications
Affiliation Agreements
Public Information
Web Site
Call Center
Issues That Bring Physicians Before The Board

- Standard of Care
- Prescribing Violations
- Untreated Impairment
- Behavioral Issues
  - Disruptive Behavior
  - Boundary Issues
  - Criminal Convictions
- Non-Compliance
  - Board Orders
  - Regulations
Issue: Substandard Care

Source: Consumer Complaints

Source: 5d/5f Reports

Source: Malpractice Review
Issue: Prescribing Violations

Self-Prescribing

Prescribing to Family

Fraudulent Prescriptions
Issue: Untreated Impairment

Confidential, Non-Disciplinary Treatment Options Exist.

Get Help Before There Is an Allegation of Patient Harm.

Mandated Reporting & Impairment Exception.
Behavioral Issues:
Disruptive Behavior

- Conflicts with other medical professionals.
- Failure to comply with facility regulations.
- Behavior can escalate to threats or violence.
- Behavioral health contracts are available.
Behavioral Issues:
Boundary Violations

Sexual Misconduct

Financial Relationships with Patients

Breaches of Confidentiality
Behavioral Issues:
Criminal Convictions

*May* be the basis for Board discipline.

*Not* necessarily related to the practice of medicine.
Issue: Non-Compliance with Board Orders

Violation of Practice Plan

Violation of PHS Contract

Failure To Respond
Issue:
Non-Compliance with Regulations

Review Regulations Annually

CME Requirements

Licensing Information
Mandatory Reporting for Health Care Providers

Required by Statute & Regulation

Reports Remain Confidential Unless Used as Basis for Statement of Allegations

Failure to Report Is A Basis for Discipline
Any Health Care Provider shall report to the Board of Registration in Medicine any person who there is a reasonable basis to believe is in violation of Chapter 112 Section 5 of the Massachusetts General Laws, or any of the regulations of the Board.
Conditional Privilege of Communication

Lawyer-Speak

All communications with the Board charging misconduct, or reporting or providing information to the Board pursuant to M.G.L. c. 112, §§ 5-51, or assisting the Board in any manner in discharging its duties and functions, are privileged, and a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.
Real World Talk

When you do the right thing ... the Board will protect you from retribution.
Avoiding Disciplinary Action
“Collateral Damage” Issues

Board Certifications

HMO Affiliations

Medicare/Medicaid Affiliations

Other states “piling on”

Public Documents, NPDB, Press Releases
Board of Medicine
Chemical Dependency Policy

Monitoring

- Through Physician Health Services (PHS)
- Generally, 5 years of documented sobriety
- PHS reports to Board if positive urine screens or noncompliance
Board of Medicine
Chemical Dependency Policy

OUTCOMES:

- No Action
- Letter of Agreement
- Assurance of Discontinuance
- Disciplinary Order
Board of Medicine
Chemical Dependency Policy

No Action:

• Self-report

• Clean evaluation by Board-approved expert

• Documented sobriety and compliance with established recovery program

• Rare
Board of Medicine
Chemical Dependency Policy

Letter of Agreement:

- Self report
- No patient harm
- Documented sobriety
- Written Recovery and Monitoring Program (PHS)
Board of Medicine
Chemical Dependency Policy

Letter of Agreement:

- Not disciplinary action
- Confidential
  - No press release
  - No NPDB report
  - No entry on Physician Profile
Board of Medicine
Chemical Dependency Policy

Assurance of Discontinuance:

- Not Self-Reported
  - No patient harm
  - Documented sobriety
  - Written Recovery and Monitoring Program (PHS)
Assurance of Discontinuance:

- IS disciplinary action
- NOT Confidential
  - NPDB report
  - Entry on Physician Profile
  - BUT.. NO press release
Disciplinary Order:

- Not self-reported
- Refusal to enter monitoring program/patient harm/inability to maintain sobriety
Disciplinary Order:

- Sanctions: monetary fine to indefinite suspension of license
- BUT… *almost* always option to return to practice with monitoring by PHS
Board of Medicine
Chemical Dependency Policy

Disciplinary Order:

• **Is** Formal Disciplinary Action
• **Not** Confidential
  • NPDB report
  • Entry on Physician Profile
  • Press Release
Section 5F Duty to Report

If practice affected any licensee must do one of two things:

- Report to Board, OR
- Ensure that is compliant with PHS recovery/monitoring program
Where To Get Help

BORIM website – www.massmedboard.org

Physician Health Services -
(781) 434-7404
1-800-322-2303

BORIM “Lawyer of the Day” – 617-654-9800
WWW.MASSMEDBOARD.ORG

Current Physician Services

Online Address Change
Assorted Downloadable Forms
Newly Approved Licenses
Licensing Fees & General Information
Downloadable Application Kits for Licenses
Physician & Applicant Direct Connect System
Frequently Asked Questions
Summary of Prescription Filling Laws & Regulations
Online Demographic Changes
Online License Renewal
Credit Card Payments
Enhanced “links” to other sites
Enhanced Credentialing Support
E-Mail notifications of Board Information
Enter Search Criteria to Find a Physician’s Profile
(Enter as much or as little information as you know to find a physician, and then click the Find Physician button.)

Last Name:  
First Name:  
Town/City:  
Specialty:  
Hospital Affiliation:  

Show Active Physicians  
Show Medical Doctors (MD)  
Show Osteopathic Doctors (DO)  

Physician Profiles
Massachusetts was the first state to offer a comprehensive program to give patients access to information about the education, training, and experience of all licensed physicians.

The “Physician Profiles” program is one tool patients can use to make the right health care decisions. Patients are encouraged to use the physician profile information to foster better communication with a physician.
A public information service of the Massachusetts Board of Registration in Medicine, containing the following information on nearly 29,000 fully licensed Massachusetts physicians:

- Education
- Training
- Medical Specialties
- Professional demographics
- Professional or community awards received
- Malpractice claims paid
- Incidents of Institutional discipline
- Disciplinary actions of the Board of Registration in Medicine
- History of criminal convictions
ENFORCEMENT OVERVIEW
Enforcement Track

CCC = Clinical Care Committee
DRC = Data Repository Committee
DALA = Division of Administrative Law Appeals

Statutory Report → DRC
Consumer Complaint → CCC
Complaint Committee → Board
Board → DALA
DALA → Discipline
## Consumer Complaints Resolved

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<tr>
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<tr>
<td>Docketed</td>
<td>760</td>
<td>650</td>
<td>677</td>
<td>670</td>
<td>626</td>
<td>584</td>
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<tr>
<td>Closed</td>
<td>682</td>
<td>673</td>
<td>680</td>
<td>865</td>
<td>773</td>
<td>365</td>
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<tr>
<td>Pending as of 12/31</td>
<td>406</td>
<td>328</td>
<td>358</td>
<td>361</td>
<td>537</td>
<td>698</td>
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DISCIPLINARY UNIT
2004 Statistics

78 Physicians Disciplined

83 Disciplinary Actions Taken

59 Statements of Allegations Issued

13 Cases Referred to DALA
## DISCIPLINARY STATISTICS

<table>
<thead>
<tr>
<th>YEAR</th>
<th># PHYSICIANS DISCIPLINED</th>
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<tbody>
<tr>
<td>2004</td>
<td>78</td>
</tr>
<tr>
<td>2003</td>
<td>60</td>
</tr>
<tr>
<td>2002</td>
<td>68</td>
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<tr>
<td>2001</td>
<td>55</td>
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<tr>
<td>2000</td>
<td>44</td>
</tr>
<tr>
<td>1999</td>
<td>38</td>
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PHYSICIAN OVERSIGHT
2004

- 92 Physicians Monitored (confidentially or under a public Probation Agreement)
- 23 for Mental Health Reasons
- 18 for Chemical Dependency
- 38 for Behavioral Health Issues (including boundary violations)
- 8 for Dual Mental Health/Chemical Dependency
- 5 for Dual Mental Health/Behavioral Issues
## NON-DISCIPLINARY ACTIONS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Letter of Acknowledgement</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td>1</td>
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<tr>
<td>Letter of Information</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>14</td>
<td>12</td>
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<tr>
<td>Letter of Advice</td>
<td>38</td>
<td>63</td>
<td>53</td>
<td>103</td>
<td>140</td>
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<tr>
<td>Letter of Concern</td>
<td>49</td>
<td>21</td>
<td>41</td>
<td>71</td>
<td>58</td>
</tr>
<tr>
<td>Letter of Warning</td>
<td>30</td>
<td>1</td>
<td>30</td>
<td>27</td>
<td>19</td>
</tr>
<tr>
<td>Dismissed</td>
<td>462</td>
<td>440</td>
<td>458</td>
<td>500</td>
<td>476</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>584</td>
<td>572</td>
<td>589</td>
<td>715</td>
<td>707</td>
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## OTHER SOURCES OF INFORMATION

<table>
<thead>
<tr>
<th>Statutory Reports Received</th>
<th>2003</th>
<th>2001</th>
<th>1999</th>
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<tbody>
<tr>
<td>Renewal &quot;yes&quot; answers—malpractice</td>
<td>3401</td>
<td>3,612</td>
<td>2,842</td>
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<tr>
<td>Court reports—malpractice</td>
<td>912</td>
<td>654</td>
<td>846</td>
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<tr>
<td>Court reports--criminal convictions</td>
<td>1</td>
<td>0</td>
<td>1</td>
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<tr>
<td>Closed claim reports</td>
<td>988</td>
<td>1,096</td>
<td>988</td>
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<tr>
<td>5F (peer) reports</td>
<td>32</td>
<td>8</td>
<td>26</td>
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<tr>
<td>Initial disciplinary action reports</td>
<td>144</td>
<td>114</td>
<td>66</td>
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<tr>
<td>Subsequent disciplinary action reports</td>
<td>148</td>
<td>124</td>
<td>27</td>
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<tr>
<td>5D (government agency) reports</td>
<td>57</td>
<td>21</td>
<td>32</td>
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<tr>
<td>MISC</td>
<td>5</td>
<td>3</td>
<td>5</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>5,688</strong></td>
<td><strong>5,632</strong></td>
<td><strong>4,833</strong></td>
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</table>
CHALLENGES & OPPORTUNITIES
CHALLENGE: Remediation & Retraining

- Continuous Skill Enhancement
- Introduction of New Technology
- Retaining Experienced Physicians
OPPORTUNITY
Patient Safety & Malpractice Reform

Continuing Competency Certification

Maximizing Institutional Compliance with Patient Safety Initiatives

Proposals to Streamline Payments to Injured Patients, Regardless of Fault
## Malpractice Payments

<table>
<thead>
<tr>
<th>Year</th>
<th>Sum of Payments</th>
<th>Avg Payments</th>
<th>Count</th>
<th>CPI</th>
<th>Inflation-Adjusted Sum of Payments (2003$)</th>
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</thead>
<tbody>
<tr>
<td>1994</td>
<td>$64,198,880.00</td>
<td>$251,760.31</td>
<td>255</td>
<td>1.2416</td>
<td>$79,707,111.47</td>
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<tr>
<td>1995</td>
<td>$87,063,300.00</td>
<td>$306,560.92</td>
<td>284</td>
<td>1.2073</td>
<td>$105,115,795.28</td>
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<tr>
<td>1996</td>
<td>$86,921,938.00</td>
<td>$306,063.16</td>
<td>284</td>
<td>1.1727</td>
<td>$101,935,223.66</td>
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<tr>
<td>1997</td>
<td>$94,773,530.00</td>
<td>$354,957.04</td>
<td>267</td>
<td>1.1464</td>
<td>$108,650,028.16</td>
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<tr>
<td>1998</td>
<td>$91,670,954.00</td>
<td>$334,565.53</td>
<td>274</td>
<td>1.1288</td>
<td>$103,481,322.31</td>
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<tr>
<td>1999</td>
<td>$118,181,047.00</td>
<td>$384,954.55</td>
<td>307</td>
<td>1.1044</td>
<td>$130,524,085.52</td>
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<tr>
<td>2000</td>
<td>$125,398,843.00</td>
<td>$379,996.49</td>
<td>330</td>
<td>1.0685</td>
<td>$133,991,795.08</td>
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<tr>
<td>2001</td>
<td>$129,095,469.00</td>
<td>$388,841.77</td>
<td>332</td>
<td>1.0390</td>
<td>$134,125,162.60</td>
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<tr>
<td>2002</td>
<td>$119,188,893.00</td>
<td>$446,400.35</td>
<td>267</td>
<td>1.0228</td>
<td>$121,905,260.21</td>
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<tr>
<td>2003</td>
<td>$118,960,482.00</td>
<td>$431,016.24</td>
<td>276</td>
<td>1.0000</td>
<td>$118,960,482.00</td>
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</table>
Inflation-Adjusted Total Amount Paid by Year: 1994-2003
### High Malpractice Risk Specialties

Table 1. Five Specialties with the Highest Percentage* of Physicians Making Payments in 1994-2003 compared to 1990-1999. (* among specialties with more than 200 physicians)

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Total # Physicians in Specialty</th>
<th>% Change in Number of Physicians</th>
<th># of Claims</th>
<th>% Change in Number of Paid Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>OB/GYN</td>
<td>1,404</td>
<td>3.0%</td>
<td>476</td>
<td>3.0%</td>
</tr>
<tr>
<td>Gynecology</td>
<td>203</td>
<td>-9.0%</td>
<td>64</td>
<td>33.0%</td>
</tr>
<tr>
<td>Neurological Surgery</td>
<td>253</td>
<td>5.4%</td>
<td>85</td>
<td>29.0%</td>
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<tr>
<td>General Surgery</td>
<td>1,363</td>
<td>no change</td>
<td>250</td>
<td>8.2%</td>
</tr>
<tr>
<td>Orthopedic Surgery</td>
<td>1,208</td>
<td>4.0%</td>
<td>258</td>
<td>3.6%</td>
</tr>
</tbody>
</table>
Number of Payments for Individual Physicians: 1994-1998

- 1 Payment/Physician: 65.6%
- 2 Payments/Physician: 19.3%
- >=3 Payments/Physician: 15.1%
Distribution of Payments by Physicians: 1999-2003

- 68% of payments are to physicians receiving 1 payment
- 20% of payments are to physicians receiving 2 payments
- 12% of payments are to physicians receiving 3 or more payments
OUTLIERS

98 physicians had more than two paid claims
4.2% of the 2,307 physicians who made a payment.
1/4 of one percent of all physicians.

These 98 physicians were responsible for
388 (13.5%) of all paid claims.
$133,988,105 (12.9%) of all dollars paid.
98 OUTLIERS

50 remain in active practice, of whom 9 have been disciplined by the Board.

48 NO LONGER IN PRACTICE

8 Revoked
9 Disciplinary Resignation
2 Suspended
4 Deceased
5 Formal Retirement
(1 after Discipline)

2 SOA issued, overturned
1 Letter of Concern
4 Formal Discipline
13 Did Not Renew
Recommendations

Better Communication of Performance/Quality Data

Clinical Skills Assessment & Enhancement

Comprehensive Training In Best Practices & New Technologies

Targeted CME opportunities in Communication
QUESTIONS ?