

REPORT DIGEST

PROGRAM AUDIT

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION'S DISCIPLINING OF PHYSICIANS

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State of Illinois
Office of the Auditor General

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SYNOPSIS

The Department of Financial and Professional Regulation is responsible for reviewing complaints and issuing disciplines against physicians licensed under the Medical Practice Act of 1987. In Fiscal Years 2004 and 2005 combined, the Department opened 3,687 physician investigations and issued a total of 458 disciplines against physicians. Our audit concluded that improvements were needed in the Department's processes to review complaints and discipline physicians.

- Cases were closed in Complaint Intake without forwarding them to Medical Investigations as required by Administrative Rules.
- Cases were also closed in Investigations without approval from the Medical Disciplinary Board, as required by Administrative Rules.
- Investigators did not have access to prior mandatory reports not sent for further investigation by the Medical Disciplinary Board.
- Half of investigations of cases received in FY04 and FY05 took longer than the 5 month guideline for completing investigations.
- There were problems with timeliness of cases due to backlogs at the Medical Coordinators.
- We questioned the adequacy or consistency of disciplinary actions for six cases where complaints were handled by the Department.
- Although we identified some problems with consistency of disciplines, the Department was unwilling to consider developing formal guidelines to help guide its decisions in disciplinary actions.
- We noted that 41 percent of disciplines were cases based on actions taken by other states' disciplinary agencies and required minimal departmental activity compared to other cases.
- Procedures have not been implemented to involve people making complaints in the disciplinary process as required by the Medical Practice Act of 1987.
- The Division of Professional Regulation has only two Probation Compliance investigators for the entire State for over 100 professions regulated by the Division.
- We found monitoring deficiencies in all of the 25 medical probation cases we selected for testing.
- We identified 41 disciplines of physicians that the Department did not include in its monthly reports in Fiscal Year 2005.
- The Department has not yet implemented several significant requirements of an important new law relating to physician regulation and discipline (Public Act 94-677).
- The Department has a number of problems related to properly documenting the decisions made related to physician disciplines.

REPORT CONCLUSIONS

The Department of Financial and Professional Regulation (Department) is responsible for reviewing complaints and issuing disciplines against physicians licensed under the Medical Practice Act. In Fiscal Years 2004 and 2005 combined, the Department opened 3,687 physician investigations and issued a total of 458 disciplines against physicians.

In May of 1997 the Office of the Auditor General issued a program audit of physicians regulated under the Medical Practice Act which concluded that the Department lacked adequate management controls in its investigatory, disciplinary, and probationary processes. This 2006 audit similarly concludes that improvements are needed in the Department's processes to review complaints and discipline physicians.

INVESTIGATIONS

The Department was not complying with legal requirements in its closure of certain cases and other aspects of investigations could be more effective. Failure to follow up on complaints and complete investigations in a timely manner may result in a physician who has violated the Medical Practice Act not being timely detected and disciplined.

Contrary to the requirements in the Administrative Rules, we identified 54 medical claims that Complaint Intake staff closed in Fiscal Year 2005 without forwarding them to Medical Investigations. Also, when initial claims are received, Intake staff do not log or document each claim.

Cases were also being closed administratively in the Investigations Unit without approval from the Medical Disciplinary Board, as required by Administrative Rules. Our review of data provided for all cases with activity in Fiscal Years 2004 and 2005 showed that 15 percent (665 of 4,357) of cases were closed administratively. The Department could not provide documentation that all administrative closings had been approved by the Board.

Investigators did not have access to prior mandatory reports (such as malpractice settlements submitted by insurance companies or reports filed by hospitals) that were not sent for further investigation by the Medical Disciplinary Board. Also, prior complaints were not documented in investigation files in 16 percent (15 of 94) of the investigative files we reviewed.

Half of the investigations of cases received in Fiscal Years 2004 and 2005 took longer than the 5 month guideline the Department has

established for completing investigations. The Department is also experiencing problems with timeliness of cases due to backlogs at the Medical Coordinators. As of May 2006, the total number of cases at the Medical Coordinator's office was 210.

PROSECUTIONS

In Fiscal Years 2004 and 2005 the Department issued a total of 458 disciplines against physicians. Those disciplines included refusing to renew licenses, suspending or revoking licenses, reprimanding licensees or placing them on probation. We questioned the adequacy or consistency of disciplinary actions for six cases that we reviewed where complaints were handled by the Department. We also noted that at least 41 percent (189 of 458) of the disciplines were cases where the Department's discipline was based on actions taken by other states' disciplinary agencies and, therefore, required minimal departmental activity compared to other cases.

The Department has not implemented procedures to involve people making complaints in the disciplinary process, as recommended in our 1997 audit and as required by the Medical Practice Act of 1987.

The Department has not established timeliness standards for Prosecutions. Cases took an average 258 days after referral to Prosecutions to reach final resolution.

PROBATION

The Department has not dedicated sufficient resources to carry out its Probation Compliance responsibilities. The Division of Professional Regulation has **only two** Probation Compliance investigators for the entire State for over 100 professions regulated by the Division. As of April 2006, these two employees of the Probation Compliance Unit were monitoring a total caseload of approximately 1,100 cases, of which approximately 150 were physician discipline cases.

The Department is not adequately monitoring disciplined physicians. Monitoring deficiencies were noted in **all** of the 25 medical probation cases we selected for testing. In 9 cases, most of which involved physicians who had their licenses suspended or revoked, the Department could not provide a file or any other evidence of Probation Compliance monitoring. In 12 other cases, the files provided lacked evidence to show that some or all of the required monitoring had occurred.

PUBLIC INFORMATION

The Department maintains a website to provide public access to license status and discipline information on physicians. This information,

which has been provided on the Department's web page since 2001, provides information to the public on physician disciplines.

However, the Department's monthly reports, used to report on the disciplinary actions taken by the Department, were not accurate. We identified at least 41 disciplines of physicians that the Department did not include in its monthly reports in Fiscal Year 2005. In addition, there is some conflict about what reportable disciplinary actions include. The law requires publication of all disciplinary actions while Administrative Rules distinguish between disciplinary and non-disciplinary actions, with non-disciplinary action not being published.

The Department has not yet implemented several significant requirements of an important new law relating to physician regulation and discipline (Public Act 94-677). Required revisions included: increasing the number of public members on the Medical Disciplinary Board, adding a new Deputy Medical Coordinator, and requiring new detailed physician profiles which will supply new information to the public about physicians.

The Department has a number of problems related to properly documenting the decisions made related to physician disciplines. These problems exist in both paper files that are maintained by various units and in the agency's computer systems and include missing files and lack of consistent or adequate documentation.

Finally, the Department had not followed its own policies in the Enforcement Manual related to the following issues: it did not require secondary employment requests to be submitted for approval on an annual basis; it did not establish appropriate training programs; and it did not require employees to disclose conflicts of interest.

BACKGROUND

On March 15, 2005, the Illinois House of Representatives adopted House Resolution Number 16. The resolution directed the Auditor General to conduct a program audit of the Department of Financial and Professional Regulation's disciplining of physicians who violate provisions of the Medical Practice Act of 1987. House Resolution Number 16 specifically asked us to determine:

- (i) The Department's compliance with State law regarding the disciplining of physicians;
- (ii) The Department's procedures for determining the need for, and nature of, any recommended disciplinary actions;

- (iii) The Department's process for ensuring that its recommended disciplinary actions are implemented and that any specified corrective steps are instituted; and
- (iv) The Department's process for communicating results of disciplinary action to the public.

THE MEDICAL PRACTICE ACT OF 1987

The Medical Practice Act of 1987 (225 ILCS 60/1 *et seq.*) contains provisions that the Department of Financial and Professional Regulation must follow in the regulation and disciplining of physicians. The Act creates the Medical Disciplinary Board, which is responsible for disciplining physicians licensed under the Act, composed of eleven members. Members of the Disciplinary Board are to be five licensed physicians, along with one osteopath and one chiropractor, and four public members not engaged in healthcare. However, since March 2005 the Board had no public members. One public member was serving as of January 2004, but he resigned in March 2005. As a result, the Board is without any of the four currently required non-medical members.

The Act also requires the Director to select a Chief Medical Coordinator and two Deputy Medical Coordinators, all licensed physicians, to be the chief enforcement officers of the Act. At least one Medical Coordinator is to be located in Chicago and at least one in Springfield. They review the completed investigations and make recommendations about disciplinary actions to the Board and the Complaint Committee.

Within the Disciplinary Board, the Act creates the Complaint Committee. Composed of one of the Medical Coordinators, the Chief of Medical Investigations, and at least 3 voting members of the Disciplinary Board, the Committee is to meet twice a month to recommend decisions regarding complaints or refer complaints to the Prosecutions Unit. The Department may take the following disciplinary actions on a license:

- revoke;
- suspend;
- place on probationary status;
- refuse to renew;
- reprimand;
- fine; or
- any other disciplinary action deemed proper.

The Act lists 43 grounds that could result in disciplinary action against licensed physicians including: gross negligence; dishonorable, unethical or unprofessional conduct; substance abuse; fraud; immoral conduct; filing false records or omission to file; and willful overcharging for professional services. With few exceptions, proceedings for disciplinary action must be commenced within five years after receipt of a complaint by the Department. (pages 3-4)

COMPLAINT INTAKE

Complaint Intake staff close some initial claims and do not forward them to the Medical Investigations Unit for review, as required by Administrative Rules. When an initial claim is received, Intake staff review the information in the claim to determine if there is sufficient information to determine: 1) the nature of the alleged violation; 2) if the Department has jurisdiction; and 3) if the alleged action, if proven, would constitute a violation of the professional practice act. If a claim meets these criteria, it is then forwarded to Medical Investigations. However, the Department's Administrative Rules (68 Ill. Adm. Code 1285.215) require that all initial claims be forwarded to the Chief or Medical Investigations for review. We found 54 medical claims in FY05 that were closed in Complaint Intake and not forwarded to Investigations. Also, Complaint Intake does not log each claim it receives. We recommended that the Department log all initial claims, forward them to Medical Investigations and close them according to requirements in Administrative Rules. (pages 6-7)

DFPR Complaint Intake staff close some initial claims and do not forward them to the Medical Investigations Unit for review as required.

INVESTIGATIONS

The Department was not complying with legal requirements in its closure of certain cases and other aspects of investigations could be more effective. Failure to follow up on complaints and complete investigations in a timely manner may result in a physician who has violated the Medical Practice Act not being timely detected and disciplined.

Cases were being closed administratively in the Investigations Unit without approval from the Medical Disciplinary Board, as required by Administrative Rules. This was also reported in the 1997 OAG program audit. If the initial claim does not become a complaint, then the Chief of Medical Investigations is required to recommend closure to the Complaint Committee of the Medical Disciplinary Board. The Complaint Committee is established by the Medical Practice Act to review complaints and make recommendations for disciplinary actions to the Board. No initial claim or

complaint is to be closed without the recommendation of the Complaint Committee and approval of the Board.

Investigators did not have access to prior mandatory reports (such as malpractice settlements submitted by insurance companies or reports filed by hospitals) that were not sent for further investigation by the Medical Disciplinary Board. We recommended that the Department make information related to mandatory reports closed by the Board prior to investigation available to assist in the investigation and prosecution of physicians who demonstrate patterns of behavior.

The Department was experiencing problems with timeliness of cases due to backlogs at the Medical Coordinators. As of May 2006, the total number of cases at the Medical Coordinator's office was 210. A Department official noted that this figure was down substantially from 2003 and that some cases take over a year to be reviewed by the Medical Coordinators. We recommended that the Department take the steps necessary to assist the Medical Coordinators with backlogs and improve case timeliness.

We also discussed three other issues related to investigations of physicians. We recommended that the Department:

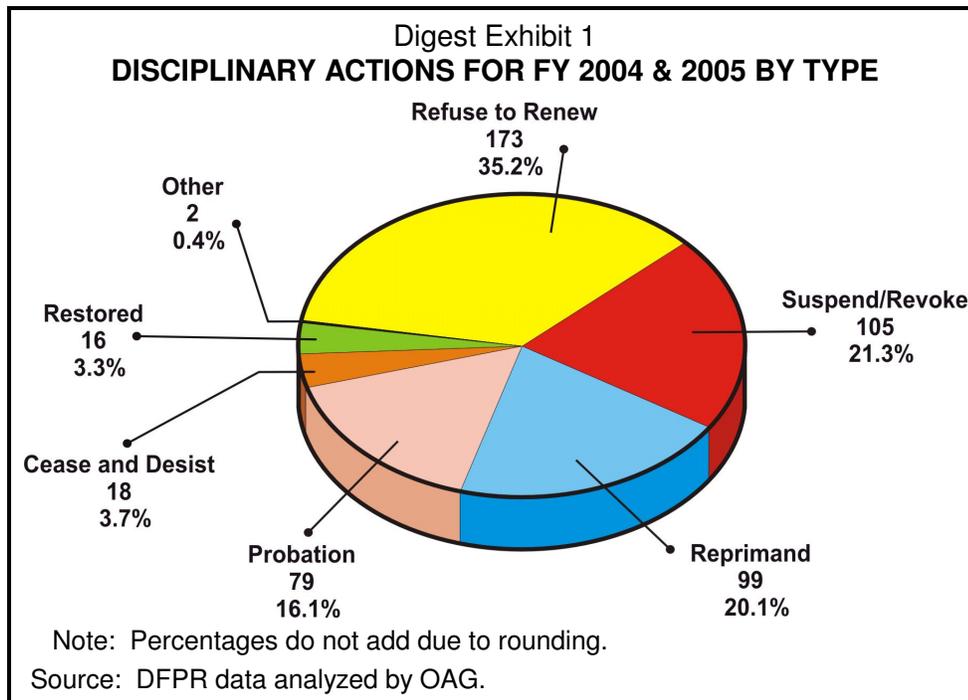
- Develop management controls to ensure timely completion of investigations of complaints received by the Department.
 - Include requirements in its procedures that prior complaint information be incorporated in files and should assure that information is included.
 - Develop controls to ensure that all investigative activities are properly conducted and documented in both the case file and the computer system.
- (pages 15-28)

DISCIPLINARY ACTIONS

The need for and nature of disciplinary action is a significant and sensitive area because of the risk to the public if there is a physician practicing who is incompetent or fraudulent. If physicians are given minimal punishment and continue to practice after a serious violation, further dangerous or inappropriate medical practice could occur. Additionally, giving dissimilar disciplines for similar violations of the Medical Practice Act could undermine public, as well as physician, confidence in the Department's process.

In Fiscal Years 2004 and 2005 the Department issued a total of 458 disciplines against physicians. Those disciplines included refusing to renew licenses, suspending or revoking licenses, reprimanding licensees or placing them on probation. Digest Exhibit 1 shows a breakdown for the 492 actions that were levied by the Department in Fiscal Years 2004 and 2005. It includes 18 cases where someone was practicing without a license and was asked to cease and desist. It also includes 16 cases where licenses were restored after being disciplined.

In Fiscal Years 2004 and 2005 DFPR issued a total of 458 disciplines against physicians.



Adequacy and Consistency of Disciplinary Actions

We questioned the adequacy or consistency of disciplinary actions for six cases that we reviewed where complaints were handled by the Department. We also noted that 41 percent (189 of 458) of the disciplines were cases where the Department's discipline was based on actions taken by other states' disciplinary agencies and, therefore, required minimal departmental activity compared to other cases.

Although our case reviews identified some problems with consistency of disciplines, the Department was unwilling to consider developing formal guidelines to help guide its decisions in disciplinary actions. Our 1997 audit of physician disciplines also noted that disciplines decided by the Board for similar violations were not always consistent and recommended that the Department develop criteria to help guide decisions in disciplinary actions.

DFPR was unwilling to consider developing formal guidelines to help guide its decisions in disciplinary actions.

We recommended that the Department and the Medical Disciplinary Board develop general criteria to help guide their decisions in disciplinary actions. Such criteria would help to ensure that similar violations under similar circumstances receive similar discipline.

Other Discipline Issues

The Department has not implemented procedures to involve people making complaints in the disciplinary process, as recommended in our 1997 audit of physician disciplines and as required by the Medical Practice Act of 1987. Section 60/37 of the Act requires that

. . . both the accused person and the complainant shall be accorded ample opportunity to present in person, or by counsel, such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto.

According to Department officials, the Department does not represent the complainant. Once a complaint is filed with the Department, it becomes the complainant, not the person who filed the original complaint. We recommended that the Department develop procedures for involving people making complaints in the disciplinary process.

Additionally, related to disciplining of physicians we recommended that the Department:

- Assure that complaints received about out of state physicians are forwarded to the licensing board of the appropriate state.
- Develop and implement management controls to ensure that Prosecution activities are timely and properly documented.
(pages 29-44)

PROBATION COMPLIANCE

The Department of Financial and Professional Regulation has not dedicated sufficient resources to carry out its Probation Compliance responsibilities. The Division of Professional Regulation has **only two** Probation Compliance investigators for the entire State for over 100 professions regulated by the Division. As of April 2006, these two employees of the Probation Compliance Unit were monitoring a total caseload of approximately 1,100 cases, of which approximately 150 were physician discipline cases.

DFPR has not dedicated sufficient resources to carry out its Probation Compliance responsibilities.

Monitoring deficiencies were noted in **all** of the 25 medical probation cases we selected for testing. In 20 of 25 cases we tested, the Department either could not provide a Probation Compliance monitoring file or the files lacked evidence to show that some or all of the required monitoring had occurred.

Six of the 9 cases with no probationary files were cases where the physician's license was either suspended or revoked. We found no evidence that Probation staff were performing any follow-up actions to attempt to ascertain that physicians whose licenses had been suspended or revoked were not continuing to practice. Not undertaking efforts to check for practicing physicians who have had their licenses suspended or revoked not only results in noncompliance with departmental policy, but also increases the risk to the general public.

According to the Department's Enforcement Manual effective June 15, 2000, responsibilities of the Probation Compliance investigators include:

- Probation monitoring;
- Verification of suspensions;
- Revocation/cease and desist surveillance;
- Liaison with federal, State and local agencies regarding disciplined licenses; and
- Violation investigations and prosecutorial referrals.

Digest Exhibit 2 shows examples of order conditions requiring probation monitoring.

According to Department personnel, most disciplinary actions that require some type of monitoring are the responsibility of the Probation Compliance Unit.

We recommended that the Department devote sufficient resources to ensure that physicians' compliance with terms of disciplinary orders are adequately monitored, including that physicians who have had their licenses suspended or revoked are not practicing.

Furthermore, the Department should ensure that probation files contain

all required documentation and that staff follow up when required documentation is not submitted. We also recommended that the Department take actions to ensure that initial interviews are conducted within 30 days and adequately documented and that files receive appropriate supervisory review. (pages 45-52)

<p>Digest Exhibit 2 EXAMPLES OF ORDER CONDITIONS REQUIRING PROBATION MONITORING</p>
<ul style="list-style-type: none"> • Alcoholics Anonymous Meetings • Caduceus Meetings • Aftercare Program • Urine Drug Screenings • Supervised Work • Psychiatrist/Psychologist Treatment • Revocation • Suspension • Continuing Education • Random Breathalyzer Tests
<p>Source: OAG analysis of Probation Compliance case files and DFPR Enforcement Manual.</p>

DISCIPLINES REPORTED TO THE PUBLIC

Although the Department provides information to the public, there is a 1-2 month backlog in reporting disciplines on the Department's website and not all disciplines in the system are reported on the monthly reports to the public. The Department's website allows users to look up physicians and determine if they have been disciplined. The website also includes monthly reports on disciplines taken against various professionals regulated by the Department.

However, the Department's monthly reports, used to report on the disciplinary actions taken by the Department, were not accurate. We identified at least 41 disciplines of physicians that the Department did not include in its monthly reports in Fiscal Year 2005. In addition, there is

some conflict about what reportable disciplinary actions include. The law requires publication of all disciplinary actions while Administrative Rules distinguish between disciplinary and non-disciplinary actions, with non-disciplinary action not being published.

Because of the conflict about which disciplines should be reported to the public, we recommended that the Department make its Administrative Rules (68 Ill. Adm. Code 1285.225) relating to the definition of disciplinary and non-disciplinary actions consistent with requirements of the Medical Practice Act (225 ILCS 60/2 (4)). We also recommended that the Department:

- Ensure that the public is fully informed of disciplinary actions on a timely, accurate, and consistent basis.
- Send required summary reports of final actions taken upon disciplinary files to every licensed health care facility, medical association, and liability insurers as required by the Medical Practice Act of 1987. (pages 53-59)

STATUS OF IMPLEMENTING PUBLIC ACT 94-677

The Department has not yet implemented several significant requirements of an important new law relating to physician regulation and discipline. Several sections of the Medical Practice Act were amended on August 25, 2005 by Public Act 94-677. According to the Act, these requirements are effective immediately. We recommended that the Department continue to work to comply with amendments to the Medical Practice Act made by Public Act 94-677, including promulgating rules to accomplish these requirements.

We made specific recommendations about two requirements of Public Act 94-677 that have not yet been implemented. We recommended that the Department:

- Continue to work to make available to the public, through the Internet, and, if requested, in writing, a profile of each physician licensed by the Department as required by Public Act 94-677.
- Work to assure that all members, including public members, are appointed to the Medical Disciplinary Board as required by the Medical Practice Act. (pages 60-63)

DFPR should continue to work to comply with amendments to the Medical Practice Act made by Public Act 94-677.

OTHER ISSUES

We also identified other issues which need the Department's attention. We recommended that the Department:

- Document its decisions and activities sufficiently and ensure that the replacement system for the Regulatory Administration and Enforcement System has the capability to help management better control the adequacy of the Enforcement process.
- Monitor employees engaging in secondary employment closely by reviewing and approving requests on an annual basis.
- Establish appropriate training programs for medical investigators as directed in its own policies and procedures.
- Require its employees to disclose potential conflicts of interest as required by its Enforcement Manual.
- Require employees, including medical investigators, to prepare timesheets as required by the State Officials and Employees Ethics Act. (pages 65-76)

RECOMMENDATIONS

The audit report contains 24 recommendations, all of which are noted in this digest. The Illinois Department of Financial and Professional Regulation generally agreed with the recommendations. Appendix D to the audit report contains the Department's complete responses.



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