



Oregon Medical Board

To Protect Patients and Maintain Public Trust, the Oregon Medical Board Should Further its Efforts to Address the Risk of Inequitable Disciplinary Decisions

January 2024
Report 2024-02



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Audit Highlights

Oregon Medical Board

To Protect Patients and Maintain Public Trust, the Oregon Medical Board Should Further its Efforts to Address the Risk of Inequitable Disciplinary Decisions

Why this audit is important

- The Oregon Medical Board (OMB) regulates doctors, physician assistants, podiatric physicians, and acupuncturists, with the mission to protect and promote the health, safety, and well-being of Oregonians.
- In addition to licensing and education, OMB also investigates and disciplines licensees for violating Oregon's Medical Practice Act. The board receives roughly 700 to 800 complaints a year.
- To protect patients and maintain public trust, OMB's role in investigating and disciplining licensees requires an assurance of consistency and equity in the resulting outcomes of these investigations.
- If licensees are disciplined inconsistently or inequitably, especially as the result of racial bias or discrimination, it can have the effect of limiting the representation of people of color in medical professions. This can contribute to continued disparities in medical treatment and health outcomes for these communities.

What we found

1. Medical complaint cases can be complex, often containing specific circumstances within the case or the licensee's history. In some instances, two complaint allegations can appear to be similar, but have completely different case details that may contribute to different board disciplinary outcomes. For example, the same procedure performed on two patients with different levels of overall health can have very different results. ([pg. 11](#))
2. While OMB's investigation process includes many formal policies and procedures staff and managers are supposed to follow, its process for comparing disciplinary decisions is generally informal and intermittent. There is no formal process to help ensure these reviews are performed in a standardized way each time. ([pg. 12](#))
3. Many medical boards in other states, including Washington and California, utilize sanctioning guidelines or disciplinary matrices to ensure disciplinary decisions are consistent and equitable. Other types of health care boards, and other regulatory organizations, also use some form of disciplinary guidelines to help improve equity and consistency. While OMB utilizes a disciplinary matrix for two specific types of complaints, it does not do so for any other complaint types. ([pg. 12](#))
4. OMB's current data system does not capture complaint information in a way that permits the agency to easily analyze its disciplinary decisions. While OMB has done qualitative reviews to try to ensure consistency, the database hinders OMB's ability to conduct routine, systematic data analysis to help assure the public and licensees that similar cases result in consistent and equitable disciplinary outcomes. ([pg. 14](#))

What we recommend

We made four recommendations to OMB. The board agreed with all of our recommendations. The response can be found at the end of the report.

Introduction

The Oregon Medical Board (OMB) was created by the Legislature in 1889. OMB’s mission is to protect the health, safety, and well-being of Oregonians by regulating the practice of medicine in a manner that promotes access to quality care. OMB licenses and regulates multiple health care professions in Oregon. In addition to its licensing functions, OMB supports education and research to support licensees in delivering quality medical care. Lastly, and the focus of this audit, OMB is responsible for investigating and deciding whether to take action on complaints against licensees that violate the state’s Medical Practice Act.

The Oregon Medical Board regulates the practice of medicine to help protect the health and safety of Oregonians

OMB licenses and regulates several different groups of health professionals. To help ensure Oregonians’ health, safety, and well-being, the board is at the forefront of evaluating, revising, and enforcing medical practice standards, scope, and regulatory oversight while also ensuring the Medical Practice Act remains reflective of any changes in health care and regulatory standards.

Nearly all of OMB’s funding comes from licensee fees

OMB is an Other-Funded Agency, with 97% of its funds coming from fees for licensure and registration. The board’s 2023-25 budget was approved in the amount of \$18,442,127. For the two-year licensing period, renewal fees for active, practicing licensees range from \$326 for acupuncturists up to \$580 for physicians.¹

Figure 1: OMB is funded solely through Other Funds and does not receive funding from the Legislature

	2019-21 Legislatively Approved	2021-23 Legislatively Approved	2023-25 Legislatively Adopted
Other Funds	\$ 14,079,904	\$ 17,346,295	\$18,442,127
Positions	41	42	42
FTE	41.00	42.00	42.00

Source: 2023-25 Budget Highlights, Oregon Legislative Fiscal Office, September 2023

The board is composed of 14 members, which includes seven Doctors of Medicine, two Doctors of Osteopathic Medicine, one Doctor of Podiatric Medicine, one Physician Assistant, and three public members. A bill passed in the 2023 legislative session added an additional Physician Assistant representative and reduced the number of Doctors of Medicine representatives from seven to six.

All board members are appointed by the Governor and confirmed by the Senate. They can serve up to two three-year terms. Under the governance of the board, there are 42 positions in several departments, including the executive director and medical director. OMB’s departments consist of Business, Licensing, Investigations and Compliance, and Administration.

¹ Renewal fee amounts include fees sent to the Oregon Health Authority for prescription monitoring and maintaining a workforce database and fees to support the Oregon Health and Science University Library.

OMB has many roles and responsibilities in regulating and enforcing the Medical Practice Act

Since its creation in 1889, the Oregon Medical Board has expanded its regulatory oversight to include several health care professions. OMB currently licenses and regulates:

- Doctors of Medicine (MDs);
- Doctors of Osteopathic Medicine (DOs);
- Doctors of Podiatric Medicine (DPMs);
- Physician Assistants (PAs); and,
- Acupuncturists (LAc).

In addition to licensing and regulating, OMB establishes practice standards, education, and scope, including for Emergency Medical Services (EMS) providers. OMB oversees licensee monitoring, probation, discipline, education, wellness, and remediation.

Figure 2: In 2022, OMB had over 25,000 licensees under its purview

	MD	DO	DPM	PA	LAc
Active	16,621	2,003	215	2,701	1,503
Inactive	1,103	115	8	134	57
Limited ²	786	217	13	3	1
Total	18,510	2,335	236	2,838	1,561

Source: Oregon Medical Board

Licenses are renewed every two years. At the time of an initial or renewal application, the licensing unit reviews the applicant's qualifications and any prior investigations or complaints they may have on their record. They also review any information available through the National Practitioner Data Bank (NPDB) administered by the U.S. Department of Health and Human Services, the Physician Data Center (PDC) administered by the Federation of State Medical Boards, as well as conducting a criminal background check. If there are any issues discovered during this process, an investigation may be opened into the licensee or an initial applicant. During the application process, licensees have the option of inputting their demographic information, as required by the Oregon Health Authority per ORS 676.410, which enables the board to conduct equity analysis.

OMB also enforces the state's Medical Practice Act as outlined in Oregon law.³ When there is potential or evident violation of the state's Medical Practice Act, OMB opens an investigation into the licensee or applicant. The board is required to make public certain actions taken against licensees who violate the state's Medical Practice Act, such as license suspensions, license revocations, or corrective action agreements. OMB is also required to report disciplinary actions to the National Practitioner Data Bank. Public board orders and actions against licensees are published and viewable on OMB's website or available via a public records request.⁴

² Limited licenses include scenarios such as postgraduates entering medical training programs, non-practicing providers employed as medical school faculty, or visiting out-of-state providers, such as during a declared state of emergency.

³ [Oregon Revised Statutes, Chapter 677](#)

⁴ [Oregon Medical Board | Board Actions](#)

Oregon's Medical Practice Act

Oregon's Medical Practice Act consists of 27 separate grounds for discipline or denial of a license. Most of these grounds are very specific. Some examples include gross or repeated acts of negligence, chemical substance abuse, conviction of a criminal offense, and sexual misconduct.

Medical board laws and structures vary from state to state

Each state determines their own Medical Practice Act. Some state legislation requires clear and convincing evidence of a medical practice violation, while other states, like Oregon, require a preponderance of evidence. Some states have one regulatory organization in charge of regulating medical practitioners. In Oregon, OMB solely regulates its licensees, within the scope of its authority under state law. Some other states have separate departments, agencies, boards, or commissions with different roles and authority. A licensee may commit a medical practice act violation in one state and face discipline, but in another state, their actions may not result in any discipline. These state-by-state variations can lead to varied disciplinary outcomes for licensees.

Other than federal requirements for reporting certain disciplinary actions to the National Practitioner Data Bank, there is no substantive federal oversight or policy requirements for medical boards. The Federation of State Medical Boards provides a framework, support, policy recommendations, relevant medical and regulatory studies, state comparisons, as well as another data hub for medical board action reporting. However, state medical boards are not required to be members of the Federation of State Medical Boards.

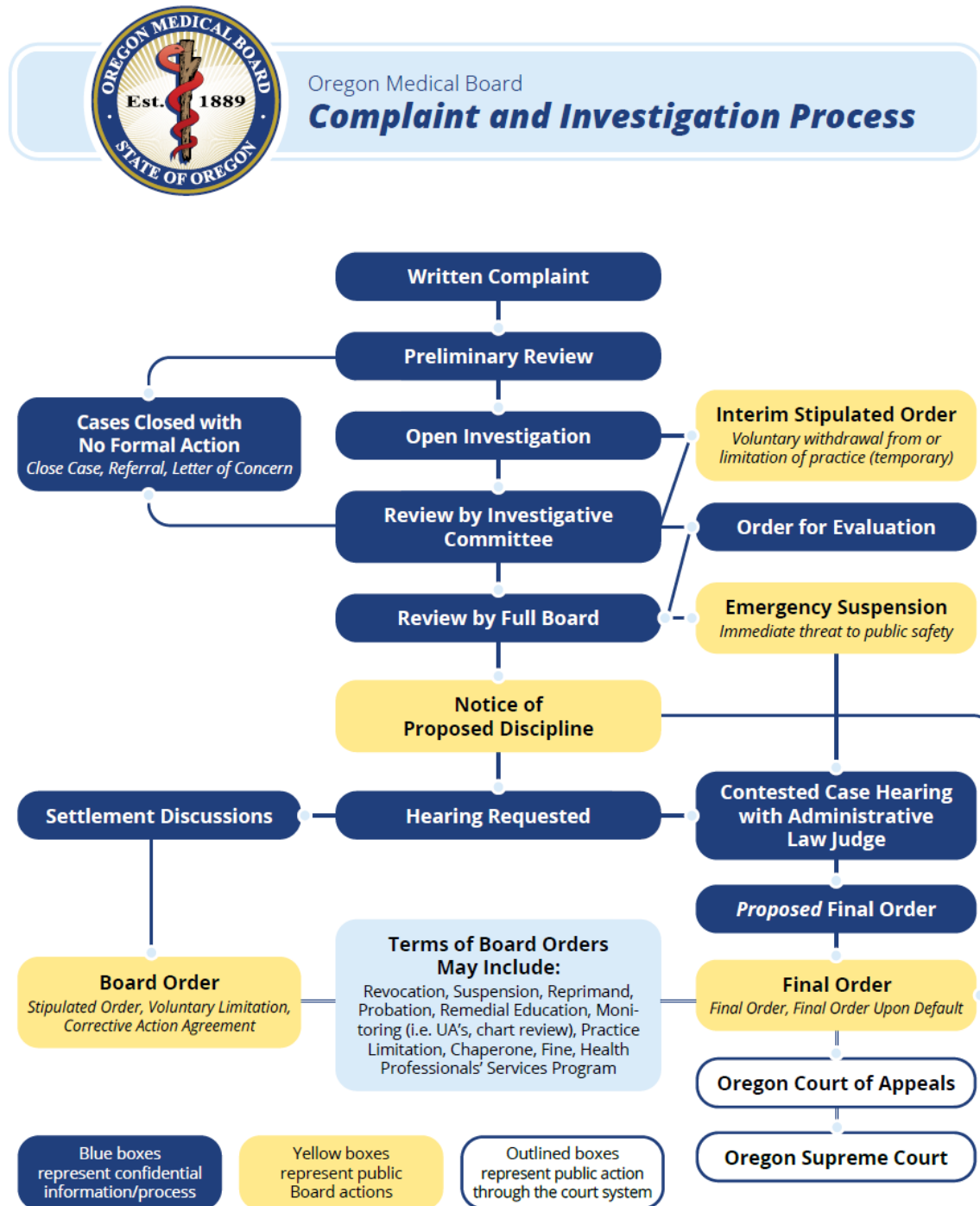
Many state boards have joined the Interstate Medical Licensure Compact (IMLC). IMLC has explicit rules and requirements in regulating licensees, some of which may override state-created laws and rules. When one participating state suspends a licensee, it has an automatic, mandated effect on that licensee in other participating states in which they practice. Currently, 37 states and two territories participate in the compact, with several pending completion of their participation application. Eleven states and territories do not participate, including Oregon. According to OMB, Oregon is not a part of the compact because some of the IMLC requirements are not as stringent as Oregon's licensing requirements.

Board composition also varies in each state. Most have one or more public members, who are individuals not licensed or regulated by the medical board. The Federation of State Medical Boards recommends at least 25% representation of public members. Currently, OMB has 21% public member representation.

OMB enforces Oregon medical laws by investigating complaints against licensees

Another critical OMB function is to investigate complaints against individuals licensed by the board. Complaints are reviewed and, if applicable, assigned for investigation. While licensees are required to report violations, most investigations come from complaints by patients and people associated with patients, such as relatives or patient advocates. An investigation is conducted when there is a potential violation of Oregon's Medical Practice Act.

Figure 3: Each written complaint OMB receives follows a defined process



Source: [Oregon Medical Board](#), January 2024

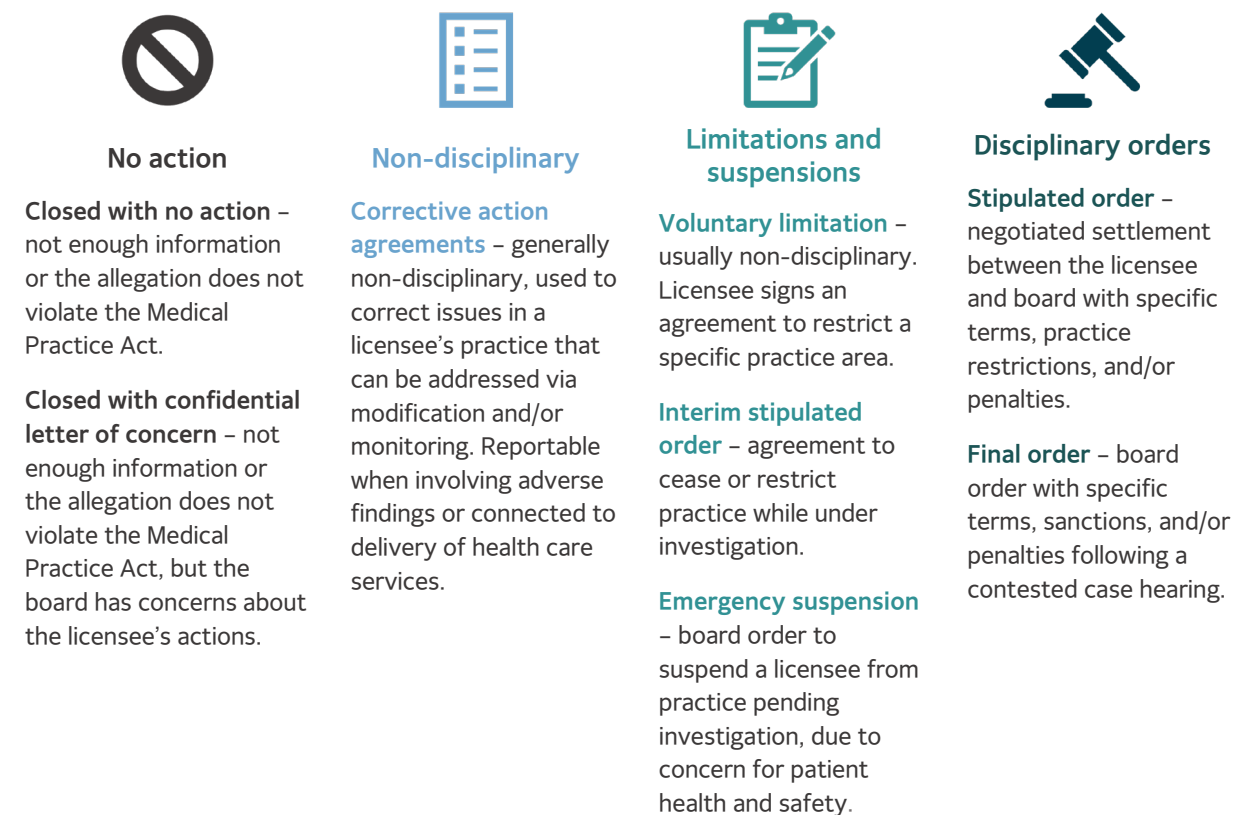
There are many stages and potential outcomes of OMB's investigated cases

OMB's investigation unit includes eight investigators, several administrative specialists, an investigations supervisor, and the investigations manager. The board receives about 700 to 800 written complaints annually. According to OMB's Winter 2023 Newsletter, the board opened 757 investigations and closed 792 investigated cases in 2022.

Complaints submitted to the board are reviewed weekly by a complaint intake committee, which determines whether there is potential for a violation. If a complaint is of an egregious nature, it will be reviewed with management upon receipt, then assigned to an investigator and prioritized; the complaint may require immediate action by the board. If there is an immediate concern for patient safety, the board may issue an Interim Stipulated Order to temporarily suspend or restrict a licensee's practice while under investigation. If the licensee refuses to agree to this order, the board can vote to suspend their license through an Order of Emergency Suspension. According to OMB, 55 cases opened from 2019 to 2022 (about 1.8%) included either an interim stipulated order or emergency suspension.

By statute, an investigator has 120 days to complete their investigation before submitting an investigation report to leadership, though the board can approve extensions to this timeline. While the investigation is open, the assigned investigator collects evidence, interviews those with potential knowledge of the violation, and then compiles an investigative case report when the investigation has concluded. This case summary report does not include any determinations on whether a violation occurred or recommend any disciplinary actions. Claims related to malpractice, incompetence, or unprofessional conduct are also reviewed by OMB's medical director, and the board often contracts with medical consultants to review medical-related cases and provide an expert opinion. The report goes through a quality assurance process that includes several reviews and then goes to the board for review and action.

Figure 4: Complaint cases can be resolved with a variety of outcomes, from case closure with no action up to a stipulated or final disciplinary order that may include sanctions and penalties.



Source: Oregon Medical Board

When the case report goes to the board, it is first reviewed by the Investigative Committee. This committee consists of five to six board members, including one public member. The committee reviews evidence and investigative case reports and proposes potential action for the board to take. This proposed action is then discussed by the full board. All disciplinary decisions are made by vote of the full board.

If the board finds that a violation occurred, it issues a Notice of Proposed Disciplinary Action. The licensee under investigation can either contest the proposed action through an administrative hearing or enter into a settlement with OMB, waiving their right to a hearing. If a settlement is reached, the board will issue a corrective action agreement, voluntary limitation, or stipulated order. Stipulated orders can include penalties, additional educational requirements, limitations on practice, monitoring requirements, or other sanctions, potentially including license surrender. Notably, the board considers corrective action agreements to be non-disciplinary actions, so they are generally not reported to the National Practitioner Data Bank, unless there are adverse findings or a connection to the delivery of health care services.

Figure 5: From 2020-2022, most of OMB's investigated cases that closed with an order were settled with stipulated orders

	2020	%	2021	%	2022	%*
Automatic Suspensions	1	1%	2	3%	3	3%
Corrective Action Agreements	13	15%	14	19%	12	13%
Stipulated Orders	62	74%	58	78%	71	78%
Voluntary Limitations	0	0%	0	0%	2	2%
Final Orders	8	10%	0	0%	3	3%
Total	84	100%	74	100%	91	100%

*Due to rounding, percentages may may not add up to 100%.

Source: Oregon Medical Board

When a licensee decides to contest a Notice of Proposed Disciplinary Action, the case goes to a hearing before an Administrative Law Judge. At the conclusion of a contested case hearing, the Administrative Law Judge will issue a Proposed Final Order. OMB can revise the terms and conditions of this order before issuing a Final Order. The licensee can further contest the Final Order at the Oregon Court of Appeals.

OMB generally learns about licensee misconduct, negligence, or noncompliance through complaints by patients and those associated with patients

Most complaints that lead to investigations come from patients or someone associated with a patient, such as a family member or advocate. In fact, more investigations came from complaints by patients and their associates than from all other sources. OMB licensees and some health care organizations are also required by statute to report potential violations of the Medical Practice Act. OMB reports that when it discovers a licensee has not reported a violation, it investigates and may take disciplinary action.

Malpractice lawsuits against OMB licensees are required to be reported to the board, as well. However, based on federal regulations and related court decisions, if a malpractice suit is filed against an organization, not a specific provider, it is not reportable to the National Practitioner Data Bank or the

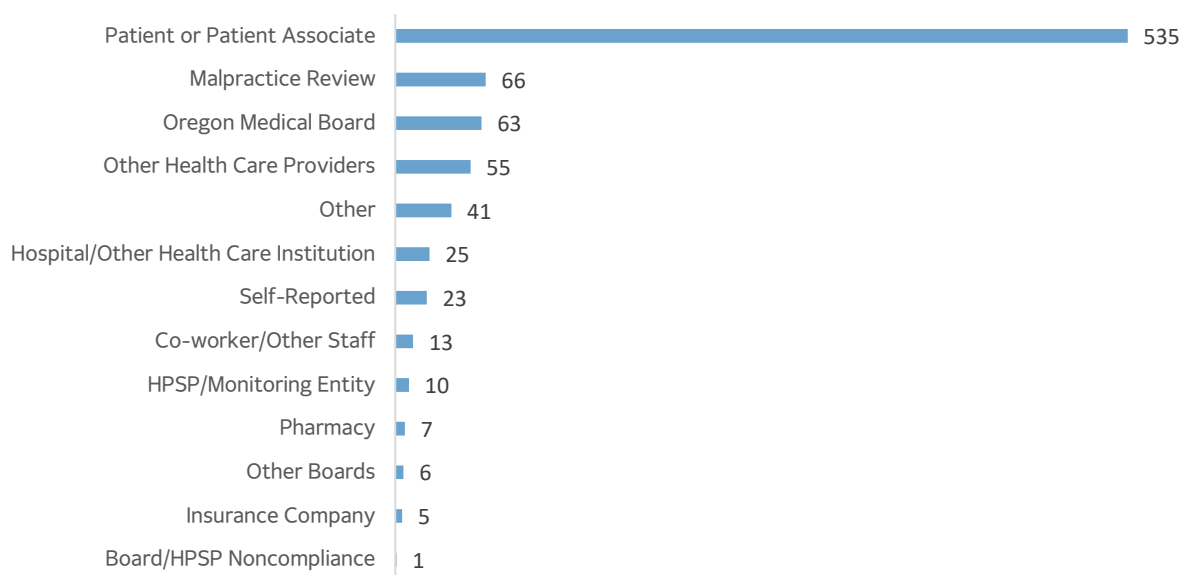
board. If a provider pays out a negotiated settlement from their own personal funds without reimbursement from an insurer, it is also not reportable to the data bank or the board.

The data bank requires hospitals and health care groups to report formal actions taken against a licensee if:

- the licensee’s conduct impacted or could have impacted patient care; and,
- the formal action against them is more than 30 days in duration; or,
- the organization accepts the practitioner’s surrender of clinical privileges or practice restriction while under investigation or in lieu of an investigation.

OMB requires health care facilities to report official actions taken against licensees within 10 days of the action. OMB defines an official action as “a restriction, limitation, loss or denial of privileges of a licensee to practice medicine, or any formal action taken against a licensee by a government agency or a health care facility based on a finding of medical incompetence, unprofessional conduct, physical incapacity or impairment.”

Figure 6: In 2022, more investigations came from complaints by patients or people associated with patients than all other sources combined



Source: Oregon Medical Board, [Winter 2023 Newsletter](#)

At a set cost to state medical boards, the National Practitioner Data Bank offers what it calls “Continuous Query” notification reports. These reports are sent to enrolled medical boards within 24 hours of the data bank receiving adverse information about a practitioner. Information reported to the data bank can consist of malpractice lawsuit payments and certain adverse actions against licensees, such as a state medical board revoking a doctor’s license. Notifications come to the data bank from several types of entities, such as hospitals, malpractice insurers, accreditation organizations, and state medical boards. Currently, OMB utilizes this feature for new applicants, licensees under investigation, and licensees who have been investigated for sexual misconduct. OMB enrolls such licensees for a 1-year period with the exception of licensees investigated for sexual misconduct, who are enrolled for a 2-year timeframe.

Contested case hearings can be expensive and are often avoided through negotiated agreements between licensees and the board. By the end of fiscal year 2022, OMB had two board orders appealed, two appeals upheld, one appeal closed without opinion, and three appeals still pending.

The Health Professionals' Services Program monitors licensees with substance use or mental health disorders

In addition to receiving complaints, the board may also learn about licensees' conduct by other means and decide to open an investigation. They may learn of a licensee's misconduct through other reporters, or through a confidential monitoring program called Health Professionals' Services Program (HPSP).

This confidential monitoring program is for licensees with substance use disorders, mental health disorders, or both. The board may order a licensee to enroll in this program after completing an investigation. The board establishes the program's requirements for the licensee to follow. During their enrollment period, the licensee is required to meet the criteria established by the board to maintain their license to practice. If a licensee fails to meet a requirement, such as failing a urine drug test, the program will alert the board, which will then potentially open a new investigation for noncompliance.

The HPSP also permits licensees to voluntarily self-enroll. The program will evaluate the licensee and create an individualized monitoring agreement. When licensees self-refer into this program, OMB will not be notified, unless the licensee becomes noncompliant with their monitoring agreement.



The Oregon Wellness Program

OMB has partnered in pioneering a free provider wellness program to help support practitioners facing personal and professional challenges. Called the Oregon Wellness Program, it was formally launched in 2018 after OMB partnered with health care institutions and a network of professional societies.

The program offers licensees resources through education and research and free, confidential counseling and wellness services. This initiative was driven by trends in provider burnout, suicides, and impairment. Providers facing these challenges with the difficult work they do are not always at their best, and it can affect their delivery of care, potentially compromising the health, well-being, and safety of Oregonians.

Racism threatens public health, impacting health outcomes and representation in the medical and scientific community

In recent years, the Centers for Disease Control (CDC) has declared racism a serious public health threat. According to the CDC, racism obstructs social and economic opportunities, affecting one's housing, education, career, well-being, and health. Health outcomes of underserved communities are affected by their community's representation in health care. The state of Oregon is working toward evaluating, revising, and implementing operational strategies and services with a focus on diversity, equity, and inclusion; all in a concerted effort to remove entrenched racism and discrimination within agencies and to the public they serve.

Racism is a serious public health threat

In 2021, when the CDC declared racism a serious public health threat, it emphasized the pervasive impacts of structured and interpersonal racism that has been rooted in this country for centuries. Racism affects an individual's ability to obtain housing, education, employment, and wealth — factors which experts refer to as the social determinants of health.

CDC also stresses racism's impact on the health care industry, in part by reducing the number of people of color employed in medical professions. This lack of representation for people of color “deprives our nation and the scientific and medical community of the full breadth of talent, expertise, and perspectives needed to best address racial and ethnic health disparities.”⁵

When health care professionals are disciplined unfairly, including through implicit or explicit bias, it can impact both licensees and the larger community. If a sanction is more lenient than typical for a violation, it could potentially jeopardize patients receiving care from that licensee. If the board's discipline is harsher than is typical, it can result in the licensee facing undue hardship and, potentially, the suspension or cancellation of their license. When this comes as the result of racial discrimination or bias, it can have the effect of limiting the representation of people of color in medical professions. Ultimately, this can contribute to continued disparities in medical treatment and health outcomes for communities of color.⁶

Racism and representation in the medical field

In its declaration of racism as a public health threat, the CDC referenced a report titled *Missing Persons: Minorities in the Health Professions, a Report of the Sullivan Commission on Diversity in the Healthcare Workforce*. This report details the impacts and barriers effected by embedded racism and how it hinders individuals from underserved communities from attaining education in a health care occupation and employment in a medical or scientific field. The report stresses that research shows a community's health outcomes are correlated with that community's representation in the health care workforce.

Oregon is focused on DEI action planning, strategies, and initiatives

In recent years, Oregon has encouraged state agencies to incorporate Diversity, Equity, and Inclusion (DEI) in their operations and service delivery. In 2021, the State of Oregon's DEI Action Plan was published. It has a specific initial focus on anti-racism and outlines recommendations and resources for state agencies to utilize. In early 2023, Governor Tina Kotek issued a letter of expectations for state agencies which included a requirement for agencies to create and submit strategic DEI action plans, making specific reference to the 2021 DEI Action Plan as a guide to agencies in their development and implementation.

Additionally, the Secretary of State's Audits Division conducts performance audits with an equity lens. Federal performance auditing standards, set by the US Government Accountability Office, compel state auditors to include an equity focus when conducting performance audits of government agencies, with

⁵ [Racism and Health | Minority Health, CDC 2021](#)

⁶ [Missing Persons: Minorities in the Health Professions, the Sullivan Commission](#)

specific criteria for assessing if an auditee’s “services are provided effectively, efficiently, economically, ethically, and equitably.”⁷

The Oregon Medical Board has a strategic plan for incorporating DEI in the board’s operations and how it regulates licensees. Following the Governor’s request in early 2023 for state agencies to submit a strategic DEI plan, OMB completed and submitted its plan in May 2023. The plan includes strategies to incorporate DEI in the investigation process, including:

- Collecting complainant demographics at the conclusion of an investigation;
- Creating a new complaint category for discrimination; and,
- Amending board rule to include discrimination as a form of unprofessional conduct.

In addition to OMB’s new DEI action plan, OMB had previously implemented a continuing education requirement for licensees on cultural competency, as required by statute. The board also established a cultural competency philosophy statement, which is a detailed explanation of its expectations of licensees related to providing culturally competent care to their patients. In 2017, OMB published a booklet, “Cultural Competency: A Practical Guide for Medical Professionals,” which was adopted as required reading for many educational and training programs and was given the 2018 “Best of Boards Award” by the national organization Administrators in Medicine for education and outreach. Furthermore, OMB has an established, detailed Affirmative Action policy for hiring and maintaining a diverse and inclusive workforce.

⁷ [Government Accountability Office, GAO-21-368G, Government Auditing Standards: 2018 Revision](#)

Audit Results

Although OMB has some processes in place to try to ensure consistent board decisions, the board does not have formal, written procedures or processes for achieving consistent and equitable decisions on investigated complaints against licensees.

OMB has taken steps to reduce the risk of making inconsistent or inequitable sanctioning decisions, including implementing sanctioning guides for two specific complaint types. The board also uses an informal process to review prior investigated case outcomes in an effort to ensure consistency. However, OMB does not conduct routine, systematic analyses of board decisions. Without this, or established sanctioning guidelines, OMB and the public cannot be sure investigated cases are decided consistently and equitably. The board would benefit from developing and implementing sanctioning guidelines for all other types of complaints the board investigates, as well as creating a formal process for routine, systematic analysis of their case decisions.

Due to how complaint information is captured in OMB's data system, it is difficult to analyze decisions for equity and consistency across all cases. For example, many cases include more than one type of complaint, but the data system is not configured to identify the primary or main complaint type. This impedes OMB's ability to easily use its data to sort and compare cases with similar complaint types.

Implementing formal guidelines and case reviews would help OMB ensure equity and consistency

While OMB utilizes some informal procedures for trying to ensure consistency and equity in board decisions, as well as using sanctioning guides for two different types of complaints, OMB could provide more assurance of consistency and equity by implementing sanctioning guidelines for all types of complaints.

Complaint cases can be complex, with unique circumstances and factors that can affect how a licensee is sanctioned

Medical complaint cases can be thorny, potentially containing specific circumstances within the case or the licensee's history that can make it challenging to compare with other cases. There are many factors that can affect the outcome of an investigation. These factors can reduce or increase the level of board action.

For example, the location of a practitioner and type of license can play a part in the board's decision making. If a provider is practicing in a rural or frontier region, the board will consider the community standard of care in determining whether the licensee was practicing appropriately. Similarly, an acupuncturist licensee may receive a lower monetary penalty for a violation than a physician licensee, as their income may be less, so a higher penalty could cause more financial hardship.

Another possible consideration is whether a licensee is new in their career or has a history of previous similar issues. If a licensee is new to their profession and is actively seeking additional experience and support, the board may decide to place the licensee on a corrective action agreement to help them learn and grow their skills through education or mentoring.



In some instances, two complaint allegations can appear to be similar, but the dynamics of the cases are completely different and may contribute to different board disciplinary outcomes. For example, the same procedure performed on two patients with different levels of overall health can have very different results. Similarly, the same surgery performed by two different surgeons can also end with different results depending on the experience of the surgeon, the available resources, the patient's condition, and other factors. As a result, these cases could have very different disciplinary outcomes.

While OMB has formal procedures in many areas, implementing disciplinary guidelines and routinely analyzing case decisions would help further equity and consistency

OMB's investigation process includes many formal policies and procedures staff and managers are expected to follow. These include policies on how the intake committee receives and initially evaluates complaints; how investigations should be conducted; and how investigation case summaries should be compiled, among other areas.

All investigation case reports go through multiple reviews, including by the investigation manager, medical director, and executive director, before going to the board. Initial recommendations for discipline are made by the Investigative Committee — comprised solely of board members — and not by investigators or other OMB staff or managers. Although auditors did not test each of these procedures, taken together, they appear to provide a useful starting point for promoting equitable and consistent decisions.

In contrast to these formal policies and procedures, OMB's current process for comparing disciplinary decisions is generally informal and intermittent. For example, OMB management indicated the board sometimes requests information on past disciplinary outcomes to inform its decision on a current case.

OMB managers will then identify similar cases using a combination of keyword searches in the data system and staff or manager recall of prior cases.

However, there are no formal policies or procedures governing this process or specific guidance for how to determine case precedence, to help ensure these reviews are performed in a standard way. Additionally, they are generally only done when requested by the board, or when OMB managers or staff anticipate the board might want this information. Without a formal process for these tasks, as well as policies and procedures for routinely conducting systematic reviews of disciplinary decisions, it is difficult to be sure the board's decisions are consistent and equitable.

To further promote the consistency and equity of disciplinary decisions, many medical boards in other states utilize sanctioning guidelines or disciplinary matrices. States with guidelines or matrices include Connecticut, North Carolina, Ohio, Virginia, and Oregon's neighbors Washington and California, among others. Like sentencing guidelines used by courts, disciplinary guidelines generally establish the minimum and maximum disciplinary sanctions a board will apply for a specific violation or category of violations.

California and Washington Utilize Sanctioning Guides

California uses a detailed, prescriptive disciplinary guidance document that details minimum and maximum sanctioning and various conditions to consider for each type of complaint. In contrast, Washington uses a disciplinary matrix that determines minimum and maximum sanctioning based on the severity of the violation and the risk of or actual harm to patients.

Many other health care-related boards also use disciplinary guidelines or matrices, as well as other types of regulatory boards. Auditors found examples of nursing, dental, physical therapy, and other health care boards using disciplinary guidelines or matrices in states like Maryland, North Carolina, Texas, and Virginia. Other regulatory boards and organizations that use or recommend using disciplinary guidelines include the Association of Marital & Family Therapy Boards, National Center for State Courts, Transportation Security Administration, and Financial Industry Regulatory Authority. Additionally, the Federation of State Medical Boards has noted the importance of efforts to "identify best practices for ensuring fairness and incorporating the principles of equity and inclusion in board decision making related to licensing and disciplinary action."⁸

While OMB uses sanctioning guidelines for two specific types of complaints, it does not use them for any other complaint types. When auditors asked OMB about this, management indicated a concern that guidelines could not adequately account for the unique circumstances and complexity of each case. Disciplinary guidelines we saw in other states included provisions in which the board can deviate from the guidelines if necessary. Some boards also set mitigating or aggravating factors that, if present in a case, may warrant either a lighter or more stringent disciplinary sanction. Providing this flexibility helps preserve a board's authority and autonomy in making disciplinary decisions and protects against potential injustices for cases that may not fit well within disciplinary guidelines.

⁸ Federation of State Medical Boards (FSMB) Diversity, Equity, and Inclusion Workgroup Interim Report, 2022.

Without a disciplinary matrix or guidelines to help guide the board's disciplinary discussions and a regular and systematic process for reviewing past cases, OMB cannot provide convincing assurance to the public and licensees that its disciplinary decisions are equitable and consistent. However, the board has taken some action to look for potential inequities. OMB's strategic plan includes an item to evaluate equity in "investigative case reviews and final outcomes," with an expected completion date of December 2023. However, according to OMB management, the expected completion date of that evaluation has been revised to December 2025 due to other work demands. The board also utilized a legal student extern in 2013 to review past cases for consistency of disciplinary outcomes. While that review found no significant inconsistencies, the limited nature of this review is not an adequate substitute for a regular, robust review process.

A new data system with robust categorization of complaints will help OMB conduct routine, systematic equity analysis of case outcomes

While OMB is in the process of developing a new data system that will have more data capabilities, the board's current system, TechMed, does not effectively capture complaint detail to allow for consistency and equity analysis.

The data system contains over 50 complaint categories, with most cases containing several different types of complaints. Moreover, all complaint types applicable to a case are captured in one data field, with no delineation in the data system to identify a primary complaint type or to organize complaint types by the most serious or most pertinent allegation included in the case. In the data provided to the audit team, there were over 600 combinations of complaint types in the complaint category field, making it difficult for auditors to analyze the data in a useful way. Without an effective complaint categorization mechanism in its data system, OMB cannot objectively and systematically evaluate consistency and equity across all cases.

Due in part to the limitations with OMB's complaint data, auditors reviewed a targeted selection of 28 case files that appeared similar in nature, or which included serious allegations. While no substantial discrepancies were found in these cases, the difficulty of identifying cases with similar complaint types in the data limited the number of cases auditors could realistically review and impaired the usefulness of both the analysis and any conclusions that could be drawn from it.

OMB is in the process of building and rolling out a new data system to capture licensing and case information, which will replace its current system. This process is expected to be finished in 2024. OMB management has indicated that while this system is intended to provide similar functionality to their current system, it will have the capability to capture different data points. Management has also indicated its willingness to make changes to the new system based on this audit's findings and recommendations.

Recommendations

To help ensure investigated cases result in consistent and equitable board decisions, OMB should:

1. Implement sanctioning guidelines and/or a sanction matrix to help reduce the risk of inconsistent and inequitable case decisions;
2. Add the ability to categorize cases by primary or most serious complaint type, or another effective categorization system, to its forthcoming new data system;
3. Use complaint data to conduct regular, systematic reviews of past cases to help monitor for and ensure equity and consistency;
4. Develop and implement written policies and procedures for analyzing board disciplinary decisions for equity and consistency.

Objective, Scope, and Methodology

Objective

How does the Oregon Medical Board ensure its disciplinary decisions are consistent and equitable for cases with similar circumstances and violations?

Scope

Complaint cases closed with a disciplinary action, corrective action agreement, or letter of concern for the five-year period of January 1, 2017, to December 31, 2021.

Methodology

To meet our objective, we performed the following procedures:

- Analyzed OMB complaint case data and licensee demographic data;
- Reviewed the board's policies, procedures, and processes related to investigations and disciplinary decisions;
- Interviewed OMB managers, staff, and Investigative Committee board members, as well as stakeholders and other outside groups, such as the Oregon Society of Physician Assistants and malpractice attorneys;
- Reviewed a targeted selection of 28 complaint case files;
- Obtained audits, reports, and/or documents from other states' medical or health licensing boards, as well as other boards and commissions in Oregon; and
- Reviewed research, reports, or other documents from related professional organizations and outside groups, such as the Federation of State Medical Boards and the National Practitioners Data Bank.

Internal control review

We determined that the following internal controls were relevant to our audit objective.⁹

- Risk Assessment
 - We reviewed policies and procedures, interviewed OMB managers and staff, and sent questions related to the board's strategic goal of consistent disciplinary outcomes.
- Control activities
 - We interviewed OMB managers and evaluated policies and procedures related to disciplinary decisions.
- Monitoring activities
 - We evaluated whether the board regularly analyzes its disciplinary outcomes for equity and consistency.

Deficiencies with these internal controls were documented in the results section of this report.

⁹ Auditors relied on standards for internal controls from the U.S. Government Accountability Office, report [GAO-14-704G](#).

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of the Oregon Medical Board during the course of this audit.

Audit team

Olivia Reched, MPA, Audit Manager

Stephen Winn, MPP, Principal Auditor

Christina Nichols, Staff Auditor

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of the office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.



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January 16, 2024

Kip Memmott, Director
Secretary of State, Audits Division
225 Capitol Street NE, Suite 500
Salem, OR 97310

Dear Mr. Memmott,

This letter serves as the Oregon Medical Board's written response to the Audits Division's final draft audit report titled "To Protect Patients and Maintain Public Trust, the Oregon Medical Board Should Further its Efforts to Address the Risk of Inequitable Disciplinary Decisions."

The OMB is committed to consistent and equitable outcomes in our investigations. Therefore, we agree with the report's findings and the four recommendations which directly align with the OMB's mission and values, specifically integrity, accountability, excellence, customer service, and equity.

Below is our detailed response to each of the four recommendations in the audit.

Recommendation 1		
Implement sanctioning guidelines and/or a sanction matrix to help reduce the risk of inconsistent and inequitable case decisions.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	July 1, 2025 and ongoing	Nicole Krishnaswami 971-673-2700

Narrative for Recommendation 1: The OMB agrees with this recommendation and the audit's acknowledgment that, "[OMB] cases can be complex, with unique circumstances and factors that can affect how a licensee is sanctioned."

In 2018, the OMB identified DUII cases and opioid prescribing cases as high-volume, single-issue allegations, and the agency developed internal advisory guidelines to assist the board in resolving these categories of cases. By the end of this fiscal biennium, the OMB will build upon this work to develop additional disciplinary guidelines to efficiently, consistently, and equitably review cases with consideration of aggravating factors (e.g. licensee has a pattern of similar conduct, has violated prior board orders, etc.) and mitigating factors (e.g. licensee has no history of similar issues, is actively engaged in remediation, etc.).

The mission of the Oregon Medical Board is to protect the health, safety, and wellbeing of Oregon citizens by regulating the practice of medicine in a manner that promotes access to quality care.

Importantly, while the goal of disciplinary guidelines is to ensure equity and consistency, the OMB understands that systemic and institutional biases raise the possibility that any matrix or algorithm may actually result in inequitable outcomes as has been a concern with Oregon's Measure 11 and many three-strikes laws across the country. The OMB will aim to write guidelines that attempt to control for inherent, systemic biases so that they do not result in disparate outcomes for historically disadvantaged licensees.

The guidelines will be used as internal advisory communications to support board members in their deliberations, and the board will retain discretion to craft an appropriate resolution in each unique case – ranging from closure with no discipline to license revocation – after carefully considering each investigation's specific circumstances.

Recommendation 2		
Add the ability to categorize cases by primary or most serious complaint type, or another effective categorization system, to the agency's forthcoming new data system.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	July 1, 2025	Nicole Krishnaswami 971-673-2700

Narrative for Recommendation 2: The OMB agrees with this recommendation and appreciates the audit's recognition of the limitations of the agency's existing database. The OMB is currently developing a new database that will replace its legacy system. Therefore, this is an ideal time to reevaluate and revise the current categorization system for complaints.

The OMB's new database is projected to deploy in early 2025. Because changing the categorization system may be deemed an "enhancement" by the vendor developing the database and because of the propensity for IT projects to be delayed, we anticipate completing this recommendation by July 1, 2025. If additional funding is needed to add such an enhancement to the project currently underway, the OMB may seek additional expenditure limitation in the agency budget.

Recommendation 3		
Use complaint data to conduct regular, systematic reviews of past cases to help monitor for and ensure equity and consistency.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	July 1, 2026	Nicole Krishnaswami 971-673-2700

Narrative for Recommendation 3: The OMB agrees with this recommendation and that regular, systematic reviews of cases will be helpful in monitoring for disparate outcomes. The OMB also appreciates the audit's recognition that such a review is complicated because "two complaint allegations can appear to be similar but have completely different case details that may contribute to different board disciplinary outcomes."


The OMB's Strategic Plan and its Diversity, Equity, and Inclusion Action Plan both include performing a retrospective analysis similar to this recommendation, and the agency looks forward to the increased reporting and data analysis capabilities that will be possible with the new database. We estimate a full year's data will be necessary for meaningful analysis; therefore, we will spend the time between now and July 1, 2026, determining the key data collection points, performing quality assurance on the data, and developing a framework for analysis of the data that aims to explore equity and consistency of disciplinary outcomes.

Recommendation 4 Develop and implement written policies and procedures for analyzing board disciplinary decisions for equity and consistency.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	January 1, 2026	Nicole Krishnaswami 971-673-2700

Narrative for Recommendation 4: The OMB agrees with this recommendation and will develop policies and procedures for conducting the regular, systematic reviews of disciplinary cases (Recommendation 3) to evaluate the board's equity and consistency in disciplinary decisions. The OMB maintains robust procedures for completing its work, and the agency will ensure that policies and procedures are in place to solidify this analysis as part of our routine process improvement activities.

Finally, the Oregon Medical Board thanks the audit team from the Secretary of State Audits Division for their detailed and comprehensive audit of the OMB's investigative processes and for their professionalism and consideration throughout the review. We are extremely proud of the dedicated and thorough work of the board members and staff, and we are pleased that the audit provides tangible recommendations for continuing to strengthen our agency.

Please contact Nicole Krishnaswami at Nicole.Krishnaswami@omb.oregon.gov or 971-673-2700 with any questions.

Sincerely,

Nicole Krishnaswami
Executive Director

cc: Christoffer Poulsen, DO, Board Chair 2024
Erin Cramer, PA-C, Board Member (Chair 2023)
Olivia Recheke, MPA, Secretary of State Audits Division, Audit Manager
Stephen Winn, MPP, Secretary of State Audits Division, Principal Auditor
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Secretary of State
LaVonne Griffin-Valade



Audits Director
Kip Memmott

This report is intended to promote the best possible
management of public resources.
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